

(CLOSING ARGUMENTS)

MS. KILLEEN: Thank you, Your Honor. Ladies and gentlemen of the jury, thank you for your patience this morning while we waited for the availability of the last piece of Commonwealth evidence. I will get to why that piece is significant, and the Commonwealth wanted to make sure that you were able to consider it later. I know it's been a bit of a long morning. We actually spent the time usefully completing all the instructions and really did use all that time. Everyone in this courtroom agrees that Raelyn Balfour, the defendant, killed Bryce Balfour, between the two parties. The defense says it; the Commonwealth says it. Commonwealth's Exhibit 1, everyone agrees that on March 30th, 2007, this little boy's life did not have to end this way, on a hospital gurney deceased, dead, his life squandered and gone forever. This case is about Bryce Balfour and his life and whether his mother's conduct as a caretaker for him constitutes criminal negligence, and the Commonwealth submits to you that it does just on having left the child for seven-and-a-half hours in the car, but that's not what you are being asked to consider. You are being asked to consider more than that. The Commonwealth expects that it heavily---well, you saw from the evidence that a big

1 factual dispute between the two sides is the meaning of the
2 telephone records in the case, of the network record from
3 Alltel and whether the call that the Commonwealth says is to
4 voicemail at 10:44:56 that morning is accurate. Ladies and
5 gentlemen of the jury, you know that she accessed her phone.
6 She's told you that she did. She told Whitney Huff, I
7 didn't return your call that morning because you normally
8 called me from a different number, and I never returned your
9 call that morning because you normally called me at a dif-
10 ferent number. She's told you that she is guilty of crimi-
11 nal negligence. She is the mother of the child, and as the
12 mother, she is a caretaker responsible for preserving his
13 safety. There are other caretakers. His father is a care-
14 taker. The babysitter is a caretaker. Teachers and coaches
15 can be caretakers. In this instance, Jarrett Balfour is not
16 charged because he doesn't have some sort of magical or
17 divine responsibility to know where the child is at all
18 times and neither does Mrs. Balfour. It's not the situation
19 of some sort of strict or absolute liability that just
20 because the infant died, she's guilty, but that's not what
21 we're here about. This isn't leaving the child in the car
22 for an hour and coming back and discovering that there was a
23 problem. This is over seven-and-a-half hours, and she picks
24 up her personal cell phone that morning after getting to
25 work not once, but twice. The call to voicemail, number

1 one, and number two, the call she received from Battlecreek,
2 Michigan, which would appear to be a continuation of the
3 serious family discussion/family argument going on regarding
4 the nephew's gambling problem, a family discussion that she
5 chose to begin that day by initiating a call for twenty-nine
6 (29) minutes uninterrupted while coming down 29 South, a
7 serious emotional discussion about money, a difficult set of
8 issues during rush hour traffic with the nine-and-a-half
9 month old in the backseat of the car. Mr. Balfour has told
10 you that Bryce was very groggy that morning, that he was
11 very quiet compared to normal, that he was normally a very
12 alert baby. There is some evidence that he was sick.
13 Neither parent seems to have had any question that, never-
14 theless, he needed to go to daycare that morning if he was
15 that different in nature. That's ordinary negligence.,
16 That's not gross negligence. We're not claiming that that's
17 gross negligence; however, the Commonwealth would suggest to
18 you that the defendant's statement in the hospital as she's
19 cradling the dead body of the infant and talking to him and
20 saying, I'll sing you patty cake every night; you were talk-
21 ing this morning and you fell asleep on mommy, didn't you?;
22 I'm sorry---tells you that at some point after Mr. Balfour
23 got out of the car, the infant became more alert. There's
24 no reason to disbelieve that statement. She's at the hospi-
25 tal under circumstances where she has within two hours pre-

1 viously discovered that she has left her infant in the car
2 all day and the infant has died, and the only sense of the
3 statement to Officer Tabler is exactly that. She, at some
4 point after Mr. Balfour got out of the car, was aware of
5 Bryce talking in the backseat as he usually would be and
6 then just later forgot. The cell phone call---any cell
7 phone call that was going on for a twenty-nine (29) minute
8 conversation, let alone something that was a serious heavy
9 family discussion, can pull a person's attention out of the
10 car, off the road, and you don't see the turn for, I think
11 the testimony was six miles from the National Ground Intel-
12 ligence Center. The Balfours came four miles down 29 South
13 or 4.8 miles down 29 South to the turn for National Ground
14 Intelligence Center, which was about two hundred (200) feet
15 or so off 29 and then she gets back on 29 and continues
16 down, Mr. Balfour said, six miles to the turn for the baby-
17 sitter's and this isn't sixty (60) miles an hour. That's
18 not six minutes. This is during rush hour traffic. This is
19 going to take some period of time longer than five minutes,
20 so there's time to be thinking and to be mindful, and she
21 has put herself in the situation repeatedly and constantly
22 with choices. She has put herself in the situation of being
23 able to forget the infant. She is exhausted because she's
24 had little sleep. That happens to a lot of young parents,
25 but in her case, she has gone out babysitting the night be-

1 fore instead of coming back and going to bed at her usual
2 time of nine or ten, even though she's been sick, Bryce has
3 been sick, work is at push time. She's having difficulties
4 at work managing her time and that's a constant ongoing dis-
5 cussion with her supervisor, and she gets up the next morn-
6 ing and proceeds, and her statement at the hospital is, I
7 should have stayed home. She only had three hours of sleep
8 but it's more than that because she's putting herself in a
9 pattern in a situation, and what you've heard is that work
10 was happening. Well, work happens for adults who work out-
11 side the home; it does. Someone who has push time at work,
12 if they have children, still has an obligation for the care-
13 taking of those children, okay? Accountants with tax day
14 coming up on April 15th still have to take care of their
15 children if they have them. The transportation officer for
16 the JAG School, in addition to doing all of the transporta-
17 tion for all of the students at the JAG School, needs to get
18 her child taken to daycare---transported to daycare. That
19 is the great irony in this case. There is an 18th Century
20 proverb, shoemakers' wives go barefoot and doctors' wives
21 die young. It has to do with neglecting your core, essen-
22 tial, personal responsibilities. It has to do with being so
23 focused on externals that you neglect what is so essential
24 to you at home, what was the most precious cargo she had,
25 and what you hear is that she has perfectionist tendencies

1 at work such that she'll focus on what she chooses to focus
2 on to the nth degree and sometimes to the neglect of other
3 things, and on this day, that got in the way of Bryce and
4 that is unacceptable, absolutely unacceptable. It is gross
5 negligence because over seven-and-a-half hours, she never
6 remembers, never remembers. There's a picture of Bryce in
7 her office. That doesn't cue her in and she was in her work
8 area. She has picked up her personal cell phone, and she
9 doesn't deal with the missed call that is on that phone.
10 The defense has put in some impeachment evidence concerning
11 Detective Roach. What the Commonwealth would suggest to you
12 that the situation means, if anything, is that you might
13 find that feelings were strong in this case and that feel-
14 ings are strong in this case on both sides. The detective's
15 conduct and actions, if you were to find that he said what
16 the defense has accused him of, his conduct speaks so much
17 louder than his words. What did he do? They've got a
18 pretty much---the police have a pretty much ironclad rule
19 that when they secure a body scene, they're not letting any-
20 one, including bereaved family members, in to see that body,
21 okay? They have no way to know when we're here in this set-
22 ting and there's a team of defense attorneys on the other
23 side whether cause of death is going to be disputed, okay,
24 whether the preservation of that body is going to be dis-
25 puted. It wasn't disputed here but they can't predict the

1 future. They don't know. Someone might have disagreed with
2 the medical examiner's conclusion. This would not be homi-
3 cide if Bryce had died of just---spontaneously died of natu-
4 ral causes, that it somehow turned out that he had had a
5 terminal disease that we didn't know about and happened to
6 expire from that just at the same time that this happened
7 because she would not have caused his death if you had that
8 mere confluence of events. One of the reasons that you wait
9 to charge in a case like this is we're not doctors. We
10 don't know. You can make inferences from a gunshot. We
11 know if someone has been shot. We can recognize a gunshot
12 wound. We don't know with the infant's body exactly how he
13 died. The detective is not a doctor, okay? He makes an ex-
14 ception, and he lets the parents see the body with supervi-
15 sion. There are other people present. It's a difficult
16 situation. We don't disagree with that. What else does he
17 do? You don't have to rely on the officer's credibility for
18 the statement. That's taken down by a court reporter for
19 you and it's recorded, but listen to his tone. He is kind
20 and gentle and respectful, and he is gathering the informa-
21 tion firsthand as he needs to do and quickly as he needs to
22 do. Which one of you wants to know that the police found or
23 learned of a nine-month old dead in a car having been there
24 for over seven-and-a-half hours and they didn't act quickly
25 to find out how that happened and to make sure it wasn't an

1 ongoing problem? That is a community safety problem for
2 sure. Detective Roach and the defense attorneys have dif-
3 ferent duties in the case. They both have jobs to do and to
4 do well, and Detective Roach did his job in this case ex-
5 tremely well. The defense attorney's job is to defend their
6 client. His job is to investigate and follow where the
7 facts lead, which is exactly what he's done and to protect
8 community safety, which is also what he's done. He's done
9 everything that the community should expect. You may find
10 that there were some strong feelings in the case. That's
11 true. That doesn't mean that he didn't do exactly what he
12 was supposed to do, and it's easy to try and take those
13 strong feelings and twist them and try and tar him up when
14 he's done nothing but treat the defendant with dignity, ab-
15 solutely nothing. Arrangements were made for her to turn
16 herself in. You've heard that. He doesn't make a charging
17 decision without consultation with the Commonwealth's Attor-
18 ney in a case of this nature. You heard that. Warrants did
19 not issue that night. They issued later, and they issued
20 with all deliberate speed under appropriate circumstances,
21 and Whitney Huff never met with him. She had no problem
22 with how he was doing his job anyway, but she never met with
23 him and came down for a full meeting to talk about the
24 situation. Instead, the defendant is talking to her about
25 how the lawyer said maybe she could have come back in the

1 middle of the day and put the child in the car in the middle
2 of the day, which she clearly found terrifying and nerve-
3 wracking, and then over several months there was a lot of,
4 you need to get an attorney, you need to get an attorney,
5 you need to get an attorney and, ultimately, the Balfour
6 family arranges for that by providing Whitney with fifteen
7 hundred dollars (\$1,500) in cash, and she's done nothing
8 wrong and there isn't anything she told you that isn't true.
9 I would challenge you to find one thing that she said that
10 isn't the absolute truth in this case, and she's not influ-
11 enced by Detective Roach at all, and she called the defen-
12 dant and she left the defendant a voicemail and that shows
13 up on her phone record. It does not show up on the defen-
14 dant's phone record because the voicemail system for Alltel
15 is different and it doesn't track by the phone. They don't
16 keep track of that. They only keep track of calls that con-
17 nect through or the defendant making a call including when
18 they call their own voicemail. On the phone records you
19 have seen that the time stamps are different. We don't dis-
20 pute that. The time stamps are different between the two
21 phones. It would appear that the defendant's phone is the
22 one that's off a bit, that it's a bit slow or, excuse me,
23 it's a bit fast. The reason the Commonwealth says that is
24 that Officer Jenkins was there at 16:01. He takes over CPR.
25 She is not doing CPR at 16:01, so if you were to rely on the

1 phone records, she can, in fact, have been making the voice-
2 mail calls that defense counsel pointed out he didn't feel
3 could be made in his examination of the Alltel witness, so
4 when Melissa Davis told you, well, she could be wrong,
5 that's not true. It's the network record. It's the raw
6 data for the phone. The time stamp is off. Officer Jen-
7 kins' time of arrival matches up more with Whitney Huff's
8 phone in terms of Whitney Huff is on her phone getting her
9 voicemail at about 3:55. She's talking to the defendant by
10 3:58. The defendant is running out of the building and dis-
11 covering the child by 3:59. You can infer that, and Officer
12 Jenkins is there at 4:01 p.m. It all happens extremely
13 quickly. The defendant screaming and Suttles---Sergeant
14 Suttles is coming out and discovering. This is not a pro-
15 tracted situation and you know from Sergeant Suttles' testi-
16 mony that the defendant clearly made phone calls during the
17 rescue scene. She called her husband. She called her
18 mother or was attempting to and the repeated calls to voice-
19 mail that evening are more than consistent with the crisis
20 situation that was going on. Those calls were made. More
21 importantly, what it means is the phone record is correct.
22 The defendant accessed her voicemail. The physical evidence
23 tells you that and the defendant has said so in her state-
24 ment. Now one of the things that counsel in cross-
25 examination of Detective Roach mentioned was there was a

1 point in the statement where the defendant says, left a mes-
2 sage or didn't leave a message, referring to the babysitter,
3 but then she saw that she had a missed call and then later
4 when the detective does the recap, he describes it as a mes-
5 sage. You need to apply your common sense and ordinary ex-
6 perience to the advent of technology that we've had and to
7 people routinely having cell phones. It used to be that if
8 one got a phone message it was audible only, that we just
9 had phone message machines that attached to our landline
10 phones, but now we have a concept, something specifically
11 called a voicemail, which you can call into and get the au-
12 dible cue, but we also have the missed calls which is a
13 visible cue on the phone, so when one refers to a message,
14 it can be visible. It can be audible. She got the message
15 in the sense that she saw the missed call. She didn't re-
16 turn it. She was busy that day, very busy, but the great
17 stress of the sergeant having yelled at her about the situa-
18 tion with the airline tickets and the fallen soldier in
19 Afghanistan, that's happening after 8:23. She's already
20 left Bryce in the car, so it's not a contributing stressor
21 to having left him in the car, and it's not particularly
22 much of a contributing stressor to failing to remember be-
23 cause it's done in about a half-an-hour, forty-five (45)
24 minutes. By 9:10, I think, or 9:12 was Sergeant Jenkins---
25 excuse me, not Sergeant Jenkins, the sergeant who testified

1 to that material, and then it's 9:42:11 that Whitney Huff is
2 leaving a voicemail. It is important ---you are going to
3 see several instructions. One of the ones that the Common-
4 wealth wants to talk about is the character instruction
5 that's been offered to you that says that you may consider,
6 you're not required to consider, but you may consider the
7 character of the defendant in assessing guilt or innocence.
8 That instruction doesn't make a whole lot of sense under the
9 defense theory of the case because the defense is going to
10 tell you that she was negligent, so they're not saying that
11 she is of such good character and such a good mom and such a
12 conscientious person that she couldn't make this mistake.
13 They're just saying that it couldn't be gross, willful, wan-
14 ton and culpable negligence because of how good she is.
15 Justice has got to be blind in this case. That's a big deal
16 here. We have to make---you should make the same decision
17 for this caretaker that you would make for a different care-
18 taker, and the point here is caretaker, not that she's mom
19 and has suffered a loss. If Whitney Huff in all of her
20 stresses and all of her economic problems had gotten so
21 caught up in work or what was going on that day that she had
22 left Bryce in the car for over seven-and-a-half hours, the
23 same decision, even though that's someone doing it to some-
24 one else's child. She doesn't get a pass because she did
25 this to her own child. Ms. Balfour does not get a pass for

1 doing this to her own child as opposed to someone else's
2 child. The same decision. The same decision that you would
3 make for a person who is described to you as a high achiev-
4 ing, high accomplishing person whose stresses are coming
5 from the fact that they maintain good employment even though
6 there's other information that they really are not meeting
7 the expectations that their employer needs them to meet re-
8 garding hours and stress levels and being there during busi-
9 ness hours to be a customer service person. The same deci-
10 sion for---versus the person who gets so stressed out be-
11 cause they're working three part-time jobs and have multiple
12 kids. The same decision. Justice has to be blind in this
13 case. It does not matter that the loss is her own child.
14 That's a sentencing issue. That's not a guilt/innocence
15 issue here. One of the reasons---we raise our children in
16 families. It's part of our freedom in this country and in
17 this community. We have what we refer to as our self-
18 evident truths, life, liberty, and the pursuit of happiness.
19 This is a different situation than the automobile accident
20 situation, okay? With respect to the wide, wide world and
21 bystanders, we need to avoid injuring them, but with respect
22 to the infant, to our children, we have to preserve and pro-
23 tect them and enhance them and raise them up to become full
24 adult members of the community. The state doesn't do it for
25 us and we wouldn't want them to. What a horrible thing, but

1 it is a bond of trust within the community. The community
2 has the right to expect that we do not encounter one of the
3 community's children in a car dead after seven-and-a-half
4 hours. We have the right to expect that. That that does
5 not happen. That that---if it happens under the circum-
6 stances presented here, is criminally unreasonable conduct
7 and it is gross, wanton and culpable negligence. One of the
8 jury instructions refers to callous disregard, and it puts
9 in parenthesis the definition of unfeeling. On the elements
10 the Commonwealth has to prove that the defendant killed
11 Bryce Balfour. That's not in contest. What's in contest
12 here is item number two, that the killing, although unin-
13 tended, was the direct result of negligence so gross, wanton
14 and culpable as to show a callous, meaning, unfeeling indif-
15 ference, disregard of human life. Okay. Well, only part of
16 that is contested. The first part is agreed to. The kill-
17 ing was unintended, and it's the direct result of negli-
18 gence. The question is, was that negligence criminal negli-
19 gence? Unfeeling indifference includes the mindlessness
20 that is present in this case, putting one's self in the
21 situation of being able to just forget the child out of the
22 combination of circumstances presented here. It is seven-
23 and-a-half hours of mindlessness. The usual situation,
24 probably the most classic involuntary manslaughter case is
25 the vehicle situation where it's---meaning a crash, an acci-

1 dent, someone is killed in a car accident, DUI, and even
2 though that person has been drinking and has put themselves
3 in the car, how does that killing happen? It happens in a
4 flash, in a flash, in an instant. It's momentary. The per-
5 son's driving may be erratic. There is a body of case law
6 concerning when a person who is unconscious in a vehicle,
7 falls asleep while driving, can be convicted of involuntary
8 manslaughter, and if there is nothing else but the uncon-
9 sciousness and they had no notice of it, no reason to think
10 that there's a problem, they cannot be. This case is dif-
11 ferent for a couple of reasons: one, there is the affirma-
12 tive situation to take care of the child. It's not the by-
13 stander wide, wide world avoid injury situation. She needs
14 to protect and preserve the infant. Two, it's not a momen-
15 tary lapse. It's seven-and-a-half hours of it, and with op-
16 portunities to remember and never doing so, so to come back
17 to our self-evident truths, it breaks a bond with the commu-
18 nity for this to happen. The infant had a right to life, a
19 right to grow up and die of old age and to develop his tal-
20 ents and his abilities and to learn joy and to learn love
21 and to learn disappointment because that comes, too, in life
22 and maybe to learn suffering because that comes, too, in
23 life, but he had a right to life and she---her role was to
24 bring him up into that life. We raise our children in fami-
25 lies, and we have to trust parents to be able to follow ba-

1 sic standards and this case violates that. This is negli-
2 gence of a sort that the law pays attention to because we
3 cannot have it. It's not---we were talking about freedom.
4 It's not illegal to talk on a cell phone while driving.
5 It's a free country and it's not illegal, but it is demon-
6 strative. It can be demonstrative of very poor judgment and
7 poor choices and this was under all of the circumstances.
8 This is not being stopped at a stoplight and calling to
9 quickly get directions while waiting through a long light
10 and this is not a call, hey, I'm running late, I'll be there
11 in five minutes, bye. This is a serious, heavy, family dis-
12 cussion having to go on right then, emotional and agitated
13 about it, about a nephew's gambling problem. When I talked
14 about what we wanted for Bryce in terms of growing up, that
15 part would be what I would refer to as the pursuit of happi-
16 ness, so we've talked about what freedom means in this con-
17 text and we've talked about what pursuit of happiness means
18 and we've talked about his right to life. We ask you to
19 find Raelyn Balfour guilty of involuntary manslaughter based
20 on all of the circumstances that you see here. Thank you.

21 THE COURT: Mr. Zwerling, are you going to close
22 for the defense?

23 MR. ZWERLING: Thank you, Your Honor. A baby is
24 dead and somebody must pay. Bryce is dead. You heard it
25 from Detective Roach and you just heard it from most of Ms.

1 Killeen's closing argument. Right to life, right to grow
2 old. The baby is dead; somebody must pay. Ms. Balfour must
3 pay. Well, on one level she will pay. She'll pay for the
4 rest of her life, but that's not what this case is about.
5 Please don't be blinded by the fact that this beautiful baby
6 boy is dead and died in a car having been left there by Mr.
7 Balfour. The Court has instructed you time and time again,
8 and you will have it in there. The fact that she left him
9 in the car, the fact that she left him in the car long
10 enough for him to die from the heat that built up, in and of
11 itself, is not enough to justify a conviction for involun-
12 tary manslaughter. That is not enough because it doesn't
13 show that she had a callous disregard for the welfare of
14 Bryce. She killed her pride and joy. She did it acciden-
15 tally and Bryce's death is in every way a tragedy, but not
16 every tragic event is a crime. It's been agreed that it was
17 an accident. It was inadvertent; she didn't mean it. It's
18 not like she left him intentionally in that car saying,
19 well, you know, it's only fifty (50) degrees out right now,
20 he'll be okay, and go into work and never coming back to
21 check on him. That would show a callous disregard for the
22 life of her child, but she forgot he was in the car. The
23 act of forgetting something is an involuntary act. You
24 don't intentionally forget something because then it isn't
25 something you've forgotten. It's something you're ignoring.

1 If you ignore something, that's different than forgetting it
2 and not remembering it is also involuntary. You don't con-
3 trol when you're going to remember something and when you're
4 not, so the fact that she didn't remember it is an involun-
5 tary act, and it doesn't show a callous disregard for the
6 well-being of her child. Neither of them do and that's what
7 the Court has instructed you. Leaving him in the car, leav-
8 ing him in there long enough to die is not involuntary man-
9 slaughter because it doesn't show callous disregard for the
10 life of the child. She somehow came to believe that day
11 that she had dropped him off at Whitney's, and had she
12 dropped him off at Whitney's as she did whenever it was her
13 responsibility up to that day, Bryce was in a place where it
14 was safe, ht was sound, he was loved and he was happy, and
15 she didn't have to worry about him once she got to work, so
16 not remembering he was in the car is understandable when you
17 understand that she believed he was in daycare once she got
18 to work. Now, what you have to decide is whether or not she
19 is guilty of manslaughter, not whether she is guilty in some
20 other moral or any other type of way for the death of her
21 child because she is responsible for the death of her child.
22 She was his mother. I want to talk about the jury instruc-
23 tion for a second, and Ms. Killeen is right as to what the
24 focus of this case is about. It's about whether you can
25 find beyond a reasonable doubt that Bryce's death was the

1 direct result of her negligence that was so gross and wanton
2 and culpable as to show a callous disregard of human life.
3 Are you convinced beyond a reasonable doubt from the circum-
4 stances presented that she had a callous disregard for the
5 life of her child? - and that's what this case is about.
6 Now how could something like this happen? You know, we have
7 to use hindsight to try to reconstruct how this happened.
8 How could somebody forget? - and that's a question that I'm
9 sure we'll ask ourselves and have asked ourselves. Well,
10 one, we had a break in the ordinary routine of her life.
11 This is a week where she only had one car, so unlike the
12 other nine months of Bryce's life or eight months that he
13 was going to Whitney for daycare, when she---when it was her
14 turn to take Bryce to daycare, she would make one stop after
15 she leaves the house at the daycare center down Route 29 and
16 get back on 29 and go down to work. That routine was broken
17 this week and on three days, not Monday because Monday
18 Jarrett had a different way of getting to work so Monday was
19 part of the old routine. Tuesday, Wednesday, Thursday and
20 this day she made an extra stop coming down from Ruckers-
21 ville and that would be to drop Jarrett at work, so she'd go
22 down 29, make the stop off of 29, drop him off and then go
23 to the daycare center, make a second stop, and then go to
24 work, so she was doing something that was unusual, not part
25 of her routine, not part of her automatic pilot. Next,

1 Bryce's seat was in a different place. Typically, actually
2 always, you heard her husband Jarrett testify, he would
3 place the child in the car seat behind the passenger where
4 he would be visible. This day the only day ever, he was not
5 placed there. He was placed directly behind her where he
6 was not visible to her, so that was a break in the routine.
7 Bryce was never quiet. He was very active in the morning.
8 This day was different. Yes, he was up and about and inter-
9 acting with the parents in the home, but once he got to the
10 car, he fell asleep. He was quiet. Jarrett said he didn't
11 hear him the whole time on the drive to his place of work.
12 That was a break in the routine. You know, no noise, not
13 visible, you've heard the expression out of sight, out of
14 mind. Unfortunately, to some extent that's a real factor in
15 our lives. We, oftentimes, rely on cues to remind us of
16 things, but this is worse. What happened on that day was
17 worse because there was not one car seat, there were two car
18 seats. The Eddie Bauer seat which he had used---they had
19 used for Bryce for a short period of time, a couple of
20 weeks, about three weeks earlier, was in the car, and it was
21 where Bryce would normally be behind the passenger and the
22 second seat was invisible to Lyn during the drive. It was
23 behind the driver's seat, so when she got to work, if she
24 saw the empty car seat, the Eddie Bauer behind the passen-
25 ger's side, that would have been the only time in nine

1 months that an empty car seat didn't mean no baby in the
2 car, the only time that would have been the message the
3 empty car seat was not truthfully conveying. What kind of
4 day was she having? She was having one of the worst days
5 ever. Clearly, it got a lot worse but she had lack of sleep
6 that week and you heard that she was getting harass---some
7 harassment or some lecturing at work about not keeping regu-
8 lar hours, about taking time off to go to the doctor, to
9 sleep in, to take Bryce to the doctor. They wanted her
10 eight-to-five, so there was pressure on her to not call in
11 sick, to get to work. She had lack of sleep that week, but
12 that night in particular, one, Erika Conely calling the
13 night before in an emergency situation. She called up and
14 said, can you help me? My dog, I've got to get him to the
15 vet. I've got to get him there now. It's an emergency.
16 Can you come and watch Samantha? - and she said yes. This
17 is not a situation where she said oh, hey, I'm going to go
18 to a movie tonight or I want to earn some more money so I'm
19 going to go see if I can get a babysitting job. This is a
20 response to a call for help from not only a neighbor but a
21 neighbor whose husband was in Iraq serving our country, and
22 this is a patriotic woman, as you must know by now, and she
23 did not say no. That night, what else happened the night
24 before this occurred? The call from mom worried about her
25 grandson, Raelyn's nephew, Jeff Willis. Whether or not he

1 had a gambling problem, in fact, who cares? The point was
2 the family was suffering a crisis situation because Jeff's
3 father was taking money out of his 401K plan to pay for his
4 household expenses and his mortgage. You know how desperate
5 that is because you know the penalties involved in taking
6 money out of a retirement fund, and the son was getting the
7 father to lend him money to pay his bills out of his 401K
8 plan and the family was distraught about that, and who do
9 they call? They call Raelyn and she says, I'll deal with
10 it, I'll help, and she does. She does it out of concern and
11 caring for her family and the well-being of her family.
12 She's not doing it out of callous disregard for her child's
13 welfare. Whitney Huff, the same night, Thursday night, she
14 and Jarrett are---have been asked to see if they can come up
15 with fifteen thousand dollars (\$15,000) immediately for
16 Whitney Huff to keep her and her business afloat, and you
17 heard Ms. Huff testify how this isn't the first time she's
18 gone to them for help, you know, and you've heard why they
19 have always been there for her. Not only are they good
20 friends and is it their nature, but this is Bryce's second
21 mother. She spends as many waking hours with Bryce probably
22 as Jarrett or Lyn did. Maybe that's an exaggeration but
23 enough so that when Bryce got there in the morning, he'd be
24 happy to see her and when he---of course, when they arrived,
25 he was happy to see them. They didn't want to lose her

1 child-caring situation by having her go out of business or
2 go bankrupt, so they were willing to pay in advance Bryce's
3 daycare bills from nine months through kindergarten. Now
4 that's extraordinary. Were they doing that because they had
5 a callous disregard for the well-being of their son? Obvi-
6 ously not, so what else was going on in her life? Before we
7 get to work, I just want to ask you to think about this.
8 Not a single one of those major stressors, and remember,
9 they weren't able to deal with Whitney's problem that night
10 because of this emergency from the dog lady and so they
11 didn't have an answer for Ms. Huff, an added stressor. They
12 would have to deal with that and tell her that they hadn't
13 made up their mind, they needed more time. Not a single one
14 of these things did they go out and look for. They didn't
15 call Whitney and say, hey, Whitney, what can we do to help
16 you? We want to give you money. They didn't say that to
17 Jeff Willis. I mean, it wasn't---he was already in default
18 on money he had borrowed before. They didn't call mom and
19 say, hey, how are things going? Isn't there anything we can
20 do to help what's going on up there? They get the call.
21 She gets the call, help us, help us, help us. At work, we
22 have all these things coming down at one time. You have the
23 double class graduation coming up which doubles the amount
24 of what is normally a lot of work for her to do, and on top
25 of that, on top of that you have the screw-up with this fam-

1 ily of the fallen hero, the mom, the dad and the step-mom.
2 Now that wasn't even her responsibility---her area of re-
3 sponsibility, but Sergeant was tasked to do it and take care
4 of it and get them down here and make sure everything was
5 fine, and he called around and looked around and everybody
6 said, Lyn Balfour, that's the lady you go to. If you need
7 help in this kind of an area, she's the go-to-gal and he
8 goes to her and she doesn't blow him off and say, I can't do
9 it, I've got too much work to do. You know, if they don't
10 get down here, they don't get down here to see their son
11 memorialized school at the school. She says, of course,
12 I'll help and she does, and then despite her best efforts
13 there's another screw-up that morning, that morning and no-
14 body can fix it. Sergeant Nelson who is at the airport
15 can't fix it. The emergency people in New Jersey can't fix
16 it. Finally, at 8:52 they get a hold of Lyn on her business
17 phone. She's just arrived at work and crisis number one for
18 the day. Her day is on. Her business day is on. She is
19 now in full business day mode dealing with this crisis and
20 she does. She deals with it and they get off on time. She
21 didn't ask for that either. That came to her. Now, I said
22 that this was a tragedy. I don't think many people would
23 disagree with that, and like all tragedies, there's someone,
24 usually a main actor in the situation who has a tragic flaw
25 which inevitably will lead to the devastation that follows.

1 Lyn had a tragic flaw and it did lead to her forgetting
2 Bryce and his dying, and her tragic flaw is epitomized in
3 her e-mail tag which is one of the exhibits that you'll have
4 when you go back there. No is not an option. Whenever she
5 sends out an e-mail, no is not an option. Tell me, tell Lyn
6 Balfour how hard I have to work to get a yes. The fighting
7 men and women deserve no less. This was her motto at work.
8 This was her motto in life and this was her tragic flaw.
9 She couldn't say no and she didn't say no and she just took
10 on too much responsibility, and it cost her her son's life
11 and it ruined her life and that of Jarrett and anybody who
12 knows---knew Bryce. You saw how many people couldn't dis-
13 cuss the situation without tearing up. This may---I mean,
14 this was her tragic flaw, but her attempts and her desires
15 to help these people, to help everyone who called upon her
16 was not callousness. It was not in callous disregard for
17 the welfare or the safety of anybody, especially her son.
18 It was driven by a motive to do good, to be helpful, not
19 harmful. Her compassion should not be turned into a crime
20 even though it led to tragic results. Now hindsight, we all
21 have 20/20 hindsight, but there's no evidence that she saw
22 that helping everybody was going to lead to the loss of her
23 son's life or that, had she seen it, had she recognized that
24 danger, that she would have disregarded it. There's no evi-
25 dence of that. The Commonwealth has proven no evidence.

1 You know enough about her from hearing people who know her
2 testify to know that her son meant everything to her and she
3 was not callous in any way about his life. I want to turn
4 to Detective Roach for a second. A baby is dead and someone
5 has to pay for it. This thought overrode Detective Roach's
6 duty to keep an open mind and follow the evidence to wher-
7 ever it led. Now, he may not remember sharing this thought
8 with Whitney Huff, but Whitney Huff remembered it. It
9 struck her and it scared her because there were two people
10 to choose from, her and Lyn. He was going to try and charge
11 Ms. Balfour with everything he could even before he inter-
12 viewed her. He may not remember saying this to Specialist
13 Steele, but Landon Steele who came here from Iraq to tes-
14 tify, he did remember Detective Roach saying that. What
15 possible motive would he have to come here and lie about it?
16 What's his relationship to Ms. Balfour other than to have
17 been present on the scene as a responder and at the hospital
18 trying to comfort her when she was curled up in the fetal
19 position crying about the death of her son? But look at
20 what Detective Roach did. Look at his actions, Ms. Killeen
21 says. He goes up and within an hour of her discovering her
22 son in the car, that's when he chooses to separate her from
23 the family and friends and put her in a room and that's when
24 he interviews her, and how does he start this interrogation?
25 He gives her her Miranda warning. Well, that's fine and

1 that's proper, but he introduces them as this is a formality
2 I have to go through, a formality. It is not a formality.
3 This is a very serious event when you tell somebody that
4 they have the right to remain silent and all the other
5 things that are contained in the Miranda warning, and that's
6 why they're required to give it. It's to make people real-
7 ize that something of significance is about to happen, an
8 interview about a crime that they are suspected of having
9 committed, and she is completely disarmed. She is in total
10 grief and shock as you've heard from the descriptions of
11 people who were at the hospital, and you listened to the
12 tape recording and I'm going to play it for you. You listen
13 to her answers. Now these answers he considers to be a com-
14 plete confession. That's what he tells Captain Anderson.
15 Now he doesn't remember telling that to Captain Anderson.
16 Captain Anderson does remember it. He does remember Detec-
17 tive Roach saying to him, well, I should go---I'm going to
18 go talk to the husband, Jarrett, but I really don't even
19 have to because she's given me a full confession and, of
20 course, the full confession when you hear it, you'll see
21 that it is simply what the Court told you is not enough for
22 manslaughter. She acknowledges she left him in the car.
23 She forgot he was there. She killed him. She also says, I
24 remember dropping him off. I killed my child. She's strug-
25 gling with the competing things that are going on in her

1 head, her memory that she dropped him off, and her realiza-
2 tion that that is not an accurate memory because the child
3 was in the car and the child died. Can we play that? Be-
4 fore we do, Your Honor, do we have the twelve (12) copies of
5 the transcript?

6 THE COURT: They should all be right together. It
7 may be simpler if we do that (unintelligible). Technically
8 I don't know whether that is going to---I'm going to leave
9 it to you.

10 MR. ZWERLING: Okay. It might be easier to under-
11 stand the words because sometimes they're hard to hear. If
12 you could just pass these around.

13

14 (Audiotape was played at this time)

15

16 MR. ZWERLING: I'm going to cut it off there. You
17 have the whole transcript and recording with you. What's
18 missing from that statement that does not elevate it to the
19 crime of manslaughter is anything remotely indicating a
20 callous disregard for the welfare of her child when she made
21 that tragic mistake when she forgot her child, so let's look
22 at what facts the Commonwealth has given to you to argue to
23 you that she did act with callous disregard for her child---
24 what they think they have proven beyond a reasonable doubt
25 that she has acted in callous disregard for her child. One,

1 she had a beer or two the night before when she was babysit-
2 ting. Well, certainly having a beer or two nine hours be-
3 fore these tragic events has nothing to do to show a callous
4 disregard for her child's life. Not the picture in her of-
5 fice. You know, she didn't forget she had a child. She
6 didn't forget she had a son. She forgot that she hadn't
7 dropped him off at the daycare center. Seeing a picture of
8 her son as she did everyday somewhere in her office reminded
9 her that he was at Whitney's, that she had a son and she'd
10 see him that night, not that she had forgotten him in the
11 car. There's no evidence that it went click, oh, my god,
12 he's in the car, I'll go get him in a few hours. They're
13 not even going to argue that, so what's the point of the
14 picture? The fact it lasted seven hours before she discov-
15 ered her child, seven hours is because that's how long it
16 took her to see the missed call, and you heard her talk
17 about it at a time when she had no time to prepare a
18 defense, when she was completely beating herself up for hav-
19 ing killed her child. She says, I saw the missed call on my
20 phone and I returned it. What time was that? It was late.
21 in the afternoon. We know what time that was. It was at
22 3:13 in the afternoon or 3:11 depending upon Alltel time or
23 Sprint time, and she leaves a message, what's up? By that
24 time, it was too late. She gets a call back a half-hour
25 later, just before four or just at four, and, who has Bryce?

1 Where's Bryce? You have Bryce. No, Jarrett forgot to drop
2 him off. I dropped him off. No, he's not here. Oh, my
3 god. Oh, my god. That is when she realizes her mistake at
4 four o'clock. I don't think that you can argue differently.
5 Let me go into these phone records because I don't under-
6 stand fully how they actually think that this lady from All-
7 tel's interpretations are correct or what they're going to
8 ask you to draw from it, but we're going to deal with that
9 in a second. The cell phone call with her nephew, now that
10 is a very significant event, and it probably is what caused
11 her to go on automatic pilot during that ride in, but who
12 among us has not had an important phone call that they took
13 while they were driving their car? Now perhaps we shouldn't
14 use the cell phone when we drive, but it's not against the
15 law. Virtually everybody does it and every now and then the
16 call becomes emotional or upsetting or important, having to
17 do with work, family, the health of somebody. These things
18 happen, and maybe it is negligent of us to drive and talk on
19 the phone. It is not a callous disregard for the welfare of
20 others because if it were, we're all guilty. The (unintel-
21 ligible) is callous disregard. Talking on the phone does
22 not show a callous disregard even if you have a child in
23 your car or your parent or your loved one, and it would not
24 be right for us to hold her to a higher standard than we
25 hold ourselves or to others, even though in this case, she

1 forgot her son and even if that was the reason, in part or
2 mostly, how she wound up at the school believing she had
3 made that one stop and dropped him off, seeing the empty
4 seat, thinking normal day, Bryce is okay, go to work, boom,
5 Sergeant Nelson and the day goes from there. Now the Alltel
6 lady, when she first testified---I think it's Ms. Davis.
7 I'm going to call her the Alltel lady so it's clear who I'm
8 talking about, the woman who came from Alltel. When she
9 first testified, she said there are two reasons calls get
10 forwarded, one, you set your phone to call forwarding and
11 that's not an issue in this case; two, she said, someone
12 calls your phone and you don't answer it and it gets for-
13 warded to voicemail. That's what she said originally and we
14 submit that is exactly what these records show, and we'll go
15 through that, but then she changed that and said, no, our
16 records don't pick up when somebody calls you and it gets
17 forwarded to voicemail. The only thing it does show is when
18 you call for your messages, then it shows you were forwarded
19 to voicemail. She said our records don't ever reflect any-
20 where, even in our network records, that it---that you're
21 actually calling voicemail, and we don't---we don't keep
22 record of it and we don't bill you for it. Well, we know
23 they put it on your bill because the March 14th phone record
24 for Ms. Balfour, this is D5, number fourteen (14). I don't
25 know if you can see this, but this is Ms. Balfour's phone

1 records, call to voicemail, the number called and there it
2 is, her number. She called her number and it registered as
3 voicemail. These records, and these have been gone through
4 by Ms. Davis from Alltel and Ms. Huff, are accurate as they
5 reflect what's on the bills. They show that calls were for-
6 forwarded, one, two, three, four, five forwarded calls that
7 day. It doesn't record the number; in other words, who is
8 calling you. It doesn't say your number either, right. For
9 some reason their fabulously accurate records, upon which
10 you're being asked to convict Mrs. Balfour, lists these
11 calls as long distance even though they either came from Ms.
12 Whitney Huff's phone or from Lyn's phone, both 434 numbers.
13 I'm going to go through these with you. I'm going to hope-
14 fully be able to show you, and I don't know if you can---
15 you'll have a copy of these in with you and you'll also have
16 this larger version. I'll start at the top and work my way
17 down and then I'll pick it up. Thank you. All right.
18 You'll see that these calls from 4:01, 4:05, 4:14, 4:22 are
19 all treated the same as the one in the morning, forwarded,
20 they were all long distance, no number is recorded, duration
21 of time is here and the time is here. Now we know that
22 Sprint and Alltel have different---their times are off.
23 The Commonwealth has now conceded that, so let's use---they
24 say that Alltel is the accurate one. All right, let's go
25 with Alltel. What times does the oh, my god call come in?

1 This is the oh, my god call. It comes in at 4:24. She says
2 that's the start time. It lasts a minute and twenty-three
3 (23) seconds, so now it's 4:01:47, okay? Now, this is when
4 Ms. Balfour is in her office learning for the first time
5 that she didn't drop her son off. This is also when
6 Jenkins, Officer Jenkins, by stipulation testifies he
7 arrives and takes over the CPR. I think you can either dis-
8 regard this entire set of phone records or you can disregard
9 Officer Jenkins recollection because, clearly, at 4:01 she's
10 up in her office. I'm going to put this down for a second
11 because I want to talk about that for a second. Ms. Balfour
12 is in her office. From four to 4:01, oh, my god, oh, my
13 god, and she runs to the parking lot. She runs down the
14 hall, down the stairs, past the loading dock into the park-
15 ing lot to her car and you have a diagram. You can see it's
16 about, and the testimony it's about seventy-five (75), a
17 hundred (100) feet away, gets to the car, opens the passen-
18 ger side door, pulls out her son, brings him around---I
19 mean, from the driver's side over to the passenger's side,
20 puts him down, starts giving him CPR. When she's not giving
21 him air, she is wailing. She is wailing. Pump, pump, pump,
22 breath, breath, breath and we hear it on the 911. You heard
23 Ms. Babatunde talk about how she heard those screams from
24 around the other side of the building. You heard Sergeant
25 Suttles talking about them, Major Anderson, lots of people

1 told you about it. She finds her child. She goes and gets
2 him. She's giving CPR. Sergeant Suttles comes over and for
3 a long time can't get her to back off so she can give CPR.
4 Then Officer Jenkins arrives and then she gets off and what
5 is she doing? She's standing there and she is inconsolable.
6 You heard people testify to that. Major Anderson has testi-
7 fied he saw her. They were trying to comfort her. She was
8 not able to be comforted. The Commonwealth wants you to
9 think, based on the testimony of Ms. Davis, that at 4:24 she
10 is calling voicemail---4:04 she's calling voicemail; 4:08
11 she's calling voicemail; at 4:16---4:17 she's calling voice-
12 mail. I want you to think about this. This is the very
13 time she's either giving CPR to her child or standing there
14 screaming for help in the presence of all these people, and
15 there's clearly no one saying, oh, and she was just picking
16 up her messages. For that reason alone, I would submit
17 these calls are not from Lyn Balfour to her answering
18 machine, but I think we can establish for you as if we had a
19 burden, which we don't, that these are from Ms. Huff. Let's
20 look at Ms. Huff's phone records, okay? Now the times are
21 different somewhat. She's making an outgoing call. This is
22 the four o'clock call. We'll use the Sprint times---I mean,
23 the Alltel time because that's what the Commonwealth wants
24 to use. This is the oh, my god call and then she testified
25 that the phone went dead. She calls back, what, two minutes

1 later, two and a half minutes later. Here's a call coming
2 in about that same time because this is the beginning and we
3 don't know when it ended, about the same time being for-
4 warded to voicemail. Ms. Huff said I called and she didn't
5 answer, and it went over to voicemail and I left a message.
6 Her records show seventy-three (73) seconds of duration,
7 okay? They show forty (40). Okay, well, it takes times---
8 once she breaks the dial tone, her company is billing her.
9 They're keeping track, so she has to dial the number. It
10 has to connect. It has to go up and go over there and start
11 ringing and then it gets forwarded and that takes, I submit,
12 forty-three (43) seconds. Look at the next one, almost
13 identical, seventy-three (73) seconds, thirty-eight (38)
14 seconds. This is at five after or eight after depending
15 upon whose clock you're using. The next one, forty-two (42)
16 seconds and this is six, so the difference here, this is
17 easier. This is about thirty-three (33) seconds and the
18 difference in this is thirty-nine (39), so it's about
19 thirty-nine (39) seconds. You can see these all match up.
20 These all make perfect sense. Ms. Huff calls and it gets
21 forwarded to voicemail and that's what these records
22 reflect. Not only does it make common sense, it's the only
23 thing that makes sense because we know darn well she was---
24 Ms. Balfour wasn't calling her voicemail. Now, once we un-
25 derstand that, then let's go up to this one. This is the

1 call that the Commonwealth wants you to hang her on. This
2 is the callous disregard, according to them, at 9:44.
3 Whitney calls and this is where she's leaving the message.
4 Where is Bryce (sic)? Seventy-six (76) second call and, of
5 course, this one is about thirty-four (34) seconds shorter,
6 almost identical. Times are a little off but not by much.
7 These are about a minute and a half to two minutes off. A
8 minute and a half would make this exactly the same time.
9 Long distance forwarded, just like all of these long dis-
10 tance forwarded. What a coincidence that every time Ms.
11 Huff is calling and leaving a voicemail on Mrs. Balfour's
12 phone, Ms. Balfour is picking up her messages. Do you be-
13 lieve that? Do you believe that beyond a reasonable doubt,
14 or do you believe that this is Ms. Huff's calls being for-
15 warded to Ms. Balfour's voicemail. That's the only thing
16 that makes any sense at all, and I would be comfortable if I
17 had the burden of proof of that fact to you beyond a reason-
18 able doubt but I don't have any burden of proof. They have
19 to prove that this is an unreasonable interpretation of
20 these records and they have to prove that beyond a reason-
21 able doubt, and the judge has instructed you as to that and
22 I'll read that to you in a second. And there's a March 30th
23 bill as well and you'll see---I may have it buried in my
24 papers. Here's another exhibit. This is the billing record
25 for Ms. Balfour's personal cell phone, which includes the

1 30th of March, and you will see that all these calls, none
2 of them to her own phone and none of them like the one on
3 the 14th indicating that she called voicemail, and to her
4 credit, Ms. Davis from Alltel did acknowledge that she could
5 be wrong about what these records show and she is. The evi-
6 dence in this case, ladies and gentlemen---here's the jury
7 instruction I was going to mention to you. Let me read it
8 to you. With respect to the phone record evidence, if you
9 find that the facts are susceptible to two different inter-
10 pretations, one of which is consistent with the innocence of
11 the defendant, you cannot arbitrarily adopt the interpreta-
12 tion which incriminates the defendant. Instead, the inter-
13 pretation more favorable to the defendant should be adopted
14 unless it is untenable, under all the circumstances, and the
15 evidence, in toto, not only must be consistent with guilt
16 but it has to be inconsistent with every reasonable hypothe-
17 sis of innocence and ours is not unreasonable. The act of
18 leaving her in the car---leaving the child in the car is not
19 enough, so what are we left with now that that telling phone
20 record I think has been pretty much put to rest? This is a
21 case, ladies and gentlemen, that never should have been
22 brought. Yes, there's a dead baby. Yes, Lyn Balfour is
23 responsible for it. Being under criminal charges has forced
24 her to defend her actions that day in a court of law, ac-
25 tions that are indefensible in her life. She doesn't want

1 to and has never defended the fact that it wasn't her fault
2 that her son is dead. Now we're defending whether she is a
3 felon, a criminal here before you. You must determine
4 whether she acted in callous disregard for the life of her
5 son. Lyn Balfour, ladies and gentlemen, is a good soldier.
6 She is a good employee. She was a good mother, still is a
7 good mother. She is a compassionate person. She is a per-
8 son who, up until this tragic event, didn't understand the
9 need to say no to people in trouble, to people who came to
10 her for help. Her son paid for that blindness but not will-
11 ful blindness. She is paying for it. I ask you to under-
12 stand that whatever she is, she is not a criminal. She
13 didn't criminally neglect her son. She didn't do what she
14 did out of callous disregard for his well-being, but out of
15 love and desire to help people without understanding that
16 she was overwhelmed. I thank you.

17 THE COURT: Ms. Killeen, rebuttal from the Common-
18 wealth?

19 MS. KILLEEN: Yes. Mr. Zwerling has said several
20 things that are a misunderstanding both of what I said in
21 closing and also of the evidence that was presented to you.
22 Understand, please, that the Commonwealth is not required to
23 prove a case to a defense attorney's satisfaction. He has
24 an obligation to defend his client. I'm required to prove
25 the case to the jury. It's a decision for you. This is a

1 case involving an infant who was left in a car for over
2 seven-and-a-half hours. That does not, on a good day, com-
3 pute to simple negligence. It's a good bit further than an
4 oops by a country mile, but we haven't presented to you a
5 case that only involves leaving the child in the car for
6 seven-and-a-half hours. There is more to it than that, a
7 great deal more to it than that. If Ms. Balfour is so con-
8 fident that the infant is safe at daycare, so certain in
9 that unshakeable belief that he is at Whitney Huff's, then
10 you can see disregard because isn't she as a parent supposed
11 to be available for an emergency? How is it that Ms. Huff
12 is to reach her if something happens? - and the fact that
13 Jarrett Balfour normally calls her on her work phone or on
14 her work cell phone because of the problems they had regard-
15 ing the use of her personal cell at work doesn't mean that
16 that was her course of dealing in practice with Whitney
17 Huff, and Whitney Huff has been very clear she rarely called
18 the defendant at work. It was unusual, and when she called
19 the defendant on a cell phone, she called her on her per-
20 sonal cell phone. The Alltel phone is not correct. The
21 Alltel phone is fast. When it says it's four o'clock, it's
22 not. It's more like 3:58. That's how you know that when
23 Officer Jenkins arrives at 16:01, at 4:01 p.m. and the CPR
24 efforts cease that it's the defendant's phone that is incor-
25 rect on the time, and Alltel is in the business of making

1 money on their cell phone contracts and the records situa-
2 tion is set up accordingly. They're not, from the evidence
3 presented to you, completely incompetent as to what it is
4 that they do and what it is that they track and Ms. Davis
5 was very clear. If the defendant calls her own voicemail,
6 that shows as a call forwarded. The only other way to for-
7 ward a call is---doesn't---would look different on that net-
8 work record and it has to do with forwarding your own cell
9 phone to another number. Ms. Huff cannot call in and have a
10 reflection that she was forwarded to voicemail, and notice
11 that the record that's pointed out doesn't have Ms. Huff's
12 number as calling it. You've heard testimony that the
13 defendant, in addition to being in hysterics, was also try-
14 ing desperately to reach her husband. You've heard her hus-
15 band say that she's the one he talked to. He couldn't hear
16 her at first. You know that by 4:12 word has gone around
17 through NGIC to Whitney Huff. This happened very, very fast
18 and by 4:01, the defendant is done administering CPR.
19 That's not happening. She's trying to reach people and
20 she's calling people and calls are coming in and she's
21 checking and she's also---she's trying to call her mother
22 and trying to call her husband. It's how you know that the
23 defense's interpretation of the physical---of the physical
24 evidence, the phone records, is, in fact, untenable, and you
25 know from the defendant's statement that she saw the missed

1 call. One of the things that you heard in the evidence dur-
2 ing the Commonwealth's case was the defense being able dur-
3 ing---well, the part where the prosecutor---when the Common-
4 wealth was calling the witnesses to get statements in be-
5 cause they were excited utterances. They have special reli-
6 ability. Everything that was said at that hospital that
7 night is an excited utterance with that reliability, includ-
8 ing everything that Ms. Huff said to Detective Roach. It
9 has very special guarantees of truth. She saw a missed call
10 and she saw it at least once that morning, but she had
11 picked up her cell phone twice---

12 MR. ZWERLING: Judge, I'm objecting to this.
13 She's intentionally misstating the evidence. There is no
14 evidence that she said she saw it that morning. She saw it
15 in the afternoon when she called, and that's what it says on
16 the tape recording that they listened to at Ms. Huff's.

17 MS. KILLEEN: She said she saw the missed call.
18 It doesn't say when at all. It's an inference.

19 MR. ZWERLING: Well, she just said it---she said
20 it in the morning.

21 THE COURT: I'm going to let the jury sort it out
22 and I think they can. You can go ahead and proceed.

23 MS. KILLEEN: Correct.

24 THE COURT: I can't---I'm not---it's a jury ques-
25 tion as to what, and I don't think it's an intentional mis-

1 statement. I think it's an interpretation and the jury may
2 not agree with it or they may. I don't know, so go ahead.

3 MS. KILLEEN: She picks up her cell phone twice
4 that morning. We know that from the phone records. She
5 tells Detective Roach that she saw the missed call. She
6 doesn't say when. She told Whitney Huff, I didn't return
7 your call that morning because, so all of that evidence
8 comes in and leads to a conclusion she had seen the missed
9 call. She may not have understood that it was Whitney
10 Huff's number. You heard that Whitney Huff had a new cell
11 phone number. That may have had something to do with her
12 exhaustion, or she may---there is---we have never said from
13 all of our evidence presented that we ever thought that she
14 actually heard the voicemail that was left for her nor have
15 we ever said, as counsel suggested in his closing, that she
16 had to pay just because Bryce was dead. The Commonwealth
17 has told you specifically that is not true. We do not say
18 that. You have a decision to make on behalf of the commu-
19 nity as to whether this was criminally negligent. Mr.
20 Zwerling talks about Ms. Huff's tragic flaw. The Common-
21 wealth is not sure that everyone in the world has a strong
22 enough personality to have a tragic flaw, but, evidently,
23 Ms. Huff (sic) does. She has this great belief and persis-
24 tence that you see from her tag, and what does her tag in
25 her e-mail go to? It goes to the fighting men and women.

1 Bryce was not one of the fighting men and women. He was her
2 infant son. Life is a series of choices. It's a series of
3 judgment calls. It's a series of compromises. She's not
4 immune or excused from having to make those calls, and she's
5 not excused from having to make the compromises on time that
6 we all have to make as adults every day. If your job is so
7 demanding and your desire for good deeds are so demanding
8 and your thing is to say yes, you've got to do that in a way
9 that you don't leave your son in peril in a car that rapidly
10 rises in heat and it's a virtual certainty that the infant
11 left there and not remembered dies and he did. If Ms.
12 Balfour, in all of her stress and all of her difficulties
13 and all of her tenaciousness had accidentally left the in-
14 fant at home in his crib, it would have been negligent and
15 Bryce might have been cranky and he might have been tired
16 and he might have been hungry and he might have been a lot
17 of things, but he probably wouldn't be dead. The car is a
18 dangerous instrumentality. It is a machine around which you
19 must watch your small child. You cannot put yourself in a
20 situation of setting out, having prepared the diaper bag, if
21 that was her habitual thing and we find the diaper bag
22 there, having set out to deliver him to his daycare provider
23 and then just forget. She knows she's exhausted. She's
24 told you that in the statement and you have the contributing
25 and combining forces. It would have been different if she

1 had been sick and under medication. That's a different
2 situation but she's engaged in a series of voluntary circum-
3 stances. She knows she's under the gun at work. It's push
4 time and they're not happy about the way she's expending her
5 time. She goes out to baby-sit from about eight to eleven,
6 but upon getting home at eleven, she doesn't come to bed un-
7 til one and the infant is up, as he often was, and then when
8 she gets up in the morning, she resumes the family discus-
9 sion, this time very intensively with the nephew and she
10 places the call. Mr. Zwerling said, who among us hasn't
11 gotten an important call? That's not what happened here.
12 She made that call. That's a choice. That's a judgment
13 call and any one little piece on its own maybe doesn't come
14 out to criminal negligence, but all of it together does.
15 Bryce Balfour was a member of the community and he shouldn't
16 have died in this way and the manner was criminally negli-
17 gent, but more importantly, the one thing---there is only
18 one thing that we can say about every person in this commu-
19 nity and every person in this courtroom and that is this.
20 All of us, everyone of us, come into life as helpless in-
21 fants who are completely reliant on a parent or caretaker to
22 raise us up and preserve our safety and teach us to live and
23 love and experience life. Everyone of us has that in common
24 and the only other thing we have in common is that we will
25 someday die. He didn't have to die like this, shouldn't

1 have died like this, and the conduct was criminally negli-
2 gent, and the Commonwealth asks you to find the defendant,
3 his mother and caretaker, guilty of involuntary manslaughter.
4 Ladies and gentlemen of the jury, the decision is in
5 your hands. The defendant, the Commonwealth and the life of
6 Bryce Balfour is in your hands.

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1 STATE OF VIRGINIA AT LARGE:

2 I, Julianne Lee, Notary Public in and for the
3 State of Virginia at Large, having been so duly commissioned
4 and qualified, do certify that the foregoing hearing was so
5 duly taken by me at the time and place specified in the cap-
6 tion hereof, said witnesses having been so duly sworn.

7 I do further certify that said hearing was cor-
8 rectly taken by me by mechanical methods and that the same
9 was accurately written out in full and transcribed into the
10 English language by Sarah W. R. Lane and that said tran-
11 script is a true, accurate and correct record of the testi-
12 mony by said witnesses.

13 I further certify that I am neither attorney nor
14 counsel for or related to or employed by any of the parties
15 to the action in which this hearing was taken and, further,
16 that I am not a relative or employee of any attorney or
17 counsel employed by the parties hereto or financially inter-
18 ested in this action.

19 My commission expires April 30, 2009.

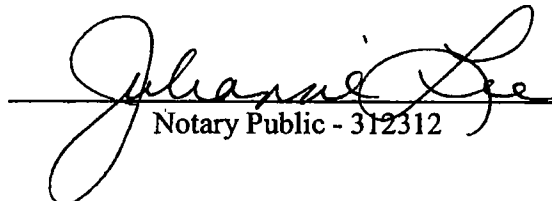
20 Given under my hand and seal this 7th day of July,
21 2008.

22

23

24

25


Notary Public - 312312