

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

WILLIAM D. BURDEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Appellate Defender

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE
COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

STATE OF S.C.,
PLAINTIFF,

- VS -

WILLIAM DEAN BURDEN,
AND ADRIAN

DEFENDANT.

TRANSCRIPT OF RECORD
#2002-GS-18-0006

ST. GEORGE, S.C.
OCTOBER 21-28, 2002

B E F O R E:

HON. DIANE S. GOODSTEIN; JUDGE, AND A JURY

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

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E X H I B I T S

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(THERE WERE NO EXHIBITS MARKED AT THIS HEARING.)

1 MS. MATAI: MAY IT PLEASE THE COURT, YOUR
2 HONOR? YOUR HONOR, I'VE HANDED UP A MOTION IN
3 SUPPORT OF THE BATTERED CHILD SYNDROME TO BE USED
4 AGAINST BOTH DEFENDANTS. WILLIAM D. BURDEN AND
5 ANDREA GADSON. AS THE MOTION STATES, MR. BURDEN IS
6 CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO
7 KILL AS WELL AS COMMITTING GREAT BODILY INJURY UPON
8 A CHILD. AND THE DEFENDANT IS CURRENTLY CHARGED
9 WITH UNLAWFUL NEGLIGENCE OF A CHILD BY A LEGAL
10 CUSTODIAN. THE STATE IS MAKING THIS MOTION ON THE
11 BASIS OF ESTELL VS. MCGUIRE WHICH IS A UNITED
12 STATES SUPREME COURT DECISION FROM 1991 AND STATE
13 VS. LOPEZ WHICH IS A SOUTH CAROLINA SUPREME COURT
14 DECISION ALSO FROM 1991.

15 YOUR HONOR, IN BOTH CASES -- THE
16 ESTELL CASE, THE SUPREME COURT UPHELD THE RECENT
17 PRIOR INJURIES OF THE CHILD AS EVIDENCE OF BATTERED
18 CHILD SYNDROME WHEN OFFERED TO SHOW THAT CERTAIN
19 INJURIES ARE A PRODUCT OF CHILD ABUSE RATHER THAN
20 ACCIDENT. EVIDENCE OF PRIOR INJURIES IS RELEVANT
21 EVEN THOUGH IT DOES NOT PURPORT TO PROVE THE
22 IDENTITY OF THE PERSON WHO INFLICTED THOSE
23 INJURIES. THE COURT ALSO WENT ON TO SAY IN THAT
24 CASE, YOUR HONOR, THAT ONLY SOMEONE REGULARLY

1 TO INFLICT THESE TYPES OF INJURIES, AND ISOLATED
2 CONTACT WITH A VICIOUS STRANGER WILL NOT RESULT IN
3 THIS PATTERN OF SUCCESSFUL INJURIES.

4 IN THIS CASE, FIVE YEAR OLD
5 Child [REDACTED] WHO IS THE VICTIM IN THIS CASE; BY
6 THE TIME HE WAS TWO YEARS OLD, HE HAD TWO FRACTURED
7 FEMURS IN TWO SEPARATE AREAS, IN DIFFERENT AREAS OF
8 THE HEAD AND FEMUR. HE IS ALSO BLINDED IN THE
9 RIGHT EYE. AND THE HEAD OF THE STORM EYE INSTITUTE
10 FOR THE PEDIATRIC SECTION HAS ALREADY TESTIFIED VIA
11 VIDEO DEPOSITION. AND HE CONCLUDED THAT THE
12 BLINDING IS CAUSED BY EITHER VIOLENT TRAUMA OR
13 SHAKING IN HIS OPINION IS CONSISTENT WITH CHILD
14 ABUSE. THE TWO PRIOR BROKEN FEMURS -- ALSO THE
15 STATE IS WILLING TO -- IS PREPARED TO PRODUCE A
16 MEDICAL EXPERT WHO'S THE CHIEF FORENSIC PATHOLOGIST
17 FROM ANDERSON MEDICAL CENTER WHO HAS PREVIOUSLY
18 TESTIFIED AS TO BATTERED CHILD SYNDROME AND HAS ON
19 AT LEAST TWENTY OCCASIONS BEEN IN THE STATE OF
20 SOUTH CAROLINA. ALSO, YOUR HONOR, HE IS WILLING
21 TOO -- OR HE IS PREPARED TO TESTIFY THAT THE
22 COMPILATION OF THOSE INJURIES SUSTAINED BY Child [REDACTED]
23 [REDACTED] IS CONSISTENT WITH BATTERED CHILD SYNDROME
24 AS PREVIOUSLY HELD IN BOTH THE LOWPETH COURT AND

1 OTHER INJURIES SUSTAINED BY THE CHILD; HE HAS BURNS
2 WHICH ARE CONSISTENT WITH CIGARETTE BURNS. HE ALSO
3 HAD BLUE PATTERN INJURIES, SCARRING ON HIS BACK,
4 AND HE HAD A BURN TO THE EAR, ALL OF THE INJURIES
5 HAVING OCCURRED PRIOR TO THE CHARGE IN QUESTION FOR
6 WHICH THE DEFENDANT BURGESS IS FACING WHICH IS
7 ASSAULT AND BATTERY WITH INTENT TO KILL. IN THAT
8 CASE, YOUR HONOR, HE WAS LEFT ALONE WITH THE CHILD
9 BY DEFENDANT GADSON WHO HAS ADMITTED THAT SHE KNEW
10 HE BROKE THE FEMUR OF THE CHILD BEFORE IN 1998.
11 THE MEDICAL EVIDENCE IS CONSISTENT WITH HIM HAVING
12 BEEN VIOLENTLY STOMPED WITH A SHOE ON HIS RIGHT
13 TEMPLE CAUSING THE BRAIN TO SHIFT AND CAUSING A
14 SUBDURAL HEMATOMA ALMOST LEADING TO DEATH. HE ALSO
15 HAS STOMPING PATTERN INJURIES OUTLINE OF THE SHOE
16 ON HIS CHEST. HE WAS ADMITTED BACK TO M.U.S.C.
17 AND, YOUR HONOR, QUITE FRANKLY THIS CASE IS A
18 CLASSIC CHILD ABUSE CASE; AND THE STATE MOVES TO
19 INTRODUCE EVIDENCE IN SUPPORTING CHILD ABUSE
20 SYNDROME

21 THE COURT: ALL RIGHT. THANK YOU, MRS.
22 MURPHY. AND MR. DAVIS, YOU REPRESENT MS. ADRIAN
23 GADSON; IS THAT RIGHT?

24 MR. DAVIS: THAT'S CORRECT, YOUR HONOR

1 PRESENCE HERE TODAY?

2 MR. DAVIS: I HAVE, YOUR HONOR.

3 THE COURT: VERY WELL. LET ME HEAR FROM
4 YOU.

5 MR. DAVIS: YOUR HONOR, AS I'VE OUTLINED,
6 FIRST OF ALL, THE STATE HAD MADE THE MOTION. BUT
7 JUST IN CONJUNCTION ALSO, I WOULD MOVE FOR
8 SEVERANCE. MY CLIENT HAS NEVER BEEN CHARGED WITH
9 ANY OFFENSE INVOLVING ANY INJURY WHATSOEVER TO HER
10 CHILD OR CHILDREN, SPECIFICALLY Child M. BUT JUST
11 FOR SOME BACKGROUND INFORMATION, YOUR HONOR; JUST
12 TO SHED SOME MORE LIGHT ON THIS MATTER. WHAT WE
13 HAVE HERE, YOUR HONOR, IS; ONE CHILD SPECIFICALLY
14 WHO WAS A BY-PRODUCT OF A TWIN BIRTH, CHILDREN THAT
15 WERE PREMATURE, TAKEN AT SIX MONTHS OF AGE. I HAD
16 THE OCCASION TO CROSS-EXAMINE DR. SANDERS. AND THE
17 CONDITION IN REFERENCE TO EYE BLINDNESS IS ONE THAT
18 IS CONDUCIVE AND IS SEEN A LOT OF TIMES IN CHILDREN
19 THAT ARE PREMATURE. SO TO SAY FROM THE STANDPOINT,
20 YOUR HONOR, IT'S JUST BEYOND A REASONABLE DEGREE OF
21 MEDICAL CERTAINTY THAT IT WAS CAUSED BY SOME
22 SHAKING, TO SOME EXTENT, YOUR HONOR, CAN BE
23 THEORETICALLY BE EXPLAINED IN ANOTHER MATTER
BECAUSE CHILDREN THAT ARE PREMATURE AND TAKEN AT AN

1 CHILD HAD THIS CONDITION. YOUR HONOR, I WILL STATE
2 TO THE COURT THAT RELATING BACK IN 1998, D.S.S. WAS
3 INVOLVED IN THIS MATTER. LIKEWISE. I WAS INVOLVED
4 IN THIS MATTER AT THIS TIME. NO CRIMINAL CHARGES
5 HAVE EVER BEEN LODGED AGAINST MY CLIENT.

6 THE COURT: IN 1990?

7 MR. DAVIS: IN 1998.

8 THE COURT: OKAY.

9 MR. SAMUELS: NO CHARGES HAVE EVER BEEN
10 LODGED AGAINST ADRIAN GADSON IN THIS MATTER. I
11 THINK IT WOULD BE PRETTY PREJUDICIAL THAT THIS
12 COURT WOULD ALLOW THE PROBATIVE VALUE OF BATTERED
13 CHILD SYNDROME TO BE LOCKED IN AND TIED IN TO MY
14 CLIENT WHO IS CHARGED WITH UNLAWFUL NEGLECT OF A
15 CHILD OR HELPLESS PERSON BY A LEGAL CUSTODIAN.
16 I'VE BEEN ADVISED THAT IT HAS BEEN UPGRADED. BUT
17 AT ONE TIME IT WAS A MISDEMEANOR IN THIS STATE.
18 AND I UNDERSTAND THAT IT CARRIES A PENALTY OVER TEN
19 YEARS AND NOT CLASSED A FELONY. BUT AT ONE TIME IT
20 WAS PUNISHABLE WITHIN THE DISCRETION OF THE COURT.

21 YOUR HONOR, IN REFERENCE TO THIS
22 UNITED STATES SUPREME COURT AND BATTERED SYNDROME,
23 IT SEEMS THAT THE STATE HAS OUTLINED CERTAIN
24 CONDITIONS TO PUT YOU IN A POSITION TO RULE THAT

1 THINK THAT TESTIMONY MAY BE IN A POSITION OF MR.
2 BURDEN. BUT WHEN IT TURNS TO MY CLIENT, THEN I
3 THINK IT'S ANOTHER ISSUE BECAUSE THERE'S NO
4 CONNECTION WHATSOEVER THAT MY CLIENT HAS EVER BEEN
5 CHARGED -- NEVER ANY ILLUSION. I MEAN, D.S.S. HAS
6 BEEN INVOLVED IN THIS FAMILY. SHE'S NEVER BEEN
7 CHARGED WITH ANY CRIMINAL OFFENSE PERTAINING TO THE
8 ABUSE OF THIS CHILD OR ANY OF HER CHILDREN. SO I
9 DO NOT BELIEVE THAT THIS IS A CLASSICAL CASE OF
10 CHILD ABUSE IN THE SENSE THAT MY CLIENT WHO I
11 REPRESENT, ADRIAN GADSON HAS NEVER, EVER BEEN EVEN
12 CHARGED. AND EVEN IN THIS PARTICULAR SITUATION, TO
13 JUST TOUCH BASES AND THINGS MR. DUKES TALKED ABOUT
14 IS THERE'S MEDICAL DOCUMENTATION THAT THE SHOEPRINT
15 THAT WAS USED IN THIS SITUATION WAS RELATIVELY USED
16 TO BRING THE CHILD BACK TO LIFE. AND THAT WOULD BE
17 THE DEFENSE THAT THE DEFENDANT WOULD USE TO CONDUCE
18 THE PLEADING TO RE-CONNECT THAT A SHOE WAS USED IN
19 REFERENCE TO TRY TO SUPPRESS HEART. BUT DO YOU SEE
20 THE DILEMMA I'VE ALREADY BEEN PUT IN TRYING TO
21 ARGUE WITH WILLIAM DEAN BURDEN WHEN THE ONLY CLIENT
22 THAT I SHOULD BE CONCERNED ABOUT IN ZEALOUS
23 REPRESENTATION IS MS. ADRIAN GADSON I'VE JUST
24 ALLUDED TO, AND THE PARTICULAR REASON THAT I THINK

1 TRIED AT THE SAME TIME IN RELATIONSHIP TO MR.
2 BURDEN WHEN THERE'S NO POLICE REPORT. SHE'S NEVER
3 BEEN AT HOME WHEN ANY OF THESE INCIDENTS OCCURRED.
4 I MEAN, THAT IS CLEARLY DOCUMENTED; NO QUESTION
5 ABOUT THAT. SHE NEVER WAS HOME WHEN ANY OF THESE
6 ABUSES TOOK PLACE. AND THE ONE THAT CAUSED HER TO
7 BE HERE THIS AFTERNOON; SHE WAS NOT AT HOME AT THAT
8 PARTICULAR TIME. WAS IN THE CARE AND CUSTODY OF
9 MR. BURDEN, THE CO-DEFENDANT IN THIS MATTER. AND,
10 SO, IT ADDS SUPPORT AGAIN, YOUR HONOR, TO WHY I
11 THINK IT WOULD BE VERY, VERY PREJUDICIAL FOR THIS
12 COURT TO ALLOW MY CLIENT TO HAVE TO GO FORWARD WITH
13 MR. BURDEN'S CASE AT THIS PARTICULAR TIME. SO I
14 WOULD ASK FOR A SEVERANCE THAT PARTICULAR BASIS
15 ALONE, YOUR HONOR.

16 THE COURT: THANK YOU SO MUCH, MR. DAVIS.
17 MR. DUKES?

18 MR. DUKES: YOUR HONOR, WE WOULD ARGUE
19 AGAIN TO THE BATTERED CHILD SYNDROME ALSO. MR.
20 BURDEN HAS NEVER BEEN CHARGED WITH A CRIME AS TO
21 THE RELATIONSHIP OF THIS CHILD. I UNDERSTAND THIS
22 IS A VERY FRAIL CHILD; VERY SMALL; IT'S A TWIN.
23 AND IT'S JUST ONE OF THESE TWINS THAT'S EVER HAD
24 ANY PROBLEMS. THERE WERE A COUPLE OF BROKEN LEGS;

THAT CAN BE CONTRIBUTED TO A PHYSICAL

1 NATURE. THIS MAN HAS FIVE CHILDREN PLUS THESE FOUR
2 CHILDREN, AND NONE OF THOSE CHILDREN HAS EVER HAD
3 ANY PROBLEMS. HE WOULD HAVE TESTIFIED HERE THAT HE
4 FOUND THIS CHILD GOING THROUGH A SEIZURE, AND THAT
5 MAYBE SOME OF THE THINGS HE DID WASN'T TOO SMART.
6 BUT WHAT HE DID, HE DID TO TRY TO HELP THE CHILD.
7 WE FEEL LIKE IT'S NOT A CLASSIC CASE OF ANY CHILD
8 ABUSE SYNDROME, AND WE WOULD ASK THAT IT NOT BE
9 ALLOWED IN.

10 THE COURT: YES, MA'AM?

11 MRS. MURPHY: YOUR HONOR, I'LL RESPOND TO
12 MR. DAVIS FIRST IN HIS MOTION TO SEVERE REGARDING
13 ANY PRIOR CHARGES OF THE DEFENDANT, MS. GADSON, I
14 HAVE HERE A CERTIFIED TRUE COPY FROM FAMILY COURT
15 FINDING AGAINST -- PLACING HER ON THE D.S.S. CHILD
16 ABUSE REGISTER IF I MAY SUBMIT THAT TO THE COURT,
17 YOUR HONOR, FOR THE 1998 FRACTURE. ALSO UPON
18 REVIEW OF ALL OF THE MEDICAL RECORDS INVOLVING THIS
19 CHILD, THE 1996 MEMORIAL FRACTURE; SHE TOOK THE
20 CHILD TO THE HOSPITAL AND STATED THAT SHE WAS ALONE
21 WITH THE CHILD WHEN HE TRAPPED OVER A MONITOR CORD,
22 AND THAT'S HOW THE CHILD BROKE HIS FEMUR. THE
23 MEDICAL EXPERT IS PREPARED TO TESTIFY THAT THE WAY
24 THE BREAK IS, THERE'S NO WAY THAT COULD HAPPEN.

1 INITIALLY STATED THAT THE CHILD FELL OUT A CRIB
2 WHICH WAS SOMEWHAT LIKE A PLAYPEN AND FELL ONTO A
3 PLASTIC TOY. THE MEDICAL EXPERT IS PREPARED TO
4 TESTIFY THAT THERE IS NO WAY THAT COULD HAVE
5 HAPPENED THAT WAY; THAT THE WAY THE BREAK OF THE
6 FEMUR IS MORE OF A TWISTING AND TORTION ACTION
7 ACCOMPANIED BY BLUNT FORCE TRAUMA. SHE HAS PLACED
8 HERSELF IN A SITUATION WHERE BOTH OF THE FEMORAL
9 BREAKS ARE; THE CHILD WAS TAKEN AWAY FROM HER IN
10 1998 AFTER THE SECOND FEMORAL FRACTURE UNTIL SIX OF
11 2000. ODDLY ENOUGH, THERE'S NO INJURIES TO THE
12 CHILD BETWEEN THAT TIME PERIOD. BUT AFTER SHE GETS
13 THE CHILD BACK, WE HAVE THE PATTERN INJURIES AND
14 THIS LAST ATTACK ON THIS CHILD.

15 SECONDLY, YOUR HONOR; REGARDING
16 MR. DAVIS ADDRESSED, RETINOPATHY OF PREMATURE DR.
17 SAUNDERS TESTIFIED ABOUT THAT HE TESTED -- HE'S A
18 SPECIALIST IN THAT FIELD -- AND HE TESTED THE
19 CHILD'S CAROTIN PREMATURE WHICH SOMETIMES CAN
20 LEAD TO BLINDNESS, AND THAT WAS COMPLETELY RULED
21 OUT. THE CHILD WAS NOT AT RISK FOR THAT. HE
22 TESTED THE BLOOD VESSELS OF THE CHILD, I BELIEVE,
23 AT SEVERAL MONTHS OF AGE. THAT WAS RULED OUT. SO
24 HE RULED OUT THAT AS A POSSIBLE CAUSE OF BLINDNESS

----- THAT WAS NOT CAUSED

1 BECAUSE OF THE PREMATUREITY BUT RATHER BY BLUNT
2 FORCE TRAUMA AND/OR SHAKING AND THAT IN HIS OPINION
3 THAT HE FELT THAT IT WAS THE CLASSIC CASE OF CHILD
4 ABUSE WHEN COMPILED WITH ALL THE OTHER INJURIES
5 THAT THE CHILD HAD. FURTHER, YOUR HONOR, AS FAR AS
6 SEVERANCE GOES, BOTH DEFENDANTS ARE CHARGED WITH
7 CRIMES WHICH ARE COMPLETELY INTERCONNECTED AND
8 ARISE OUT OF THE SINGLE CHAIN OF CIRCUMSTANCES AND
9 APPROVABLE BY THE SAME EVIDENCE THAT ONE FOR
10 JUDICIAL ECONOMY CERTAINLY TO PAY ALL THESE EXPERTS
11 TO COME HERE TWICE TO PRESENT THE SAME EVIDENCE
12 CERTAINLY IS NOT FAIR TO THE STATE. I DON'T SEE
13 HOW IT WOULD BE PREJUDICIAL TO THE DEFENDANT TO
14 HAVE THESE CHARGES SEVERED, THE EVIDENCE IS
15 ADMISSIBLE AGAINST THEM ANYWAY. IT WOULD BE
16 ADMISSIBLE AGAINST BOTH OF THEM.

17 YOUR HONOR, UNDER THE CASE LAW
18 THERE IS NO REQUIREMENT THAT EITHER PARENTS HAVE
19 EVER BEEN CHARGED WITH A CRIME OF THIS NATURE
20 BEFORE. CERTAINLY WHEN YOU TAKE ONE INCIDENT AND
21 ONE INCIDENT AND ONE INCIDENT; YOU HAVE TO ADD THEM
22 ALL UP TO COME UP WITH BATTERED CHILD SYNDROME.
23 THERE ARE CERTAIN DIAGNOSTIC TESTS AND CRITERIA FOR
24 A PATHOLOGIST OR A QUALIFIED MEDICAL EXPERT TO SAY

1 HAVE TO ARISE OUT OF JUST ONE SINGLE OCCURRENCE
2 WHERE THERE HAS BEEN A CRIMINAL CHARGE, BUT A
3 COMPILATION OF INJURIES WHICH ACTUALLY LEAD TO THE
4 INFERENCE THAT IT'S NOT AN ACCIDENT AS THE
5 DEFENDANT IS ACTUALLY CLAIMING. SO BY THE
6 DEFENDANT'S OWN CLAIM THAT IT WAS AN ACCIDENT THAT
7 HE MAY HAVE REACTED WRONGLY TRYING TO REVIVE THE
8 CHILD BY STOMPING ON HIM; THE STATE HAS TO PROVE
9 THAT IT'S NOT AN ACCIDENT; AND THE CASE LAW HAS
10 HELD THAT BATTERED CHILD SYNDROME EVIDENCE IS
11 ADMISSIBLE TO PROVE THE INFERENCE THAT THIS INJURY
12 IS NOT BY ACCIDENTAL MEANS. SO BASED UPON THAT,
13 YOUR HONOR, WE WOULD OPPOSE THE MOTION TO SEVER.
14 AND AGAIN WE'D MOVE TO ADMIT THE BATTERED CHILD
15 SYNDROME TESTIMONY

16 THE COURT: ALL RIGHT. WHAT CONCERNS ME,
17 MRS. MURPHY, AT THIS POINT IS, OF COURSE, I HAVE
18 PROFFERS BY THE STATE TO WHICH -- I GATHER WHAT YOU
19 BELIEVE THAT THE TESTIMONY WILL SHOW.

20 MRS. MURPHY: YES, MA'AM

21 THE COURT: AND OBVIOUSLY THOSE EXPERTS
22 ARE NOT HERE IN ORDER TO LAY THE PROPER FOUNDATION
23 FOR THE ADMISSION OF THOSE INJURIES. CERTAINLY I
24 HAVEN'T HEARD ANY OBJECTION FOR THAT ON BEHALF OF

1 DEFENSE IS CONCERNED ABOUT THAT AS WELL.

2 MR. DAVIS: YOUR HONOR, SHE AND I
3 DISCUSSED THAT. SHE SAID SHE STILL WANTED TO GO
4 FORWARD WITH THE MOTION. I TOLD HER I THOUGHT IT
5 WAS A LITTLE PREMATURE BECAUSE WE HADN'T GOTTEN TO
6 POINT LAY THE GROUND WORK FOR THE CONDITION THAT
7 WOULD LAY OUT THE BATTERED CHILD SYNDROME.

8 THE COURT: VERY WELL. IN TERMS OF --
9 LET ME JUST SAY THAT IN TERMS OF YOUR PREPARATION,
10 AND AS YOU'VE PREPARED TO GO FORWARD WITH THE CASE;
11 I THINK THAT IF THE EVIDENCE IS PROFFERED BY THE
12 STATE, IT VERY WELL MAY BE ADMISSIBLE. HOWEVER,
13 IT'S VERY DIFFICULT, AND I WOULD NOT PUT THE
14 DEFENSE IN THE POSITION THAT I WOULD RULE AT THIS
15 POINT NOT HAVING HEARD THE TESTIMONY. AND I THINK
16 THAT IT OUGHT TO BE OFFERED IN CAMERA BEFORE IT IS
17 OFFERED BEFORE THE JURY. SO BEFORE WE WOULD CHOOSE
18 TO OFFER THAT, MRS. MURPHY, I WOULD SIMPLY ASK THAT
19 WE HAVE AN OPPORTUNITY TO HEAR THAT IN CAMERA. BUT
20 JUST AS YOU GO FORWARD FOR YOUR PREPARATION IN
21 DEFENDING YOUR CLIENT, I WOULD TELL YOU THAT IT
22 CERTAINLY, IF IT IS AS IS PROFFERED; AND OF COURSE,
23 YOU KNOW, THE PRESENTATION OF A TRIAL IS A DYNAMIC
24 THING. BUT IF IT IS AS MRS. MURPHY CERTAINLY

1 ADMISSIBLE. I JUST TELL YOU THAT FOR YOUR
2 PREPARATION PURPOSES. I AM NOT RULING BECAUSE I
3 HAVEN'T HEARD IT. I'VE ONLY HEARD HER PROFFER.
4 WITH REGARDS TO THE SEVERANCE; I WILL DENY YOUR
5 MOTION FOR SEVERANCE AND DO FIND THAT THESE CHARGES
6 CERTAINLY ARISE OUT OF THE SAME SET OF
7 CIRCUMSTANCES; AND THE PROOF AS TO ONE WOULD BE
8 CERTAINLY THE PROOF AS TO THE OTHER. AND IN ANY
9 WAY THAT I CAN ASSIST YOU, MR. DAVIS, I KNOW THAT
10 YOU WILL GIVE ME AN OPPORTUNITY TO DO THAT TO BE
11 SURE THAT THE JURY IS CLEAR AS TO WHAT CHARGES ARE
12 AGAINST EACH OF THESE DEFENDANTS. AND I CERTAINLY
13 WILL HEAR FROM YOU AS THE TRIAL PROCEEDS. BUT I
14 WOULD RESPECTFULLY DENY YOUR MOTION FOR SEVERANCE
15 AND NOTE YOUR EXCEPTION FOR THE RECORD. VERY WELL.
16 THANK YOU ALL SO MUCH. ANYTHING FURTHER AT THIS
17 TIME?

18 MRS. MURPHY: YOUR HONOR, WE DO HAVE A
19 JACKSON VS. DINNO MOTION.

20 THE COURT: ALL RIGHT.

21 MRS. MURPHY: AND WE COULD GO AHEAD AND
22 DO THAT.

23 THE COURT: ALL RIGHT. VERY WELL. I
24 WOULD JUST ASK OF YOU, NOW; IS THAT RELATIVE TO

1 THE COURT: YES, MA'AM. BOTH DEFENDANTS
2 GAVE A STATEMENT

3 THE COURT: AND YOU INTEND TO USE THE
4 STATEMENTS AS TO BOTH MS. GADSON AS WELL AS TO MR.
5 BURDEN?

6 MRS. MURPHY: THAT'S RIGHT.

7 THE COURT: LET ME ASK YOU THIS QUESTION,
8 NOW, MR. DAVIS. THAT'S A DIFFERENT CIRCUMSTANCE
9 SINCE YOUR CLIENT IS NOT PRESENT.

10 MR. DAVIS: I WOULD PREFER MY CLIENT BE
11 PRESENT.

12 THE COURT: ABSOLUTELY. AND I WOULD ASK
13 JUST IN TERMS OF, JUST AT THE ECONOMY OF IT ALL,
14 DOES IT MAKE SENSE JUST TO GO FORWARD AT ONE TIME
15 REGARDING BOTH STATEMENTS RATHER THAN DOING THAT
16 TWICE?

17 MRS. MURPHY: THAT'S FINE, YOUR HONOR.

18 THE COURT: VERY WELL. THE JURY IS
19 COMING IN AT---

20 MRS. MURPHY: TEN O'CLOCK.

21 THE COURT: TEN O'CLOCK IN THE MORNING?

22 MRS. MURPHY: YES, MA'AM.

23 THE COURT: WHY DON'T WE PROCEED WITH THE
24 JACKSON VS. DINNO AT NINE IN THE NINE IN THE

1 THINK?

2 MRS. MURPHY: YES, MA'AM.

3 THE CLERK: THE JURY IS NOT COMING IN
4 UNTIL TWO.

5 THE COURT: THAT'S OKAY, EVERYONE. LET'S
6 PROCEED AT 9:30.

7 THE DAVIS: JUDGE, YOU KNOW HOW THE LAW
8 IS. I'LL BE DOING A LOT OF THINGS IN BERKELEY
9 COUNTY BEFORE I COME OVER HERE AT TWO O'CLOCK; BUT
10 THAT'S FINE. IF THE JURY IS NOT COMING IN UNTIL
11 TWO.

12 THE COURT: THE JURY IS COMING IN AT TWO.
13 I WANTED TO DO THE JACKSON VS. DINNO. DO YOU WANT
14 TO DO THE JACKSON VS. DINNO AT ELEVEN, THEN?

15 MR. DAVIS: THAT WILL BE FINE.

16 THE COURT: WHATEVER MOTIONS WE HAVE TO
17 DO; I REALLY WANT TO DO THOSE---

18 MR. DAVIS: YES; I JUST HAVE TO DO SOME
19 THINGS IN MY OFFICE.

20 THE COURT: VERY WELL. AND THAT WAY THE
21 -- AND ALSO THE POLICE OFFICERS CAN JUST BE HERE
22 AND WON'T HAVE TO COME AND GO.

23 MRS. MURPHY: YES, MA'AM.

24 THE COURT: VERY WELL.

1 JUDGE. THANK YOU.

2 MRS. MURPHY: THANK YOU, YOUR HONOR.

3 (WHEREUPON AT 5:15 COURT WAS ADJOURNED FOR THE
4 DAY.)

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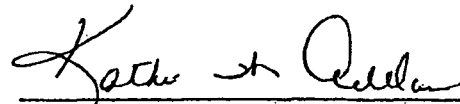
24

C E R T I F I C A T E

I, THE UNDERSIGNED KATHI W. ADDISON, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD IN THE P.C.R. HEARING OF THE CAPTIONED CASE IN THE COURT OF COMMON PLEAS IN ORANGEBURG COUNTY, ON THE 21ST DAY OF OCTOBER, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 12, 2002


OFFICIAL COURT REPORTER

MY COMMISSION EXPIRES: 2/23/2008

(6)

STATE OF SOUTH CAROLINA)	IN THE
)	COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER)	FOR THE FIRST JUDICIAL CIRCUIT
STATE OF S.C.,)	
)	
PLAINTIFF,)	
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- VS -)	TRANSCRIPT OF RECORD
)	#2002-GS-18-0006
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AND ANDRIAN GADSON)	<u>VOLUME I OF III</u>
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DEFENDANT.)	ST. GEORGE, S.C.
)	OCTOBER 21-28, 2002

B E F O R E:

HON. DIANE S. GOODSTEIN; JUDGE, AND A JURY

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

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MOTIONS

6

1 MS. MURPHY: MAY IT PLEASE THE COURT,
2 YOUR HONOR? YOUR HONOR, I'VE HANDED UP A MOTION IN
3 SUPPORT OF THE BATTERED CHILD SYNDROME TO BE USED
4 AGAINST BOTH DEFENDANTS, WILLIAM DEAN BURDEN AND
5 ADRIAN GADSON. AS THE MOTION STATES, MR. BURDEN IS
6 CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO
7 KILL AS WELL AS COMMITTING GREAT BODILY INJURY UPON
8 A CHILD. AND THE DEFENDANT, MS. GADSON, IS
9 CURRENTLY CHARGED WITH UNLAWFUL NEGLIGENCE OF A
10 CHILD BY A LEGAL CUSTODIAN. THE STATE IS MAKING
11 THIS MOTION ON THE BASIS OF ESTELL VS. MCGUIRE
12 WHICH IS A UNITED STATES SUPREME COURT DECISION
13 FROM 1991 AND STATE VS. LOPEZ WHICH IS A SOUTH
14 CAROLINA SUPREME COURT DECISION ALSO FROM 1991.

15 YOUR HONOR, IN BOTH CASES -- THE
16 ESTELL CASE, THE SUPREME COURT UPHELD THAT PRIOR
17 INJURIES OF THE CHILD AS EVIDENCE OF BATTERED CHILD
18 SYNDROME WHEN OFFERED TO SHOW THAT CERTAIN INJURIES
19 ARE A PRODUCT OF CHILD ABUSE RATHER THAN ACCIDENT.
20 EVIDENCE OF PRIOR INJURIES IS RELEVANT EVEN THOUGH
21 IT DOES NOT PURPORT TO PROVE THE IDENTITY OF THE
22 PERSON WHO INFLICTED THOSE INJURIES. THE COURT
23 ALSO WENT ON TO SAY IN THAT CASE, YOUR HONOR, THAT
24 ONLY SOMEONE REGULARLY CARING FOR THE CHILD HAS A
25 CONTINUING OPPORTUNITY TO INFLICT THESE TYPES OF

MOTIONS

7

1 INJURIES, AND ISOLATED CONTACT WITH A VICIOUS
2 STRANGER WILL NOT RESULT IN THIS PATTERN OF
3 SUCCESSFUL INJURIES.

4 IN THIS CASE, FIVE YEAR OLD
5 Child [REDACTED] WHO IS THE VICTIM IN THIS CASE; BY
6 THE TIME HE WAS TWO YEARS OLD, HE HAD TWO FRACTURED
7 FEMURS IN TWO SEPARATE AREAS, IN DIFFERENT AREAS OF
8 THE HEAD AND FEMUR. HE IS ALSO BLINDED IN THE
9 RIGHT EYE. AND THE HEAD OF THE STORM EYE INSTITUTE
10 FOR THE PEDIATRIC SECTION HAS ALREADY TESTIFIED VIA
11 VIDEO DEPOSITION. AND HE CONCLUDED THAT THE
12 BLINDING IS CAUSED BY EITHER VIOLENT TRAUMA OR
13 SHAKING IN HIS OPINION IS CONSISTENT WITH CHILD
14 ABUSE. THE TWO PRIOR BROKEN FEMURS -- ALSO THE
15 STATE IS WILLING TO -- IS PREPARED TO PRODUCE A
16 MEDICAL EXPERT WHO'S THE CHIEF FORENSIC PATHOLOGIST
17 FROM ANDERSON MEDICAL CENTER WHO HAS PREVIOUSLY
18 TESTIFIED AS TO BATTERED CHILD SYNDROME AND HAS ON
19 AT LEAST TWENTY OCCASIONS BEEN IN THE STATE OF
20 SOUTH CAROLINA. ALSO, YOUR HONOR, HE IS WILLING TO
21 -- OR HE IS PREPARED TO TESTIFY -- THAT THE
22 COMPILATION OF THOSE INJURIES SUSTAINED BY Child [REDACTED]
23 [REDACTED] IS CONSISTENT WITH BATTERED CHILD SYNDROME
24 AS PREVIOUSLY HELD IN BOTH THE LOWPETH COURT AND
25 THE MCGUIRE COURT (PHONETICALLY SPELLED) THE

MOTIONS

8

1 OTHER INJURIES SUSTAINED BY THIS CHILD; HE HAS
2 BURNS WHICH ARE CONSISTENT WITH CIGARETTE BURNS.
3 HE ALSO HAD BLUE PATTERN INJURIES, SCARRING ON HIS
4 BACK, AND HE HAS A SCARRING TO THE EAR, ALL OF THE
5 INJURIES HAVING OCCURRED PRIOR TO THE CHARGE IN
6 QUESTION FOR WHICH THE DEFENDANT BURDEN IS FACING
7 WHICH IS ASSAULT AND BATTERY WITH INTENT TO KILL.
8 IN THAT CASE, YOUR HONOR, HE WAS LEFT ALONE WITH
9 THE CHILD BY DEFENDANT GADSON WHO HAS ADMITTED THAT
10 SHE KNEW HE BROKE THE FEMUR OF THE CHILD BEFORE IN
11 1998. THE MEDICAL EVIDENCE IS CONSISTENT WITH HIM
12 HAVING BEEN VIOLENTLY STOMPED WITH A SHOE ON HIS
13 RIGHT TEMPLE CAUSING THE BRAIN TO SHIFT AND CAUSING
14 A SUBDURAL HEMATOMA ALMOST LEADING TO DEATH. HE
15 ALSO HAS STOMPING PATTERN INJURIES OUTLINE OF THE
16 SHOE ON HIS CHEST. HE WAS MEDIVACCED (PHONETICALLY
17 BACK TO M.U.S.C. AND, YOUR HONOR, QUITE FRANKLY
18 THIS CASE IS A CLASSIC CHILD ABUSE CASE; AND THE
19 STATE MOVES TO INTRODUCE EVIDENCE IN SUPPORTING
20 CHILD ABUSE SYNDROME.

21 THE COURT: ALL RIGHT. THANK YOU, MRS.
22 MURPHY. AND MR. DAVIS, YOU REPRESENT MS. ADRIAN
23 GADSON; IS THAT RIGHT?

24 MR. DAVIS: THAT'S CORRECT, YOUR HONOR.

MOTIONS

9

1 PRESENCE HERE TODAY?

2 MR. DAVIS: I HAVE, YOUR HONOR.

3 THE COURT: VERY WELL. LET ME HEAR FROM
4 YOU.

5 MR. DAVIS: YOUR HONOR, AS I'VE OUTLINED,
6 FIRST OF ALL, THE STATE HAD MADE THE MOTION. BUT
7 JUST IN CONJUNCTION ALSO, I WOULD MOVE FOR
8 SEVERANCE. MY CLIENT HAS NEVER BEEN CHARGED WITH
9 ANY OFFENSE INVOLVING ANY INJURY WHATSOEVER TO HER
10 CHILD OR CHILDREN, SPECIFICALLY SHAHEEM. BUT JUST
11 FOR SOME BACKGROUND INFORMATION, YOUR HONOR; JUST
12 TO SHED SOME MORE LIGHT ON THIS MATTER. WHAT WE
13 HAVE HERE, YOUR HONOR, IS; ONE CHILD SPECIFICALLY
14 WHO WAS A BY-PRODUCT OF A TWIN BIRTH, CHILDREN THAT
15 WERE PREMATURE, TAKEN AT SIX MONTHS OF AGE. I HAD
16 THE OCCASION TO CROSS-EXAMINE DR. SANDERS. AND THE
17 CONDITION IN REFERENCE TO THE EYE BLINDNESS IS ONE
18 THAT IS CONDUCIVE AND IS SEEN A LOT OF TIMES IN
19 CHILDREN THAT ARE PREMATURE. SO TO SAY FROM THE
20 STANDPOINT, YOUR HONOR, IT'S JUST BEYOND A
21 REASONABLE DEGREE OF MEDICAL CERTAINTY THAT IT WAS
22 CAUSED BY SOME SHAKING, TO SOME EXTENT, YOUR HONOR,
23 CAN BE THEORETICALLY BE EXPLAINED IN ANOTHER MATTER
24 BECAUSE CHILDREN THAT ARE PREMATURE AND TAKEN AT AN

MOTIONS

10

1 CHILD HAD THIS CONDITION. YOUR HONOR, I WILL STATE
2 TO THE COURT THAT RELATING BACK TO 1998, D.S.S. WAS
3 INVOLVED IN THIS MATTER. LIKEWISE, I WAS INVOLVED
4 IN THIS MATTER AT THIS TIME. NO CRIMINAL CHARGES
5 HAVE EVER BEEN LODGED AGAINST MY CLIENT.

6 THE COURT: IN 1990?

7 MR. DAVIS: IN 1998..

8 THE COURT: OKAY.

9 MR. DAVIS: NO CHARGES HAVE EVER BEEN
10 LODGED AGAINST ADRIAN GADSON IN THIS MATTER. I
11 THINK IT WOULD BE PRETTY PREJUDICIAL THAT THIS
12 COURT WOULD ALLOW THE PROBATIVE VALUE OF BATTERED
13 CHILD SYNDROME TO BE LOCKED IN AND TIED IN TO MY
14 CLIENT WHO IS CHARGED WITH UNLAWFUL NEGLECT OF A
15 CHILD OR HELPLESS PERSON BY A LEGAL CUSTODIAN. I'VE
16 BEEN ADVISED THAT IT HAS BEEN UPGRADED. BUT AT ONE
17 TIME IT WAS A MISDEMEANOR IN THIS STATE. AND I
18 THINK THAT IT CARRIES A PENALTY OVER TEN YEARS
19 AND NOT CLASSED A FELONY. BUT AT ONE TIME IT
20 WAS PUNISHABLE WITHIN THE DISCRETION OF THE
21 COURT.

22 YOUR HONOR, IN REFERENCE TO THIS
23 UNITED STATES SUPREME COURT CASE AND BATTERED CHILD
24 SYNDROME, IT SEEMS THAT THE STATE HAS OUTLINED

MOTIONS

11

1 THAT YOU SHALL ALLOW THIS TESTIMONY. YOUR HONOR, I
2 THINK THAT TESTIMONY MAY BE IN A POSITION OF MR.
3 BURDEN. BUT WHEN IT TURNS TO MY CLIENT, THEN I
4 THINK IT'S ANOTHER ISSUE BECAUSE THERE'S NO
5 CONNECTION WHATSOEVER THAT MY CLIENT HAS EVER BEEN
6 CHARGED -- NEVER ANY ILLUSION. I MEAN, D.S.S. HAS
7 BEEN INVOLVED IN THIS FAMILY. SHE'S NEVER BEEN
8 CHARGED WITH ANY CRIMINAL OFFENSE PERTAINING TO THE
9 ABUSE OF THIS CHILD OR ANY OF HER CHILDREN. SO I
10 DO NOT BELIEVE THAT THIS IS A CLASSICAL CASE OF
11 CHILD ABUSE IN THE SENSE THAT MY CLIENT WHO I
12 REPRESENT, ADRIAN GADSON, HAS NEVER EVER BEEN EVEN
13 CHARGED. AND EVEN IN THIS PARTICULAR SITUATION, TO
14 JUST TOUCH BASES AND THINGS MR. DUKES TALKED ABOUT
15 IS THERE'S MEDICAL DOCUMENTATION THAT THE SHOEPRINT
16 THAT WAS USED IN THIS SITUATION WAS RELATIVELY USED
17 TO BRING THE CHILD BACK TO LIFE. AND THAT WOULD BE
18 THE DEFENSE THAT THE DEFENDANT WOULD USE TO CONDUCE
19 THE PLEADING TO RE-CONNECT THAT A SHOE WAS USED IN
20 REFERENCE TO TRY TO SUPPRESS THE HEART. BUT DO YOU
21 SEE THE DILEMMA I'VE ALREADY BEEN PUT IN TRYING TO
22 ARGUE WITH WILLIAM DEAN BURDEN WHEN THE ONLY CLIENT
23 I SHOULD BE CONCERNED ABOUT IN ZEALOUS
24 REPRESENTATION IS MS. ADRIAN GADSON. FOR ALL OF
25 THOSE REASONS I HAVE JUST ALLUDED TO AND THE

MOTIONS

12

1 PARTICULAR REASON THAT I THINK THAT IT'S VERY
2 PREJUDICIAL FOR MY CLIENT TO BE TRIED AT THE SAME
3 TIME IN RELATIONSHIP TO MR. BURDEN WHEN THERE'S NO
4 POLICE REPORT. SHE'S NEVER BEEN AT HOME WHEN ANY
5 OF THESE INCIDENTS OCCURRED. I MEAN, THAT IS
6 CLEARLY DOCUMENTED; NO QUESTION ABOUT THAT. SHE
7 NEVER WAS HOME WHEN ANY OF THESE ABUSES TOOK PLACE.
8 AND THE ONE THAT CAUSED HER TO BE HERE THIS
9 AFTERNOON; SHE WAS NOT AT HOME AT THAT PARTICULAR
10 TIME; WAS IN THE CARE AND CUSTODY OF MR. BURDEN,
11 THE CO-DEFENDANT IN THIS MATTER. AND, SO, IT ADDS
12 SUPPORT AGAIN, YOUR HONOR, TO WHY I THINK IT WOULD
13 BE VERY, VERY PREJUDICIAL FOR THIS COURT TO ALLOW
14 MY CLIENT TO HAVE TO GO FORWARD WITH MR. BURDEN IN
15 THIS CASE AT THIS PARTICULAR TIME. SO I WOULD ASK
16 FOR A SEVERANCE ON THAT PARTICULAR BASIS ALONE,
17 YOUR HONOR.

18 THE COURT: THANK YOU SO MUCH, MR. DAVIS.
19 MR. DUKES?

20 MR. DUKES: YOUR HONOR, WE WOULD ARGUE
21 AGAIN TO THE BATTERED CHILD SYNDROME ALSO. MR.
22 BURDEN HAS NEVER BEEN CHARGED WITH A CRIME AS TO
23 THE RELATIONSHIP OF THIS CHILD. I UNDERSTAND THIS
24 IS A VERY FRAIL CHILD; VERY SMALL; IT'S A TWIN.

AND THIS JUST ONE OF THESE TWINS THAT'S EVER HAD

MOTIONS

13

1 ANY PROBLEMS. THERE WERE A COUPLE OF BROKEN LEGS;
2 BUT I THINK THAT CAN BE CONTRIBUTED TO A PHYSICAL
3 NATURE. THIS MAN HAS FIVE CHILDREN PLUS THESE FOUR
4 CHILDREN, AND NONE OF THOSE CHILDREN HAS EVER HAD
5 ANY PROBLEMS. HE WOULD HAVE TESTIFIED HERE THAT HE
6 FOUND THIS CHILD GOING THROUGH A SEIZURE, AND THAT
7 MAYBE SOME OF THE THINGS HE DID WASN'T TOO SMART.
8 BUT WHAT HE DID, HE DID TO TRY TO HELP THE CHILD.
9 WE FEEL LIKE IT'S NOT A CLASSIC CASE OF ANY CHILD
10 ABUSE SYNDROME, AND WE WOULD ASK THAT IT NOT BE
11 ALLOWED IN.

12 THE COURT: YES, MA'AM?

13 MRS. MURPHY: YOUR HONOR, I'LL RESPOND TO
14 MR. DAVIS FIRST IN HIS MOTION TO SEVER REGARDING
15 ANY PRIOR CHARGES OF THE DEFENDANT, MS. GADSON. I
16 HAVE HERE A CERTIFIED TRUE COPY FROM FAMILY COURT
17 FINDING AGAINST -- PLACING HER ON THE D.S.S. CHILD
18 ABUSE REGISTER IF I MAY SUBMIT THAT TO THE COURT,
19 YOUR HONOR, FOR THE 1998 FEMORAL FRACTURE. ALSO
20 UPON REVIEW OF ALL OF THE MEDICAL RECORDS INVOLVING
21 THIS CHILD, THE 1996 FEMORAL FRACTURE; SHE TOOK THE
22 CHILD TO THE HOSPITAL AND STATED THAT SHE WAS ALONE
23 WITH THE CHILD WHEN HE TRIPPED OVER A MONITOR CORD,
24 AND THAT'S HOW THE CHILD BROKE HIS FEMUR. THE
25 MEDICAL EXPERT IS PREPARED TO TESTIFY THAT THE WAY

MOTIONS

14

1 THE BREAK IS, THERE'S NO WAY THAT COULD HAPPEN.
2 BOTH OF THOSE BREAKS; THE SECOND BREAK, SHE HAD
3 INITIALLY STATED THAT THE CHILD FELL OUT A CRIB
4 WHICH WAS SOMEWHAT LIKE A PLAYPEN AND FELL ONTO A
5 PLASTIC TOY. THE MEDICAL EXPERT IS PREPARED TO
6 TESTIFY THAT THERE IS NO WAY COULD HAVE HAPPENED
7 THAT WAY; THE WAY THE BREAK OF THE FEMUR IS IT'S
8 MORE OF A TWISTING AND TORTION ACTION ACCOMPANIED
9 BY BLUNT FORCE TRAUMA. SHE HAS PLACED HERSELF IN A
10 SITUATION WHERE BOTH OF THE FEMORAL BREAKS ARE; THE
11 CHILD WAS TAKEN AWAY FROM HER IN 1998 AFTER THE
12 SECOND FEMORAL FRACTURE UNTIL SIX OF 2000. ODDLY
13 ENOUGH, THERE'S NO INJURIES TO THE CHILD BETWEEN
14 THAT TIME. BUT AFTER SHE GETS THE CHILD BACK, WE
15 HAVE THE BURNS. WE HAVE THE PATTERN INJURIES IN
16 THIS LAST ATTACK ON THIS CHILD.

17 SECONDLY, YOUR HONOR; REGARDING
18 MR. DAVIS ADDRESSED, RETINOPATHY OF PREMATUREITY
19 WHICH DR. SAUNDERS TESTIFIED ABOUT THAT HE TESTED
20 -- HE'S A SPECIALIST IN THAT FIELD -- AND HE
21 TESTED THE CHILD'S CAROTIN PREMATUREITY WHICH
22 SOMETIMES CAN LEAD TO BLINDNESS, AND THAT WAS
23 COMPLETELY RULED OUT. THE CHILD WAS NOT AT RISK
24 FOR THAT. HE TESTED THE BLOOD VESSELS OF THE
25 CHILD. I BELIEVE AT SEVERAL MONTHS OF AGE. THAT

MOTIONS

15

1 WAS RULED OUT. SO HE RULED OUT THAT AS A POSSIBLE
2 CAUSE OF BLINDNESS WHICH THE DETACHED RETINA THAT
3 WAS NOT CAUSED BECAUSE OF THE PREMATUREITY BUT
4 RATHER BY BLUNT FORCE TRAUMA AND/OR SHAKING, AND
5 THAT IN HIS OPINION THAT HE FELT THAT IT WAS THE
6 CLASSIC CASE OF CHILD ABUSE WHEN COMPILED WITH ALL
7 THE OTHER INJURIES THAT THE CHILD HAD. FURTHER,
8 YOUR HONOR, AS FAR AS SEVERANCE GOES, BOTH
9 DEFENDANTS ARE CHARGED WITH CRIMES WHICH ARE
10 COMPLETELY INTERCONNECTED AND ARISE OUT OF THE
11 SINGLE CHAIN OF CIRCUMSTANCES AND APPROVABLE BY THE
12 SAME EVIDENCE THAT ONE FOR JUDICIAL ECONOMY
13 CERTAINLY TO PAY ALL THESE EXPERTS TO COME HERE
14 TWICE TO PRESENT THE SAME EVIDENCE CERTAINLY IS NOT
15 FAIR TO THE STATE. I DON'T SEE HOW IT WOULD BE
16 PREJUDICIAL TO THE DEFENDANT TO HAVE THESE CHARGES
17 SEVERED, THE EVIDENCE IS ADMISSIBLE AGAINST THEM
18 ANYWAY. IT WOULD BE ADMISSIBLE AGAINST BOTH OF
19 THEM.

20 YOUR HONOR, UNDER THE CASE LAW
21 THERE IS NO REQUIREMENT THAT EITHER PARENT HAS EVER
22 BEEN CHARGED WITH A CRIME OF THIS NATURE BEFORE.
23 CERTAINLY WHEN YOU TAKE ONE INCIDENT AND ONE
24 INCIDENT AND ONE INCIDENT; YOU HAVE TO ADD THEM ALL
25 UP TO COME UP WITH BATTERED CHILD SYNDROME

MOTIONS

16

61

1 ARE CERTAIN DIAGNOSTIC TESTS AND CRITERIA FOR A
2 PATHOLOGIST OR A QUALIFIED MEDICAL EXPERT TO SAY
3 YES, IT IS BATTERED CHILD SYNDROME. IT DOESN'T
4 HAVE TO ARISE OUT OF JUST ONE SINGLE OCCURRENCE
5 WHERE THERE HAS BEEN A CRIMINAL CHARGE, BUT A
6 COMPILATION OF INJURIES WHICH ACTUALLY LEAD TO THE
7 INFERENCE THAT IT'S NOT AN ACCIDENT AS THE
8 DEFENDANT IS ACTUALLY CLAIMING. SO BY THE
9 DEFENDANT'S OWN CLAIM THAT IT WAS AN ACCIDENT THAT
10 HE MAY HAVE REACTED WRONGLY TRYING TO REVIVE THE
11 CHILD BY STOMPING ON HIM; THE STATE HAS TO PROVE
12 THAT IT'S NOT AN ACCIDENT; AND THE CASE LAW HAS
13 HELD THAT BATTERED CHILD SYNDROME EVIDENCE IS
14 ADMISSIBLE TO PROVE THE INFERENCE THAT THIS INJURY
15 IS NOT BY ACCIDENTAL MEANS. SO BASED UPON THAT,
16 YOUR HONOR, WE WOULD OPPOSE THE MOTION TO SEVER.
17 AND AGAIN WE'D MOVE TO ADMIT THE BATTERED CHILD
18 SYNDROME TESTIMONY.

19 THE COURT: WHAT CONCERNS ME, MRS.
20 MURPHY, AT THIS POINT IS, OF COURSE, I HAVE
21 PROFFERS BY THE STATE TO WHICH -- I GATHER WHAT YOU
22 BELIEVE THAT THE TESTIMONY WILL SHOW.

23 MRS. MURPHY: YES, MA'AM.

24 THE COURT: AND OBVIOUSLY THOSE EXPERTS

MOTIONS

17

1 FOR THE ADMISSION OF THOSE INJURIES. CERTAINLY I
2 HAVEN'T HEARD ANY OBJECTION FOR THAT ON BEHALF OF
3 THE DEFENSE. BUT NEEDLESS TO SAY, I'M SURE THE
4 DEFENSE IS CONCERNED ABOUT THAT AS WELL.

5 MR. DAVIS: YOUR HONOR, SHE AND I
6 DISCUSSED THAT. SHE SAID SHE STILL WANTED TO GO
7 FORWARD WITH THE MOTION. I TOLD HER I THOUGHT IT
8 WAS A LITTLE PREMATURE BECAUSE WE HADN'T GOTTEN TO
9 POINT YET WHERE THE EXPERT ACTUALLY SAID THEY'D LAY
10 THE GROUND WORK FOR THE CONDITION THAT WOULD LAY
11 OUT THE BATTERED CHILD SYNDROME.

12 THE COURT: VERY WELL. IN TERMS OF --
13 LET ME JUST SAY THAT IN TERMS OF YOUR PREPARATION,
14 AND AS YOU'VE PREPARED TO GO FORWARD WITH THE CASE;
15 I THINK THAT IF THE EVIDENCE IS PROFFERED BY THE
16 STATE, IT VERY WELL MAY BE ADMISSIBLE. HOWEVER,
17 IT'S VERY DIFFICULT, AND I WOULD NOT PUT THE
18 DEFENSE IN THE POSITION THAT I WOULD RULE AT THIS
19 POINT NOT HAVING HEARD THE TESTIMONY. AND I THINK
20 THAT IT OUGHT TO BE OFFERED IN CAMERA BEFORE IT IS
21 OFFERED BEFORE THE JURY. SO BEFORE WE WOULD CHOOSE
22 TO OFFER THAT, MRS. MURPHY, I WOULD SIMPLY ASK THAT
23 WE HAVE AN OPPORTUNITY TO HEAR THAT IN CAMERA. BUT
24 JUST AS YOU GO FORWARD FOR YOUR PREPARATION IN
25 DEFENDING YOUR CLIENT I WOULD TELL YOU THAT IT

MOTIONS

18

1 CERTAINLY, IF IT IS AS IS PROFFERED; AND OF COURSE,
2 YOU KNOW, THE PRESENTATION OF A TRIAL IS A DYNAMIC
3 THING. BUT IF IT IS AS MRS. MURPHY CERTAINLY
4 ANTICIPATES, THEN IT WOULD MOST PROBABLY BE
5 ADMISSIBLE. I JUST TELL YOU THAT FOR YOUR
6 PREPARATION PURPOSES. I AM NOT RULING BECAUSE I
7 HAVEN'T HEARD IT. I'VE ONLY HEARD HER PROFFER.
8 WITH REGARDS TO THE SEVERANCE; I WILL DENY YOUR
9 MOTION FOR SEVERANCE AND DO FIND THAT THESE CHARGES
10 CERTAINLY ARISE OUT OF THE SAME SET OF
11 CIRCUMSTANCES; AND THE PROOF AS TO ONE WOULD BE
12 CERTAINLY THE PROOF AS TO THE OTHER. AND IN ANY
13 WAY THAT I CAN ASSIST YOU, MR. DAVIS, I KNOW THAT
14 YOU WILL GIVE ME AN OPPORTUNITY TO DO THAT TO BE
15 SURE THAT THE JURY IS CLEAR AS TO WHAT CHARGES ARE
16 AGAINST EACH OF THESE DEFENDANTS. AND I CERTAINLY
17 WILL HEAR FROM YOU AS THE TRIAL PROCEEDS. BUT I
18 WOULD RESPECTFULLY DENY YOUR MOTION FOR SEVERANCE
19 AND NOTE YOUR EXCEPTION FOR THE RECORD. VERY WELL.
20 THANK YOU ALL SO MUCH. ANYTHING FURTHER AT THIS
21 TIME?

22 MRS. MURPHY: YOUR HONOR, WE DO HAVE A
23 JACKSON VS. DINNO MOTION.

24 THE COURT: ALL RIGHT.

MOTIONS

19

1. DO THAT.

2. THE COURT: ALL RIGHT. VERY WELL. I
3. WOULD JUST ASK OF YOU, NOW; IS THAT RELATIVE TO
4. EACH---

5. THE COURT: YES, MA'AM. BOTH DEFENDANTS
6. GAVE A STATEMENT.

7. THE COURT: ALL RIGHT. AND YOU INTEND TO
8. USE THE STATEMENTS AS TO BOTH MS. GADSON AS WELL AS
9. TO MR. BURDEN?

10. MRS. MURPHY: THAT'S RIGHT.

11. THE COURT: LET ME ASK YOU THIS QUESTION,
12. NOW, MR. DAVIS. THAT'S A DIFFERENT CIRCUMSTANCE
13. SINCE YOUR CLIENT IS NOT PRESENT.

14. MR. DAVIS: I WOULD PREFER MY CLIENT BE
15. PRESENT.

16. THE COURT: ABSOLUTELY. AND I WOULD ASK
17. JUST IN TERMS OF, JUST AT THE ECONOMY OF IT ALL,
18. DOES IT MAKE SENSE JUST TO GO FORWARD AT ONE TIME
19. REGARDING BOTH STATEMENTS RATHER THAN DOING THAT
20. TWICE?

21. MRS. MURPHY: THAT'S FINE, YOUR
22. HONOR.

23. THE COURT: VERY WELL. THE JURY IS
24. COMING IN AT---

MOTIONS

20

1 THE COURT: TEN O'CLOCK IN THE MORNING?

2 MRS. MURPHY: YES, MA'AM.

3 THE COURT: WHY DON'T WE PROCEED WITH
4 THE JACKSON VS. DINNO AT NINE IN THE MORNING.
5 WILL THAT GIVE US SUFFICIENT TIME, DO YOU
6 THINK?

7 MRS. MURPHY: YES, MA'AM.

8 THE CLERK: THE JURY IS NOT COMING IN
9 UNTIL TWO.

10 THE COURT: THAT'S OKAY, EVERYONE. LET'S
11 PROCEED AT 9:30.

12 THE DAVIS: JUDGE, YOU KNOW HOW THE LAW
13 IS. I'LL BE DOING A LOT OF THINGS IN BERKELEY
14 COUNTY BEFORE I COME OVER HERE AT TWO O'CLOCK; BUT
15 THAT'S FINE. IF THE JURY IS NOT COMING IN UNTIL
16 TWO.

17 THE COURT: THE JURY IS COMING IN AT
18 TWO. I WANTED TO DO THE JACKSON VS. DINNO. DO
19 YOU WANT TO DO THE JACKSON VS. DINNO AT ELEVEN,
20 THEN?

21 MR. DAVIS: THAT WILL BE FINE.

22 THE COURT: WHATEVER MOTIONS WE HAVE TO
23 DO; I REALLY WANT TO DO THOSE---

24 MR. DAVIS: YES; I JUST HAVE TO DO SOME

MOTIONS

21

1 THE COURT: VERY WELL. AND THAT WAY THE
2 -- AND ALSO THE POLICE OFFICERS CAN JUST BE HERE
3 AND WON'T HAVE TO COME AND GO.

4 MRS. MURPHY: YES, MA'AM.

5 THE COURT: VERY WELL.

6 MR. DAVIS: WE'LL SEE YOU IN THE MORNING,
7 JUDGE. THANK YOU.

8 MRS. MURPHY: THANK YOU, YOUR HONOR.

9

10

11 (WHEREUPON AT 5:15 COURT WAS ADJOURNED FOR THE
12 DAY.)

13

14

15

16

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18

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21

22

23

24

RANDY WARREN BOTTEN - DIRECT/MRS. MURPHY

22

TUESDAY, OCTOBER 22, 2002

THE COURT: ALL RIGHT. THERE IS MR.

DUKES. ALL RIGHT, MS. MURPHY.

MRS. MURPHY: YES, MA'AM. THE STATE IS
READY TO PROCEED ON THE JACKSON VS. DINNO HEARING
REGARDING THE DEFENDANTS GADSON AND BURDEN. THE
STATE WOULD FIRST CALL DEPUTY RANDY BOTTEN TO THE
STAND.

THE COURT: ALL RIGHT, IF YOU WOULD
STOP SOMEWHERE IN THAT AREA AND RAISE YOUR RIGHT
HAND.

WHEREUPON,

RANDY WARREN BOTTEN, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MRS. MURPHY:

Q. DEPUTY BOTTEN, WHERE YOU EMPLOYED, SIR?

A. AT THE DORCHESTER COUNTY SHERIFF'S OFFICE.

Q. AND WERE YOU ON DUTY LAST NOVEMBER THE THIRD OF
2001?

A. YES, MA'AM, I WAS.

RANDY WARREN BOTTEN - DIRECT/MRS. MURPHY

23

1 CENTER?

2 A. YES, MA'AM, I WAS.

3 Q. IS THAT WHERE YOU RESPONDED?

4 A. YES, MA'AM.

5 Q. WHAT HAPPENED WHEN YOU ARRIVED AT THAT PARTICULAR
6 SCENE?

7 A. I WAS MET BY DR. GOLDMAN WHO STATED THAT HE WAS
8 TREATING THE CHILD, AND THAT THE CHILD APPEARED TO
9 HAVE BEEN BEATEN.

10 MR. DAVIS: I OBJECT TO ANY HEARSAY
11 STATEMENTS.

12 MRS. MURPHY: DON'T TELL US WHAT SOMEBODY
13 ELSE TOLD YOU; JUST TELL US WHAT YOU SAW WHEN YOU
14 GOT THERE.

15 A. THEY DIRECTED ME TO THE ROOM WHERE THE CHILD WAS
16 AT. I SAW THE CHILD UNRESPONSIVE. DR. GOLDMAN
17 POINTED OUT SEVERAL MARKS ON THE CHILD. I
18 PHOTOGRAPHED THOSE.

19 Q. AT THAT POINT DID DETECTIVE MARSHALL AT SOME POINT
20 COME TO THE SUMMERVILLE MEDICAL CENTER?

21 A. YES, MA'AM; HE MET ME THERE.

22 Q. AND WHAT, IF ANYTHING, WERE YOU DIRECTED TO DO AT
23 THAT POINT?

24 A. TO GO BACK TO 240 PIGEON BAY ROAD.

25

RANDY WARREN BOTTEN - DIRECT/MRS. MURPHY

24

1 A. JUST AN INVESTIGATION TO SEE WHAT HAPPENED AT THE
2 HOUSE.

3 Q. WAS THAT WHERE THE ORIGINAL 911 CALL CAME FROM?

4 A. YES, MA'AM, IT WAS.

5 Q. AND DID YOU RESPOND TO 240 PIGEON BAY ROAD?

6 A. YES, MA'AM, I DID.

7 Q. AND WHO DID YOU MEET THERE AT THAT SCENE?

8 A. MR. BURDEN.

9 Q. AND WHAT DID YOU DO WHEN YOU GOT THERE?

10 A. I EXPLAINED TO HIM WHY WE WERE THERE, WHY I WAS
11 THERE; AND ASKED IF I COULD COME IN AND LOOK AROUND
12 AND SEE IF HE COULD TELL ME WHAT HAPPENED.

13 Q. AND DID HE COOPERATE?

14 A. YES, MA'AM, HE DID.

15 Q. WAS HE A SUSPECT AT THAT POINT?

16 A. NO, MA'AM.

17 Q. WHAT EXACTLY HAPPENED WHEN YOU GOT THERE? YOU CAME
18 TO THE DOOR AND ASKED IF YOU COULD COME IN?

19 A. YES, MA'AM. HE OPENED THE DOOR AND LET ME COME
20 IN. I ASKED HIM WHAT HAPPENED. HE EXPLAINED TO
21 ME WHAT HAD HAPPENED. AT THE DIRECTION OF
22 DETECTIVE MARSHALL, I TOOK PHOTOS OF INSIDE THE
23 HOUSE.

24 Q. AT ANY POINT DID HE ASK YOU TO LEAVE THE

RANDY WARREN BOTTEN - DIRECT/MRS. MURPHY

25

LASER STOCK FORM FMU

THE CORBY GROUP 1-800-255-5040

- 1 A. NO, MA'AM.
- 2 Q. AT ANY POINT DID HE TELL YOU HE DIDN'T WANT TO TALK
- 3 TO YOU?
- 4 A. NO, MA'AM.
- 5 Q. WAS HE IN CUSTODY AT THAT POINT?
- 6 A. NO, MA'AM, HE WASN'T.
- 7 Q. AND DID HE VOLUNTARILY GIVE YOU A STATEMENT AT THAT
- 8 POINT?
- 9 A. YES, MA'AM.
- 10 Q. AND YOU TOOK THAT WRITTEN STATEMENT FROM HIM?
- 11 A. YES, MA'AM.
- 12 Q. AND AT SOME POINT AFTER THAT WRITTEN STATEMENT, DID
- 13 YOU REPORT BACK TO DETECTIVE MARSHALL WHAT YOUR
- 14 FINDINGS WERE?
- 15 A. YES, MA'AM.
- 16 Q. AND WHAT HAPPENED AT THAT POINT?
- 17 A. I STAYED ON THE SCENE. AND LATER, YOU KNOW, AFTER
- 18 EVERYTHING WAS COMPLETED, I TOOK MR. BURDEN TO THE
- 19 L.L.C.
- 20 Q. AND WAS THAT AT THE REQUEST OF DETECTIVE
- 21 MARSHALL---
- 22 A. YES, MA'AM.
- 23 Q. --BASED ON WHAT YOU HAD TOLD HIM?
- 24 A. YES, MA'AM.
- 25 Q. AND BY STAYING AT THE SCENE FOR A WHILE WHAT WERE

RANDY WARREN BOTTEN - DIRECT/MRS. MURPHY

26

1 YOU DOING AT THE SCENE?

2 A. I WAS AWAITING D.S.S. TO ARRIVE FOR THE EMERGENCY
3 PROTECTIVE CUSTODY TO TAKE THE CHILDREN OUT OF
4 THE HOUSE BASED ON THE EVIDENCE THAT WE HAD
5 FOUND.

6 Q. THE OTHER CHILDREN?

7 A. YES, MA'AM.

8 Q. AND SKIPPING UP TO NOVEMBER THE SIXTH OF 2001; WERE
9 YOU PRESENT IN THE FAMILY COURT HEARING OF

10 DEFENDANT BURDEN?

11 A. YES, MA'AM, I WAS.

12 Q. WERE YOU PRESENT WHEN HE WAS READ HIS RIGHTS AT
13 THAT HEARING?

14 A. YES, MA'AM.

15 Q. AND WERE YOU ALSO PRESENT WHEN HE WAS READ HIS
16 RIGHTS AFTER THAT HEARING BY DETECTIVE MARSHALL
17 UPON HIS ARREST?

18 A. YES, MA'AM, I WAS.

19 MRS. MURPHY: THAT'S ALL QUESTIONS I HAVE
20 FOR THIS WITNESS AT THIS PARTICULAR TIME.

21 THE COURT: OKAY.

22 MRS. MURPHY: I WOULD RESERVE THE RIGHT
23 TO RECALL HIM, YOUR HONOR.

24 THE COURT: VERY WELL. CROSS-EXAMINATION,

25 MR. DUKES?

RANDY WARREN BOTTEN - CROSS/MR. DUKES

27

1

CROSS-EXAMINATION

2

BY MR. DUKES:

3

Q. DEPUTY BOTTEN, I UNDERSTAND THAT YOU WENT TO THE
SCENE AT 240 PIGEON BAY ROAD?

4

5

A. I WENT TO SUMMERVILLE MEDICAL CENTER FIRST, AND
THEN TO PIGEON BAY ROAD; YES, SIR.

6

7

Q. ALL RIGHT. NOW, WHEN YOU GOT TO 240 PIGEON BAY
ROAD, WHO ALL WAS PRESENT?

8

9

A. JUST MR. BURDEN AND THE CHILDREN.

10

Q. AND THERE WERE, WHAT, FOUR OF THE CHILDREN
THERE?

11

12

A. I BELIEVE SO; YES, SIR.

13

Q. WERE THEY ALL -- HOW WERE THEY ACTING?

14

A. I BELIEVE THE YOUNGEST ONE, MAYBE THE TWIN; AND THE
OTHER ONE WAS CRYING. THE OTHER CHILDREN JUST
SEEMED DESPONDENT. THEY WOULDN'T TALK TO ME OR
ANYTHING.

17

18

Q. BUT MR. BURDEN WAS THERE WITH THEM?

19

A. YES, SIR.

20

Q. AND WHAT CONDITION WAS HE IN?

21

A. MR. BURDEN?

22

Q. YES, SIR. HOW DID HE APPEAR TO YOU?

23

A. RELAXED.

24

Q. AND YOU TOLD HIM WHAT?

RANDY WARREN BOTTEN - CROSS/MR. DUKES

28

1. Q. WHAT DID YOU TELL HIM WHEN YOU GOT THERE?

2 A. THAT WE WERE HERE FOR THE CHILD THAT WAS AT
3 SUMMERVILLE MEDICAL CENTER TO SEE WHAT HAD HAPPENED
4 AT THE HOUSE. THAT'S WHERE THE ORIGINAL 911 CALL
5 CAME FROM.

6 Q. OKAY. AND HE TALKED TO YOU?

7 A. YES, SIR.

8 Q. AND HE TOLD YOU HIS OPINION ON WHAT HAPPENED?

9 A. YES, SIR.

10 Q. AND YOU HAD NOT -- HE WAS NOT A SUSPECT AT THAT
11 TIME?

12 A. NO, SIR, HE WASN'T.

13 Q. AND YOU DID NOT GIVE HIM ANY -- YOU DID NOT READ
14 HIM HIS RIGHTS?

15 A. I HAD NO NEED TO AT THAT TIME.

16 Q. OKAY. AND WHAT DID HE TELL YOU?

17 A. THAT THE CHILD WAS IN THE BED WHEN WE CAME IN TO
18 GET HIM UP TO FEED HIM AND BATHE HIM; THAT THE
19 CHILD WAS RIGID. THAT HE PICKED THE CHILD UP; THAT
20 THE CHILD HAD FALLEN. THAT HE TOOK THE CHILD IN
21 THE BATHROOM, PUT HIM IN THE BATHTUB, AND IT FELL
22 IN THE BATHTUB.

23 Q. AND THAT WAS THE EXTENT OF WHAT HE TOLD YOU?

24 A. BASICALLY; YES, SIR.

RANDY WARREN BOTTEN - CROSS/MR. DUKES

29

1 THERE?

2 A. AT THE HOUSE?

3 Q. YES, SIR?

4 A. I WAS THERE FROM PROBABLY ABOUT -- I DON'T HAVE THE
5 CAD REPORT; BUT IT WAS PROBABLY ABOUT 7:00 O'CLOCK
6 P.M. TO ALMOST MAYBE MIDNIGHT, 12:30.

7 Q. SO YOU WERE IN THE PRESENCE WITH MR. BURDEN
8 AND THE OTHER FOUR CHILDREN FROM SEVEN UNTIL
9 TWELVE?

10 A. ROUGHLY; YES, SIR.

11 Q. AND THEN DURING THAT PERIOD OF TIME, DID YOU TAKE A
12 WRITTEN STATEMENT FROM HIM?

13 A. YES, SIR, I DID.

14 Q. AND DO YOU HAVE THAT WRITTEN STATEMENT?

15 A. MRS. MURPHY HAS GOT IT; YES.

16 Q. AND THAT 2200 HOURS; THAT'S TEN O'CLOCK?

17 A. TEN O'CLOCK; YES, SIR.

18 Q. AND YOU HAD BEEN THERE SINCE SEVEN. SO YOU
19 HAD ALREADY BEEN THERE FOR THREE HOURS
20 THEN?

21 A. YES.

22 Q. DID Y'ALL TALK ABOUT ANYTHING ELSE OTHER THAN
23 THIS?

24 A. NO, SIR.

25 Q. Y'ALL TALKED ABOUT ANYTHING ELSE OTHER THAN THIS?

RANDY WARREN BOTTEN - CROSS/MR. DUKES

30

1 THERE?

2 A. NO. WHEN I GOT THERE, IT WAS JUST COMMUNICATIONS
3 BACK BETWEEN ME AND DETECTIVE MARSHALL. I WAS IN
4 MY CAR SOME TALKING TO DETECTIVE MARSHALL.

5 Q. AND MR. BURDEN AND THE CHILDREN WERE IN THE HOUSE?

6 A. YES, SIR.

7 Q. AND YOU DIDN'T ADVISE HIM OF HIS RIGHTS BEFORE YOU
8 TOOK THIS STATEMENT EITHER?

9 A. NO, SIR. IT'S A VOLUNTARY STATEMENT.

10 Q. OKAY. AND MR. BURDEN COOPERATED WITH YOU THE WHOLE
11 TIME---

12 A. YES, SIR.

13 Q. --THAT YOU WERE THERE?

14 A. YES, SIR.

15 Q. OKAY.

16 MR. DUKES: THAT'S ALL.

17 THE COURT: CROSS-EXAMINATION, MR. DAVIS?

18 MS. DAVIS: THANK YOU.

19 RE-DIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. JUST A FEW QUESTIONS. I WANT TO TRY TO PUT DOWN A
22 TIME LOG. THAT'S WHAT I THINK IS IMPORTANT. WHAT
23 TIME DID YOU RESPOND OUT THERE?

24 A. TO THE SUMMERVILLE MEDICAL CENTER?

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

31

1 A. 1815 WHICH IS 6:15 P.M.

2 Q. 6:00 P.M.?

3 A. 6:15 P.M.

4 Q. OKAY. SO YOU GOT UP THERE AT 6:15. AT 6:15 P.M.,
5 YOU WERE AT THE SUMMERVILLE MEDICAL CENTER?

6 A. YES, SIR.

7 THE COURT: MR. DAVIS; IF THIS WILL BE OF
8 HELP TO YOU. (INDICATING.)

9 Q. 6:15? AND WHO CALLED YOU TO BE AT THE SUMMERVILLE
10 MEDICAL CENTER?

11 A. THE DORCHESTER COUNTY SHERIFF'S OFFICE DISPATCH.

12 Q. TOLD YOU TO GO THERE?

13 A. YES, SIR.

14 Q. AND WHERE DID THEY DISPATCH AND SAY TO YOU?

15 A. I DON'T RECALL EXACTLY WHAT IT WAS; BUT I RESPONDED
16 THERE IN REFERENCE TO A POSSIBLE CHILD ABUSE. SO
17 IT WAS PROBABLY SOMETHING LIKE THAT.

18 Q. CHILD ABUSE?

19 A. REFERENCE TO A POSSIBLE CHILD ABUSE.

20 Q. POSSIBLE? WHEN YOU GOT THERE, WHO WAS THERE AT THE
21 HOSPITAL?

22 A. THE SUMMERVILLE MEDICAL CENTER STAFF; DR. GOLDMAN,
23 NURSES.

24 Q. WELL, WAS ANYBODY THERE FOR MY CLIENT'S FAMILY?

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

32

1 Q. DID YOU MEET WITH ANYBODY?

2 A. NOT WHEN I GOT TO SUMMERVILLE.

3 Q. YOU DIDN'T INQUIRE TO MEET WITH ANYBODY THERE?

4 A. NO, SIR.

5 Q. WAS MS. GADSON THERE; MY CLIENT, ADRIAN GADSON?

6 A. I DO NOT RECALL.

7 Q. DID YOU HAVE A CONVERSATION WITH HER THERE?

8 A. I DON'T RECALL HAVING A CONVERSATION WITH HER.

9 Q. NOW, 6:15 -- BUT YOU DID GET TO SEE MRASHALL LATER
10 ON?

11 A. DETECTIVE MARSHALL ARRIVED A SHORT WHILE LATER.

12 Q. WELL, THAT'S THE QUESTION. YOU DID GET TO SEE
13 DETECTIVE MARSHALL THERE ABOUT WHAT, 6:20, 6:15,
14 SIX WHAT?

15 A. I HAVE NO RECOLLECTION OF WHAT TIME IT WOULD HAVE
16 BEEN.

17 Q. OKAY. WE KNOW THIS, THOUGH. THAT YOU
18 DEPARTED THERE TO GO TO THE GADSON HOME AT WHAT
19 TIME?

20 A. I WOULD THINK ROUGHLY AROUND SEVEN O'CLOCK.

21 Q. OKAY. AND WHY DID YOU GO THERE?

22 A. THAT WAS AT THE DIRECTION OF DETECTIVE MARSHALL.

23 Q. DID HE TELL YOU TO GO BACK OUT THERE?

24 A. YES, SIR.

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

33

1 WITH MR. GADSON; RIGHT?

2 A. WELL, THAT'S WHAT HE SAYS.

3 Q. WHO HAS IDENTIFIED HIMSELF AS MR. GADSON. YOU TOOK
4 A REPORT FROM HIM SAYING IT WAS MR. GADSON; IS THAT
5 CORRECT?

6 A. RIGHT.

7 Q. YOU DIDN'T ASK HIM TO PULL OUT HIS LICENSE AND SHOW
8 YOU A DRIVER'S LICENSE OR NOTHING; RIGHT?

9 A. RIGHT.

10 Q. SO WE'RE TALKING ABOUT MR. GASTON, THEN?

11 A. YES; OKAY.

12 Q. OKAY. NOW, WAS MS. GADSON THERE, MY CLIENT, ADRIAN
13 GADSON; WAS SHE AT THE HOUSE?

14 A. NO, SHE WASN'T.

15 Q. OKAY. A MATTER OF FACT YOU WERE THERE FROM SEVEN
16 TO HOW LONG?

17 A. I WAS THINKING ROUGHLY ABOUT PROBABLY 12:00 OR
18 12:30.

19 Q. 12:30 AT NIGHT?

20 A. YES.

21 Q. EIGHT O'CLOCK, NINE, TEN, ELEVEN. YOU WERE AT THIS
22 MAN'S HOUSE ALL THIS TIME?

23 A. YES.

24 Q. YOU ALONE?

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

34

1 Q. EXCUSE ME; YOU AND MR. BURDEN?

2 A. RIGHT.

3 Q. NOW, IS THERE ANY COMMUNICATION BETWEEN YOU AND
4 MARSHALL FROM 7:00 O'CLOCK P.M. TO 12:30?

5 A. CERTAINLY.

6 Q. CERTAINLY?

7 A. YES.

8 Q. WHEN IS THE FIRST TIME YOU RECEIVED SOME
9 COMMUNICATION FROM MARSHALL?

10 A. I DON'T RECALL WHAT TIME IT WAS THAT I TALKED TO
11 HIM.

12 Q. HAVE YOU GOT YOUR RECORDS WITH YOU?

13 A. NO, I DON'T. THIS IS JUST MY INCIDENT REPORT. I
14 DON'T WRITE EVERY TIME I TALK TO SOMEBODY DOWN.
15 THERE WAS COMMUNICATIONS DONE BETWEEN ME AND HIM
16 BETWEEN SEVEN AND TWELVE, I'M SURE.

17 Q. SEVEN AND TWELVE?

18 A. YES.

19 Q. HOW MANY TIMES?

20 A. IT'S HARD TO SAY.

21 Q. WELL, GIVE ME AN EDUCATED GUESS IF YOU WEREN'T
22 THERE. HOW MANY TIMES WOULD YOU SAY?

23 A. FIVE OR TEN TIMES PROBABLY.

24 Q. FIVE TO TEN TIMES?

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

35

1 Q. FIVE TO TEN TIMES. NOW, HELP US. WHERE IS MR.
2 MARSHALL, DETECTIVE MARSHALL?

3 A. I WOULD ASSUME THAT HE'S EITHER---

4 Q. DON'T ASSUME.

5 A. --EITHER AT THE SUMMERVILLE MEDICAL CENTER---

6 Q. DON'T ASSUME. DON'T ASSUME.

7 A. I WASN'T WITH HIM; SO I COULDN'T TELL YOU.

8 Q. SO YOU DON'T KNOW WHERE HE'S AT? I MEAN, WE JUST
9 WANT TO KNOW. DO YOU KNOW WHERE HE'S AT?

10 A. IT WASN'T WITH HIM; SO I COULDN'T TELL YOU.

11 Q. YOU ASSUME HE'S AT THE HOSPITAL?

12 A. EITHER AT THE HOSPITAL OR AT THE LAW ENFORCEMENT
13 CENTER.

14 Q. SO, HE COULD BE AT THE HOSPITAL; RIGHT?

15 A. COULD BE.

16 Q. AND HE COULD BE AT THE LAW -- WHAT DO YOU CALL IT?

17 A. THE LAW ENFORCEMENT CENTER.

18 Q. I'M SORRY. THE LAW ENFORCEMENT CENTER. THAT'S IN
19 SUMMERVILLE?

20 A. RIGHT.

21 Q. OKAY. NOW, ONE OF THESE LOCATIONS YOU'RE SPEAKING
22 WITH HIM FOR EITHER FIVE OR TEN TIMES?

23 A. BY CELL PHONE; YES.

24 Q. BY CELL PHONE?

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

36

- 1 Q. OKAY. NOW, YOU LEAVE ABOUT 12:30; RIGHT?
- 2 A. YES.
- 3 Q. YOU DON'T ARREST NOBODY?
- 4 A. NO.
- 5 Q. DON'T CHARGE ANYBODY?
- 6 A. NO.
- 7 Q. HE COOPERATES?
- 8 A. YES.
- 9 Q. YOU'VE GOT EVERYTHING YOU NEED?
- 10 A. YES, SIR.
- 11 Q. BUT DURING THIS TIME, FROM 7:00 TO 12:30, YOU'RE
- 12 NOT HAVING ANY CONVERSATION WITH MY CLIENT?
- 13 A. I DID NOT SAY THAT.
- 14 Q. OH! BACK UP THEN. ARE YOU HAVING CONVERSATION WITH
- 15 ADRIAN GADSON?
- 16 A. SHE ARRIVED LATER THAT EVENING.
- 17 Q. WHEN DID SHE ARRIVE?
- 18 A. I DON'T REMEMBER.
- 19 Q. YOU DON'T REMEMBER?
- 20 A. NO.
- 21 Q. WAS IT ANY TIME BETWEEN 8:00 AND 12:30?
- 22 A. SURE.
- 23 Q. WHAT TIME DID YOU ESTIMATE SHE ARRIVED?
- 24 A. I COULDN'T GIVE YOU AN ACCURATE TIME.

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

37

1 DETECTIVE MARSHALL AT THAT TIME?

2 A. I'M SORRY?

3 Q. DID YOU MEET DETECTIVE MARSHALL AT THAT TIME?

4 A. I WOULD NOT KNOW.

5 Q. YOU WOULD NOT KNOW. BUT THERE'S NO QUESTION IT IS
6 YOUR TESTIMONY THAT YOU WERE AT THAT HOUSE FROM
7 7:00 TO 12:30?

8 A. ROUGHLY; YES.

9 Q. --AND THAT ADRIAN GADSON COMES TO THE HOUSE?

10 A. RIGHT.

11 Q. DURING THAT TIME. YOU DON'T KNOW WHEN; BUT SHE
12 CAME?

13 A. NO; IT WAS LATER IN THE EVENING.

14 Q. LATER IN THE EVENING. WAS IT'S ELEVEN O'CLOCK?

15 A. IT COULD HAVE BEEN.

16 Q. OH; IT COULD HAVE BEEN?

17 A. COULD HAVE BEEN. IT COULD HAVE BEEN 12:30. I
18 DON'T REMEMBER.

19 Q. COULD HAVE BEEN 12:30.

20 A. IT COULD HAVE BEEN.

21 MRS. MURPHY: OBJECTION, YOUR HONOR.

22 HE'S ALREADY SAID HE DOESN'T KNOW THE EXACT TIME.
23 HE'S ASKING FOR HIM TO SPECULATE.

24 MR. DAVIS: HE SAID IT COULD HAVE BEEN.

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

38

1 Q. IS THAT WHAT YOU SAID, OFFICER?

2 A. IT COULD HAVE BEEN.

3 THE COURT: OVERRULED.

4 Q. NOW, THE QUESTION IS; DO YOU HAVE ANY INDEPENDENT
5 RECOLLECTION OR ANYTHING IN YOUR RECORDS THAT
6 ADRIAN GADSON IS AT THE SUMMERVILLE MEDICAL CENTER?

7 A. THAT SHE IS AT THE SUMMERVILLE MEDICAL.

8 Q. YES?

9 A. NOT THAT I KNOW OF.

10 Q. DID THE CHILD REMAIN AT THE SUMMERVILLE MEDICAL
11 CENTER?

12 A. NO; HE WAS FLOWN TO M.U.S.C.

13 Q. DO YOU KNOW WHEN THAT CHILD WAS FLOWN TO
14 M.U.S.C.?

15 A. PROBABLY ABOUT 6:30 P.M. OR SO.

16 Q. 6:30?

17 A. YES, SIR.

18 Q. SO REALLY WHEN YOU RESPONDED TO SUMMERVILLE MEDICAL
19 CENTER, THE CHILD WAS STILL LIVING?

20 A. YES.

21 Q. AND SHORTLY THEREAFTER, THOUGH, APPARENTLY BETWEEN
22 6:30 AND 7:00; THE CHILD HAS BEEN DEPARTED?

23 A. RIGHT.

24 Q. DO YOU KNOW WHY HE WENT TO M.U.S.C.?

25 A. I WOULD ASSUME FROM THE TRAUMA.

RANDY WARREN BOTTEN - RE-CROSS/MR. MURPHY

39

1 Q. DON'T ASSUME, NOW. DID THEY TELL YOU WHY THEY HAD
2 TO TAKE THAT CHILD TO M.U.S.C., OR DID YOU LEARN
3 WHY?

4 A. PROBABLY DUE TO THE INJURIES.

5 Q. ALL RIGHT. THAT'S FAIR ENOUGH. NOW, DO YOU HAVE
6 ANY INDEPENDENT RECOLLECTION OR ANY KNOWLEDGE THAT
7 MY CLIENT WAS AFFORDED THE OPPORTUNITY TO GO TO
8 M.U.S.C. HOSPITAL?

9 A. THAT I DON'T KNOW.

10 Q. OKAY. DID YOU TRANSPORT MY CLIENT TO SUMMERVILLE,
11 OR MARSHALL DID?

12 A. TO THE SUMMERVILLE MEDICAL CENTER?

13 Q. I MEAN, TO THE LAW ENFORCEMENT CENTER?

14 A. I DID NOT.

15 Q. WHO DID?

16 A. THAT I DON'T KNOW.

17 Q. YOU DON'T KNOW?

18 A. NO. I WAS UP AT 240 PIGEON BAY ROAD.

19 MRS. DAVIS: NO FURTHER QUESTIONS, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT. ANY RE-DIRECT?

22 MRS. MURPHY: JUST A COUPLE.

23 THE COURT: OKAY.

24 RE-CROSS-EXAMINATION

25 BY MRS. MURPHY:

RANDY WARREN BOTTEN - RE-CROSS/MR. MURPHY

40

1 Q. DEPUTY BOTTEN, YOU DON'T KNOW FOR SURE AT WHAT TIME
2 MS. GADSON ARRIVED AT 240 PIGEON BAY ROAD?

3 A. NO, MA'AM, I DON'T.

4 Q. AND DID HAVE ANY KIND OF CONVERSATION WITH HER AT
5 THAT TIME?

6 A. AT THE HOUSE?

7 Q. YES, SIR?

8 A. IT WAS LATE THAT EVENING. SHE HELPED US GATHER THE
9 CLOTHES FOR THE KIDS THAT WERE BEING PLACED INTO
10 EMERGENCY PROTECTIVE CUSTODY.

11 Q. SO CERTAINLY AT THAT POINT YOU DIDN'T TALK TO HER
12 ABOUT WHAT HAD HAPPENED?

13 A. NO, MA'AM.

14 Q. ALL RIGHT, SIR. NOW, JUST TO FOLLOW BACK UP ON
15 DEFENDANT BURDEN ON NOVEMBER SIXTH. DO YOU RECALL
16 BY WHOM HE WAS READ HIS RIGHTS ON NOVEMBER THE
17 SIXTH?

18 A. AT THE COURT HOUSE?

19 Q. YES, SIR?

20 A. THE JUDGE DID IT BEFORE THE HEARING. AND THEN
21 DETECTIVE MARSHALL DID IT.

22 Q. AND YOU WERE PRESENT BOTH TIMES?

23 A. YES, MA'AM.

24 Q. DO YOU RECALL EXACTLY WHAT RIGHTS WERE READ TO THE

RANDY WARREN BOTTEN - RE-CROSS/MR. MURPHY

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1 A. THE MIRANDA RIGHTS.

2 Q. AND DO YOU KNOW THOSE OFF THE TOP OF YOUR HEAD?

3 A. YES, MA'AM.

4 Q. CAN YOU RECITE WHAT RIGHTS WERE READ TO THE
5 DEFENDANT?

6 A. "YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU
7 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF
8 LAW. YOU HAVE A RIGHT TO HAVE AN ATTORNEY PRESENT
9 WITH YOU WHILE YOU'RE BEING QUESTIONED. IF YOU
10 CANNOT AFFORD TO HIRE AN ATTORNEY, ONE WILL BE
11 APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING
12 IF YOU WISH."

13 Q. AND BOTH THE JUDGE IN THE FAMILY COURT HEARING AS
14 WELL AS THE SECOND MARSHALL READ THE DEFENDANT BOTH
15 OF THOSE---

16 MR. DAVIS: JUDGE, I WOULD OBJECT TO THAT
17 WHOLE LINE OF QUESTIONING. NONE OF IT WAS BROUGHT
18 OFF IN CROSS-EXAMINATION. THE EXTENT OF IT WAS MR.
19 DUKES, AS I RECALL -- IT'S REALLY SOMETHING THAT
20 SHE SHOULD HAVE BROUGHT UP ON DIRECT EXAMINATION.
21 SHE DID NOT AT ANY TIME ALLUDE THAT THE RIGHTS WERE
22 READ TO MR. BURDEN. SO SHE WENT INTO A NEW ISSUE,
23 AN ISSUE THAT WAS NOT BROUGHT UP -- I KNOW
24 SPECIFICALLY I DIDN'T BRING IT UP ON

RANDY WARREN BOTTEN - RE-CROSS/MR. MURPHY

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1 THE COURT: YES, MA'AM?

2 MRS. MURPHY: YOUR HONOR, CERTAINLY I

3 THINK I'M ENTITLED. I DON'T THINK THERE'S A LIMIT
4 IN THE COURSE OF EVIDENCE TO WHAT CAN BE BROUGHT UP
5 ON RE-DIRECT. I DID BRING IT UP. HE'S TALKING
6 ABOUT STATEMENTS THAT WERE GIVEN. WHETHER OR NOT
7 HE TALKED TO HIS CLIENT, NOT MR. BURDEN, AND AT
8 WHAT POINT THESE PEOPLE WERE BROUGHT BACK AND
9 FORTH; I'M TRYING MAKE SURE IT'S CLARIFIED AT WHAT
10 POINT DEFENDANT BURDEN WAS GIVEN HIS RIGHTS AT THIS
11 TIME.

12 THE COURT: I'LL ALLOW IT. YOU MAY
13 PROCEED. OVERRULED.

14 Q. AND DEPUTY BOTTEN, DID YOU SEE THE DEFENDANT BURDEN
15 HAD BEEN GIVEN THOSE RIGHTS BOTH TIMES?

16 A. YES, MA'AM.

17 Q. AND DID HE APPEAR TO UNDERSTAND THOSE?

18 A. YES, MA'AM.

19 Q. DID HE HAVE ANY QUESTIONS?

20 A. NOT THAT I CAN RECALL; NO, MA'AM.

21 Q. DID ANYONE PROMISE HIM, THREATEN HIM, IN ANY WAY,
22 SHAPE, OR FORM?

23 A. NO.

24 Q. WERE YOU PRESENT WHEN HE MADE A SPONTANEOUS

RANDY WARREN BOTTEN - RE-CROSS/MR. MURPHY

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1 THOSE RIGHTS AGAIN?

2 A. YES, MA'AM.

3 MR. DAVIS: YOUR HONOR, I WOULD OBJECT
4 AGAIN JUST FOR THE RECORD. THAT GOES WAY BEYOND
5 WHAT WAS ON DIRECT EXAMINATION. SHE'S GOING INTO
6 AN AREA THAT SHE SHOULD HAVE BROUGHT OUT THE FIRST
7 TIME. I STILL ALLUDE TO THAT, YOUR HONOR.

8 THE COURT: OKAY.

9 MRS. MURPHY: JUDGE, FIRST OF ALL I DON'T
10 THINK HE'S GOT STANDING TO OBJECT. HE DOESN'T
11 REPRESENT MR. BURDEN. SECONDLY, I DON'T KNOW IF HE
12 ACTUALLY CAN RECALL. I CAN PUT DETECTIVE MARSHALL
13 BACK UP AND THEN PUT BOTTEN BACK UP. I'M TRYING TO
14 SAVE THE COURT SOME TIME.

15 THE COURT: I'LL ALLOW YOU TO PROCEED.
16 YOU MAY PROCEED. I NOTE YOUR EXCEPTION FOR THE
17 RECORD.

18 Q. AND DID HE MAKE A SPONTANEOUS UTTERANCE TO
19 DETECTIVE MARSHALL AT THAT POINT?

20 A. YES, MA'AM, HE DID.

21 Q. AND WERE YOU PRESENT FOR THAT?

22 A. YES, MA'AM.

23 Q. WERE YOU PRESENT -- WHAT DID DETECTIVE MARSHALL DO
24 AT THAT POINT?

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

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1 THAT---

2 MR. DAVIS: I OBJECT, YOUR HONOR; THAT'S
3 HEARSAY.

4 Q. WHAT DID HE DO? DO YOU RECALL WHAT HE DID?

5 A. NOT REALLY; NO, MA'AM.

6 Q. ALL RIGHT, SIR. AND DID YOU SEE DETECTIVE MARSHALL
7 MAKE HIM ANY PROMISES, THREATS, OR COERCE HIM IN
8 ANY WAY?

9 A. NO, MA'AM.

10 Q. THANK YOU, SIR.

11 MRS. MURPHY: NO FURTHER QUESTIONS, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT. RE-CROSS?

14 MR. DUKES: YES, MA'AM.

15 RE-CROSS EXAMINATION

16 BY MR. DUKES:

17 Q. YOU'RE TALKING NOW AT SOME POINT IN TIME WHERE
18 THERE WAS A FAMILY COURT HEARING?

19 A. ON THE SIXTH OF NOVEMBER.

20 Q. AND PRIOR TO THAT, OR AFTER THAT, Y'ALL ATTEMPTED
21 TO INTERVIEW MY CLIENT?

22 A. I'M SORRY?

23 Q. PRIOR TO THE HEARING OR AFTER THE HEARING, DID
24 Y'ALL ATTEMPT TO INTERVIEW MY CLIENT?

25 A. NEITHER.

RANDY WARREN BOTTEN - RE-CROSS/MR. DUKES

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1 Q. WELL, DID SOMEBODY GIVE HIM HIS MIRANDA RIGHTS?

2 A. WHEN DETECTIVE MARSHALL SPOKE WITH HIM THAT NIGHT,
3 I WOULD ASSUME THEY GAVE HIM HIS RIGHTS; YES.

4 Q. WHEN?

5 A. ON THE EVENING OF THE FIFTH, LATE INTO THE MORNING
6 OF THE SIXTH.

7 Q. IS THAT WHAT Y'ALL WERE TALKING ABOUT WHEN YOU TALK
8 ABOUT THE MIRANDA RIGHTS THEN?

9 A. NO, SIR. THE MORNING OF THE SIXTH WHEN WE HAD A
10 COURT HEARING, JUDGE MACLIN ADVISED MR. BURDEN OF
11 HIS RIGHTS BEFORE THE E.P.C. HEARING. WHEN HE WAS
12 ARRESTED, HE WAS READ HIS RIGHTS AGAIN BY DETECTIVE
13 MARSHALL.

14 Q. FROM THE COURT?

15 A. OUTSIDE OF THE COURT.

16 Q. OUTSIDE?

17 A. MCLIN DID IT INSIDE THE COURT; DETECTIVE MARSHALL
18 DID IT OUTSIDE OF THE COURT.

19 Q. BUT YOU'RE SAYING PRIOR TO THAT, MARSHALL HAD GIVEN
20 HIM HIS RIGHTS?

21 A. I BELIEVE WHEN HE TOOK THE STATEMENT; YES.

22 Q. WELL, HE TOOK ANOTHER STATEMENT? THERE'S ANOTHER
23 WRITTEN STATEMENT?

24 A. NO; WHEN HE TOOK THE WRITTEN STATEMENT.

RANDY WARREN BOTTEN - RE-CROSS/MR. DUKES

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1 A. A WRITTEN STATEMENT.

2 Q. DETECTIVE MARSHALL DID?

3 A. RIGHT.

4 Q. AND YOU DON'T HAVE THAT STATEMENT?

5 A. I DIDN'T TAKE THE STATEMENT; DETECTIVE MARSHALL
6 DID.

7 Q. OKAY. AND YOU DON'T HAVE A COPY OF THE MIRANDA
8 RIGHTS?

9 A. I DON'T HAVE A NEED FOR IT.

10 Q. SO YOU'RE JUST HERE TO TESTIFY ABOUT WHAT HAPPENED
11 AT THE HOUSE THAT NIGHT?

12 A. AND THE COURT DATE THE NEXT DAY; YES, SIR.

13 Q. THE COURT DATE THE NEXT DAY?

14 A. YES, SIR.

15 Q. AND ON THAT COURT DATE, THE JUDGE GAVE HIM HIS
16 RIGHTS?

17 A. RIGHT.

18 Q. AND THEN DETECTIVE MARSHALL GAVE HIM HIS RIGHTS?

19 A. YES, SIR.

20 Q. AND WAS ANY STATEMENTS MADE?

21 A. HE HAD A SPONTANEOUS UTTERANCE.

22 Q. HE HAD A SPONTANEOUS UTTERANCE?

23 A. RIGHT.

24 Q. YOU HEARD IT?

RANDY WARREN BOTTEN - RE-CROSS/MR. DUKES

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- 1 Q. WHAT WAS THAT?
- 2 A. THAT HE FLIPPED OR SOMETHING; THAT HE JUST LOST IT.
- 3 Q. THAT'S ALL HE SAID?
- 4 A. YES.
- 5 Q. THAT HE FLIPPED?
- 6 A. OR HE HAD LOST IT, OR SOMETHING.
- 7 Q. WAS THAT THE EXACT WORDS?
- 8 A. I CAN'T QUOTE HIM; NO, SIR.
- 9 Q. YOU CAN'T QUOTE HIM?
- 10 A. NO, SIR.
- 11 Q. SO YOU DON'T KNOW THE EXACT WORDS?
- 12 A. I JUST SAID I CAN'T QUOTE HIM.
- 13 Q. ALL RIGHT.

14 THE COURT: RE-DIRECT?

15 MR. DAVIS: YES, MA'AM.

16 RE-CROSS EXAMINATION

17 BY MR. DAVIS:

- 18 Q. THERE'S NO QUESTION THAT WHAT WE WENT THROUGH, THAT
- 19 TIME LOG THERE, HAPPENED ON NOVEMBER THE THIRD?
- 20 THERE'S NO QUESTION ABOUT THAT?
- 21 A. IT DIDN'T HAPPEN ON NOVEMBER THE THIRD; NOT THAT
- 22 I'M AWARE OF, DID IT?"

23 THE COURT: WHOA, WHOA! LISTEN TO ME,

24 BOTH OF YOU. YOU CAN'T TALK AT THE SAME TIME. YOU

25 HAVE WAIT UNTIL HE FINISHES ASKING THE QUESTION,

RANDY WARREN BOTTEN - RE-DIRECT/MR. DAVIS

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1 EVEN IF YOU KNOW WHAT THE RESPONSE IS. AND YOU DO
2 THAT SO THAT MRS. ADDISON CAN TAKE YOU BOTH DOWN.
3 SHE'S VERY TALENTED, BUT YET SHE DOES NOT TYPE WELL
4 WITH HER TOES. SO BOTH OF YOU MUST COOPERATE IN
5 THAT REGARD.

6 Q. THERE'S NO QUESTION THAT THIS TIME LAG THAT YOU AND
7 I DISCUSSED ON CROSS-EXAMINATION IS FROM NOVEMBER
8 THE THIRD?

9 A. RIGHT.

10 Q. AND EQUALLY, THERE'S NO QUESTION THAT YOU HAD AMPLE
11 OPPORTUNITY TO ARREST THIS FELLOW APPARENTLY ON
12 NOVEMBER THE FOURTH?

13 A. SIR? I WASN'T IN CHARGE OF THE INVESTIGATION.

14 Q. NOVEMBER THE FIFTH?

15 A. I WASN'T IN CHARGE OF THE INVESTIGATION.

16 Q. BUT YOU WERE THERE NOVEMBER THE SIXTH?

17 A. YES, SIR; FOR AN E.P.C. HEARING SINCE I HAD

18 E.P.C. AND THE CHILDREN FROM THE HOME.

19 Q. WELL, SINCE YOU TALKED WITH THE CHILDREN, WERE ANY

20 OTHER CHILDREN ABUSED OR APPEARED TO HAVE ANY

21 INJURIES?

22 A. I'M NOT A DOCTOR OR A PHYSICIAN OR ANYTHING ELSE.

23 Q. EXCUSE ME?

24 A. I'M NOT A DOCTOR OR A PHYSICIAN.

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 FOR THIS QUESTION. MY QUESTION IS---

2 A. DID I EXAMINE THE CHILDREN?

3 Q. I DIDN'T ASK YOU IF YOU EXAMINED THEM. WERE THERE
4 ANY ALLEGATIONS PRESENTED IN REFERENCE TO INJURIES
5 TO ANY OF THE CHILDREN?

6 A. THAT NIGHT?

7 Q. AT ANY TIME.

8 A. NOT THAT I'M AWARE OF, NO.

9 MR. DAVIS: I'M CONCLUDED, YOUR HONOR.

10 THE COURT: VERY WELL. YOU MAY COME
11 DOWN. CALL YOUR NEXT WITNESS.

12 MRS. MURPHY: DETECTIVE TOM MARSHALL.

13 -----

14 WHEREUPON,

15 THOMAS MILES MARSHALL, WHO AFTER BEING
16 FIRST DULY SWORN TO TELL THE TRUTH,
17 TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MRS. MURPHY:

20 Q. DETECTIVE MARSHALL, ARE YOU EMPLOYED WITH THE
21 DORCHESTER COUNTY SHERIFF'S OFFICE?

22 A. THAT'S CORRECT.

23 Q. AND WERE YOU THE LEAD DETECTIVE ON THIS PARTICULAR
24 INVESTIGATION?

25 A. YES, I WAS.

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 Q. WHERE DID YOU FIRST RESPOND ON NOVEMBER THE THIRD,
2 2001?

3 A. TO THE SUMMERVILLE MEDICAL CENTER OFF OF MIDLAND
4 PARK ROAD IN SUMMERVILLE.

5 Q. AND WHAT DID YOU DO AT THAT PARTICULAR SCENE?

6 A. WHEN I ARRIVED ON THE SCENE, I WAS BRIEFED ON THE
7 CALL. AND, OF COURSE, I WAS ALREADY TOLD THAT
8 THERE WAS A CHILD THAT HAD BEEN INJURED. SO THAT'S
9 WHY I WENT THERE AND WAS BRIEFED BY DEPUTY BOTTEN.
10 AND I ALSO TALKED TO THE DOCTOR AT THE SCENE, AND
11 THEN I WENT INTO THE ROOM AND EXAMINED THE CHILD.
12 AND THE CHILD APPEARED TO BE INJURED. THEY SHOWED
13 ME SOME INJURIES AND POINTED OUT SOME INJURIES TO
14 ME, THE NURSE DID. AND THEY SAID THAT THEY WERE
15 GETTING READY TO TAKE THE CHILD ON THE CHOPPER. IT
16 HAD JUST LANDED, AND THEY WERE RUSHING HIM TO
17 MEDICAL UNIVERSITY.

18 Q. AND WHAT DID YOU DO AT THAT POINT FROM
19 WHEN THE CHILD WAS FLOWN TO THE MEDICAL
20 UNIVERSITY?

21 A. WELL, ONCE I FOUND OUT THE CHILD WAS FLOWN TO THE
22 MEDICAL UNIVERSITY, I CALLED OUT ANOTHER
23 DETECTIVE. I CALLED OUT DETECTIVE JOYNER AND TOLD
24 HIM TO GET DOWN TO THE MEDICAL UNIVERSITY AND CHECK

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 THE MOTHER WAS THERE. I TALKED A LITTLE BIT WITH
2 THE DOCTOR. AND THEN I DIRECTED DEPUTY BOTTEN TO
3 GO BACK TO THE SCENE WHERE THE ALLEGED INCIDENT
4 TOOK PLACE AND FIND OUT SOME INFORMATION SO WE
5 COULD FIND OUT WHAT HAPPENED BECAUSE AT THAT TIME
6 WE WERE STILL SKETCHY ON WHAT WAS GOING ON.

7 Q. AND AT THAT POINT WAS DEFENDANT BURDEN A SUSPECT
8 AND YOU SENT DEPUTY BOTTEN TO INVESTIGATE THE
9 SCENE?

10 A. NO. I DIDN'T HAVE ENOUGH INFORMATION AT THAT
11 PARTICULAR TIME. I MEAN, WE'VE GOT AN INJURED
12 CHILD. I WAS NOT TOLD EXACTLY WHAT HAPPENED. I
13 DID NOT KNOW THE MECHANISM OF THE INJURY. AND, SO,
14 I SENT AN OFFICER OUT THERE TO ASSIST IN THE
15 INVESTIGATION.

16 Q. AND WHAT WAS THE PURPOSE OF SENDING DETECTIVE
17 JOYNER TO THE MEDICAL UNIVERSITY?

18 A. TO CHECK ON THE CONDITION OF THE CHILD AND SEE WHAT
19 CAUSED THESE INJURIES, WHAT THESE RED MARKS WERE.
20 AT FIRST ALL I SAW WAS RED MARKS. THERE WAS A RED
21 MARK ON THE -- IF I REMEMBER CORRECTLY ON THE RIGHT
22 TEMPLE, AND THERE WERE SOME RED MARKS ON THE
23 CHEST. BUT AT THIS PARTICULAR TIME WHEN I WAS IN
24 THERE LOOKING, THERE WAS LEADS ON THE CHILD. AND I
25 COULD SEE SOME RED MARKS, BUT THEY WERE NOT DEFINED

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 TO ME.

2 Q. SO AT THAT POINT YOU HAD NO INFORMATION AS TO THE
3 MECHANISM OF THE INJURIES?

4 A. NO, I DID NOT.

5 Q. AND WHAT DID YOU DO AT THAT POINT? YOU MENTIONED
6 THAT THE DEFENDANT, GADSON, WAS PRESENT AT THE
7 SUMMERVILLE MEDICAL CENTER?

8 A. YES. AFTER MAKING SURE THAT MY ORDERS WERE CARRIED
9 OUT AND EVERYBODY ELSE WAS DOING THEIR JOB; THEN I
10 WENT IN THERE AND BASICALLY SAT DOWN WITH MS.
11 GADSON -- AND THERE'S A LITTLE INTERVIEW ROOM OFF
12 TO THE SIDE -- AND ASKED HER IF SHE WOULD COME
13 BACK TO THE STATION WITH ME SO THAT I COULD ASK
14 WHAT HAPPENED. AND BASICALLY SHE VOLUNTEERED,
15 AND BASICALLY WE DROVE FROM THERE BACK TO THE
16 OFFICE.

17 Q. AND AT THAT POINT, WERE YOU AWARE OF WHERE SHE HAD
18 BEEN DURING THE INCIDENT?

19 A. NO. I HADN'T GOTTEN INTO GREAT DETAIL WITH
20 HER. WHEN I GOT BACK TO THE OFFICE IS WHEN I
21 ACTUALLY GOT INTO DETAIL ON WHAT HAPPENED. AND
22 THEN SHE TOLD ME WHERE SHE WAS AND WHAT SHE WAS
23 DOING.

24 Q. SO AT THAT POINT, WAS SHE A SUSPECT INVOLVING THE

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 A. NO.

2 Q. AND DID SHE GO WITH YOU VOLUNTARILY TO THE LAW
3 ENFORCEMENT COMPLEX?

4 A. YES, SHE DID.

5 Q. AND WAS SHE IN CUSTODY AT THAT POINT?

6 A. NO, SHE WAS NOT.

7 Q. AND WHAT HAPPENED ONCE YOU ARRIVED AT THE LAW
8 ENFORCEMENT COMPLEX?

9 A. I WENT UPSTAIRS TO THE DETECTIVE OFFICE AND WENT UP
10 TO OUR INTERVIEW ROOM. THE DOOR WAS PROPPED OPEN
11 AND LEFT OPEN. AND I TOLD HER THAT SHE WAS NOT
12 UNDER ARREST AND THAT AT ANY TIME SHE COULD LEAVE.
13 AND I TOLD HER I NEEDED TO ASK HER SOME QUESTIONS
14 ON WHAT WAS GOING ON.

15 Q. AND DID YOU DO SO?

16 A. YES, I DID.

17 Q. AND WAS SHE WILLING TO COOPERATE?

18 A. YES, SHE DID.

19 Q. AND DID SHE GIVE YOU A STATEMENT AT THAT
20 POINT?

21 A. YES. WE TALKED FOR A WHILE. AND SHE GAVE ME A
22 STATEMENT ON WHAT HAPPENED, WHERE SHE WAS AT, AND
23 WHO WAS IN CHARGE OF THE CHILDREN.

24 Q. AND WHERE WAS SHE AT DURING THE TIME AND QUESTION
25 OF NOVEMBER THE THIRD?

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 A. SHE AND HER MOTHER WERE OUT SHOPPING. AND SHE HAD
2 CALLED BACK IN. AND WHEN SHE CALLED BACK IN TO
3 TELL HER TO TELL MR. BURDEN THAT SHE WAS STILL
4 SHOPPING AND SHE WAS GOING TO BE A LITTLE BIT
5 LATER, THAT'S WHEN HE WAS INFORMING THAT THAT
6 SOMETHING HAPPENED TO HER CHILD. AND SHE INFORMED
7 ME THAT HER AND HER MOM IMMEDIATELY RUSHED BACK TO
8 THE HOUSE, AND 911, AND THAT'S WHEN EVERYTHING
9 STARTED.

10 Q. AND DURING THIS WHOLE TIME, DID HAVE CONTACT WITH
11 DETECTIVE JOYNER AND/OR DEPUTY BOTTEN?

12 A. PERIODICALLY I WAS GETTING BEEPS FROM DETECTIVE
13 JOYNER. I GOT ONE. LATER ON I MADE A TELEPHONE
14 CALL TO HIM. AND WELL INTO THE TALKING TO MS.
15 GADSON, I WAS INFORMED OF SOME OF THE INJURIES OF
16 WHAT WAS GOING ON AND WHAT HAD HAPPENED TO THE
17 CHILD BASED ON THOSE INJURIES. THEN I CALLED AND
18 TOLD DEPUTY BOTTEN TO E.P.C. THE CHILDREN. AND
19 THEN FROM THERE, IT WENT INTO ANOTHER AREA OF
20 INVESTIGATION.

21 Q. AND AT THAT POINT DEPUTY BOTTEN INFORMED YOU
22 THAT DEFENDANT BURDEN HAD GIVEN HIM A
23 STATEMENT?

24 A. YES. HE HAD ALREADY INFORMED ME OF THE STATEMENT;

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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ON WHAT I WAS GETTING FROM THE HOSPITAL, THEN I
KNEW THAT THE MECHANISM OF THE INJURIES THAT HE WAS
WRITING DOWN AND WHAT HAD BEEN WRITTEN DOWN AND
WHAT DEPUTY BOTTEN WAS TELLING ME AND THE
INFORMATION THAT I WAS GETTING FROM THE HOSPITAL,
THERE WAS DEFINITELY SOMETHING WRONG. THEY'RE
TELLING ME AN INJURY; AND I'M BEING TOLD THAT THERE
WAS A FALL; AND THIS CHILD IS ONLY ABOUT -- IF I
REMEMBER CORRECTLY -- IS ABOUT TWO-AND-A-HALF FEET
TALL AND WEIGHING LIKE 25, MAYBE 20 POUNDS AND A
FALL -- STANDING UP FALLING; AND THIS INJURY I'M
GETTING BACK FROM THE HOSPITAL, WHAT I'M BEING
TOLD, WASN'T -- IT WAS -- THE MECHANISM WAS NOT
FITTING -- THE INJURY WAS NOT FITTING WHAT HE WAS
TELLING ME.

Q. AND THE STATEMENT THAT DEFENDANT BURDEN
PROVIDED ACTUALLY WAS EXCULPATORY IN NATURE AS TO
HIM?

A. YES.

Q. AT THAT POINT DID YOU DEVELOP HIM AS A SUSPECT
WHEN HE WAS ASKED TO BE TRANSPORTED TO THE
L.L.C.?

A. YES. I GOT ANOTHER CALL BACK. AND AT THAT TIME
THEY WERE TELLING ME THAT THE RED MARKS APPEARED TO

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 CHEST. ONCE THAT CAME ACROSS, THAT IS WHEN I
2 DEVELOPED HIM AS A SUSPECT. I CALLED DEPUTY
3 BOTTEN, AND I ASKED HIM TO SEE IF MR. BURDEN WOULD
4 VOLUNTARILY COME TO THE OFFICE. I WAITED A FEW
5 MINUTES. AND HE SAID, YES, HE'LL COME.

6 Q. AND AT THAT POINT -- LET'S BACK UP A LITTLE BIT TO
7 MS. GADSON -- IN SPEAKING TO MS. GADSON, YOU
8 TESTIFIED THAT SHE WAS NOT A SUSPECT IN THIS
9 PARTICULAR CASE?

10 A. THAT'S CORRECT.

11 Q. AND THAT WAS CONFIRMED BY YOUR INFORMATION
12 FROM DETECTIVE JOYNER AS WELL AS FROM DEPUTY
13 BOTTEN?

14 A. YES.

15 Q. AND AT SOME POINT DURING HER STATEMENT, DID SHE
16 MAKE ANY INCRIMINATING STATEMENTS TO YOU REGARDING
17 OTHER ACTIVITIES THAT SHE HAD DONE?

18 A. YES. BACK IN 1998 I INQUIRED OF AN INJURY THAT
19 HAPPENED TO THE CHILD, THE SAME CHILD, BACK IN
20 1998. THERE WAS A BREAK TO THE RIGHT LEG -- I
21 THINK IT WAS THE FEMORAL BONE TO THE RIGHT LEG. I
22 WAS THE INVESTIGATING OFFICER ON THAT CASE BACK IN
23 1998. I INQUIRED TO HER ABOUT THAT. AND SHE
24 INFORMED ME THAT SHE WAS NOT PRESENT AT THE HOUSE

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 HOUSE. MR. BURDEN AGAIN WAS IN CONTROL OF THE
2 CHILDREN AND THAT SHE WAS WORKING AT BURGER KING
3 WHEN SHE RECEIVED A TELEPHONE CALL FROM MR. BURDEN
4 THAT HE THOUGHT THAT THE CHILD HAD A BROKEN LEG,
5 AND HE THOUGHT THAT HE MIGHT HAVE DONE IT. FROM
6 THERE SHE RUSHED HOME. YOU PICKED THE CHILD UP,
7 RUSHED IT TO THE HOSPITAL -- HER, HERSELF; MR.
8 BURDEN STAYED AT HOME -- AND FROM THERE IT WAS
9 CONFIRMED THAT THE CHILD DID HAVE A BROKEN LEG.
10 AND FROM 1998, THEN, THE CHILDREN WERE TAKEN INTO
11 EMERGENCY PROTECTIVE CUSTODY. D.S.S. CAME INTO
12 THAT CASE. AND THERE WAS A CASE INVOLVING HER IN
13 1998.

14 Q. AND DID SHE ACTUALLY TAKE THE BLAME FOR THE BREAK
15 IN 1998?

16 A. YES. THERE WAS A D.S.S. HEARING. AFTER THE
17 HEARING WAS OVER WITH, I WAS INFORMED THAT SHE DID
18 IN FACT---

19 MR. DAVIS: I OBJECT ABOUT HER TAKING THE
20 BLAME. I KNOW WE'RE UP TO PRESENT; BUT I JUST
21 WANTED IT NOTED IN THIS IN CAMERA HEARING. I
22 OBJECT TO THIS WHOLE LINE OF QUESTIONING SIMPLY
23 ABOUT SHE TAKING THE BLAME. AND ALSO, YOUR HONOR,
24 THERE---

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 THAT HAS ALREADY BEEN TESTIFIED TO. NOW THERE'S
2 BEEN ANOTHER QUESTION ASKED.

3 MR. DAVIS: JUDGE, THIS REFERENCE TO MY
4 CLIENT TAKING THE BLAME AS IF SHE WAS INVOLVED IN
5 SOME OTHER CRIME. I KNOW WE'RE IN CAMERA, SO I
6 JUST WANTED THE COURT TO KNOW THAT I WANTED TO NOTE
7 IT ON THE RECORD; I OBJECT TO THIS WHOLE LINE OF
8 QUESTIONING BECAUSE IT SEEMS TO SUGGEST NOW THAT MY
9 CLIENT MAY HAVE COMMITTED SOME OTHER CRIME,
10 CONCEDED EVIDENCE OF ANOTHER CRIME, WHICH WOULD BE
11 VERY PREJUDICIAL IN REFERENCE TO MY CLIENT. IT
12 OUTWEIGHS THE PROBATIVE VALUE SUBSTANTIALLY, I
13 THINK. BUT I JUST WANTED IT NOTED IN CAMERA. I
14 INTEND TO MAKE THIS SAME OBJECTION
15 CONTEMPORANEOUSLY AGAIN.

16 THE COURT: I UNDERSTAND. THE OBJECTION
17 IS THE CHARACTERIZATION OF THE CONVERSATION THAT
18 SHE TOOK THE BLAME IS THE OBJECTION OF COUNSEL.
19 AND I'M GOING TO SUSTAIN THE OBJECTION. WHAT SHE
20 SAID IS WHAT SHE SAID. BUT IT'S HIS
21 CHARACTERIZATION OF WHAT SHE SAID. SO I'M GOING TO
22 SUSTAIN THE OBJECTION.

23 Q. DETECTIVE MARSHALL, BACK IN 1998, DID YOU CHARGE
24 HER FOR THE BREAKING OF THE LEG?

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 WAS INDICATION THERE WAS SOMEBODY ELSE INVOLVED IN
2 THE CASE. THERE WAS AN UNKNOWN PERSON. I
3 EVENTUALLY GOT THE NAME AND TRIED TO TRACK IT
4 DOWN. I ACTUALLY WENT OVER TO HER HOUSE WITH THE
5 GUARDIAN AD LITEM AND SAW THE -- AGAIN THE
6 MECHANISM OF THE INJURY. THERE WAS SUPPOSEDLY A
7 PLAYPEN WHERE THE CHILD HAD ALLEGEDLY BEEN IN AND
8 HAD ALLEGEDLY HAD FALLEN OUT OF. AND THEN THERE
9 WAS A PLASTIC TOY TYPE LIKE BUBBLE BLOWING MACHINE
10 THAT THE CHILD WAS ALLEGED TO HAVE FALLEN ON. SHE
11 ALLOWED ME INTO THE HOUSE. I TALKED TO HER AND WAS
12 TRYING TO ASK HER WHO WAS INVOLVED IN 1998. I WAS
13 GETTING ACTUALLY NO COOPERATION OUTSIDE THE FACT
14 THAT SHE DID SHOW ME WHERE THE CRIB WAS -- DIDN'T
15 SHOW ME THE TOY. THE CRIB WAS NOT A CRIB. FOR
16 LACK OF A BETTER WORD -- I'M CALLING IT A CRIB --
17 BUT IT WAS LIKE A FOLD-UP PLAYPEN. THE TOY WAS IN
18 WHAT WOULD HAVE BEEN CALLED THE LAUNDRY ROOM. AND
19 THIS WAS A VERY SMALL HOUSE. BUT IT HAD LIKE A
20 LITTLE LAUNDRY ROOM IN THE BACK. AND IN THERE WAS
21 THE TOY WHICH WAS LIKE -- FOR LACK OF A BETTER WORD
22 -- IT LOOKED LIKE A -- TO ME IT LOOKED LIKE A
23 LITTLE TOY LAWNMOWER WITH HANDLES. BUT IT WAS IN
24 TACT. BASED ON THE X-RAYS THAT I SAW AND THE TYPE

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 PIECE OF EQUIPMENT OR TOY. WHAT I SAW WAS
2 NOTHING. SO I MADE -- MY DECISION WAS THAT SHE
3 WASN'T INVOLVED IN THIS; AND I WAS TRYING TO FIND
4 OUT WHO IT WAS. I EVEN AT THAT PARTICULAR TIME
5 OFFERED TO TALK TO HER AFTER I LEFT. I WAS CALLED
6 BY MR. DAVIS; AND HE SAID HE WAS HER ATTORNEY. AND
7 UNBEKNOWNST TO ME, I DIDN'T KNOW SHE HAD AN
8 ATTORNEY. AND I OFFERED -- ME AND HIM TALKED.
9 AND BASICALLY THE OFFER WAS PUT ON THE TABLE TO
10 TALK TO HER AGAIN. AND HE SAID NO. THEN THEY
11 WENT TO THEIR HEARING, AND THERE WAS A
12 SUBSTANTIATED CASE OF CHILD ABUSE FOUND ON MS.
13 GADSON, AND SHE---

14 MR. DAVIS: YOUR HONOR, I'D OBJECT TO
15 THAT. THE RECORD SPEAKS FOR ITSELF. WE HAVE
16 SUBSTANTIATED CASE. AND I THINK THEIR COURT
17 ORDER SPEAKS FOR ITSELF. WE HAVE A SUBSTANTIATED
18 CASE. AND I THINK THAT COURT ORDER SPEAKS FOR
19 ITSELF WAY BEYOND WHAT MR. MARSHALL IS SAYING IN
20 THIS HEARING.

21 THE COURT: ARE YOU TALKING ABOUT THE
22 BEST EVIDENCE?

23 MR. DAVIS: THAT'S RIGHT.

24 THE COURT: SUSTAINED.

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 DID SHE THEN ADMIT TO YOU THAT SHE KNEW WHO BROKE
2 THE CHILD'S LEG?

3 A. YES, SHE DID. SHE SAID THAT SHE WAS OUT OF THE
4 HOUSE, AND THAT MR. BURDEN WAS IN CHARGE OF THE
5 KIDS, AND HE WAS IN THERE, AND SHE BELIEVED THAT HE
6 WAS THE ONE THAT BROKE HER CHILD'S LEG. THAT WAS
7 HER EXACT WORDS BECAUSE WHEN SHE GOT BACK FROM THE
8 HOSPITAL, SHE ASKED HIM WHAT HAPPENED, AND HE SAID
9 THAT HE HAD HIT THE CHILD, AND HE THOUGHT HE BROKE
10 IT.

11 Q. AND YOUR CONVERSATION WITH HER THAT NIGHT, SHE WAS
12 NOT A SUSPECT?

13 A. NO. SHE WAS NOT A SUSPECT. AS A MATTER OF FACT, I
14 TOLD HER AGAIN. AND AT THE VERY END, I SAID
15 "YOU'RE FREE TO GO." AND, YOU KNOW, "YOU CAN WALK
16 OUT HERE ANY TIME."

17 Q. AND DID SHE DO SO?

18 A. YES. SHE LEFT PRIOR TO MR. BURDEN COMING IN. AND
19 I DON'T REMEMBER HOW SHE GOT BACK TO HER HOUSE.
20 BUT SHE WAS ALLOWED TO GO BACK THERE. I DON'T KNOW
21 IF WE TRANSPORTED HER OR SOMEBODY WAS IN -- SOME
22 FAMILY MEMBERS PICKED HER UP. I JUST DON'T
23 REMEMBER.

24 Q. AND, SIR, IN REGARDS TO DEFENDANT BURDEN, WHEN HE

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 OBVIOUSLY HAD HIM AS A SUSPECT?

2 A. YES.

3 Q. AND DID YOU READ HIM HIS RIGHTS AT THAT POINT?

4 A. YES. HE WAS BROUGHT UP INTO THE INTERVIEW ROOM.

5 AND ABOUT THAT TIME DETECTIVE JOYNER ARRIVED ON THE

6 SCENE. AND BASED ON THE FACT THAT HE WAS A

7 SUSPECT, THEN WE TRY TO HAVE TWO PEOPLE IN AN

8 INTERVIEW ROOM. HE WAS BROUGHT IN. AND I WAS

9 GETTING READY TO GO OVER HIS STATEMENT. AND I TOLD

10 HIM BEFORE I COULD TALK TO YOU, YOU'RE A SUSPECT IN

11 THIS CASE. AND THEN I WENT AHEAD AND READ HIM HIS

12 RIGHTS. AT THAT PARTICULAR TIME, HE INVOKED HIS

13 CONSTITUTIONAL RIGHT AND SAID HE DID NOT WANT TO

14 TALK TO US WITHOUT AN ATTORNEY. AND WE SAID, OKAY,

15 HAVE A NICE EVENING; AND LET HIM GO OUT THE FRONT

16 DOOR.

17 Q. AND, SIR, DO YOU HAVE A COPY OF THAT -- DO YOU HAVE

18 THE ORIGINAL MIRANDA FORM WHERE YOU READ HIM HIS

19 RIGHTS THAT NIGHT?

20 A. YES, I DO.

21 MRS. MURPHY: MAY I APPROACH THE WITNESS?

22 THE COURT: YOU MAY.

23 Q. IS THAT THE ORIGINAL THERE.

24 A. YES. THIS IS THE ORIGINAL. AND I FILLED IT OUT.

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 RIGHTS, I ASKED HIM HOW OLD HE WAS; AND I WROTE
2 DOWN THIRTY YEARS. THEN I -- I'VE GOT THIRTY YEARS
3 OLD. I THEN ASKED HIM ABOUT HIS EDUCATIONAL
4 BACKGROUND.

5 Q. AND WHAT'S THE PURPOSE OF THAT?

6 A. TO FIND OUT IF HE UNDERSTANDS NORMAL AND THAT
7 HE DOES NOT HAVE ANY IMPARITIES; AND WHETHER HE
8 CAN READ AND WRITE. AND WE GO THROUGH THAT
9 BECAUSE IF THEY CAN'T READ AND WRITE, WE'LL READ
10 IT FOR THEM AND TRY TO MAKE THEM UNDERSTAND. IF
11 THEY STILL CAN'T UNDERSTAND, THEN WE STOP
12 EVERYTHING.

13 Q. DID HE INDICATE TO YOU WHETHER OR NOT HE COULD READ
14 AND WRITE?

15 A. YES, HE DID. HE ALSO SAID HE HAD A G.E.D. WHERE I
16 INDICATED UP HERE. (INDICATING.) THEN MY WAY OF
17 DOING THIS IS THAT I READ THE RIGHTS TO THEM.

18 Q. AND DID YOU DO SO IN THIS CASE?

19 A. YES, I DID.

20 Q. WOULD YOU PLEASE TELL THE COURT WHAT EXACT RIGHTS
21 YOU READ TO THE DEFENDANT?

22 A. I READ "YOU HAVE THE RIGHT TO REMAIN SILENT.
23 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU
24 IN A COURT OF LAW. YOU HAVE A RIGHT TO TALK TO A

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 WHILE YOU'RE BEING QUESTIONED. IF YOU CANNOT
2 AFFORD TO HIRE IN ORDER TO HIRE A LAWYER, ONE WILL
3 BE APPOINTED TO REPRESENT YOU BEFORE ANY
4 QUESTIONING IF YOU WISH. YOU CAN DECIDE AT ANY
5 TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY
6 QUESTIONS OR MAKE ANY STATEMENTS." I STOPPED
7 THERE, AND I ASKED HIM IN IF HE UNDERSTOOD
8 THAT. AND HE GAVE ME AN AFFIRMATIVE HE UNDERSTOOD
9 IT. AND THEN I SAID, "HERE'S THE NEXT ONE I'LL
10 READ TO IT. IT'S CALLED THE WAIVER OF YOUR
11 RIGHTS."

12 Q. NOW, PRIOR TO GOING TO THE WAIVER OF RIGHTS, DID HE
13 ACTUALLY INITIAL BY EACH OF THOSE RIGHTS THAT HE
14 UNDERSTOOD THOSE RIGHTS?

15 A. YES. I -- BEFORE HE INITIALS IT, WHAT I DO NEXT IS
16 I READ HIM THE WAIVER. AND THEN I GO BACK UP AND
17 EXPLAIN IT, AND THEN I ASK HIM BEFORE HE MAKES THE
18 DECISION ON WHAT HE'S GOING TO DO. I SAID, "WOULD
19 YOU PLEASE AT LEAST INITIAL THE FIVE THAT I READ
20 YOU." NOW "WILL YOU PLEASE MAKE YOUR DECISION?"
21 AND WHERE I GO FROM THERE IS; I GIVE HIM THE WAIVER
22 OF RIGHTS. AND I SAID "I HAVE READ THE ABOVE
23 STATEMENT OF MY RIGHTS. I UNDERSTAND EACH OF THOSE
24 RIGHTS. AND HAVING THESE RIGHTS IN MIND, I WAIVE

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 EXPLAIN TO THEM THAT HE'S NOT GIVING UP ANYTHING;
2 THAT AT ANY TIME DURING THIS LINE OF QUESTIONING
3 THAT HE CAN STOP. AND I SAY, "IT'S JUST LIKE IT
4 SAYS UP THERE, ESPECIALLY NUMBER FIVE. IT SAYS
5 "YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE
6 RIGHTS." AND I GIVE HIM A LITTLE SYNOPSIS. AND
7 SAID, FOR INSTANCE, "IF YOU SIGN THIS, AND YOU SAID
8 YOU WANTED TO TALK TO ME; YOU MIGHT ANSWER TWO
9 QUESTIONS. AND ON THE THIRD QUESTION, YOU MIGHT
10 TELL ME YOU DON'T WANT TO TALK ANY MORE. AND THEN
11 I'LL SAY "DOES THAT MEAN YOU WANT AN ATTORNEY?" IF
12 YOU SAY YES; THEN I SAY "OKAY; THAT'S THE END OF
13 THE QUESTIONING." HE GAVE US ANOTHER AFFIRMATIVE.
14 HE INITIALED THEM. AND THEN THE LAST ONE I ASKED
15 IF HE WAS GOING TO SIGN IT. AND HE SAID HE WAS
16 NOT. AND I WROTE DOWN HERE WHAT HE SAID. HE SAID,
17 "I DO NOT WISH TO TALK NOW." THEN I PUT UNDER
18 THERE "WANTS A LAWYER TO BE PRESENT WHEN
19 QUESTIONED." SO HIS SIGNATURE IS NOWHERE ON
20 THERE. DETECTIVE WHITTEN SIGNS IT; MYSELF.
21 AND WE DATE IT NOVEMBER THE 4TH, 2001 AT 1:47
22 A.M.
23 Q. SO HE UNDERSTOOD HIS RIGHTS AND ACTUALLY INVOKED
24 HIS RIGHTS IN THE EARLY MORNING HOURS OF NOVEMBER

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 A. YES, HE DID.

2 MRS. MURPHY: YOUR HONOR, AT THIS
3 POINT I'D LIKE TO INTRODUCE THIS AS A COURT'S
4 EXHIBIT.

5 THE COURT: ALL RIGHT. ANY OBJECTION?

6 MR. DAVIS: WE'D LIKE TO LOOK AT IT, YOUR
7 HONOR.

8 THE COURT: OF COURSE.

9 (AT THIS TIME MR. DAVIS REVIEWS DOCUMENT.)

10 MR. DAVIS: NO OBJECTION, YOUR HONOR.

11 THE COURT: VERY WELL. THANK YOU SO
12 MUCH. COURT'S EXHIBIT NUMBER 1 IN EVIDENCE WITHOUT
13 OBJECTION.

14 COURT'S EXHIBIT NO. 1

15 MARKED FOR IDENTIFICATION

16 Q. DETECTIVE MARSHALL, DID YOU ARREST THE DEFENDANT AT
17 THAT POINT?

18 A. NO, I DID NOT.

19 Q. AT SOME POINT DID YOU DRAW UP THE ARREST WARRANT
20 FOR HIM?

21 A. YES. IT WAS APPROXIMATELY TWO DAYS LATER.

22 Q. AND WOULD THAT HAVE BEEN ON NOVEMBER THE SIXTH?

23 A. THAT'S CORRECT.

24 Q. AND WERE YOU PRESENT AT AN E.P.C. FAMILY COURT

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THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 A. YES, I WAS.

2 Q. AND WERE YOU PRESENT WHEN THE DEFENDANT WAS READ
3 HIS RIGHTS BY JUDGE MCLIN?

4 A. YES, I WAS.

5 Q. AND WOULD YOU GO THROUGH AND TELL THE COURT WHAT
6 RIGHTS WERE READ TO THE DEFENDANT?

7 A. AGAIN, SHE READ THE MIRANDA WARNINGS TO HIM. AND
8 SHE ALSO SAW THAT WE WERE IN THERE. SO SHE READ
9 HIM HIS RIGHTS AND TOLD HIM "YOU HAVE THE RIGHT TO
10 REMAIN SILENT; AND ANYTHING YOU SAY CAN AND WILL BE
11 USED AGAINST YOU IN A COURT OF LAW. YOU HAVE THE
12 RIGHT TO HAVE AN ATTORNEY PRESENT. AND IF YOU
13 CANNOT AFFORD TO HIRE AN ATTORNEY, ONE WILL BE
14 APPOINTED TO REPRESENT YOU. AND THEN YOU CAN
15 DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS. SHE
16 THEN ASKED HIM IF HE WANTS AN ATTORNEY FOR THE
17 E.P.C. STUFF. AND I DON'T RECALL WHAT HAPPENS
18 AFTER THAT. BUT---

19 Q. DID HE ACTUALLY MAKE ANY STATEMENTS IN COURT?

20 A. NO, HE DID NOT.

21 Q. DID HE ACTUALLY AGAIN INVOKE THOSE MIRANDA RIGHTS?

22 A. I WOULD SAY HE INVOKED THEM BY NOT SAYING
23 ANYTHING. OUTSIDE OF SAYING -- I THINK HE SAID HE
24 WANTED AN ATTORNEY FOR THE REST OF THE E.P.C. STUFF

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 Q. AT SOME POINT AFTER THE HEARING, DID YOU SERVE THE
2 ARREST WARRANT ON THE DEFENDANT?

3 A. AFTER THE HEARING WAS OVER WITH, HE WAS -- WELL, I
4 GOT OUT OF THE COURTROOM MYSELF. AND DEPUTY BOTTEN
5 GOT OUT OF THE COURTROOM FIRST, WE WAITED UNTIL HE
6 EXITED THE COURTROOM AND TOLD HIM WE HAD AN ARREST
7 WARRANT FOR HIS ARREST AND ASKED HIM TO FOLLOW US
8 OVER TO THE L.E.C. TO THE JAIL SECTION. AND HE
9 COOPERATED WITH THAT AND CAME WITH US.

10 Q. AT THAT POINT DID YOU READ HIM HIS RIGHTS AGAIN
11 UPON HIS ARREST?

12 A. I GOT IN THERE AND TOLD HIM HE WAS UNDER ARREST FOR
13 UNLAWFUL NEGLECT BY LEGAL CUSTODIAN. AND AT THAT
14 PARTICULAR POINT, I EXPLAINED TO HIM ABOUT THAT.
15 AND THAT'S WHEN HE MADE HIS SPONTANEOUS UTTERANCE
16 AT THAT POINT.

17 Q. AND CAN YOU TELL THE COURT WHAT EXACTLY HE TOLD
18 YOU?

19 A. AFTER THE FAMILY COURT HEARING, I PUT DOWN ON MY
20 NOTES THAT THE SUBJECT WAS BOOKED IN. AND AT THE
21 BOOKING, HE SAID HE WANTED TO TALK. HE SAID THAT
22 HE WANTED TO TALK TO THIS INVESTIGATING OFFICER;
23 ASKED THE SUSPECT IF HE STILL WANTED A LAWYER TO BE
24 PRESENT. HE SAID THAT HE -- AT THAT POINT, HE WENT
25 IN AND SAID THAT THE CHILD WAS NOT RESPONSIVE. HE

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 LOST IT AND SAID THAT HE TOOK A SHOE AND HIT THE
2 CARE IN THE CHEST SEVERAL TIMES. WHEN HE MADE THAT
3 STATEMENT, I THEN ASKED HIM AGAIN IF HE WANTED AN
4 ATTORNEY. I READ HIM HIS RIGHTS AGAIN. AND HE
5 SAID -- THE LAST PART IN HERE I PUT DOWN WHAT HE
6 SAYS IS "I ASKED SUBJECT IF HE WANTED TO TALK. HE
7 SAID YES. AND THEN HE SAID HE DIDN'T KNOW IF HE
8 WANTED TO AND IF HE WANTED HIS LAWYER." WHEN HE
9 MADE THAT DECISION, THOUGH, HE SAID HE DIDN'T KNOW;
10 HE WANTED TO TALK AND HE DIDN'T WANT TO TALK; THEN
11 I WENT AHEAD AND INVOKED HIS RIGHTS FOR HIM AND
12 BASICALLY SAID "I'M NOT GOING TO TALK TO YOU UNTIL
13 YOU GET AN ATTORNEY." AND I EXPLAINED TO HIM ABOUT
14 HIS RIGHTS AND READ THEM OVER AGAIN TO HIM AND THEN
15 SAID "IF YOU WANT TO TALK TO ME, THIS IS HOW YOU
16 HAVE TO DO IT. YOU HAVE TO SEND A MESSAGE TO ME
17 THROUGH EITHER THE JAIL OR YOUR ATTORNEY THAT YOU
18 WANT TO TALK." OBVIOUSLY I NEVER GOT A MESSAGE
19 FROM HIM. BUT HE WAS INFORMED HOW TO DO IT. AND,
20 AGAIN, LIKE I SAID, ONCE HE SAID "YES, I WANT TO
21 TALK; NO, I DON'T WANT TO TALK, I WANT MY LAWYER;"
22 I JUST WENT AHEAD AND SAID "FINE, DON'T TALK."

23 Q. SO PRIOR TO HIM MAKING THE STATEMENT THAT HE LOST
24 IT AND HIT THE CHILD WITH A SHOE, HE WAS READ HIS
25 MIRANDA WARNINGS AT LEAST THREE TIMES?

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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1 A. YES.

2 Q. AND HE HAD INVOKED THOSE RIGHTS ON AT LEAST TWO
3 PRIOR OCCASIONS?

4 A. YES.

5 Q. AND WAS IT CLEAR TO YOU THAT HE CLEARLY UNDERSTOOD
6 HOW TO INVOKE HIS RIGHTS?

7 A. I'M SORRY?

8 Q. WAS IT CLEAR TO YOU THAT HE UNDERSTOOD THOSE
9 RIGHTS?

10 A. YES, MA'AM.

11 Q. AND DID YOU MAKE ANY PROMISES, THREATS, OR COERCE
12 HIM IN ANY WAY?

13 A. NO, I DID NOT.

14 Q. WAS THE STATEMENT GIVEN BY DEFENDANT BURDEN
15 AS A RESULT OF A QUESTION, OR DID HE JUST SAY
16 IT?

17 A. IT CAME AS A RESULT OF ME TELLING HIM WHAT THE
18 OFFICIAL CHARGES WERE. AND THEN HE BLURTED IT
19 OUT. HE SAID HE WANTED TO TALK. AND I SAID WHAT
20 DO YOU WANT TO TALK ABOUT. AND THEN HE JUST
21 BLURTED THAT OUT. THAT'S WHY I STOPPED AND WENT
22 INTO HIS RIGHTS TO LET HIM UNDERSTOOD IT AGAIN.
23 AND THEN I SAID, "DO YOU WANT TO TALK WITHOUT YOUR
24 ATTORNEY PRESENT?" AND HE SAID "YES, I DO; NO I
25 DON'T." AND I HAD TO CLARIFY WHAT HE WAS TRYING TO

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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1 TELL ME, WHERE HE WANTED ME TO GO. SO I CLARIFIED
2 THAT. AND IN MY OPINION THE CLARIFICATION WAS IT
3 WAS BETTER FOR HIM TO HAVE HIS ATTORNEY PRESENT.
4 AND I JUST STOPPED EVERYTHING AND SAID "FINE; JUST
5 GET YOUR ATTORNEY. WHEN YOU'RE READY TO TALK, CALL
6 ME."

7 MRS. MURPHY: NO FURTHER QUESTIONS, YOUR
8 HONOR.

9 THE COURT: CROSS-EXAMINATION?

10 CROSS-EXAMINATION

11 BY MR. DUKES:

12 Q. SO THE ONLY CONTACT THAT YOU HAD WITH MR. BURDEN
13 WAS ON NOVEMBER THE SIXTH?

14 A. NO. ACTUALLY THE NIGHT OF THE INCIDENT WHICH WOULD
15 HAVE BEEN NOVEMBER THE FOURTH IS WHEN I HAD MY
16 FIRST CONTACT WITH HIM.

17 Q. OKAY. THAT'S RIGHT. ON NOVEMBER THE FOURTH, HE
18 FLAT INFORMED YOU HE WANTED A LAWYER PRESENT?

19 A. YES, SIR, HE DID.

20 Q. SO YOU LET HIM GO?

21 A. YES, SIR, I DID.

22 Q. ON NOVEMBER THE SIXTH, NOW, THERE WAS AN APPEARANCE
23 IN FAMILY COURT?

24 A. YES, SIR.

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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- 1 A. THE ARREST WARRANT WAS SERVED AFTER FAMILY COURT.
2 THERE WAS AN APPEARANCE IN FAMILY COURT FOR THE
3 E.P.C. HEARING.
4 Q. THE E.P.C., EMERGENCY PROTECTION?
5 A. YES; THAT'S CORRECT; ON ALL THE CHILDREN.
6 Q. OKAY.
7 A. ALL FIVE CHILDREN WERE TAKEN INTO EMERGENCY
8 PROTECTIVE CUSTODY, AND D.S.S. WAS GIVEN CUSTODY OF
9 THE CHILDREN.
10 Q. ALL RIGHT. AND, THEN, THE ARREST WAS PREPARED?
11 A. THE ARREST WARRANT WAS PREPARED PRIOR TO THE E.P.C.
12 HEARING.
13 Q. RIGHT.
14 A. AND AFTER HE WAS SERVED THE ARREST WARRANT AND
15 ARRESTED AFTER THE HEARING. AFTER THE HEARING
16 WAS OVER AND DONE WITH AND EVERYTHING THAT
17 D.S.S. WAS GOING TO DO WAS FINISHED, THEN HE WAS
18 ARRESTED.
19 Q. AND DIDN'T YOU SAY THE JUDGE GAVE HIM HIS MIRANDA
20 RIGHTS?
21 A. YES; SHE GIVES THEM THEIR RIGHTS IN THERE ALSO
22 BECAUSE SHE KNEW THAT THERE WAS A CRIMINAL
23 PROCEEDING. WHEN SHE SEES US SITTING IN THERE, SHE
24 -- ESPECIALLY MYSELF -- SHE READS THE RIGHTS.

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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1 A. IN THE COURTROOM; IF I GO BY THE COURTROOMS; I WAS
2 IN THE ONE CLOSEST TO THE END OF THE BUILDING;
3 THAT'S USUALLY JUDGE MCLIN'S COURTROOM.

4 Q. JUDGE MCLIN?

5 A. I WOULD THINK THAT WAS HER THAT WAS IN THERE.

6 Q. DID HE SAY ANYTHING IN THE COURTROOM?

7 A. NO, SIR, HE DID NOT.

8 Q. OKAY. BUT THEN, YOU AND DEPUTY BOTTEN TOOK HIM OUT
9 OF THE COURTROOM?

10 A. I WALKED OUT OF THE COURTROOM. WE STOOD AT THE
11 DOOR AND WAITED FOR HIM TO COME OUT. AND ONCE HE
12 CAME OUT, WE TOLD HIM TO STEP OVER HERE TO US AND
13 THAT WE NEEDED TO GO NEXT DOOR BECAUSE WE HAD AN
14 ARREST WARRANT FOR HIM.

15 Q. AND, SO, THAT'S ALL YOU SAID TO HIM AT THE COURT
16 HOUSE?

17 A. YES, SIR; THAT'S CORRECT.

18 Q. SO YOU TOOK HIM TO THE L.E.C.?

19 A. YES, SIR.

20 Q. AND WHEN YOU GOT THERE, WHAT DID YOU DO?

21 A. ONCE I GOT THERE, I ACTUALLY STARTED TO READ HIM
22 HIS WARRANT AND EXPLAIN TO HIM THE ACTUAL CHARGE.
23 I THINK THERE WAS A LITTLE CONVERSATION OF "WHAT AM
24 I BEING CHARGED WITH." AND THE CHARGE, I TOLD HIM,

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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1 Q. OKAY.

2 A. AND AT THAT POINT, HE SAID -- IN MY NOTES I REFLECT
3 IN THERE THAT HE SAID HE WANTED TO TALK. AND I
4 SAID, "DO YOU WANT TO TALK WITHOUT AN ATTORNEY
5 PRESENT?" AND THAT'S WHEN HE WENT STRAIGHT INTO "I
6 LOST CONTROL; AND I WAS TRYING TO REVIVE HIM; AND I
7 HIT HIM WITH THE SHOE." AND I SAID, "HOLD ON A
8 MINUTE; LET ME EXPLAIN SOMETHING TO YOU; STOP! AND
9 THEN I WENT AND EXPLAINED HIM HIS RIGHTS AGAIN, AND
10 THEN WENT INTO THAT. AND I SAID, "DO YOU WANT TO
11 TALK WITHOUT YOUR ATTORNEY PRESENT?" AND HE SAID
12 "YES, I WANT TO TALK; NO, I DON'T WANT TO TALK."
13 SO I SAID, "WELL, THEN, WE'RE GOING TO STOP IT
14 RIGHT HERE. JUST CALL ME WHEN YOU AND YOUR
15 ATTORNEY ARE READY TO TALK."

16 Q. HE HAD ALREADY SIGNED THE STATEMENT SAYING HE
17 DIDN'T WANT TO TALK?

18 A. YES.

19 Q. IT WASN'T NO SIGNED STATEMENT OR ANYTHING AFTER
20 THIS. DID YOU ASK HIM TO SIGN A STATEMENT AFTER
21 YOU READ HIM THE WARRANT?

22 A. NO, SIR.

23 Q. YOU DIDN'T GIVE HIM HIS MIRANDA WARNINGS?

24 A. NO. HE HAD ALREADY BEEN GIVEN THEM. AND THEN I

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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1 Q. OKAY. ALL RIGHT. AND THOSE ARE THE EXACT WORDS HE
2 SAID?

3 A. YES. HE SAID HE WANTED TO TALK TO ME. AND THEN I
4 SAID "WITHOUT -- AND I HAD TO CONFIRM. I SAID "DO
5 YOU WANT TO TALK WITHOUT YOUR ATTORNEY" BECAUSE I
6 KNEW HE HAD INVOKED IT FROM TWO DAYS EARLIER. AND
7 THEN HE INVOKED IT IN A SENSE IN FAMILY COURT
8 WITHOUT SAYING ANYTHING. SO I HAVE THE RIGHT TO
9 ASK HIM IF HE'S GOING TO DO THIS WITHOUT AN
10 ATTORNEY PRESENT. FROM THAT QUESTION CAME THE
11 UTTERANCE. AND THEN I STOP HIM, AND THEN EXPLAIN
12 TO HIM AGAIN, AND THEN HE MAKES THE STATEMENT AGAIN
13 "I WANT TO TALK TO YOU, BUT I DON'T WANT TO TALK
14 TO YOU." SO I SAID, "FINE; THEN THAT MEANS YOU
15 DON'T WANT TO TALK; AND YOU NEED TO GET AN ATTORNEY
16 AND THEN COME BACK TO ME." AND THEN I EXPLAINED TO
17 HIM THAT IF HE'S GOING TO TALK TO ME AND WANTS ME,
18 THEN HE NEEDS TO EITHER GO THROUGH THE JAILER AND
19 SEND ME A LETTER, OR EITHER GO THROUGH HIS ATTORNEY
20 AND SEND ME SOMETHING HE WANTS. AND, OF COURSE, I
21 NEVER GOT TO TALK TO HIM. THAT MEANS HE INVOKED
22 HIS RIGHT.

23 Q. WHAT I'M ASKING YOU NOW IS; AFTER HE WAS READ THE
24 WARRANT, HE JUST BLURTED OUT "I WANT TO TALK?"

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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1 Q. "I DON'T WANT AN ATTORNEY?"

2 A. NO. HE JUST BLURTED OUT "I WANT TO TALK TO YOU."
3 SO I CONFIRMED "ARE YOU SAYING YOU WANT TO TALK
4 WITHOUT THE PRESENCE OF YOUR ATTORNEY?" AND THEN
5 HE BLURTS OUT "I LOST CONTROL" AND "I WAS TRYING
6 TO REVIVE MY CHILD; AND I HIT HIM WITH THE SHOE."

7 Q. ALL RIGHT. AND DEPUTY BOTTEN WAS STANDING RIGHT
8 THERE BY HIM?

9 A. YES.

10 Q. AND I THINK HE'S ALREADY TESTIFIED HIS RECOLLECTION
11 WAS -- HE SAID SOMETHING LIKE "I PANICKED."

12 A. WELL, WHEN I READ IT OUT THAT WAY; IF YOU LISTEN TO
13 IT, I GUESS YOU CAN INFER THAT HE PANICKED. HE
14 SAID HE LOST CONTROL.

15 Q. HE NEVER HEARD THE WORD PANIC?

16 A. DID I HEAR THE WORD "PANIC?"

17 Q. YES?

18 A. NO. I DID NOT WRITE THE WORD "PANIC". BUT YOU CAN
19 INFER FROM WHAT I WROTE DOWN IN THERE LOOSE
20 CONTROL, PANIC. YOU KNOW, I COULD SEE WHERE
21 SOMEBODY COULD INFER THAT.

22 Q. BUT THE EXACT WORD AS YOU RECALL THEM WERE?

23 A. THE EXACT WORDS I WROTE DOWN WAS WHAT I READ. IF
24 YOU WANT TO READ IT AGAIN, I'LL READ IT.

25 Q. WOULD YOU READ IT AGAIN FOR ME, PLEASE?

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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1 A. IT SAYS -- ACTUALLY HOW I WRITE THIS LAST LITTLE
2 PART IN MY NOTES. IT SAYS "ON THIS DATE, NOVEMBER
3 THE 6TH, 2001, THIS INVESTIGATING OFFICER WENT TO
4 FAMILY COURT TO THE 48 HOUR E.P.C. HEARING ON THE
5 GADSON CHILDREN. AFTER COURT THE SUSPECT IN THIS
6 CASE WAS ARRESTED AND TAKEN TO THE COUNTY JAIL.
7 WHILE THE SUSPECT WAS BEING BOOKED INTO THE COUNTY
8 JAIL, THE SUSPECT SAID THAT HE WANTED TO TALK TO
9 THIS INVESTIGATING OFFICER. AND THIS INVESTIGATING
10 OFFICER ASKED THE SUSPECT IF HE STILL WANTED HIS
11 LAWYER TO BE PRESENT. AND HE SAID THAT WHEN THE
12 CHILD WAS NOT RESPONSIVE, HE LOST IT. AND HE SAID
13 HE TOOK A SHOE AND HIT THE CHILD IN THE CHEST
14 SEVERAL TIMES. THIS INVESTIGATING OFFICER THEN
15 ASKED THE SUSPECT IF HE WANTED TO TALK, AND HE SAID
16 YES. AND HE SAID THAT HE DID NOT KNOW IF HE WANTED
17 HIS LAWYER." AT THAT POINT, THAT'S WHEN I -- AFTER
18 HE MADE THAT STATEMENT, THEN I INVOKED HIS RIGHT
19 FOR HIM AND SAID "I'M NOT GOING TO QUESTION YOU."

20 Q. OKAY. NOW LET ME DIGRESS A BIT. THAT WAS A 1998
21 CASE?

22 A. THAT'S CORRECT.

23 Q. ABOUT A BROKEN LEG?

24 A. I WAS IN CHARGE OF THAT ONE; YES, SIR.

THOMAS MILES MARSHALL - CROSS/MR. DUKES

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1 A. YES, SIR.

2 Q. AND THAT CASE WENT TO TRIAL IN JUVENILE COURT?

3 A. FROM MY UNDERSTANDING, AND THE RECORDS THAT I'VE
4 GOT, IT WENT TO TRIAL IN FAMILY COURT ON A
5 PARTICULAR DAY THAT I WAS NOT PRIVY TO AND DID NOT
6 GO TO.

7 Q. AND MY CLIENT WAS A PARTY TO THAT ACTION?

8 A. I CANNOT ANSWER THAT. WITHOUT GOING OVER THE 1998
9 RECORDS, WHAT I'VE BEEN TOLD AND WHAT MY RECORDS
10 SHOWED ME, AND WHAT I HAD WHEN I WENT OVER TO
11 FAMILY COURT, WAS IT WAS ALL MS. GADSON. AND THAT
12 THEY BROUGHT IN SPECIALISTS TO TALK AND TELL ABOUT
13 THE BREAKS IN THE LEGS AND HOW THE BREAKS
14 HAPPENED. AND BASED ON THAT, THERE WAS A
15 DETERMINATION MADE. AND THEN MS. GADSON WAS
16 ENTERED INTO THE CENTRAL REGISTRY OF D.S.S. FOR
17 CHILD ABUSE.

18 Q. WAS MY CLIENT ENTERED IN THE CENTRAL REGISTRY?

19 A. AS FAR AS I KNOW; NO.

20 Q. BUT YOU'RE USING A STATEMENT THAT YOU SAID WHEN YOU
21 TALKED WITH HER AFTER THIS THAT SHE SAID THAT SHE
22 LIED AND THAT MY CLIENT WAS THE ONE THAT BROKE THE
23 LEG BACK THEN?

24 A. SHE DIDN'T TELL ME SHE LIED. SHE INDICATED THAT

THOMAS MILES MARSHALL - RE-DIRECT/MR. DAVIS

79

1 SOUL CARE OF THOSE CHILDREN WAS BEING DONE BY MR.
2 BURDEN; THAT SHE WAS AT BURGER KING. AND I
3 CONFIRMED THAT SHE DID IN FACT WORK FOR BURGER KING
4 AND WAS WORKING FOR BURGER KING ON THE DATE AND THE
5 TIME THAT THE CHILD WAS INJURED.

6 Q. SO IN 1998 WAS WILLIAM BURDEN A PARTY TO THAT
7 ACTION?

8 A. WITHOUT ME GOING BACK OVER TO MY -- I CANNOT SAY.

9 Q. WAS HE LISTED IN THE -- WAS THERE A FINDING AGAINST
10 HIM?

11 A. NO. THERE WAS A FINDING ON MS. GADSON AND MS.
12 GADSON ONLY.

13 Q. AND NOT A FINDING ON HIM?

14 A. NOT A FINDING ON HIM.

15 Q. I THINK THAT'S ALL THE QUESTIONS I HAVE AT THIS
16 TIME.

17 THE COURT: ALL RIGHT.

18 CROSS-EXAMINATION, MR. DAVIS.

19 RE-DIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. HAVE YOU GOT YOUR REPORT THERE WITH YOU, YOUR
22 INVESTIGATION REPORT?

23 A. I'VE GOT MY NOTES IN HERE.

24 Q. NOTES? MAY I LOOK OVER IT BRIEFLY? (AT THIS TIME
25 COUNSEL REVIEWS RECORDS.) WHAT IS THE REST OF THE

THOMAS MILES MARSHALL - RE-DIRECT/MR. DAVIS

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1 FILE ALL ABOUT?

2 A. THE REST OF THE FILE IS YOU'VE BEEN GIVEN FROM THE
3 DISCOVERY MOTION.

4 Q. I HAVEN'T BEEN GIVEN ANYTHING. I DIDN'T FILE ANY
5 DISCOVERY IN THIS CASE.

6 A. SIR, YOU'VE BEEN GIVEN A COPY OF EVERYTHING.

7 Q. I DIDN'T FILE ANY DISCOVERY IN THIS CASE.

8 MRS. MURPHY: OBJECTION, YOUR HONOR.

9 HE'S HAD A YEAR TO HAVE THIS CASE. HE KNOWS WHERE
10 OUR OFFICE---

11 THE COURT: I DON'T HEAR HIM OBJECTING.

12 DETECTIVE MARSHALL JUST SAID YOU'VE GOT IT. AND HE
13 SAID, I DON'T HAVE IT BECAUSE I DIDN'T FILE RULE
14 FIVE. I DON'T THINK HE'S OBJECTING ON THAT BASIS.
15 HE'S JUST MADE A COMMENT "I DON'T HAVE IT BECAUSE I
16 DIDN'T FILE A RULE FIVE." SEE WHAT I'M SAYING?

17 MR. DAVIS: CAN I HAVE IT?

18 THE COURT: HE'S SAYING HE WANTS TO HOLD
19 IT.

20 MR. DAVIS: YES.

21 THE COURT: YES. YOU CAN HOLD IT.

22 Q. THANK YOU. THE SAME FILE YOU HAD BACK IN 1998?

23 A. NO; IT'S A TOTALLY DIFFERENT FILE. THAT'S FOR
24 2001. 1998 IS A SEPARATE FILE.

THOMAS MILES MARSHALL - RE-DIRECT/MR. DAVIS

81

1 A. SAY THAT AGAIN.

2 Q. WHO IS WILLIAM BURDEN?

3 A. WILLIAM BURDEN?

4 Q. YES, SIR.

5 A. THAT'S MR. BURDEN RIGHT OVER THERE. (INDICATING.)

6 Q. SO HE DID GIVE A STATEMENT?

7 A. WE DIDN'T SAY HE DIDN'T GIVE A STATEMENT. WE SAID
8 HE GAVE A STATEMENT.

9 Q. I THOUGHT YOU HAD SAID THAT.

10 A. YOU MISUNDERSTOOD. THE STATEMENT HAD BEEN GIVEN
11 AND WRITTEN DOWN.

12 Q. THAT'S WILLIAM BURDEN. NOW, MAKE SURE YOU LISTEN.
13 I SAID WILLIAM BURDEN. I DIDN'T SAY ANYTHING ABOUT
14 ANYBODY ELSE; JUST WILLIAM BURDEN. WHO IS KELLY?

15 A. KELLY?

16 Q. YES?

17 A. IS THAT THE D.S.S. FAX FORM?

18 Q. YES.

19 A. THEN THAT'S A GIRL THAT WORKS OVER AT THE D.S.S.
20 OFFICE. SHE FAXED ME THEIR RECORDS WHERE THEY PUT
21 HER ON THE CENTRAL REGISTRY.

22 Q. AND THAT WAS FAXED TO YOU ON NOVEMBER THE THIRD,
23 2001?

24 A. YOU'VE GOT IT OVER THERE, SO I CAN'T TELL YOU WHEN

THOMAS MILES MARSHALL - RE-DIRECT/MR. DAVIS

82

1 Q. SIR?

2 A. IT SAYS NOVEMBER THE THIRD, 2001.

3 Q. THAT'S THE DAY THIS HAPPENED; RIGHT?

4 A. YES, THAT'S THE DAY THIS HAPPENED.

5 Q. OKAY. DID YOU RUN A RAP SHEET ON MY CLIENT?

6 A. IF IT'S NOT IN THERE; NO, I DIDN'T RUN ONE.

7 Q. YOU DIDN'T RUN ONE?

8 MRS. MURPHY: OBJECTION, YOUR HONOR. I'M
9 GOING TO OBJECT TO THE RELEVANCY OF THIS LINE OF
10 QUESTIONING.

11 MR. DAVIS: I'M GOING TO TIE IT IN IN A
12 FEW MINUTES.

13 MRS. MURPHY: WE'RE HERE FOR A JACKSON
14 VS. DINNO HEARING. HE APPEARS TO BE GOING ON A
15 FISHING EXPEDITION.

16 MR. DAVIS: IT DEALS WITH COERCION AND
17 ALL THAT GOOD STUFF; AS TO WHAT HE KNEW WHEN HE WAS
18 INTERVIEWING MY CLIENT.

19 THE COURT: OVERRULED.

20 Q. WHEN YOU WERE INTERVIEWING MY CLIENT, YOU HAD THE
21 INFORMATION FROM D.S.S. THAT SHE HAD PLACED ON THE
22 NATIONAL REGISTRY?

23 A. NO, I DID NOT.

24 Q. IT WAS FAXED TO YOU, THOUGH, ON NOVEMBER THE THIRD?

THOMAS MILES MARSHALL - RE-DIRECT/MR. DAVIS

83

1 FEELING THAT'S PROBABLY A TYPO. NO, I DID NOT.

2 Q. A TYPO?

3 A. YES.

4 Q. HAVE YOU GOT ANY INFORMATION WHY THAT WOULD BE A
5 TYPO?

6 A. NO, I DO NOT. I HAVE PERSONAL KNOWLEDGE OF HER
7 FROM 1988.

8 Q. MY QUESTION IS DO YOU HAVE ANY INFORMATION WHY THAT
9 WOULD BE A TYPO ERROR, NOVEMBER 3, 2001?

10 A. NO, SIR. NO, I DON'T.

11 Q. WELL, WHY ARE YOU SUGGESTING THAT?

12 A. BECAUSE I DID NOT GET THAT. AND D.S.S. IS NOT
13 OPENED UP AT ELEVEN O'CLOCK AT NIGHT.

14 Q. WELL, IT HAS A TIME ON THERE OF ELEVEN O'CLOCK AT
15 NIGHT?

16 A. NO. THAT'S WHEN SHE WAS DOWN THERE BETWEEN EIGHT
17 O'CLOCK AND ELEVEN. I THINK HER STATEMENT WAS
18 TAKEN AT 10:57. SO THAT WAS AROUND ELEVEN O'CLOCK
19 AT NIGHT.

20 Q. I DIDN'T ASK YOU ABOUT A STATEMENT. I JUST ASKED
21 YOU WHAT TIME.

22 A. THAT'S WHAT I'M EXPLAINING TO YOU. THEY'RE NOT
23 OPEN AT NIGHT TIME.

24 MR. DAVIS: I DON'T HAVE ANY FURTHER
25 QUESTIONS.

CLINTON JOYNER - DIRECT/MRS. MURPHY

84

1 THE COURT: ALL RIGHT. ANY RE-DIRECT?

2 MRS. MURPHY: NO, MA'AM.

3 THE COURT: ALL RIGHT. COME ON DOWN. ALL
4 RIGHT. CALL YOUR NEXT WITNESS, PLEASE, MA'AM.

5 MRS. MURPHY: THE STATE WOULD CALL
6 DETECTIVE JOYNER TO THE STAND.

7 THE COURT: ALL RIGHT.

8 - - - - -

9 WHEREUPON,

10 CLINTON BERNARD JOYNER, WHO AFTER BEING
11 FIRST DULY SWORN TO TELL THE TRUTH,
12 TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MRS. MURPHY:

15 Q. DETECTIVE JOYNER, WERE YOU EMPLOYED WITH THE
16 DORCHESTER COUNTY SHERIFF'S OFFICE LAST NOVEMBER
17 THE THIRD OF 2001?

18 A. YES, MA'AM, I WAS.

19 Q. AND, SIR, I'M GOING TO SHOW YOU WHAT'S BEEN
20 PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER ONE AND
21 ASK YOU IF YOU RECOGNIZE THIS DOCUMENT, SIR?

22 A. YES, MA'AM. THIS IS THE MIRANDA FORM THAT WAS
23 FILLED OUT BY DETECTIVE MARSHALL HIMSELF.

24 Q. AND DID YOU SIGN THAT FORM DOWN AT THE BOTTOM?

25 A. YES, MA'AM, I DID. I WITNESSED IT.

CLINTON JOYNER - DIRECT/MRS. MURPHY

85

1 Q. WERE YOU PRESENT WHEN DEFENDANT BURDEN WAS READ HIS
2 MIRANDA WARNINGS?

3 A. YES, MA'AM, I WAS.

4 Q. AND CAN YOU JUST TELL THE COURT BRIEFLY -- GO AHEAD
5 AND TELL THE COURT WHAT HE WAS TOLD?

6 A. DETECTIVE MARSHALL -- YOU KNOW, FIRST HE CAME IN.
7 HE ASKED ME HOW OLD HE WAS. I TOLD HIM THIRTY
8 YEARS. ASKED HIM WHAT HIS HIGH SCHOOL EDUCATION
9 WAS. HE SAID HE HAD A G.E.D. AND THEN DETECTIVE
10 MARSHALL READ HIM HIS MIRANDA RIGHTS WHICH STATES
11 "YOU HAVE A RIGHT TO REMAIN SILENT" WHICH HE
12 INITIALLED. "ANYTHING YOU SAY CAN AND WILL BE USED
13 AGAINST YOU IN A COURT OF LAW" WHICH HE
14 INITIALLED. "YOU HAVE A RIGHT TO TALK TO A LAWYER
15 AND HAVE HIM PRESENT WITH YOU WHILE BEING
16 QUESTIONED" WHICH HE INITIALLED. "IF YOU CANNOT
17 AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO
18 REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH"
19 WHICH IS ALSO INITIALED. AND "IF YOU DECIDE ANY
20 TIME TO EXERCISE YOUR RIGHTS AND NOT ANSWER ANY
21 QUESTIONS OR MAKE ANY STATEMENTS;" AND THAT IS ALSO
22 INITIALLED. THEN COMES THE WAIVER OF RIGHTS. IT
23 SAYS "I HAVE READ THE ABOVE STATEMENT OF MY RIGHTS
24 AND I UNDERSTAND EACH OF THOSE RIGHTS. AND HAVING

CLINTON JOYNER - DIRECT/MRS. MURPHY

86

1 TO MAKE A STATEMENT." NORMALLY WHEN WE READ THAT
2 TO THEM, WE MARK AN "X" AND ASK YOU TO SIGN IT IF
3 YOU WANT TO SPEAK TO US; AND IF YOU DON'T, JUST
4 LEAVE IT BLANK. AT THAT TIME, HE DID NOT WANT TO
5 TALK TO US. AND I WITNESSED IT, AND TOM MARSHALL
6 SIGNED OFF AS AN OFFICER AT 0147 A.M.

7 Q. AND WERE THERE ANY PROMISES, THREATS, OR COERCIONS
8 MADE TO THE DEFENDANT?

9 A. NO, MA'AM.

10 Q. AND HE UNDERSTOOD BOTH OF THOSE RIGHTS AS WERE READ
11 TO HIM?

12 A. THAT'S CORRECT.

13 MRS. MURPHY: NO FURTHER QUESTIONS OF
14 THIS WITNESS, YOUR HONOR.

15 THE COURT: CROSS-EXAMINATION, MR. DUKES?

16 MR. DUKES: I HAVE NO QUESTIONS.

17 THE COURT: ALL RIGHT. MR. DAVIS?

18 MR. DAVIS: NO, MA'AM.

19 THE COURT: VERY WELL. YOU MAY COME
20 DOWN. CALL YOUR NEXT WITNESS, PLEASE.

21 MRS. MURPHY: THAT'S THE EXTENT OF THE
22 WITNESSES FOR THIS HEARING, YOUR HONOR.

23 THE COURT: VERY WELL. LET ME HEAR FROM
24 THE DEFENSE.

CLINTON JOYNER - DIRECT/MRS. MURPHY

87

1 OBJECT FIRST OF ALL TO ANY STATEMENT BEING
2 INTRODUCED AGAINST MY CLIENT. NONE HAS BEEN
3 PRESENTED TO THIS COURT.. AND I MEAN IN A WRITTEN
4 FORM IN REFERENCE TO ADRIAN GADSON. NONE HAS BEEN
5 INTRODUCED UNLESS I MISSED IT SOMEWHERE THAT IT WAS
6 OFF WHEN THIS WAS TAKING PLACE. BUT I HAVE BEEN
7 PROVIDED THIS MORNING WITH A COPY OF ALLEGEDLY A
8 STATEMENT BY ADRIAN GADSON. BUT FOR ALL PRACTICAL
9 PURPOSES IN THE MIDDLE OF THIS IN CAMERA HEARING,
10 IT WAS NEVER MOVED TO BE INTRODUCED INTO EVIDENCE
11 AT ANY PARTICULAR TIME. THEREFORE, I DO NOT
12 ANTICIPATE ANY STATEMENT BEING INTRODUCED ON
13 BEHALF, OR AGAINST MY CLIENT, ADRIAN GADSON. I
14 KNOW, YOUR HONOR -- I DON'T KNOW WHAT THE STATE'S
15 POSITION IS IN THAT REGARD. BUT THERE'S BEEN NO
16 MOVEMENT OF ANY STATEMENTS IN THIS JACKSON VS.
17 DINNO HEARING THAT---

18 THE COURT: WELL, THERE HAVE BEEN NO
19 WRITTEN STATEMENTS.

20 MR. DAVIS: THAT'S CORRECT; NO WRITTEN
21 STATEMENTS.

22 THE COURT: NO WRITTEN. YOU'RE NOT
23 TALKING -- YOU'RE SPECIFICALLY -- OKAY. HOLD ON.
24 LET ME HEAR FROM THE STATE.

CLINTON JOYNER - DIRECT/MRS. MURPHY

88

1 REQUIREMENT OF JACKSON VS. DINNO. THE REQUIREMENT
2 OF JACKSON VS. DINNO IS FOR YOUR HONOR TO DETERMINE
3 THE VOLUNTARINESS OF THE STATEMENT AND WHETHER OR
4 NOT IT IS CUSTODIAL IN NATURE. THAT'S THE PURPOSE
5 OF THE TESTIMONY. THE STATE IS NOT REQUIRED AT
6 THIS JUNCTURE TO INTRODUCE THE STATEMENT; JUST AN
7 IN CAMERA HEARING FOR YOUR HONOR TO EVALUATE
8 WHETHER OR NOT IT IS ADMISSIBLE DOWN THE ROAD. I
9 DON'T THINK THE STATE IS REQUIRED AT THIS POINT TO
10 INTRODUCE IT INTO EVIDENCE.

11 MR. DAVIS: MAYBE I'M MISSING IT, JUDGE,
12 BUT IT'S ALWAYS BEEN MY EXPERIENCE THAT EVEN IN A
13 JACKSON VS. DINNO HEARING THAT THE STATE HAS
14 ACTUALLY INTRODUCED IT AT THAT TIME. HOW ELSE CAN
15 THE COURT REALLY MAKE A DETERMINATION IF THE COURT
16 DOESN'T PERUSE THE STATEMENTS TO THE JURY. THERE'S
17 NO POINT -- THERE WAS NO MIRANDA WARNINGS GIVEN TO
18 MY CLIENT AT ANY TIME IN THIS PARTICULAR CASE.
19 THERE'S NO STATEMENT THAT THESE STATEMENTS WERE
20 GIVEN AS SPONTANEOUS. I MEAN, WHAT'S THE WHOLE
21 PURPOSE OF HAVING A JACKSON VS. DINNO HEARING IF
22 IT'S NOT TO ASCERTAIN WHETHER THE COURT FEELS THAT
23 ANY STATEMENT THAT MY CLIENT MADE WOULD BE
24 ADMISSIBLE OR NOT. UNLESS WE'RE JUST GOING TO DO

CLINTON JOYNER - DIRECT/MRS. MURPHY

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LASER STOCK FORM FMU

THE CORBY GROUP 1-800-255-5040

1 POINT, I DEFINITELY AM GOING TO GO INTO MORE
2 ASPECTS OF TIME LIMITATIONS, COERCION, THE FACT
3 THAT MY CLIENT WAS TRANSPORTED BY OFFICER MARSHALL
4 FROM THE HOME TO THE POLICE STATION. YOU KNOW, A
5 VERY IMPORTANT STATEMENT; HE SAID WHEN YOU'RE
6 TAKING A STATEMENT FROM THE SUBJECT OR SOMETHING,
7 YOU ALWAYS HAVE TWO WITNESSES. YOU KNOW, AND ANY
8 STATEMENT THAT MY CLIENT -- IT'S JUST ONE
9 STATEMENT. IT'S ONE ON ONE TO HIM AND JUST MY
10 CLIENT OVER A PERIOD OF SOME FOUR-AND-A-HALF HOURS.
11 IF THAT'S THE CASE, YOUR HONOR, I RESERVE THE RIGHT
12 TO CALL MY CLIENT DURING THIS JACKSON VS. DINNO
13 HEARING. I'D LIKE TO DO THAT FIRST. LET'S COME
14 BACK TO THAT.

15 THE COURT: I UNDERSTAND, MR. DAVIS. IS
16 THE POSITION OF THE SOLICITOR'S OFFICE THAT -- I
17 GATHER -- THAT THE ACTUAL OFFERING AS A COURT'S
18 EXHIBIT THIS STATEMENT IS NOT REQUIRED; THAT WHAT
19 IS REQUIRED IS A SHOWING OF WHETHER OR NOT IT WAS A
20 CUSTODIAL INTERROGATION AND THE VOLUNTARINESS OF
21 THE STATEMENT, THAT THOSE ARE THE ISSUES THAT ARE
22 RELEVANT. AND THE TESTIMONY LEADING UP TO THE
23 GIVING OF THE STATEMENT, BE IT EITHER ORAL OR
24 WRITTEN. IS THAT THE POSITION OF THE STATE?

CLINTON JOYNER - DIRECT/MRS. MURPHY

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1 THE COURT: AND IT'S THE POSITION OF THE
2 STATE THAT THE STATEMENT INVOLVED WAS THE STATEMENT
3 THAT WAS GIVEN THE EVENING THAT THE CHILD ARRIVED
4 AT THE HOSPITAL WHEN THE DEFENDANT CAME BACK -- NOW
5 DEFENDANT -- CAME BACK TO THE LAW ENFORCEMENT
6 CENTER; MS. GADSON RODE WITH DETECTIVE MARSHALL TO
7 THE LAW ENFORCEMENT CENTER. AND THAT STATEMENT IS
8 THE ONE THAT'S AT ISSUE; IS THAT RIGHT?

9 MRS. MURPHY: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: I DON'T THINK IT'S REQUIRED.
11 I DON'T THINK IT'S -- AND YOU'RE EXACTLY RIGHT, MR.
12 DAVIS, VERY OFTEN THAT THEY ARE OFFERED AS A
13 COURT'S EXHIBIT OR MARKED SIMPLY FOR IDENTIFICATION
14 PURPOSES, THE STATEMENTS. BUT I DON'T KNOW OF ANY
15 RESEARCH WHERE THE STATEMENT ITSELF IS REQUIRED TO
16 BE ADMITTED AS A COURT'S EXHIBIT OR FOR
17 IDENTIFICATION PURPOSES. I KNOW THAT I'VE BEEN
18 INVOLVED IN CASES WHERE BOTH SIDES WERE PRETTY
19 CONCERNED ABOUT ME ACTUALLY SEEING THE STATEMENT.
20 SO I THINK THAT THE ISSUES THAT THE COURT CONCERNS
21 ITSELF WITH ARE THAT OF VOLUNTARINESS AND CUSTODIAL
22 -- WHETHER OR NOT IT IS A CUSTODIAL INTERROGATION,
23 AND, OF COURSE, NOT THE VOLUNTARINESS OF IT.

24 MR. DAVIS: YOUR HONOR, THAT WOULD BE

ADRIAN GADSON - DIRECT/MR. DAVIS

91

1 THINK THE COURT NEEDS TO INQUIRE OF MY CLIENT.

2 THE COURT: INDEED. AND, OF COURSE, YOU
3 HAVE EVERY RIGHT TO CALL YOUR CLIENT IN JACKSON VS.
4 DINNO, AND SHE'S PROTECTED.

5 MR. DAVIS: YES, MA'AM.

6 THE COURT: AND CERTAINLY MAY TESTIFY
7 REGARDING THIS HEARING. ALL RIGHT.

8 - - - - -

9 WHEREUPON,

10 ADRIAN GADSON, WHO AFTER BEING FIRST
11 DULY SWORN TO TELL THE TRUTH,
12 TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. DAVIS:

15 Q. PLEASE IDENTIFY YOURSELF, PLEASE.

16 A. ADRIAN GADSON.

17 Q. AND WHAT IS YOUR RELATIONSHIP TO Child [REDACTED] GADSON?

18 A. I'M HIS MOTHER.

19 Q. OKAY. HOW MANY CHILDREN DO YOU HAVE?

20 A. FIVE.

21 Q. AND Child [REDACTED] HAS A TWIN BROTHER?

22 A. YES.

23 Q. WHAT'S HIS NAME?

24 A. TASHEEM.

25 Q. OKAY. WHERE WERE YOUR CHILDREN PLACED IN EMERGENCY

ADRIAN GADSON - DIRECT/MR. DAVIS

92

1 PROTECTIVE CUSTODY?

2 A. WHERE?

3 Q. WHEN?

4 A. THAT NIGHT.

5 Q. NOVEMBER THE THIRD, 2001?

6 A. YES.

7 Q. ARE THEY STILL IN PROTECTIVE CUSTODY?

8 A. YES.

9 Q. OKAY. ONLY ONE CHILD WAS ALLEGED TO HAVE BEEN
10 ABUSED; ISN'T THAT CORRECT?

11 A. YES.

12 Q. THAT'S Child

13 A. YES.

14 Q. NOW, THERE WERE ALLEGATIONS ABOUT 1998; ISN'T THAT
15 CORRECT?

16 A. YES.

17 Q. AND I REPRESENTED YOU AT THAT TIME; ISN'T THAT
18 CORRECT?

19 A. YES.

20 Q. AND OFFICER MARSHALL THERE, DETECTIVE MARSHALL, WAS
21 INVOLVED IN THAT CASE; ISN'T THAT CORRECT?

22 A. YES.

23 Q. HOW WOULD YOU DESCRIBE OFFICER MARSHALL IN
24 RELATIONSHIP TO THE RESULTS THAT TOOK PLACE IN

ADRIAN GADSON - DIRECT/MR. DAVIS

93

1 MR. DAVIS: OBJECTION, YOUR HONOR. THAT
2 CALLS FOR SPECULATION.

3 Q. IF YOU CAN.

4 THE COURT: JUST A SECOND. THERE IS AN
5 OBJECTION.

6 MRS. MURPHY: IT CALLS FOR SPECULATION AS
7 TO WHAT DETECTIVE MARSHALL WAS FEELING IN 1998.

8 Q. DID OFFICER MARSHALL EVER SHARE WITH YOU WHAT HIS
9 OPINION---

10 MR. DAVIS: OBJECTION, YOUR HONOR; HE'S
11 LEADING THE WITNESS.

12 THE COURT: HOLD ON ONE SECOND; HOLD ON.
13 THE FIRST OBJECTION WAS STATE OF MIND. I'LL
14 SUSTAIN THAT AS TO WHAT WAS HIS STATE OF MIND. LET
15 ME HEAR YOU. DON'T ANSWER, MA'AM, UNTIL I'VE HEARD
16 THE QUESTION BECAUSE I THINK THERE MIGHT BE AN
17 OBJECTION. THERE'S ONE FLOATING AROUND.

18 Q. DID DETECTIVE MARSHALL EVER SHARE WITH YOU HIS
19 OPINION AS TO THE RESULT THAT TOOK PLACE AS TO THE
20 FIRST ALLEGATION OF CHILD ABUSE?

21 THE COURT: HOLD ON. ANY OBJECTION TO
22 THAT?

23 MRS. MURPHY: HEARSAY.

24 MR. DAVIS: MAYBE I WAS SHARING IT WITH

ADRIAN GADSON - DIRECT/MR. DAVIS

94

1 THE COURT: IN OTHER WORDS, DID HE EVER
2 SHARE IT. AND IT'S NOT ASKING FOR IT
3 SPECIFICALLY. I WILL ALLOW THAT. THAT WOULD BE A
4 YES OR A NO OR YOU DON'T KNOW.

5 A. YES.

6 Q. OKAY. HE DIDN'T LIKE THE RESULT; ISN'T THAT
7 CORRECT?

8 MRS. MURPHY: OBJECTION, YOUR HONOR.
9 HE'S LEADING THE WITNESS.

10 THE COURT: VERY WELL. WHY IS THAT NOT
11 HEARSAY?

12 MR. DAVIS: I THINK IT WAS, YOUR HONOR.
13 BUT I CAN MOVE ON, JUDGE.

14 THE COURT: ALL RIGHT, MR. DAVIS.

15 Q. ON NOVEMBER THE THIRD WHEN YOUR CHILD WAS ALLEGEDLY
16 INJURED, WHERE WERE YOU AT?

17 A. I WAS SHOPPING WITH MY MOTHER.

18 Q. NO QUESTION YOU WERE NOT AT HOME AT THE TIME?

19 A. NO QUESTION.

20 Q. YOU WERE NOT AT HOME?

21 A. NO, SIR, I WASN'T AT HOME.

22 Q. NOW, LISTEN TO ME. NOW, WHAT TIME DID YOU GET TO
23 THE HOUSE?

24 A. ABOUT SIX -- BETWEEN 6:00 AND 6:30.

25 Q. WHEN YOU GOT TO THE HOUSE, WHO WAS AT THE HOUSE?

ADRIAN GADSON - DIRECT/MR. DAVIS

95

- 1 A. WILLIAM AND MY FIVE KIDS.
- 2 Q. WILLIAM AND YOUR FIVE KIDS?
- 3 A. YES.
- 4 Q. AND WHERE WAS Child
- 5 A. HE WAS ON THE FLOOR UNRESPONSIVE.
- 6 Q. UNRESPONSIVE? OKAY. HAD E.M.S. BEEN CALLED AT
- 7 THAT TIME?
- 8 A. YES.
- 9 Q. DID YOU CALL THEM?
- 10 A. NO.
- 11 Q. DID ANYONE GO AND MEET E.M.S. TO MAKE SURE THEY
- 12 COULD LOCATE WHERE YOU ALL LIVED?
- 13 A. YES.
- 14 Q. WHO DID?
- 15 A. MY MOTHER.
- 16 Q. OKAY. NOW, DID YOU GO TO THE SUMMERVILLE MEDICAL
- 17 CENTER?
- 18 A. YES.
- 19 Q. WHAT TIME DID YOU GET THERE?
- 20 A. I'M NOT SURE.
- 21 Q. DID YOU GO IN THE AMBULANCE WITH YOUR CHILD?
- 22 A. YES.
- 23 Q. OKAY. SO YOU RODE IN THE AMBULANCE WITH YOUR CHILD
- 24 TO THE SUMMERVILLE MEDICAL CENTER?
- 25 A. YES.

ADRIAN GADSON - DIRECT/MR. DAVIS

96

1 Q. OKAY. WHAT TIME DID YOU LEARN THAT YOUR CHILD HAD
2 TO LEAVE THE SUMMERVILLE MEDICAL CENTER AND GO TO
3 M.U.S.C.?

4 A. I WASN'T SURE BECAUSE I WAS IN THE WAITING ROOM.

5 Q. IN THE WAITING ROOM. BUT DID YOU LEARN THAT?

6 A. YES.

7 Q. OKAY. NOW DID YOU GO WITH YOUR CHILD TO M.U.S.C.?

8 A. NO.

9 Q. WHY NOT?

10 A. BECAUSE DETECTIVE MARSHALL CAME AND ASKED IF I
11 WOULD GO WITH HIM FOR QUESTIONING.

12 Q. YOU MEAN TO TELL ME YOUR CHILD IS GOING TO M.U.S.C.
13 WITH BLOOD ON THE BRAIN, AND YOU DON'T GET TO GO
14 WITH YOUR CHILD TO U.M.S.C. INSTEAD YOU'VE GOT TO
15 GO---

16 MRS. MURPHY: OBJECTION, YOUR HONOR. HE
17 IS LEADING THE WITNESS.

18 MR. DAVIS: IT'S A QUESTION.

19 THE COURT: DON'T ANSWER IT UNTIL I HEAR
20 THE QUESTION.

21 Q. THERE'S NO QUESTION AT THAT TIME THEY WERE SHARING
22 WITH YOU THAT YOUR CHILD WAS UNRESPONSIVE; ISN'T
23 THAT CORRECT?

24 A. YES.

MRS. MURPHY: OBJECTION YOUR HONOR.

ADRIAN GADSON - DIRECT/MR. DAVIS

97

1 THE COURT: SUSTAINED.

2 MRS. MURPHY: YOUR HONOR, HE'S LEADING.

3 THE COURT: SUSTAINED; LEADING.

4 Q. WHAT WAS YOUR UNDERSTANDING AS TO THE CONDITION OF
5 YOUR CHILD?

6 A. THEY WERE SAYING THAT THEY WASN'T QUITE SURE WHAT
7 WAS GOING ON. AND THAT IT LOOKED LIKE HE WAS
8 HAVING A SEIZURE.

9 Q. BUT IT WAS NO QUESTION THAT YOUR CHILD HAD TO BE
10 MEDIVACCED (PHONETICALLY SPELLED) TO M.U.S.C.?

11 A. NO.

12 Q. WERE YOU ALLOWED TO GO; THAT'S MY QUESTION?

13 A. YES.

14 Q. WHY DIDN'T YOU GO?

15 A. BECAUSE I THOUGHT I HAD TO GO WITH DETECTIVE
16 MARSHALL.

17 Q. AND HOW DID YOU GO WITH DETECTIVE MARSHALL?

18 A. HE TRANSPORTED ME.

19 Q. IN HIS VEHICLE?

20 A. YES.

21 Q. HIS CAR?

22 A. YES.

23 Q. SO, WOULD IT BE FAIR TO SAY INSTEAD OF YOU GOING TO
24 M.U.S.C., THEN, YOU WERE HEADED TO THE SUMMERVILLE

ADRIAN GADSON - DIRECT/MR. DAVIS

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- 1 A. YES.
- 2 Q. WHAT TIME DID YOU ARRIVE AT THE SUMMERVILLE MEDICAL
- 3 CENTER?
- 4 A. I'M NOT SURE.
- 5 Q. NOT SURE. WHAT TIME DID YOU LEAVE?
- 6 A. NOT SURE.
- 7 Q. YOU'RE NOT SURE?
- 8 A. NO, SIR.
- 9 Q. WHAT'S THE ONLY TIME YOUR PARENTS -- HOW DID YOU
- 10 LEAVE THE CENTER?
- 11 A. DETECTIVE MARSHALL.
- 12 Q. OH! HE GAVE YOU A RIDE AWAY FROM THERE?
- 13 A. OH, YOU MEAN THE---
- 14 Q. AWAY FROM THE LAW ENFORCEMENT CENTER. HOW DID YOU
- 15 LEAVE THE LAW ENFORCEMENT CENTER?
- 16 A. MY MOTHER CAME AND PICKED ME UP.
- 17 Q. DO YOU RECALL WHAT TIME YOUR MOTHER CAME AND PICKED
- 18 YOU UP? WAS IT AFTER TWELVE O'CLOCK?
- 19 A. YES.
- 20 Q. WAS IT AFTER ONE O'CLOCK?
- 21 A. IT WAS BETWEEN TWELVE AND ONE.
- 22 Q. BETWEEN 12:30 AND 1:00, YOUR CHILD -- YOU WERE AT
- 23 THE SUMMERVILLE MEDICAL CENTER AT WHAT TIME, THEN?
- 24 A. SEVEN.
- 25 Q. SEVEN O'CLOCK. AND YOU LEAVE WITH MARSHALL HERE

ADRIAN GADSON - DIRECT/MR. DAVIS

99

1 FROM SEVEN AND REMAIN WITH HIM UNTIL 12:30 OR
2 12:00?

3 A. YES.

4 Q. NOW YOU BELIEVED YOU COULD GO ANY TIME YOU WERE
5 READY?

6 A. HE DIDN'T LET ME KNOW.

7 Q. OKAY. NOW, HOW DID Y'ALL GET INTO THIS DISCUSSION
8 ABOUT THE 1998 CASE?

9 A. HE BROUGHT IT UP.

10 Q. AND YOU TOLD HIM THAT YOU WEREN'T AT HOME WHEN THIS
11 HAPPENED; ISN'T THAT CORRECT?

12 A. YES.

13 Q. NOW, WHAT DID HE SHARE WITH YOU IF YOU DIDN'T GIVE
14 A STATEMENT?

15 A. THAT I WOULDN'T GET MY KIDS BACK.

16 Q. HE TOLD YOU YOU WOULDN'T GET THE REST OF YOUR KIDS;
17 ISN'T THAT CORRECT?

18 A. YES.

19 Q. YOU ALREADY KNEW HE WASN'T GOING TO LET YOU GO TO
20 M.U.S.C. BECAUSE HE DIDN'T LET YOU GO THEN; ISN'T
21 THAT CORRECT?

22 A. YES.

23 Q. SO WHO IS AT M.U.S.C. OTHER THAN DETECTIVE JOYNER?
24 IS HE RELATED TO YOU, DETECTIVE JOYNER?

ADRIAN GADSON - DIRECT/MR. DAVIS

100

- 1 Q. YOU GOT ANY FAMILY MEMBERS WITH YOUR CHILD [REDACTED]
- 2 AT THE M.U.S.C. CENTER?
- 3 A. YES. FLORAMAYE JENKINS, AND I THINK HER HUSBAND
- 4 ALSO.
- 5 Q. AND THAT'S [REDACTED] GRANDPARENTS; ISN'T THAT
- 6 CORRECT?
- 7 A. YES.
- 8 Q. OKAY. WAS YOUR MOTHER THERE?
- 9 A. SHE WAS AT HOME WITH THE KIDS. SHE WAS GETTING
- 10 THEIR THINGS READY FOR WHEN D.S.S. CAME.
- 11 Q. SO MR. MARSHALL TOLD YOU RIGHT THEN THEY WERE GOING
- 12 TO TAKE YOUR KIDS AND PUT THEM IN PROTECTIVE
- 13 CUSTODY; ISN'T THAT CORRECT?
- 14 A. YES.
- 15 Q. THAT SAME NIGHT?
- 16 A. YES.
- 17 Q. AND SO YOU GAVE THEM THE STATEMENT?
- 18 A. YES.
- 19 Q. NOW, IF MY MEMORY SERVES ME RIGHT -- JUDGE, I'M
- 20 GOING TO MARK THIS FOR IDENTIFICATION; COURT'S
- 21 EXHIBIT.

22 THE COURT: ALL RIGHT. ANY OBJECTION?

23 MRS. MURPHY: NO OBJECTION, YOUR HONOR.

24 COURT'S EXHIBIT NO. 2

ADRIAN GADSON - DIRECT/MR. DAVIS

101

1 Q. HOW LONG DID IT TAKE BEFORE YOU ACTUALLY GAVE THIS
2 STATEMENT HERE WHILE YOU WERE AT THE SUMMERVILLE
3 LAW ENFORCEMENT CENTER? HOW LONG DO YOU THINK IT
4 TOOK?

5 A. A COUPLE OF HOURS.

6 Q. A COUPLE OF HOURS? NOW, WHILE YOU WERE WAITING
7 THIS COUPLE OF HOURS, IS OFFICER JOYNER CALLING YOU
8 ON HIS BEEPER TELLING YOU THE CONDITION OF YOUR
9 CHILD?

10 A. NO.

11 Q. WHO IS CALLING YOU TO GIVE YOU THE UPDATE OF THE
12 CONDITION OF YOUR CHILD?

13 A. NO ONE.

14 Q. NOBODY IS TELLING YOU WHETHER YOUR CHILD HAS
15 SURVIVED; WHETHER YOUR CHILD IS IN CRITICAL
16 CONDITION OR WHETHER THEY NEED YOU TO SIGN A
17 CONSENT PAPER FOR ANYTHING?

18 A. NO.

19 Q. BUT YOU'VE GOT TO GIVE THIS STATEMENT?

20 A. YES.

21 Q. YOU FINALLY RELINQUISH AND GIVE A STATEMENT, DON'T
22 YOU?

23 A. YES.

24 Q. ANYTHING TO GET AWAY FROM THE SUMMERVILLE LAW

ADRIAN GADSON - DIRECT/MR. DAVIS

102

1 A. YES.

2 Q. AND HE PROMISED YOU THAT IF YOU GAVE THIS STATEMENT
3 THAT---

4 MRS. MURPHY: OBJECTION, YOUR HONOR.
5 HE'S LEADING.

6 THE COURT: SUSTAINED. DON'T LEAD.

7 Q. WHAT DID HE PROMISE YOU?

8 MRS. MURPHY: YOUR HONOR, HE'S STILL
9 LEADING.

10 MR. DAVIS: A PROMISE IS A PROMISE. I
11 PROMISE WE'LL GO TO THE MOVIE. I PROMISE TO GO --
12 I DIDN'T SAY WHAT I'M PROMISING. I JUST ASKED WAS
13 ANY PROMISE GIVEN; THAT'S ALL.

14 THE COURT: IF THAT'S THE QUESTION, WERE
15 THERE ANY PROMISES MADE.

16 Q. WERE THERE ANY PROMISES MADE?

17 A. HE SAID IF I WANTED THE KIDS BACK THAT I'LL HAVE TO
18 SIGN A STATEMENT.

19 Q. BECAUSE OFFICER MARSHALL WAS STILL BENT ON WHAT
20 HAPPENED IN 1998; ISN'T THAT CORRECT?

21 MRS. MURPHY: OBJECTION, YOUR HONOR. HE'S
22 LEADING AGAIN.

23 THE COURT: SUSTAINED. DON'T LEAD.

24 O. WAS OFFICER MARSHALL STILL INQUIRING ABOUT

ADRIAN GADSON - DIRECT/MR. DAVIS

103

1. A. YES.

2 Q. OKAY. HE WAS INQUIRING ABOUT WHAT HAPPENED TO THAT
3 CHILD'S LEG; ISN'T THAT CORRECT?

4 A. YES.

5 Q. I WANT YOU TO TAKE YOUR TIME -- YOUR HONOR, IF IT
6 PLEASE -- ALLOW HER PLEASE TO PUBLISH THIS. I WANT
7 YOU TO PUBLISH THIS FOR THE RECORD, PLEASE.

8 PUBLISH YOUR STATEMENT. READ IT. THAT'S WHAT US
9 LAWYERS MEAN. READ IT OUT LOUD.

10 A. "NOVEMBER THE THIRD, 2001; ADRIAN GADSON WENT
11 SHOPPING WITH MY MOTHER. THE STORES THAT WE WENT
12 TO WERE CATO'S, WAL-MART, AND FASHION SEVEN DOLLAR
13 STORE AND FAMILY DOLLARS. I MADE PHONE CALL TO MY
14 HOUSE TO LET THEM KNOW WHERE I WAS AT. WHEN
15 WILLIAM TOLD ME TO HURRY UP AND COME HOME BECAUSE
16 SOMETHING WAS WRONG WITH OUR SON, Child SO ME
17 AND MY MOTHER RUSHED HOME TO SEE WHAT WAS WRONG.
18 WHEN I GOT THERE, Child WAS LAYING ON THE LIVING
19 ROOM FLOOR UNRESPONSIVE LIKE HE WAS HAVING A
20 SEIZURE. HE HAD ALREADY MADE THE CALL -- WILLIAM
21 HAD ALREADY MADE THE CALL TO E.M.S. BEFORE WE GOT
22 THERE. HE TOLD US THAT HE WAS FEEDING THEM AND
23 AFTERWARDS HE WAS GIVING THEM A BATH. WILLIAM TOLD
24 US THAT Child WAS WEAK AND COULD BARELY STAND UP

ADRIAN GADSON - DIRECT/MR. DAVIS

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1 COULDN'T BREATHE, SO HE WAS TRYING TO HELP HIM.
2 THEN IN THE YEAR OF 1998, Child HAD A BROKEN LEG
3 BECAUSE I WAS TOLD THAT HE HAD FALLEN FROM THE CRIB
4 AND LANDED ON A HARD TOY. THEN BASED ON WHAT HE
5 TOLD ME, I DON'T THINK IT'S TRUE. BACK IN '98 I
6 WAS WORKING AT BURGER KING. WILLIAM CALLED ME AT
7 WORK AND SAID THAT HE THINK Child LEG IS
8 BROKEN. WHEN I GOT THERE, HE WAS HOLDING Child
9 AND SAID, I THINK HIS LEG IS BROKEN. SO I RUSHED
10 Child TO THE HOSPITAL. I ASKED HIM HOW DID
11 Child HIS LEG? AND HE SAID THAT HE HAD
12 FELL FROM THE CRIB ONTO A TOY. AFTER I CAME
13 FROM THE HOSPITAL, HE TOLD ME THAT HE HAD SPANKED
14 HIM.

15 Q. READ EVERYTHING. NOW, NOTICE IN THAT STATEMENT ALL
16 OF A SUDDEN, SWEETHEART, THERE IS A BREAK IN THE
17 FLOW. AFTER YOU SHARED WITH OFFICER MARSHALL WHERE
18 YOU WERE AT ON NOVEMBER THE THIRD, ALL OF A SUDDEN
19 THERE'S A LEAD INTO 1998. WHO CAUSED THAT LEAD IN?

20 A. MR. MARSHALL.

21 Q. WHY? DO YOU KNOW?

22 MRS. MURPHY: OBJECTION, YOUR HONOR.

23 THAT CALLS FOR SPECULATION.

24 MR. DAVIS: IF SHE KNOWS. SHE WAS

ADRIAN GADSON - DIRECT/MR. DAVIS

105

- 1 THE COURT: JUST A MINUTE. THAT
- 2 CALLS FOR HIS STATE OF MIND. I'LL SUSTAIN THE
- 3 OBJECTION.
- 4 Q. THERE'S NO QUESTION THAT OFFICER MARSHALL INQUIRED
- 5 ABOUT AN INCIDENT THAT HAPPENED IN 1998; ISN'T THAT
- 6 CORRECT?
- 7 A. YES.
- 8 Q. WHEN WERE YOU ARRESTED IN THIS SITUATION? DOES
- 9 DECEMBER RING A BELL TO YOU?
- 10 A. YES.
- 11 Q. I THINK DECEMBER THE SEVENTH. THAT WAS 2001.
- 12 WHERE WERE YOU AT AT THE TIME YOU WERE
- 13 ARRESTED?
- 14 A. AT SUMMERVILLE LAW ENFORCEMENT.
- 15 Q. FAMILY COURT. THAT'S HELD THE SAME PLACE, IS IT
- 16 NOT?
- 17 A. YES.
- 18 Q. SO WE WENT THERE FOR A FAMILY COURT HEARING; ISN'T
- 19 THAT CORRECT?
- 20 A. YES.
- 21 Q. AND YOU WERE ARRESTED AT THAT TIME DECEMBER THE
- 22 SEVENTH?
- 23 A. YES.
- 24 Q. DID THEY GIVE YOU ANY MIRANDA WARNINGS AT THAT

ADRIAN GADSON - CROSS/MR. DUKES

106

1 A. (NO RESPONSE.)

2 Q. ON DECEMBER THE SEVENTH, DID THEY GIVE YOU YOUR
3 MIRANDA WARNINGS TELLING YOU YOU'VE GOT A RIGHT TO
4 REMAIN SILENT, ANYTHING YOU SAY CAN AND WILL BE
5 USED AGAINST YOU IN A COURT OF LAW? YOU KNOW
6 YOU'VE GOT A RIGHT TO MR. DAVIS; HE'S STILL YOUR
7 LAWYER; HE CAN TALK TO YOU ANY TIME. DID THEY GIVE
8 YOU ONE OF THOSE; ACTUALLY GIVE YOU A STATEMENT
9 THERE?

10 A. NO.

11 Q. WAS MR. MARSHALL THE ONE THAT ARRESTED YOU?

12 A. YES.

13 Q. OKAY. AND, IN FACT, MR. MARSHALL HAS BEEN
14 PRESENT AT ALL THESE D.S.S. HEARINGS; ISN'T THAT
15 CORRECT?

16 A. YES.

17 Q. HE WAS PRESENT AT THE D.S.S. HEARING BACK IN 1998;
18 ISN'T THAT CORRECT?

19 A. YES.

20 MR. DAVIS: NO FURTHER QUESTIONS, YOUR
21 HONOR.

22 THE COURT: VERY WELL. YES, SIR.

23 CROSS-EXAMINATION

24 BY MR. DUKES:

25 Q. IS IT ADRIAN? V'ALL HAVE GOT DIFFERENT LAST NAMES.

ADRIAN GADSON - CROSS-EXAMINATION

107

1 WHAT'S YOUR LAST NAME?

2 A. GADSON.

3 Q. GADSON? AND YOU AND MY CLIENT ARE
4 BOYFRIEND/GIRLFRIEND, OR HAVE BEEN?

5 A. YES.

6 Q. ALL FIVE OF THESE CHILDREN Y'ALL HAD TOGETHER?

7 A. YES.

8 Q. AND BACK IN 1998, THERE WAS AN ABUSE CASE BROUGHT
9 BY D.S.S.?

10 A. YES.

11 Q. NOW WHO WAS THAT BROUGHT AGAINST?

12 A. ME.

13 Q. WAS IT BROUGHT AGAINST YOUR BOYFRIEND AT THAT TIME?

14 A. IT WAS BROUGHT AGAINST ME AT THE TIME.

15 Q. HE WAS NOT EVEN A PARTY TO THAT. AND THERE WAS A
16 FINDING IN THAT CASE AGAINST YOU?

17 A. YES.

18 Q. BUT THERE WAS NO FINDING AGAINST HIM?

19 A. NO.

20 Q. AND AS I UNDERSTAND IT, YOU AND THE OFFICER ON THE
21 NIGHT OF THE THIRD; Y'ALL RODE FROM TRIDENT MEDICAL
22 -- SUMMERVILLE MEDICAL?

23 A. YES.

24 Q. BACK OVER TO THE LAW ENFORCEMENT?

ADRIAN GADSON - CROSS-EXAMINATION

108

- 1 Q. AND HOW LONG WERE YOU TOGETHER?
- 2 A. HOW LONG WERE WE TOGETHER?
- 3 Q. YES, YOU AND DETECTIVE MARSHALL?
- 4 A. ABOUT FOUR HOURS.
- 5 Q. AND DURING THAT PERIOD OF TIME, A STATEMENT WAS --
- 6 YOU GAVE A STATEMENT?
- 7 A. YES.
- 8 Q. AND IT WAS PART RELATED TO THE NOVEMBER THIRD
- 9 TRANSACTION EVENTS. YOU STARTED OFF TALKING ABOUT
- 10 THE EVENTS OF THAT DAY?
- 11 A. YES.
- 12 Q. AND WHAT HAD HAPPENED. AND YOU WERE AT A STORE.
- 13 OKAY. AND BECAUSE YOU DIDN'T KNOW WHAT HAD
- 14 HAPPENED. BUT YOU HAD WENT HOME, AND YOU HAD A
- 15 TALK WITH MR. BURDEN, AND HE HAD TOLD YOU WHAT
- 16 HAPPENED, AND YOU RELATED IT TO DETECTIVE MARSHALL
- 17 AS GOOD AS YOU COULD?
- 18 A. YES.
- 19 Q. AND THEN YOU GOT INTO TALKING ABOUT 1988?
- 20 A. YES.
- 21 Q. WHO STARTED THAT?
- 22 A. DETECTIVE MARSHALL.
- 23 Q. YOU DIDN'T BRING UP 1988, DID YOU?
- 24 A. NO.

ADRIAN GADSON - CROSS-EXAMINATION

109

1 TRUTH? DID THE TRUTH COME OUT? DID HE ASK YOU ANY
2 QUESTIONS ABOUT 1988?

3 A. YES.

4 THE COURT: ARE YOU TALKING ABOUT '98 OR
5 '88?

6 MR. DUKES: '98.

7 THE COURT: OKAY.

8 A. DETECTIVE MARSHALL; HE ASKED ME IF I WAS AT HOME AT
9 THE TIME IN '98. AND HE SAID THAT HE DIDN'T FEEL
10 THAT I WAS TELLING THE TRUTH AT---

11 MRS. MURPHY: OBJECTION, YOUR HONOR.
12 SHE'S GETTING INTO HEARSAY.

13 THE COURT: WHAT ELSE DO YOU DO IN A
14 BATSON HEARING BUT TALK ABOUT HEARSAY? FREELY AND
15 VOLUNTARILY. WHAT YOU WERE TOLD; WHAT WAS YOUR
16 PROMISE. I MEAN, THE WHOLE THING IS ABOUT HEARSAY
17 IS FAR AS I'M CONCERNED IT'S NOT FOR THE TRUTH OF
18 THE MATTER ASSERTED. IT'S TO THE STATE OF MIND OF
19 THE---

20 THE COURT: WELL, THERE'S AN EXCEPTION,
21 ISN'T IT?

22 MR. DUKES: THAT'S RIGHT.

23 THE COURT: VERY WELL. I'LL ALLOW IT. I
24 THINK IT IS HEARSAY. I THINK THERE'S THE EXCEPTION

ADRIAN GADSON - CROSS-EXAMINATION

110

1 HEARSAY.

2 MR. DUKES: THANK YOU.

3 THE COURT: AND THAT IT COULD BE
4 CONSIDERED ADMISSION OF A PARTY OR OPPONENT. SO
5 I'LL ALLOW IT. YOU MAY PROCEED.

6 Q. SO WHAT DID THE DETECTIVE ASK?

7 A. HE ASKED IF -- WELL, HE WAS SAYING "YOU WEREN'T AT
8 HOME AT THE TIME IN 1998." AND HE SAID THAT HE
9 DIDN'T BELIEVE ME THEN.

10 Q. THAT HE DIDN'T BELIEVE YOU IN 1998?

11 A. YES.

12 Q. DID HE TELL YOU IF YOU EVER WANT YOUR CHILDREN
13 BACK, YOU'D BETTER DO WHAT?

14 A. WRITE A STATEMENT.

15 Q. SO THAT'S WHY YOU WROTE IT?

16 A. YES.

17 Q. SO YOU'RE NOT VOUCHING FOR THE ACCURACY OF THAT
18 STATEMENT BECAUSE YOU WROTE THE STATEMENT FOR
19 ANOTHER PURPOSE?

20 A. YES.

21 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

22 THE COURT: VERY WELL. YES, MA'AM, MRS.
23 MURPHY?

24 MRS. MURPHY: YOUR HONOR, MAY I SEE A

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

111

1 THE COURT: SURELY. (WITNESS REVIEWS
2 DOCUMENT.)

3 RE-DIRECT EXAMINATION

4 BY MRS. MURPHY:

5 Q. MS. GADSON, YOU SIGNED THE STATEMENT, DID YOU NOT?
6 THAT'S YOUR SIGNATURE?

7 A. YES.

8 Q. ON BOTH OF THESE PAGES?

9 A. YES.

10 Q. NOW TELL ME; WHEN YOU FIRST TESTIFIED -- I WANT TO
11 MAKE SURE I GET YOUR STORIES STRAIGHT HERE. WHEN
12 YOU FIRST TESTIFIED THAT -- WERE YOU ALLOWED THE
13 DIRECT EXAMINATION BY MR. DAVIS, HE ASKED WERE YOU
14 ALLOWED TO GO TO M.U.S.C.; AND YOU ANSWERED YES.
15 BUT THEN YOU WENT WITH DETECTIVE MARSHALL BECAUSE
16 YOU FELT YOU HAD TO TALK ABOUT THE CURRENT
17 SITUATION; IS THAT CORRECT?

18 A. YES.

19 Q. THERE'S NOTHING THAT PREVENTED YOU IF YOU HAD BEEN
20 ASKED TO GO TO M.U.S.C. TO GO TO M.U.S.C., IS
21 THERE?

22 A. IF THERE'S WHAT?

23 Q. DID ANYTHING PREVENT YOU FROM GOING TO M.U.S.C.?

24 A. DETECTIVE MARSHALL.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

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1. A. NO.

2. Q. SO DID YOU ASK DETECTIVE MARSHALL IF YOU COULD GO
3. TO M.U.S.C.?

4. A. NO, I DIDN'T.

5. Q. NOW, YOU TESTIFIED EARLIER THAT YOUR MOM PICKED YOU
6. UP AFTER YOU GAVE DETECTIVE MARSHALL A STATEMENT.

7. DID YOU THEN GO TO M.U.S.C.?

8. A. YES.

9. Q. YOU WENT THAT NIGHT---

10. A. YES.

11. Q. --TO M.U.S.C.?

12. A. YES.

13. Q. SO AT WHAT POINT DID YOU GET BACK PRIOR TO 12:30 AT
14. NIGHT TO THE HOUSE TO COLLECT STUFF FROM THE KIDS?

15. A. I WAS NOT AT HOME AT THE TIME TO COLLECT THINGS FOR
16. THE KIDS. MY MOTHER WAS GETTING THE THINGS READY
17. FOR D.S.S.

18. Q. SO AT ANY POINT THAT NIGHT, HAD THE KIDS ALREADY
19. BEEN TAKEN?

20. A. YES; BEFORE I GOT THERE.

21. Q. BEFORE YOU GOT THERE. SO YOUR TESTIMONY IS THAT
22. YOU NEVER WENT BACK TO THE HOUSE?

23. A. I NEVER WENT BACK TO THE HOUSE UNTIL AFTER I LEFT
24. FROM THE LAW ENFORCEMENT.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

113

1 A. YES.

2 Q. ALL RIGHT, NOW. YOUR MOM PICKED YOU UP; CORRECT?

3 A. YES.

4 Q. AND TELL ME A LITTLE BIT ABOUT DETECTIVE MARSHALL.
5 YOU JUST TESTIFIED THAT HE TOLD YOU -- HE INFORMED
6 YOU THAT YOUR KIDS WERE BEING PUT IN P.C.; IS THAT
7 NOT CORRECT?

8 A. YES.

9 Q. WHILE YOU WERE AT THE LAW ENFORCEMENT COMPLEX?

10 A. YES.

11 Q. AND WAS THIS BEFORE OR AFTER YOU GAVE THIS
12 STATEMENT?

13 A. I DON'T REMEMBER.

14 Q. YOU DON'T RECALL?

15 A. NO..

16 Q. BUT YOU KNEW YOUR KIDS WERE BEING TAKEN AWAY .
17 REGARDLESS?

18 A. YES; AFTER HE INFORMED ME.

19 Q. HE INFORMED YOU. AND THEN AT THAT POINT YOU DON'T
20 KNOW IF IT WAS AFTER YOU GAVE THE STATEMENT? SO IT
21 COULD HAVE BEEN AFTER YOU GAVE THE STATEMENT?

22 MR. DAVIS: ASKED AND ANSWERED. SHE SAID
23 SHE DON'T KNOW.

24 THE COURT: I'LL ALLOW IT

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

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1 Q. COULD IT HAVE BEEN AFTER YOU GAVE THE STATEMENT
2 THAT HE TOLD YOU THAT?

3 A. I'M NOT SURE.

4 Q. IT COULD HAVE OR COULDN'T HAVE. SO YOU DON'T KNOW
5 AT WHAT POINT YOU CLAIM THAT HE TOLD YOU THIS?

6 A. NO RESPONSE.

7 Q. YES? NO?

8 A. NO.

9 Q. NOW, MS. GADSON, I'M GOING TO SHOW YOU YOUR
10 STATEMENT HERE.

11 MRS. MURPHY: MAY I APPROACH THE WITNESS,
12 YOUR HONOR?

13 THE COURT: YOU MAY.

14 Q. AND ASK YOU TO READ THIS BOTTOM PORTION RIGHT HERE.
15 (INDICATING.) THIS RIGHT HERE. (INDICATING.)

16 A. RIGHT HERE? (INDICATING.)

17 Q. YES, MA'AM?

18 A. I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT
19 READ TO ME, AND IT IS TRUE AND CORRECT TO THE BEST
20 OF MY KNOWLEDGE. I HAVE GIVEN THE STATEMENT FREELY
21 AND VOLUNTARY AND HAVE BEEN PROVIDED A COPY OF MY
22 STATEMENT.

23 Q. AND IS THIS SECOND PAGE; IS THAT YOUR SIGNATURE
24 THERE AT THE BOTTOM?

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

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1 Q. AND IT SAYS YOU HAVE READ THAT AND IT IS FREE AND
2 VOLUNTARY. IS THAT NOT WHAT YOU JUST READ?

3 A. I DIDN'T READ THAT PART.

4 Q. SO YOU JUST SIGNED THE STATEMENT WITHOUT READING
5 IT?

6 A. (NO RESPONSE.)

7 Q. IS THIS YOUR HANDWRITING? (INDICATING.)

8 A. YES.

9 Q. AND YOU SIGNED BOTH OF THESE PAGES?

10 A. YES.

11 Q. AND YOU'RE TELLING THE COURT NOW THAT YOU DIDN'T
12 READ ANY OF THIS BEFORE YOU SIGNED IT?

13 A. I'M TALKING ABOUT THIS PART RIGHT HERE.

14 (INDICATING.) I'M NOT TALKING ABOUT---

15 THE COURT: KEEP YOUR VOICE UP SO WE CAN
16 HEAR YOU, PLEASE, MA'AM.

17 MR. DAVIS: TALK UP, SWEETHEART.

18 A. I DIDN'T READ THE BOTTOM PART. I WAS NOT TALKING
19 ABOUT MY STATEMENT.

20 Q. YOU DIDN'T READ THE BOTTOM PART WHERE IT IS FREE
21 AND VOLUNTARY?

22 A. YES.

23 Q. SO TELL ME WHICH PART DETECTIVE MARSHALL -- WHICH
24 PART DID HE FORCE YOU TO WRITE?

25 A. AFTER I WROTE THE STATEMENT ---

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

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1 THIRD, THEN HE TOLD ME TO WRITE ABOUT THE EIGHTH.

2 Q. AND HE FORCED YOU TO WRITE THOSE EXACT WORDS?

3 A. IF I WANTED MY KIDS BACK.

4 Q. NOW -- SO YOU'RE TELLING THE COURT NOW THAT YOU
5 WERE HOME IN 1998 WHEN THE CHILD'S LEG WAS BROKEN.

6 IS THAT YOUR TESTIMONY UNDER OATH HERE TODAY?

7 A. NO.

8 Q. SO THIS IS TRUE? WHAT THE STATEMENT SAYS IS TRUE?

9 A. YES.

10 Q. SO IT'S THE TRUTH?

11 A. YES.

12 Q. THAT YOU WERE NOT HOME IN 1998?

13 A. YES.

14 Q. AND IS IT TRUE THAT HE TOLD YOU THAT THE DEFENDANT
15 BURDEN WAS THERE BY HIMSELF IN 1998?

16 A. YES.

17 Q. AND THAT HE HAD SPANKED THE CHILD IN 1998?

18 A. YES. I WAS TELLING DETECTIVE MARSHALL THAT HE SAID
19 HE SPANKED THE CHILD. BUT I -- HE KEPT ASKING ME
20 IF HE SPANKED THE CHILD ON THE LEG.

21 Q. YOU HAD ALREADY TOLD HIM YOU WEREN'T THERE;
22 CORRECT?

23 A. YES.

24 Q. BUT YOU TOLD HIM THAT HE ADMITTED TO YOU THAT HE
-- SPANKED THE CHILD?

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

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- 1 A. YES.
- 2 Q. SO ALL OF THAT IS TRUE?
- 3 A. YES.
- 4 Q. BUT YOU'RE FORCING -- YOU'RE BASICALLY SAYING HE'S
- 5 FORCING TO TELL A PORTION OF THIS -- OR HE'S
- 6 FORCING YOU TO TELL THE LAST PORTION? OR WHICH
- 7 PORTION IS HE FORCING YOU TO DO?
- 8 A. BASICALLY HE'S FORCING ME ABOUT THE WHOLE THING.
- 9 Q. WERE YOU IN HANDCUFFS?
- 10 A. NO.
- 11 Q. WAS THE DOOR CLOSED?
- 12 A. IT WAS OPEN.
- 13 Q. AND YOU WERE ACTUALLY ALLOWED TO LEAVE RIGHT AFTER
- 14 THAT, WERE YOU NOT?
- 15 A. BUT HE DIDN'T LET ME KNOW THAT I COULD LEAVE OR
- 16 ANYTHING.
- 17 Q. DID YOU ASK HIM TO LEAVE?
- 18 A. NO.
- 19 Q. YOU DIDN'T ASK TO LEAVE; THE DOOR WAS OPEN; AND YOU
- 20 WERE ALLOWED TO LEAVE AFTER THAT?
- 21 A. YES.
- 22 Q. AND THIS IS YOUR OWN HANDWRITING?
- 23 A. YES.
- 24 Q. AND YOU'RE STATING IT'S THE TRUTH?
- 25 A. YES.

ADRIAN GADSON - RE-CROSS/MR. DAVIS

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1 THE COURT: ANYTHING FURTHER?

2 MRS. MURPHY: NOTHING FURTHER, YOUR

3 HONOR.

4 MR. DAVIS: JUST ONE, YOUR HONOR.

5 RE-CROSS EXAMINATION

6 BY MR. DAVIS:

7 Q. DID YOU NOTICE ON THIS STATEMENT ALSO, IT HAS A
8 SPOT ON HERE FOR TWO WITNESSES. SO I'M ASKING WAS
9 ANYBODY ELSE PRESENT WHEN YOU WERE GIVING THIS
10 STATEMENT IN THAT ROOM OTHER THAN YOU AND DETECTIVE
11 MARSHALL?

12 A. NO.

13 Q. WERE YOU ADVISED THAT THEY HAD THE RECORDING
14 CAPABILITIES THAT ACTUALLY COULD RECORD THE
15 WHOLE---

16 MR. DAVIS: OBJECTION, YOUR HONOR. HE'S
17 LEADING THE WITNESS.

18 Q. WERE YOU PROVIDED A COPY OF ANY RECORDINGS?

19 A. NO.

20 Q. WHEN YOU SIGNED THIS, WHO IS THE WITNESSES NAME
21 LISTED ON THERE?

22 A. DETECTIVE MARSHALL.

23 Q. ANYBODY ELSE WITNESS IT BUT DETECTIVE MARSHALL?

24 A. NO, SIR.

25 Q. NO FURTHER QUESTIONS.

ADRIAN GADSON - RE-DIRECT/MR. DUKES

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1 THE COURT: ALL RIGHT. MR. DUKES,
2 ANYTHING FURTHER?

3 MR. DUKES: YES, MA'AM.

4 RE-DIRECT EXAMINATION

5 BY MR. DUKES:

6 Q. DO YOU THINK MY CLIENT BROKE YOUR CHILD'S LEG IN
7 1998?

8 A. I'M NOT SURE.

9 Q. BUT YOU WROTE IT THAT NIGHT, DIDN'T YOU?

10 A. YES.

11 Q. AND YOU WROTE IT THAT NIGHT FOR WHAT REASON?

12 A. DETECTIVE MARSHALL.

13 Q. AND YOU WANTED TO GET YOUR CHILDREN BACK?

14 A. YES.

15 Q. AND THAT'S THE ONLY WAY YOU THOUGHT YOU COULD DO
16 IT?

17 A. YES.

18 Q. THANK YOU.

19 THE COURT: ALL RIGHT.

20 MR. DAVIS: YOU CAN STEP ON DOWN.

21 THE COURT: MRS. MURPHY, YOU HAVE NOTHING
22 FURTHER?

23 MRS. MURPHY: NOTHING FURTHER.

24 THE COURT: VERY WELL. YOU CAN COME ON
25 DOWN.

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 MR. DAVIS: THAT WOULD BE MY SHOWING.

2 THE COURT: VERY WELL. ALL RIGHT, MR.

3 DUKES?

4 MR. DUKES: I WOULD CALL MY CLIENT.

5 THE COURT: ALL RIGHT. COME AROUND,

6 PLEASE.

7 -----

8 WHEREUPON,

9 WILLIAM DEAN BURDEN, WHO AFTER BEING

10 FIRST DULY SWORN TO TELL THE TRUTH,

11 TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. DUKES:

14 Q. YOUR NAME IS WILLIAM BURDEN?

15 A. WILLIAM DEAN BURDEN; YES, SIR.

16 Q. AND YOU ARE HOW OLD, SIR?

17 A. I'M 31 YEARS OLD.

18 Q. AND HOW FAR DID YOU GO IN SCHOOL?

19 A. I WENT TO THE NINTH GRADE; AND I OBTAINED MY G.E.D.

20 Q. OKAY. AND ON NOVEMBER THE THIRD, THIS PAST YEAR,

21 WERE YOU AT -- WHAT IS IT; PIGEON BAY?

22 A. AT 240 PIGEON BAY ROAD.

23 Q. AND YOU'RE THE CARE TAKER OF FIVE CHILDREN?

24 A. YES, SIR.

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 A. YES, SIR.

2 Q. SHE AND HER MOTHER WENT SHOPPING?

3 A. YES, SIR.

4 Q. AND SOMETHING HAPPENED WITH ONE OF THE CHILDREN?

5 A. YES, SIR.

6 Q. OKAY. AFTER THAT, THERE'S A DEPUTY BOLTEN WHO CAME
7 TO YOUR HOUSE?

8 A. YES, SIR.

9 Q. ALL RIGHT. DID HE ASK YOU ANY QUESTIONS?

10 A. WHEN DEPUTY BOTTEN FIRST CAME, HE WAS JUST PARKED
11 OUT MY HOUSE, HIM AND ABOUT THREE OTHER OFFICERS.
12 AND THEY CAME IN ABOUT THREE CARS. AND HE JUST SAT
13 AROUND. AND HE DIDN'T ASK ME ANY QUESTIONS WHEN HE
14 INITIALLY CAME.

15 Q. OKAY. DID HE EVENTUALLY ASK YOU ANY QUESTIONS?

16 A. YES, SIR, HE DID.

17 Q. DID HE ASK YOU TO SIGN A STATEMENT?

18 A. YES, SIR. HE ASKED ME TO GIVE A STATEMENT ON WHAT
19 HAPPENED.

20 Q. AND YOU GAVE A STATEMENT?

21 A. YES, SIR.

22 Q. PRIOR TO THAT DID HE GIVE YOU YOUR MIRANDA RIGHTS
23 THAT HE WANTED TO TELL YOU YOU DIDN'T HAVE TO DO
24 ONE?

25 A. PRIOR TO THAT HE DID

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 Q. ALL RIGHT. BUT I DON'T THINK HE TOLD YOU YOU WAS
2 UNDER ARREST OR ANYTHING, DID HE?

3 A. NO, SIR, HE DIDN'T.

4 Q. OKAY. LATER ON, YOU WERE TAKEN TO THE L.E.C.?

5 A. YES, SIR.

6 Q. AND AT THAT TIME WERE YOU APPROACHED AGAIN BY LAW
7 ENFORCEMENT?

8 A. YES, SIR. I WAS APPROACHED BY DETECTIVE THOMAS
9 MARSHALL AND DETECTIVE QUINTON JOYNER.

10 Q. OKAY. AND WHAT DID THEY ASK FOR?

11 A. THEY ASKED ME TO GIVE A STATEMENT.

12 Q. AND DID YOU GIVE A STATEMENT?

13 A. NO, SIR. I TOLD HIM THEM THAT I HAD PREVIOUSLY
14 GIVEN A STATEMENT TO OFFICER BOLTEN, AND THAT IF HE
15 NEEDED ANY INFORMATION THAT HE COULD GET IT FROM MY
16 STATEMENT.

17 Q. YOU WERE GOING TO STAND BY THAT STATEMENT?

18 A. YES, SIR.

19 Q. AND I THINK YOU EVEN SIGNED ON THAT YOU WEREN'T
20 GOING TO GIVE A STATEMENT WITHOUT AN ATTORNEY
21 PRESENT?

22 A. YES, SIR, I DID.

23 Q. AND YOU WERE LET GO BACK HOME THAT NIGHT AFTER
24 THAT?

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

123

1 Q. AND A COUPLE OF DAYS LATER YOU WENT TO FAMILY
2 COURT?

3 A. YES.

4 Q. FOR A FAMILY COURT HEARING?

5 A. YES, SIR, I DID.

6 Q. AND AFTER THE FAMILY COURT HEARING, YOU WERE TAKEN
7 OUTSIDE?

8 A. YES, SIR.

9 Q. BY DETECTIVE MARSHALL?

10 A. I WAS APPROACHED BY DETECTIVE MARSHALL AND THREE
11 OTHER DEPUTIES.

12 Q. THREE OTHER DEPUTIES? WAS IT DEPUTY BOTTEN?

13 A. I DON'T RECALL SEEING DETECTIVE BOTTEN -- EXCUSE
14 ME; OFFICER BOTTEN.

15 Q. YOU DON'T RECALL SEEING HIM?

16 A. NO, SIR.

17 Q. ALL RIGHT. MARSHALL AND THE THREE OTHER OFFICERS
18 TOOK YOU OVER TO THE L.E.C.?

19 A. YES, SIR.

20 Q. AND WHAT TRANSPIRED THERE, SIR?

21 A. WHEN I WALKED FROM THE COURTROOM TO THE L.E.C.,
22 DETECTIVE THOMAS MARSHALL SAID TO ME "YOU KNEW THAT
23 YOU WERE GOING TO BE ARRESTED." AND I RESPONDED TO
24 HIM YES, BECAUSE I HAD AN OUTSTANDING CHILD SUPPORT

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 TOLD ME THAT I WAS BEING CHARGED WITH UNLAWFUL
2 NEGLECT BY A LEGAL CUSTODIAN.

3 Q. OKAY. AND DID HE READ YOUR MIRANDA WARNINGS THEN?

4 A. NO, SIR, HE DID NOT.

5 Q. WHAT HAPPENED AFTER THAT, SIR?

6 A. THAT'S WHEN WE WERE INSIDE THE BOOKING DEPARTMENT
7 OF THE JAIL. AND HE TOOK ME THROUGH THE WARRANT
8 PROCEDURE. AND AFTER I WENT THROUGH THE WARRANT
9 PROCEDURE AND WAS BEING ARRESTED, HE TOOK ME TO THE
10 LOCK-UP. AND THAT'S WHEN HE INQUIRED OF ME DID I
11 WANT TO SPEAK WITH HIM. AND I DID SAY TO HIM THAT
12 I WASN'T SURE IF I WANTED TO SPEAK TO HIM NOW.

13 Q. DID YOU SAY ANYTHING FURTHER?

14 A. NO, SIR.

15 Q. DID YOU SAY "I GOT CARRIED AWAY AND HIT HIM IN THE
16 CHEST?"

17 A. NO, SIR.

18 Q. DID YOU SAY "I PANICKED?"

19 A. NO, SIR.

20 Q. WAS ANYBODY ELSE PRESENT WHEN THAT STATEMENT WAS
21 MADE?

22 A. NO, SIR. IT WAS JUST ME AND DETECTIVE MARSHALL.

23 Q. NOT THE DEPUTY?

24 A. NO, SIR, BECAUSE ONCE I WAS INSIDE THE BOOKING

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 MARSHALL.

2 Q. ARE YOU SURE OF THAT?

3 A. POSITIVE.

4 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE. YOU
5 MIGHT ANSWER QUESTIONS OTHER COUNSEL MIGHT HAVE.

6 THE COURT: ALL RIGHT. MR. DAVIS?

7 MR. DAVIS: MR. DAVIS; NO QUESTIONS. ALL
8 RIGHT, MRS. MURPHY; CROSS-EXAMINATION?

9 MRS. MURPHY: THANK YOU, YOUR HONOR.

10 CROSS-EXAMINATION

11 BY MRS. MURPHY:

12 Q. MR. BURDEN, YOUR TESTIMONY NOW IS THAT DETECTIVE
13 MARSHALL DID NOT READ YOU YOUR RIGHTS UPON ARREST?

14 A. THAT WAS ALWAYS MY TESTIMONY BECAUSE HE DID NOT
15 READ ME MY MIRANDA RIGHTS; NO, MA'AM.

16 Q. HE DID READ THEM TO YOU ON NOVEMBER THE THIRD?

17 A. YES.

18 Q. AND YOU WENT THROUGH, AND YOU INITIALED ON THAT
19 MIRANDA FORM. WOULD YOU LIKE TO LOOK AT IT?

20 A. OH, NO; I RECALL.

21 Q. YOU RECALL DOING THAT?

22 A. YES.

23 Q. SO HE DID GO THROUGH EACH AND EVERY ONE OF THOSE
24 RIGHTS ON THE MIRANDA FORM?

25 A. YES, MA'AM, HE DID.

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 Q. AND YOU UNDERSTOOD THAT YOU DID NOT HAVE TO TALK TO
2 HIM. AS A MATTER OF FACT, YOU INVOKED YOUR RIGHTS
3 NOT TO TALK?

4 A. YES, I DID.

5 Q. AND, SO, THERE WAS NO QUESTION IN YOUR MIND THAT
6 YOU DIDN'T HAVE TO TALK?

7 A. EXACTLY.

8 Q. AND WERE YOU READ YOUR RIGHTS BY JUDGE MCLIN IN
9 FAMILY COURT?

10 A. NO. ACTUALLY WE DIDN'T EVEN GO BEFORE
11 JUDGE MCLIN. WE WENT BEFORE JUDGE WILLIAM
12 WYLIE.

13 Q. WERE YOU READ YOUR RIGHTS IN FAMILY COURT?

14 A. YES.

15 Q. AND THAT WAS ON THE SAME DAY?

16 A. OF THE PLACEMENT HEARING; YES, MA'AM.

17 Q. DID YOU KNOW DEPUTY BOTTEN FROM BEFORE?

18 A. WELL, I KNEW OF HIM. BUT, NO, I DIDN'T KNOW
19 HIM.

20 Q. YOU DIDN'T KNOW HIM?

21 A. NO, MA'AM.

22 Q. BUT YOUR TESTIMONY HERE TODAY IS THAT HE WAS NOT
23 PRESENT WHEN DETECTIVE MARSHALL READ YOU YOUR
24 RIGHTS AGAIN WHEN YOU WERE ARRESTED?

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 Q. YOUR TESTIMONY HERE TODAY IS THAT DEPUTY BOTTEN
2 WAS NOT PRESENT WHEN YOU WERE READ YOUR RIGHTS
3 AGAIN?

4 A. YES, MA'AM.

5 Q. AND DETECTIVE MARSHALL NEVER READ YOU YOUR RIGHTS?

6 A. NO, MA'AM.

7 Q. IS WHAT YOU'RE SAYING HERE TODAY?

8 A. YES, MA'AM.

9 Q. SO BASICALLY THEY JUST ARRESTED YOU WITHOUT READING
10 YOU YOUR RIGHTS?

11 A. YES, MA'AM.

12 Q. AND BOTH OF THESE OFFICERS WERE MISTAKEN?

13 A. WELL, AS I INITIALLY TOLD YOU, OFFICER BOTTEN
14 WASN'T THERE; SO, YES.

15 Q. NOW THE FIRST STATEMENT, YOU HAVE NO PROBLEM WITH
16 THAT ONE?

17 A. OH, NO, MA'AM.

18 Q. YOU GAVE THAT FREELY, VOLUNTARILY, AND---

19 A. YES, MA'AM.

20 Q. --YOU COOPERATED; AND YOU WERE HAPPY TO GIVE THAT
21 STATEMENT?

22 A. I COOPERATED FULLY; YES.

23 Q. NO FURTHER QUESTIONS.

24 THE COURT: VERY WELL.

25 MR. DAVIS: ONE QUESTION. YOUR HONOR

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

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1 THE COURT: OKAY.

2 MR. DAVIS: I PROMISE IT WILL BE SHORT.

3 RE-DIRECT EXAMINATION

4 BY MR. DAVIS:

5 Q. ON NOVEMBER THE THIRD, DID YOU GO TO THE
6 SUMMERVILLE LAW ENFORCEMENT CENTER?

7 A. YES, SIR.

8 Q. WHAT TIME DID YOU ARRIVE?

9 A. WE HAD A PLACEMENT HEARING FOR THE CHILDREN AT TWO
10 O'CLOCK; SO ABOUT 1:45.

11 Q. WAS ADRIAN GASTON STILL PRESENT WHEN YOU GOT THERE?

12 A. YES, SIR.

13 Q. AT WHAT TIME?

14 A. 1:45.

15 Q. OKAY. NO FURTHER QUESTIONS.

16 THE COURT: VERY WELL. ANY RE-DIRECT?

17 MR. DUKES: NO, MA'AM

18 THE COURT: VERY WELL. YOU MAY COME
19 DOWN. CALL YOUR NEXT WITNESS, PLEASE.

20 MR. DUKES: I HAVE NO FURTHER WITNESSES.

21 THE COURT: VERY WELL. WOULD THERE BE
22 ANY REPLY?

23 MRS. MURPHY: NO, MA'AM.

24 THE COURT: VERY WELL. ALL RIGHT. I'VE
25 HAD AN OPPORTUNITY, OF COURSE, NOW TO HEAR THE

MOTIONS

129

1 TESTIMONY IN THE JACKSON VS. DINNO HEARING. AND I
2 AM HAPPY TO HEAR FROM YOU. YES, MA'AM, MRS.
3 MURPHY.

4 MRS. MURPHY: YOUR HONOR, IN REGARDS TO
5 MS. GADSON'S STATEMENT, DETECTIVE MARSHALL
6 TESTIFIED THAT SHE WAS NOT IN CUSTODY. THE
7 DEFENDANT HERSELF TESTIFIED THAT THE DOOR WAS
8 OPEN. SHE WAS ALLOWED TO LEAVE SHORTLY
9 THEREAFTER. AND SHE TESTIFIED THAT EVERYTHING IN
10 THE STATEMENT IS TRUE. THE ONLY -- SHE'S OBVIOUSLY
11 NOT A SUBJECT OF THE CURRENT INVESTIGATION AT THE
12 TIME BECAUSE WHAT DETECTIVE MARSHALL WAS
13 INVESTIGATING AT THE TIME WAS THE NOVEMBER THIRD
14 INCIDENT AND THAT'S WHAT SHE WAS THERE TO TALK
15 ABOUT. HE TESTIFIED HE DID NOT MAKE HER ANY
16 PROMISES. AND BASED UPON THAT, YOUR HONOR, WE FEEL
17 THAT HER STATEMENT SHOULD BE ADMISSIBLE BECAUSE
18 IT'S NOT CUSTODIAL IN NATURE AND SHE WASN'T EVEN A
19 SUSPECT AT THE TIME. SHE IMPLICATED HERSELF BY
20 BLAMING THE DEFENDANT FOR THE 1998 LEG FRACTURE.
21 AS FAR AS MR. BURDEN IS CONCERNED, BY HIS OWN
22 ADMISSION, THE FIRST STATEMENT IS VOLUNTARILY AND
23 FREELY GIVEN. HE WAS NOT IN CUSTODY. IT'S
24 ACTUALLY EXCULPATORY IN NATURE, HIS STATEMENT; AND
25 HE SAYS HE STILL STANDS BY IT. THE SECOND

MOTIONS

130

1 STATEMENT, YOUR HONOR; YOU'VE GOT TWO LAW
2 ENFORCEMENT OFFICERS TESTIFYING. AND THEY WERE
3 THERE. HE'S OBVIOUSLY UNDERSTOOD HIS RIGHTS PRIOR
4 TO GIVING -- BLURTING OUT THAT HE LOST IT. BOTH
5 OFFICERS RECALL THE STATEMENT. THEY WERE BOTH
6 THERE. DETECTIVE MARSHALL TESTIFIED THAT HE DID IN
7 FACT WITNESS THE JUDGE GIVING HIM HIS RIGHTS AFTER
8 HE HAD BEEN GIVEN THE RIGHTS ON NOVEMBER THE
9 THIRD. PLUS HE READ HIM HIS RIGHTS AGAIN ON
10 NOVEMBER THE SIXTH. DEPUTY BOTTEN CONFIRMED THAT,
11 THAT HE WAS THERE, HE WAS PRESENT WHEN BOTH OF
12 THOSE RIGHTS WERE GIVEN TO THE DEFENDANT, AND THAT
13 THE DEFENDANT DID BLURT THAT OUT. BASED UPON THE
14 EVIDENCE PRESENTED, YOUR HONOR, WE FEEL THAT BOTH
15 STATEMENTS OF THE DEFENDANT, BURDEN, SHOULD COME IN
16 AS WELL AS ADRIAN GADSON'S STATEMENT.

17 THE COURT: VERY WELL. THANK YOU SO
18 MUCH. LET ME HEAR FIRST FROM MR. DUKES.

19 MR. DUKES: YOUR HONOR, I WOULD OBJECT TO
20 MS. GADSON'S STATEMENT.

21 THE COURT: ALL RIGHT.

22 MR. DUKES: AS TO THE FACT THAT MAYBE
23 WHAT SHE SAID AS TO A PRESENT INCIDENT ON NOVEMBER
24 THE 30TH WOULD BE INVESTIGATORY. WHAT SHE SAID AS

MOTIONS

131

1 CASE. MY PARTY WAS NOT EVEN -- HE WAS NOT EVEN A
2 PARTY TO THAT. AND HE'S GETTING HER TO TELL A
3 DIFFERENT STORY THAN THE FINDINGS OF THAT CASE AND
4 ALL. I JUST DON'T SEE WHERE THIS HAS ANY PROBATIVE
5 VALUE EXCEPT TO PREJUDICE MY CLIENT'S CASE. IT'S
6 RELATING TO AN OLD CASE. IT HAS NOTHING TO DO WITH
7 THE INVESTIGATION, AND THEY'RE WORKING ON AT THIS
8 DATE AND TIME. AND IF A LITTLE BIT OF REASONABLE
9 TO THINKING ABOUT IT; WHY WOULD HE BE TALKING WITH
10 HER ABOUT IF HE DIDN'T BELIEVE FINDINGS FOR THE
11 FIRST TIME? SHE IS CERTAINLY OVER A TRAP. THEY
12 GOT HER CHILDREN THIS TIME. IF YOU EVER WANT TO
13 GET THEM BACK, YOU'D BETTER GET SOME OF THE
14 RESPONSIBILITY OFF YOU. YOU'VE ALREADY BEEN
15 FOUND. YOU'RE ALREADY ON THE CENTRAL REGISTER.
16 HE'S NOT; PUT IT ON HIM. AND I JUST DON'T THINK
17 THAT THAT'S FREELY AND VOLUNTARILY. AND I THINK
18 FROM THE WAY SHE TESTIFIED ON THE WITNESS STAND IT
19 WASN'T FREELY AND VOLUNTARILY. NOW AS TO MY
20 CLIENT'S STATEMENT, THE FIRST ONE; HE MADE IT. HE
21 WASN'T ARRESTED THEN. HE TOLD THE TRUTH AND SIGNED
22 IT. HE WENT TO A LAW ENFORCEMENT CENTER AND
23 DECIDED THAT HE HAD ALREADY TOLD WHAT HE KNEW. SO
24 HE DIDN'T MAKE ANOTHER STATEMENT. AS TO THAT THIRD

MOTIONS

132

1 HE SAID "I PANICKED" OR SOMETHING LIKE THAT. AND
2 THEN WHAT DETECTIVE MARSHALL SAID; HE SAID HE HIT
3 HIM IN THE CHEST SEVERAL TIMES WITH A SHOE. I
4 MEAN, IF HE WAS PRESENT, THEY CERTAINLY HEARD TWO
5 DIFFERENT STATEMENTS. MY CLIENT SAYS OFFICER
6 BOTTEN WASN'T PRESENT. HE DID INDICATE THAT HE
7 MIGHT WOULD HAVE TALKED WITH HIM; BUT THAT'S ALL HE
8 SAID. AND I ADMIT THAT THAT WAS SUFFICIENT TO
9 WITHHOLD THAT FROM THE JURY ALSO.

10 THE COURT: THANK YOU SO MUCH, MR. DUKES.
11 MR. DAVIS?

12 MR. DAVIS: JUDGE, I JUST WANT TO BRIEFLY
13 SAY TO YOUR HONOR; I SHARE WITH MY CLIENT THE STORY
14 OF SOLOMON AND THE MOTHER WITH THE TWO CHILDREN AND
15 ONE MOTHER SLEEPING ON THE CHILD TO THE EXTENT THAT
16 HE SUFFOCATED THE CHILD. AND THEN THE DECISION WAS
17 MADE WHETHER THEY WERE GOING TO CUT THE BABY IN
18 HALF. AND TRUE MOTHER STOOD UP AND SAID IN
19 REFERENCE TO DOING THAT, I WOULD ASK THAT YOU GIVE
20 THE CHILD TO THE OTHER MOTHER. JUDGE; I SAY THAT
21 TO SAY THIS: THE ONLY REASON MY CLIENT IS INDICTED
22 IN THIS COURTROOM IS BECAUSE DETECTIVE MARSHALL
23 KNEW IT WAS CRITICAL FOR HER TO SAY AND HAVE
24 KNOWLEDGE ABOUT THE 1998 CASE. THAT'S IT! THAT'S

THE ONLY REASON IN RELATIONSHIP TO THIS STATUTE

MOTIONS

133

1 UNLAWFUL NEGLIGENCE BY LEGAL CUSTODIAN, THAT IF SHE
2 KNEW IN 1998 THAT THE LEG FRACTURE WAS CAUSED BY
3 MR. BURDEN; THEN SHE SHOULD HAVE MADE SURE THAT
4 THAT CHILD WAS NOT LEFT IN THE CUSTODY OF MR.
5 BURDEN.

6 AND, SO, WHEN YOU LOOK AT THIS
7 STATEMENT, IT MAY HAVE ALL APPEARANCES OF BEING
8 INNOCENT. BUT IN REALITY, THAT STATEMENT IS THE
9 CRUX OF THE MATTER HERE. IT'S THE CRUX OF THE
10 MATTER, YOUR HONOR, BECAUSE AS YOU LOOK AT IT FROM
11 THIS STANDPOINT, IF THIS STATEMENT IS NOT MADE,
12 THERE IS NO QUESTION THAT MS. GADSON IS NOT AT HOME
13 WHEN THIS INCIDENT TOOK PLACE. AND, SO, INSTEAD OF
14 HER BEING WHAT A MOTHER SHOULD BE, AT M.U.S.C.
15 WHERE ALL THESE ALLEGATIONS THAT THE SOLICITOR HAS
16 PUT FORTH THAT'S SO WRONG WITH THIS CHILD THAT
17 THEY'VE GOT DETECTIVE JOYNER ON THE OUTSIDE OF THE
18 EMERGENCY ROOM AT M.U.S.C., IT SADDENS ME THAT THE
19 MOTHER OF THIS CHILD WHO HAS NEVER, NEVER, YOUR
20 HONOR, BEEN ACCUSED OR CHARGED WITH ANY CRIMINAL
21 OFFENSE IN THIS MATTER FROM 1998. THIS YOUNG LADY
22 PLED, OR WENT ON THE NATIONAL REGISTER ON MY ADVICE
23 IN REFERENCE TO THREAT OF HARM, BECAUSE THE REALITY
24 IS SOMETIMES -- THEY DON'T HAVE AN ALFORD OR ALFORD

MOTIONS

134

1 BUT IF WE HAD IT, THAT WOULD HAVE BEEN THE SUBTOTAL
2 OF WHAT SHE DID TO THIS THREAT OF HARM BACK IN
3 1998. BUT THE QUESTION REMAINS, YOUR HONOR; THIS
4 YOUNG LADY FROM EIGHT O'CLOCK UP TO 12:30, AS LATE
5 AS 1:45, IS STILL AT THE SUMMERVILLE POLICE
6 DEPARTMENT. I DON'T CARE IF SHE DIDN'T HAVE
7 TRANSPORTATION TO GO. SHE SHOULD HAVE BEEN
8 AFFORDED THE OPPORTUNITY TO GO IN THE MEDIVACCED
9 (PHONETICALLY SPELLED) WITH A CHILD WHO IS GOING TO
10 M.U.S.C. BUT SHE WAS NOT. INSTEAD SHE WAS IN
11 DETECTIVE MARSHALL'S VEHICLE. YOU KNOW, JUDGE,
12 IT'S SAD. IF WE WERE LIVING IN A PERFECT WORLD, WE
13 PROBABLY WOULDN'T BE HERE. BUT WE'RE NOT. WE'RE
14 NOT LIVING IN A PERFECT WORLD. AND I'M TELLING YOU
15 THAT IF YOU VIEW THIS TESTIMONY, YOUR HONOR, IT'S
16 CRITICAL. FROM EIGHT O'CLOCK UNTIL 12:30 OR 1:00,
17 THAT'S WHY I PUT THAT TIME LAG. THAT WAS MY WHOLE
18 PURPOSE FOR THE TIME LAG. ANY MOTHER WORTH ITS
19 SALT SHOULD HAVE BEEN AT M.U.S.C. WITH THIS CHILD.
20 BUT ANY MOTHER THAT HAS ANY CONSIDERATION OF EVER
21 SEEING THE CHILD AGAIN, MIND ME, JUST THIS ONE
22 PARTICULAR CHILD, WILL BE MORE THAN HAPPY TO TELL
23 DETECTIVE MARSHALL THAT BACK IN 1998; YES, I KNEW
24 THAT THAT LEG WAS BROKEN. NOW THEY WANT TO GET ALL

MOTIONS

135

1 POINT OF THE MATTER, YOUR HONOR, WE'RE TALKING
2 ABOUT COERCION. WE'RE TALKING ABOUT UNDUE
3 INFLUENCE.

4 THE COURT: MR. DAVIS; I'M LISTENING TO
5 YOU. WATCH THE MICROPHONE. YOU AND I BOTH HAVE
6 GOT SOME VOLUME TO OUR VOICES, AND WE'VE GOT JURORS
7 OUTSIDE THE DOOR.

8 MR. DAVIS: OH, WE DO?

9 THE COURT: AND I JUST NOTICED -- AND I
10 JUST WANTED YOU TO WATCH YOUR VOLUME BECAUSE THEY
11 ARE WATCHING YOU.

12 MR. DAVIS: OKAY, JUDGE. JUDGE, THAT
13 GOES WITHOUT QUESTION OF ME. JUDGE, WHY I'M SO
14 ADAMANT ABOUT THIS; I KNOW I'M NOT ARGUING IN FRONT
15 OF A JURY; I'M ARGUING IN FRONT OF YOU, YOUR HONOR.
16 BUT WHY I'M SO ADAMANT ABOUT IT BECAUSE, JUDGE, I
17 WAS INVOLVED IN 1998. I WAS INVOLVED IN THE FAMILY
18 COURT MATTER IN 1998. AM I HAPPY WITH ADRIAN
19 GADSON, THE RELATIONSHIP WITH HER AND HER
20 RELATIONSHIP WITH MR. BURDEN? TO SOME EXTENT, I
21 QUESTION IT. BUT I KNOW ONE THING. THEY'VE GOT
22 FIVE KIDS TOGETHER, AND THERE'S NEVER BEEN ANY
23 ALLEGATION OF ANY ABUSE TO ANY OF THOSE CHILDREN
24 EXCEPT THIS ONE CHILD THAT WAS A TWIN. AND, JUDGE,
25 I TAKE THE POSITION THAT I CAN THINK OF NO OTHER

MOTIONS

136

1 PRESSURE PUT ON A MOTHER THAN BEING AT THE LAW
2 ENFORCEMENT CENTER WITH DETECTIVE MARSHALL WHO IS
3 DISSATISFIED WITH THE FIRST RESULTS IN THE FIRST
4 CASE SAYING -- AND HE MADE THIS STATEMENT ON DIRECT
5 EXAMINATION. "I WAS NOT PRESENT WHEN THAT CASE WAS
6 WAS DISPOSED OF IN FAMILY COURT." JUDGE, THE ONLY
7 REASON THAT THAT'S SUGGESTED TO YOU IS THAT IF I
8 WAS PRESENT, THERE MAY HAVE BEEN A DIFFERENT
9 OUTCOME. IT WASN'T MY CLIENT'S FAULT THAT HE
10 WASN'T PRESENT IN 1998. BUT THE POINT REMAINED
11 THAT WHEN DETECTIVE MARSHALL HAD ANOTHER
12 OPPORTUNITY TO INVOLVE HIMSELF IN THIS MATTER, HE
13 AVAILED HIMSELF IN SUCH A MANNER TO GET THIS
14 STATEMENT. AND THIS STATEMENT IS CRITICAL. THIS
15 STATEMENT IS CRITICAL IN THE SENSE BECAUSE IF WE DO
16 NOT HAVE THIS STATEMENT, WE'RE NOT IN FRONT OF YOU
17 THIS AFTERNOON, YOUR HONOR. AND, SO, IT'S MY
18 POSITION THAT THIS STATEMENT SHOULD NOT BE
19 ALLOWED. AND THERE'S NO QUESTION THAT SHE WAS
20 COERCED AND HAD UNDUE INFLUENCE. BUT SHE'S GOT A
21 CHILD FLYING IN A HELICOPTER, GOING TO M.U.S.C.,
22 NOT KNOWING WHAT THE CONDITION IS GOING TO BE, AND
23 BEING REQUIRED TO STAY THERE FOR OVER 24 HOURS. I
24 CAN'T THINK OF ANY GREATER SITUATION, YOUR HONOR.

MOTIONS

137

1 OF NO GREATER SITUATION THAN YOU NOT TO ALLOW THIS
2 STATEMENT IN BECAUSE THAT'S THE CRUX OF THE CASE.
3 THAT'S IT. YOU TAKE THAT AWAY AND THERE'S NO CASE,
4 YOUR HONOR. I ASK YOU VEHEMENTLY TO DENY THE STATE
5 THE IMPOSITION OF THIS STATEMENT IN THIS CASE, YOUR
6 HONOR.

7 THE COURT: THANK YOU SO MUCH, MR. DAVIS.
8 ALL RIGHT. LET ME HANDLE EACH OF THESE FOLKS
9 SEPARATELY. AND I'LL BEGIN WITH THE STATEMENT, THE
10 FIRST STATEMENT, THE WRITTEN STATEMENT OF MS.
11 BURTON. AND WITH REGARDS TO THAT STATEMENT, THE
12 FIRST ONE I THINK THAT HE EVEN AGREES WAS FREELY
13 AND VOLUNTARILY GIVEN. HE WAS NOT AT THAT POINT --
14 HE WAS CERTAINLY NOT -- THEY TALK ABOUT HE'S NOT A
15 SUSPECT AT THAT POINT. CERTAINLY AT A TIME -- AND
16 HE TESTIFIES HIMSELF THAT IT WAS FREELY AND
17 VOLUNTARILY GIVEN, AND HE WAS CERTAINLY FREE TO
18 COME AND GO. THAT'S CERTAINLY NOT A CUSTODIAL
19 INTERROGATION. SO WITH REGARDS TO THE FIRST
20 STATEMENT OF MR. BURDEN, THAT WOULD CERTAINLY
21 DEFINE THAT THE STATE HAS PROVEN BY A PREPONDERANCE
22 OF THE EVIDENCE THAT IT'S FREELY AND VOLUNTARILY
23 GIVEN AND IT IS A NON-CUSTODIAL STATEMENT. WITH
24 REGARDS TO THE SECOND STATEMENT OF MS. BURDEN, IT

MOTIONS

138

1 HOWEVER HE EVEN AGREES THAT HE WAS GIVEN HIS
2 MIRANDA RIGHTS ON THE THIRD OF NOVEMBER, THE DATE
3 OF THE OCCURRENCE OF THIS EVENT WHEN HE DID ARRIVE
4 AT THE LAW ENFORCEMENT CENTER. HE TALKS AGAIN THAT
5 HIS RIGHTS WERE AGAIN GIVEN TO HIM BY THE FAMILY
6 COURT JUDGE JUST PRIOR TO HIS BEING ARRESTED. AND
7 HE TESTIFIES THAT HE UNDERSTOOD HIS RIGHTS AND
8 UNDERSTOOD HIS RIGHTS NOT TO MAKE A STATEMENT. SO
9 I FIND THAT HE WAS PROPERLY MIRANDIZED. I FIND
10 THAT THE STATEMENT THAT HE GAVE WAS ONE THAT HE
11 CHOSE TO -- IT WAS SPONTANEOUS. IT WAS
12 CHARACTERIZED AS A SPONTANEOUS. IT WAS
13 CHARACTERIZED AS BEING A BLURTING OUT. AND, SO, IT
14 LIKEWISE WAS A VOLUNTARY STATEMENT GIVEN FREELY AND
15 VOLUNTARILY ALTHOUGH IN A CUSTODIAL ENVIRONMENT BUT
16 CERTAINLY AFTER HE HAD BEEN MIRANDIZED. SO THE
17 SECOND STATEMENT OF MR. BURDEN WOULD LIKEWISE COME
18 IN AS THE STATE'S PROVEN ITS BURDEN BY A
19 PREPONDERANCE OF A EVIDENCE AND WOULD BE SUBMITTED
20 TO THE JURY. AS TO THE ULTIMATE DECISION REGARDING
21 HIS STATEMENT, THAT'S FOR THIS JURY AND NOT FOR THE
22 COURT EXCEPT, OF COURSE, WHETHER OR NOT HE WAS
23 MIRANDIZED; AND HE WAS CERTAINLY MIRANDIZED PRIOR
24 TO GIVING OF THE SECOND STATEMENT, THE ONLY ORAL
25 STATEMENT.

MOTIONS

139

1 NOW, WITH REGARDS TO MS. GADSON,
2 THE QUESTION AS TO WHETHER OR NOT THE STATE HAS
3 PROVEN BY A PREPONDERANCE THAT THE STATEMENT THAT
4 SHE GAVE WAS FREELY AND VOLUNTARILY GIVEN; AND ALSO
5 THE QUESTION AS TO WHETHER OR NOT SHE WAS IN A
6 CUSTODIAL -- THE INTERROGATION WAS ONE WHICH WAS A
7 CUSTODIAL INTERROGATION, AND WHETHER OR NOT SHE WAS
8 THERE FREELY AND VOLUNTARILY. I THINK IT IS
9 IMPORTANT THAT WHEN ASKED WHETHER OR NOT SHE COULD
10 GO TO M.U.S.C. -- AND I DON'T REMEMBER SPECIFICALLY
11 HOW SHE STATED IT. BUT WHEN ASKED WHETHER OR NOT
12 SHE COULD HAVE GONE TO M.U.S.C. WHEN HER CHILD WAS
13 FLOWN TO M.U.S.C.; SHE SAID SHE COULD HAVE. AND
14 THEN SHE SAYS THAT SHE WENT WITH DETECTIVE
15 MARSHALL. CLEARLY DETECTIVE MARSHALL TESTIFIES
16 THAT HE ASKED HER WHETHER OR NOT SHE WOULD GO WITH
17 HIM, AND AT THAT POINT WAS NOT A SUSPECT. AND I
18 THINK THAT THE STATE HAS PROVEN BY A PREPONDERANCE
19 OF THE EVIDENCE THAT SHE WENT WITH HIM FREELY AND
20 VOLUNTARILY AND MADE THE DECISION TO GO WITH HIM
21 FREELY AND VOLUNTARILY. ALTHOUGH SHE RODE IN THE
22 AUTOMOBILE; ALTHOUGH THEY WENT TO THE LAW
23 ENFORCEMENT CENTER; THE MERE FACT THAT THEY
24 HAPPENED TO BE LOCATED AT THE LAW ENFORCEMENT
25 CENTER IN AND OF ITSELF IS INSUFFICIENT TO SHOW

MOTIONS

140

1 THAT IT IS A CUSTODIAL INTERROGATION. HE TALKS
2 ABOUT THE DOOR BEING OPENED. AND CERTAINLY
3 DETECTIVE MARSHALL TELLS HER THAT SHE'S FREE TO GO
4 AT ANY POINT AND TIME. HE TESTIFIES TO THAT. I
5 THINK TAKING THE EVIDENCE IN ITS ENTIRETY, LOOKING
6 AT ALL THESE CIRCUMSTANCES, I THINK THE STATE HAS
7 SUSTAINED ITS BURDEN BY A PREPONDERANCE THAT THE
8 STATEMENT WAS VOLUNTARILY, FREELY GIVEN AND
9 THAT IT WAS A NON-CUSTODIAL -- A NON-CUSTODIAL
10 SITUATION.

11 SO I WILL ALLOW THE STATEMENTS TO
12 COME IN FOR THIS JURY TO DETERMINE WHETHER OR NOT
13 THEY WERE FREELY AND VOLUNTARILY GIVEN. AND THE
14 JURY WILL MAKE THAT DETERMINATION IN THIS CASE.
15 ALL RIGHT. WE'LL GET SOME LUNCH. LET ME TELL YOU
16 HOW I WANT TO PROCEED BECAUSE I'M SO WORRIED ABOUT
17 YOU GUYS. BUT I'M REAL WORRIED ABOUT MRS. ADDISON.
18 SO I THINK WHAT WE'LL DO IS THE JURY IS GOING TO
19 COME IN. THEY'VE GOT TO SCREEN. THAT TAKES A
20 WHILE. MRS. ADDISON, YOU DON'T NEED TO TAKE THE
21 ROLL CALL, DO YOU? I DON'T THINK YOU DO. THAT
22 GIVES YOU ALMOST AN HOUR FOR LUNCH. YOU COME AHEAD
23 AND GET SOME LUNCH. AND WE'VE GOT -- COUNSEL, YOU
24 NEED TO GET SOME LUNCH. WE'VE GOT CRACKERS AND

MOTIONS

141

1 ADEQUATE OR APPROPRIATE. BUT LET ME
2 CERTAINLY OFFER THAT TO YOU... AND WE PROBABLY
3 NEED TO CONVENE FOR ROLL CALL PURPOSES AT
4 2:30ISH.

5 (AT THIS TIME COURT IS ADJOURNED FOR LUNCH.)

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THE COURT: LADIES AND GENTLEMEN, LET ME
INTRODUCE MYSELF AGAIN. I'M DIANE GOODSTEIN, AND I
AM, OF COURSE, DELIGHTED AND SO HAPPY TO BE HERE
WITH YOU THIS AFTERNOON AND SO GRATEFUL AND
APPRECIATIVE OF YOU BEING HERE THIS AFTERNOON. AND
I ALWAYS LIKE TO BEGIN MY DISCUSSIONS WITH JURY
PANELS BY SAYING I KNOW; I KNOW; THERE ARE 3,812
PLACES YOU'D RATHER BE THIS AFTERNOON AND ABOUT
5,000 THINGS THAT YOU'D RATHER BE DOING. SO AFTER
HAVING ACKNOWLEDGED THAT; AND I TELL YOU THAT I AM
AWARE OF THAT; I THINK THAT ALL THAT DOES IS
UNDERScore WHAT YOU ARE GIVING TO OUR SYSTEM OF
JUSTICE, AND THAT IS YOUR VERY PRECIOUS AND
VALUABLE TIME. AND FOR THAT I AM SO APPRECIATIVE
AND GRATEFUL TO YOU. AND I THANK YOU FOR IT. AND
I WILL THANK YOU FOR YOUR TIME THROUGHOUT THE
BALANCE OF THIS WEEK BECAUSE YOU SEE, LADIES AND
GENTLEMEN, IF YOU WERE NOT HERE, THERE WOULD BE NO
REASON FOR US TO BE HERE BECAUSE YOU ARE HERE

MOTIONS

142

1 HEART OF OUR JUDICIAL SYSTEM. AND I WOULD SUBMIT
2 TO YOU THAT IT IS QUITE A SYSTEM OF JUSTICE THAT
3 YOU CAN ASK FELLOW MEMBERS OF THE COMMUNITY TO COME
4 IN AND HELP FELLOW CITIZENS RESOLVE DISPUTES. AND
5 THAT REALLY IS WHAT OUR SYSTEM OF JUSTICE IS ALL
6 ABOUT. AND THAT IS, OF COURSE, THE RESOLUTION OF
7 DISPUTES.

8 SO THANK YOU AGAIN FOR BEING HERE
9 THIS WEEK. AND YOU HAVE REPORTED HERE THIS WEEK TO
10 THIS TERM OF GENERAL SESSIONS. GENERAL SESSIONS
11 IS CRIMINAL COURT. AND ONE SIDE, OF COURSE, IS THE
12 STATE, SOUTH CAROLINA, WHO BRINGS CHARGES AGAINST
13 FOLK. AND THEN WE HAVE, OF COURSE, INDIVIDUALS WHO
14 HAVE BEEN CHARGED. AND THOSE ARE DISPUTES THAT
15 WOULD BE ABOUT HELPING TO RESOLVE AND RESOLVING
16 THIS WEEK. SO I THANK YOU AGAIN SO MUCH FOR YOUR
17 BEING HERE THIS WEEK.

18 NOW, LET ME GIVE YOU SORT OF
19 AN OVERVIEW ABOUT WHAT WE'RE GOING TO BE DOING
20 THIS AFTERNOON; AND THEN WE'RE GOING TO GET INTO
21 THE PROCESS. THE FIRST THING THAT WE'RE GOING TO
22 DO IS IN A MOMENT I'M GOING TO INTRODUCE YOU TO
23 THE FOLKS SO THAT YOU'LL KNOW WHO IS IN THE AREA
24 WITH YOU, WHO'S IN THE COURTROOM WITH YOU THIS

MOTIONS

143

1 DIFFERENT FUNCTIONS OF SOME OF THE DIFFERENT
2 PEOPLE IN THE COURTROOM. AND THEN WE'RE GOING
3 TO GET INTO THE GENERAL JURY QUALIFICATION. AND
4 THAT HAPPENS IN STAGES. THE FIRST THING THAT WILL
5 HAPPEN IS THAT OUR CLERK OF COURT WILL CALL THE
6 ROLL. I'LL TALK ABOUT THAT IN JUST A COUPLE OF
7 MOMENTS. AFTER SHE HAS CALLED THE ROLL, THEN THERE
8 ARE CERTAIN STATUTORILY MANDATED QUESTIONS THAT I
9 WILL ASK OF YOU. AND THEN WE WILL TAKE A BREAK
10 AFTER WE'VE FINISHED THAT PART OF THE PROCESS;
11 AND YOU WILL BE READY FOR A BREAK. AND AFTER
12 THE BREAK WHEN WE RETURN, THEN OUR FIRST CASE
13 FOR TRIAL WILL BE CALLED. AND THEN I'LL ASK
14 YOU SOME QUESTIONS ABOUT THAT PARTICULAR MATTER.
15 AND THEN WE'LL SELECT OUR FIRST JURY FOR OUR
16 FIRST TRIAL THIS WEEK. AND THEN I'LL GIVE YOU
17 SOME FURTHER INSTRUCTIONS, THOSE OF YOU WHO ARE
18 NOT SELECTED TO SERVE ON THAT JURY BUT HOW WE
19 CAN STAY IN CONTACT WITH EACH OTHER THROUGHOUT
20 THE BALANCE OF THE WEEK. THAT GIVES YOU BIG
21 OVERVIEW OF WHAT WE'RE GOING TO BE DOING THIS
22 AFTERNOON.

23 NOW, THE FIRST THING THAT I WANT
24 TO DO IS INTRODUCE THE FOLKS THAT ARE WITH YOU THIS

MOTIONS

144

1 INTRODUCED MYSELF. I'M DIANE GOODSTEIN. I'M ONE
2 OF THE TWO RESIDENT CIRCUIT JUDGES FROM THE FIRST
3 JUDICIAL CIRCUIT. AND I'M SO HAPPY TO ANNOUNCE TO
4 YOU THAT YOU LIVE WITHIN THE FIRST JUDICIAL CIRCUIT
5 WHICH IS DORCHESTER COUNTY, ORANGEBURG COUNTY, AND
6 CALHOUN COUNTIES. AND, OF COURSE, I AM FROM
7 DORCHESTER COUNTY. AND IT IS JUST A REAL TREAT TO
8 BE ABLE TO HOLD COURT IN MY OWN COUNTY. IT REALLY
9 IS A SPECIAL TIME. AND I ALWAYS ENJOY BEING AND
10 HOLDING COURT AT HOME. CIRCUIT COURT JUDGES
11 TYPICALLY ARE IN OUR CIRCUITS FOR SIX MONTHS, AND
12 THEN WE'RE OUT OF OUR CIRCUIT FOR SIX MONTHS. AND,
13 THEN OF COURSE, I'M HERE DURING THE SIX MONTHS
14 PERIOD. AND THAT'S REAL SPECIAL. WITH SOME OF THE
15 BUDGETARY CONSIDERATIONS, WE'VE BEEN ABLE TO BE
16 HOME A LITTLE BIT MORE. AND IT'S JUST A DELIGHT
17 FOR ME TO BE HOME.

18 NOW, I WANT TO INTRODUCE YOU TO
19 OUR BAILIFFS.

20 (AT THIS TIME THE COURT INTRODUCES COURT PERSONNEL TO
21 THE JURY PANEL.)

22 THE COURT: NOW, IN A MOMENT I'M GOING TO
23 ASK MRS. GRAHAM TO CALL THE ROLL. AND A COUPLE OF
24 THINGS I WANT TO DISCUSS WITH YOU ABOUT THAT. AND

MOTIONS

145

1 YOUR RIGHT BECAUSE IT IS A REVIEW OF THE
2 INFORMATION THAT WE WOULD LIKE TO HAVE FROM YOU.
3 THE FIRST ITEM, OF COURSE, IS GOING TO BE YOUR
4 NAME. AND WE WANT TO BE SURE THAT WE'VE STATED
5 YOUR NAME CORRECTLY, AND BE SURE THAT YOUR NAME HAS
6 BEEN PRINTED CORRECTLY AND THAT MS. GRAHAM STATES
7 IT CORRECTLY. IF YOU ARE A JUNIOR, SHE WILL SAY
8 JUNIOR. IF YOU ARE NOT A JUNIOR, PLEASE LET US
9 KNOW THAT YOU'RE NOT A JUNIOR BECAUSE BELIEVE IT OR
10 NOT, WE HAVE HAD OCCASION WHERE WE HAVE HAD A SON
11 CALL A DADDY LIKE ON MONDAY NIGHT AND SAY "GOSH,
12 POPS; I GOT YOUR SUMMONS FOR JURY DUTY. YOU'VE GOT
13 TO BE IN ST. GEORGE TOMORROW AT TWO O'CLOCK FOR
14 JURY DUTY." SO WE WANT TO BE SURE THAT WE HAVE
15 FATHER/SON, THE ONE WE'RE SUPPOSED TO HAVE WITH US
16 HERE TODAY. SO IF YOU ARE A JUNIOR AND MS. GRAHAM
17 DOESN'T SAY JUNIOR, LET US KNOW. AND IF SHE SAYS
18 JUNIOR AND YOU'RE A SENIOR, LET US KNOW THAT AS
19 WELL.

20 NOW, YOU MAY DURING THE COURSE OF
21 MS. GRAHAM CALLING THE ROLL; YOU MAY HEAR HER CALL
22 A NAME AND THERE'S NO RESPONSE. I WANT TO EXPLAIN
23 TO YOU WHAT OCCURS WHEN THAT HAPPENS. MAJOR
24 MOULTRIE APPEARS AGAIN RIGHT ON QUEUE OR NEARLY

MOTIONS

146

1 AS MS. GRAHAM CALLS THE ROLL. AND WHEN SHE CALLS
2 THE NAME AND THERE IS NO RESPONSE, DEPUTY SMITH IS
3 GOING TO CIRCLE THAT NAME. IT'S GOING TO BE A CALL
4 MADE TO LAW ENFORCEMENT. AND WE'RE GOING TO GO
5 OUT; AND, OFTEN TIMES WE'RE STILL A TRANSIENT
6 COMMUNITY; AND IT VERY WELL MAY BE THAT SOMEONE HAS
7 JUST LEFT THE COUNTY AND THEIR INFORMATION HASN'T
8 CAUGHT UP WITH THEM. BUT IN THE EVENT THAT THOSE
9 FOLKS ARE STILL IN THE COUNTY, WE WILL GIVE THEM A
10 CHAUFFEUR DRIVEN RIDE DOWN TO THE COURT HOUSE TO
11 SEE WHERE THEY WERE THIS AFTERNOON BECAUSE WE
12 MISSED THEM FOR THE JURY QUALIFICATIONS. BUT I DID
13 WANT YOU TO KNOW THAT WE DON'T JUST IGNORE THE FACT
14 THAT FOLKS DON'T ATTEND, PARTICULARLY WHEN YOU ARE
15 HERE.

16 WE FEEL COMPELLED TO FIND OUT
17 WHERE FOLKS WERE THIS AFTERNOON WHO DID NOT
18 RESPOND. AND AGAIN, WHEN THE ROLL CALL PROCESS --
19 LET ME GO THROUGH THE REST OF IT. WE NEED TO KNOW
20 YOUR OCCUPATION. AFTER WE GET YOUR NAME, WE NEED
21 TO KNOW YOUR OCCUPATION. IF YOU ARE RETIRED, SHARE
22 WITH US, IF YOU WILL, YOUR OCCUPATION THAT YOU ARE
23 RETIRED FROM. IF YOU HAPPEN TO BE DISABLED, IF
24 YOU'D SHARE WITH US WHAT YOUR LAST POSITION WAS.

JURY QUALIFICATION

147

1 OCCUPATION. AND, LIKEWISE, IF YOUR SPOUSE IS
2 RETIRED OR DISABLED, THEIR LAST OCCUPATION AS WELL
3 WOULD BE MOST HELPFUL. SO, AGAIN, IN A CLEAR
4 AUDIBLE VOICE -- AND I'M SORRY THAT THE ACOUSTICS
5 ARE NOT BETTER IN THIS COURTROOM THAN THEY ARE --
6 -- YOUR NAME, YOUR OCCUPATION, AND YOUR SPOUSES'
7 OCCUPATION. AND TO THAT END, LADIES AND
8 GENTLEMEN, AS PART OF THE ROLL CALL AND JURY
9 QUALIFICATION PROCESS, IT IS NECESSARY THAT I
10 ADMINISTER AN OATH TO YOU. SO AT THIS TIME I'M
11 GOING TO ASK YOU TO PLEASE STAND AND RAISE YOUR
12 RIGHT HAND.

13 (AT THIS TIME ENTIRE JURY PANEL IS SWORN BY THE COURT.)

14 THE COURT: LET'S TAKE ABOUT A FIFTEEN
15 MINUTE BREAK.

16 (BRIEF RECESS.)

17 (ROLL CALL)

18 THE COURT: LADIES AND GENTLEMEN, AT THIS
19 TIME I'M GOING TO ASK THE SOLICITOR TO PLEASE CALL
20 OUR FIRST CASE FOR TRIAL THIS WEEK.

21 MRS. MURPHY: THANK YOU, YOUR HONOR.
22 MAY IT PLEASE THE COURT? THE STATE CALLS THE
23 STATE OF S.C. VS. WILLIAM DEAN BURDEN ON
24 INDICTMENT NUMBER 2002-GS-18-0006, INDICTED
25 FOR ASSAULT AND BATTERY WITH A DEADLY WEAPON.

JURY QUALIFICATION

148

1 THIS HAS BEEN TRUE BILLED BY THE GRAND JURY.
2 THE STATE ALSO CALLS INDICTMENT NUMBER
3 2002-GS-18-0992, THE STATE VS. WILLIAM DEAN
4 BURDEN FOR CHILD ABUSE, INFLICTION OF GREAT
5 BODILY HARM UPON A CHILD. THIS HAS ALSO BEEN
6 TRUE BILLED BY THE GRAND JURY. AND THE STATE
7 ALSO CALLS INDICTMENT 2002-GS-18-0221, THE STATE
8 VS. ADRIAN GADSON INDICTED FOR UNLAWFUL NEGLECT
9 BY A CHILD UNDER THE AGE OF SEVEN. ALL THESE
10 HAVE BEEN TRUE BILLED BY THE GRAND JURY, YOUR
11 HONOR.

12 THE COURT: THANK YOU, MA'AM. ALL RIGHT,
13 LADIES AND GENTLEMEN, LET ME TELL YOU WHAT YOU HAVE
14 JUST HEARD. WHAT YOU'VE JUST HEARD, OF COURSE, IS
15 THE STATE OF SOUTH CAROLINA THROUGH THE SOLICITOR'S
16 OFFICE. IN OUR STATE, CASES ARE PROSECUTED BY THE
17 SOLICITOR AND MRS. MURPHY WHO HAS JUST PASSED THESE
18 UP TO ME IS AN ASSISTANT SOLICITOR HERE IN
19 DORCHESTER COUNTY, AND SHE HAS CALLED THE CASES --
20 JUST CALLED THESE CASES TO TRIAL. AND SHE HAS
21 REFERRED TO A WORD CALLED "INDICTMENT;" AND I WANT
22 TO TALK ABOUT THAT FOR A MOMENT. AN INDICTMENT IS
23 A CHARGING DOCUMENT. NOW, WHAT DO WE MEAN BY
24 CHARGING DOCUMENT? WHAT THIS IS IS IT'S NOTICE TO

AN INDIVIDUAL THAT THE STATE OF SOUTH CAROLINA

JURY QUALIFICATION

149

1 BELIEVES, MAINTAINS, AND ALLEGES THAT AN INDIVIDUAL
2 HAS BROKEN A LAW IN THE STATE OF SOUTH CAROLINA.
3 AND THEY NOTIFY THE INDIVIDUAL THAT THIS IS WHAT WE
4 THINK HAS -- THE PROVISION HAS BEEN VIOLATED, AND A
5 LITTLE BIT ABOUT WHY. AND THAT THEN GOES TO A
6 PERSON SO THEY KNOW. IT IS NO MORE THAN THE
7 NOTIFYING DOCUMENT, THE CHARGING DOCUMENT. I WILL
8 TELL YOU, AND IT IS IMPORTANT FOR YOU TO KNOW, THAT
9 AN INDICTMENT, THE CHARGING DOCUMENT, IS EVIDENCE
10 OF NOTHING. SO THAT'S IMPORTANT FOR YOU TO KEEP IN
11 MIND. I WILL ALSO TELL YOU THAT TO THESE
12 INDICTMENTS, THE DEFENDANTS, MR. BURDEN AND MS.
13 GADSON HAVE PLED NOT GUILTY TO THESE INDICTMENTS.
14 AND THAT PLACES UPON THE STATE OF SOUTH CAROLINA
15 THE BURDEN -- WHAT'S CALLED THE BURDEN OF PROOF.
16 BE MINDFUL THAT NO DEFENDANT, NO MATTER WHAT THE
17 CHARGE, EVER, HAS TO PROVE ANYTHING. THEY NEVER
18 HAVE THE BURDEN TO PROVE, CERTAINLY TO PROVE
19 THEMSELVES INNOCENT. THE BURDEN IS ALWAYS UPON THE
20 STATE OF SOUTH CAROLINA. I SHARE THAT WITH YOU
21 EVEN AT THIS POINT, BECAUSE IT IS IMPORTANT THAT
22 YOU UNDERSTAND THAT AN INDICTMENT IS THE CHARGING
23 DOCUMENT. IT'S THE NOTIFYING DOCUMENT. AND IT'S
24 NOT EVIDENCE OF ANYTHING.

JURY QUALIFICATION

150

1 GOING TO BE READING TO YOU PORTIONS OF THE
2 INDICTMENT. AND THE REASON THAT I'M GOING TO BE
3 DOING THAT IS ONLY TO FIND OUT WHETHER OR NOT ANY
4 OF YOU KNOW, OR THINK YOU KNOW, OR HAVE HEARD OR
5 THINK YOU MAY HAVE HEARD, ANYTHING WHATSOEVER ABOUT
6 THIS PARTICULAR MATTER. SO I WILL DO THAT NOW.
7 I'LL FIRST READ THE INDICTMENT, THE INDICTMENTS
8 INVOLVING MR. BURDEN, AND THEN I'LL READ THE
9 INDICTMENT INVOLVING MS. GADSON, OR NAMING, I
10 SHOULD SAY, MS. GADSON AND NAMING MR. BURDEN. ALL
11 RIGHT. THE FIRST INDICTMENT SAYS THAT MR. WILLIAM
12 DEAN BURDEN DID IN DORCHESTER COUNTY ON OR ABOUT
13 NOVEMBER THE THIRD, 2001, WITH MALICE AFORETHOUGHT
14 DID COMMIT AN ASSAULT AND BATTERY UPON THE VICTIM
15 Child [REDACTED] BY STRIKING THE FIVE YEAR OLD VICTIM
16 MULTIPLE TIMES RENDERING HIM UNCONSCIOUS AND
17 CAUSING MULTIPLE INJURIES ON THE CHILD'S BODY, THIS
18 OFFENSE BEING IN VIOLATION OF SECTION 16-3-620 OF
19 THE SOUTH CAROLINA CODE OF LAWS AS AMENDED. THE
20 SECOND INDICTMENT ALLEGES THAT THE DEFENDANT,
21 WILLIAM DEAN BURDEN, DID IN DORCHESTER COUNTY ON OR
22 ABOUT NOVEMBER THE THIRD, 2001, KNOWINGLY AND
23 UNLAWFULLY INFLICT GREAT BODILY INJURY UPON
24 Child [REDACTED] A CHILD FIVE YEARS OF AGE, DATE OF

JURY QUALIFICATION

151

1 THE CODE OF LAWS OF SOUTH CAROLINA 1976 AS
2 AMENDED. THOSE ARE THE INDICTMENTS WHICH NOTICE MR.
3 BURDEN.

4 NOW THE INDICTMENT WHICH NOTICES
5 MS. GADSON IS THAT ADRIAN GADSON DID IN DORCHESTER
6 COUNTY ON OR ABOUT NOVEMBER THE THIRD, 2001,
7 WILLFULLY AND UNLAWFULLY PLACE HER FIVE YEAR OLD
8 CHILD IN DANGER BY LEAVING THE CHILD IN THE CUSTODY
9 OF WILLIAM D. BURDEN WHO HAS BEEN INDICTED FOR
10 ASSAULT AND BATTERY WITH THE INTENT TO KILL WHEREBY
11 THE SAME CHILD WAS THE VICTIM. AND AGAIN, THAT'S
12 THE CHARGING DOCUMENT NOTICING MS. GADSON.

13 LADIES AND GENTLEMEN, THE FIRST
14 QUESTION THAT I WOULD ASK OF YOU IS WHETHER OR NOT
15 ANY OF YOU KNOW OR THINK YOU MAY KNOW, OR ANY OF
16 YOU HAVE HEARD OR THINK YOU MAY HAVE HEARD,
17 ANYTHING ABOUT THESE MATTERS WHICH ALLEGEDLY
18 OCCURRED NOVEMBER THE THIRD, 2001. IF SO, PLEASE
19 STAND AT THIS TIME. (NO RESPONSE.) AND I FIND NO
20 ONE STANDING. LADIES AND GENTLEMEN, THE ASSISTANT
21 SOLICITOR WHO I UNDERSTAND WILL BE PARTICIPATING IN
22 THIS MATTER IS MRS. MAITE MURPHY. MRS. MURPHY, IF
23 YOU'D INTRODUCE THE FOLKS FROM THE SOLICITOR'S
24 OFFICE IN JUST A MOMENT AND WHO WILL BE ASSISTING
25 YOU FROM THE SOLICITOR'S OFFICE IN THIS CASE

JURY QUALIFICATION

152

QUESTION THAT I'M GOING TO BE ASKING OF YOU IS
WHETHER OR NOT ANY OF YOU KNOW, IF YOU ARE RELATED
BY BLOOD OR MARRIAGE, OR ACQUAINTED WITH ANY OF THE
MEMBERS, FIRST OF ALL, OF THE SOLICITOR'S OFFICE.
BUT LET ME DEFINE ACQUAINTED FOR YOU, THE
DEFINITION THAT I USE. WHEN I ASK ARE YOU
ACQUAINTED WITH SOMEONE, THEN I AM ATTEMPTING TO
FIND OUT IF YOU HAVE ANY CONNECTION WHATSOEVER WITH
AN INDIVIDUAL. FOR EXAMPLE, IT MIGHT BE THAT YOU
WENT TO SCHOOL WITH SOMEONE TWENTY YEARS AGO AND
YOU REALLY HAVE NOT SEEN THEM IN TWENTY YEARS, OR
IN TWENTY YEARS, BUT YOU KNOW THAT YOU WENT TO
SCHOOL WITH THEM, AND YOU KNEW THEM TWENTY YEARS
AGO. THAT RELATIONSHIP, AS LIMITED AS THAT IS,
WOULD BE ENCOMPASSED WITHIN MY DEFINITION OF
ACQUAINTED WITH. IT MIGHT BE THAT YOU WORK AT THE
SAME BUILDING AS SOMEONE ELSE AND YOU ONLY
OCCASIONALLY WAVE AT HIM ACROSS THE PARKING LOT;
AND THAT'S THE EXTENT OF YOUR RELATIONSHIP. AS
LIMITED AS THAT IS, THAT LIKEWISE WOULD ENCOMPASSED
WITHIN MY DEFINITION OF ACQUAINTED WITH. AND I'M
SIMPLY TRYING TO FIND OUT IF YOU HAVE ANY
CONNECTION WITH THE INDIVIDUAL. AND I USE THE TERM
"ACQUAINTED WITH." SO SIMPLY TO ASK THE QUESTION

JURY QUALIFICATION

153

1 ACQUAINTED WITH ANY OF THE MEMBERS OF THE
2 DORCHESTER COUNTY SOLICITOR'S OFFICE. AND MRS.
3 MURPHY WILL GIVE YOU THEIR NAMES NOW. THANK YOU,
4 MRS. MURPHY.

5 MRS. MURPHY: THANK YOU, YOUR HONOR.
6 (AT THIS TIME THE ASSISTANT SOLICITOR INTRODUCES
7 MEMBERS OF THE SOLICITOR'S OFFICE TO THE
8 JURY.)

9 THE COURT: THANK YOU VERY MUCH. ARE YOU
10 RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED WITH ANY
11 OF THOSE ATTORNEYS IN THE SOLICITOR'S OFFICE OR TO
12 YOUR KNOWLEDGE ANYONE WHO WORKS IN THE SOLICITOR'S
13 OFFICE? (NO RESPONSE.) ALL RIGHT. YOU CAN STAND
14 FOR ME. AND I'M GOING TO GO TO EACH ONE OF YOU
15 INDIVIDUALLY. THANK YOU SO MUCH. WE'LL START --
16 FIRST OF ALL, ANSWER IF YOU WOULD FOR ME JUST THE
17 QUESTIONS THAT I ASK. FIRST OF ALL, TELL ME YOUR
18 NAME AGAIN.

19 THE JUROR: JOHN HODGE.

20 THE COURT: YES, SIR, MR. HODGE. TELL ME
21 WHO YOU KNOW.

22 MR. HODGE: I KNOW BEN LAFOND AND WALTER
23 BAILEY.

24 THE COURT: ALL RIGHT. ANYONE ELSE IN
25 THE OFFICE?

JURY QUALIFICATION

154

1. MR. HODGE: NO; THAT'S IT.

2. THE COURT: VERY WELL. WITH REGARDS TO
3. MR. LAFOND OR MR. BAILEY; DO YOU ALL VISIT IN EACH
4. OTHER'S HOMES?

5. MR. HODGE: NO.

6. THE COURT: WOULD YOU SAY THAT YOU ARE
7. CASUAL ACQUAINTANCES?

8. MR. HODGE: LONG TERM FRIENDS.

9. THE COURT: LONG TERM FRIENDS?

10. MR. HODGE: YES, MA'AM.

11. THE COURT: ALL RIGHT, SIR. AND I WOULD
12. ASK OF YOU; DO YOU VISIT IN EACH OTHER'S HOMES
13. EVER?

14. MR. HODGE: YES; BEN HAS BEEN TO OUR HOME
15. MANY TIMES.

16. THE COURT: HE'S BEEN TO YOUR HOME MANY
17. TIMES?

18. MR. HODGE: YES, MA'AM.

19. THE COURT: VERY WELL. AND I WOULD ASK
20. OF YOU: AS A RESULT OF THAT RELATIONSHIP, DO YOU
21. BELIEVE THAT THAT RELATIONSHIP MIGHT, OR COULD, IN
22. ANY WAY INTERFERE WITH YOUR ABILITY TO BE
23. COMPLETELY FAIR AND IMPARTIAL FOR THE STATE OF
24. SOUTH CAROLINA AS WELL AS TO MR. BURDEN AND TO MS.

JURY QUALIFICATION

155

1 MR. HODGE: I DON'T BELIEVE IT WOULD MAKE
2 ANY DIFFERENCE WHATSOEVER.

3 THE COURT: CAN YOU SET THOSE
4 RELATIONSHIPS COMPLETELY ASIDE AND TRY THIS CASE
5 BASED UPON THE EVIDENCE IN THIS COURTROOM AND THE
6 LAW AS I WILL GIVE IT TO YOU?

7 MR. HODGE: YES.

8 THE COURT: VERY WELL. PLEASE STAY
9 WITH US. (JUROR STANDS.) YES, SIR; YOUR
10 NAME?

11 THE JUROR: JASON WEESLER.

12 THE COURT: YES, SIR, MR. WEESLER. TELL
13 ME FIRST OF ALL WHO YOU KNOW.

14 MR. WEESLER: MR. LAFOND; WE WERE IN HIGH
15 SCHOOL TOGETHER.

16 THE COURT: ALL RIGHT, SIR. AND SINCE
17 YOU WENT TO HIGH SCHOOL, HAVE Y'ALL MAINTAINED A
18 FRIENDSHIP? DO YOU SEE HIM OFTEN?

19 MR. WEESLER: NO, MA'AM; NOT AT
20 ALL.

21 THE COURT: DO YOU VISIT IN EACH OTHER'S
22 HOMES?

23 MR. WEESLER: NO, MA'AM.

24 THE COURT: DO YOU BELIEVE THAT THAT
25 RELATIONSHIP MIGHT HAVE OR COULD IN ANY WAY

JURY QUALIFICATION

156

1 INTERFERE WITH YOUR ABILITY TO BE COMPLETELY FAIR
2 AND IMPARTIAL TO THE STATE AND TO MR. BURDEN AS
3 WELL AS TO MS. GADSON?

4 MR. WEESLER: NOT AT ALL.

5 THE COURT: THANK YOU VERY MUCH, MR.
6 WEESLER. PLEASE STAY WITH US.

7 MR. WEESLER: I'M SORRY. ALSO MRS.
8 MURPHY.

9 THE COURT: OH, YOU KNOW MRS. MURPHY AS
10 WELL?

11 MR. WEESLER: YES.

12 THE COURT: THE SAME KIND OF
13 ACQUAINTANCE, OR IS IT A CLOSER RELATIONSHIP?

14 MR. WEESLER: NO; NOT CLOSER AT ALL. IN
15 FACT I HAVEN'T SEEN HER IN PROBABLY TWO YEARS.

16 THE COURT: AND WAS THAT ALSO -- WOULD
17 YOU SAY THAT'S A CASUAL FRIENDSHIP?

18 MR. WEESLER: NO; NOT EVEN THAT. JUST AS
19 A CUSTOMER.

20 THE COURT: I UNDERSTAND. AS A RESULT OF
21 THAT RELATIONSHIP, DO YOU BELIEVE THAT THAT MIGHT
22 OR COULD IN ANY WAY INTERFERE WITH YOUR ABILITY TO
23 BE COMPLETELY FAIR AND IMPARTIAL?

24 MR. WEESLER: NOT AT ALL.

THE COURT: THANK YOU SO MUCH. ALL

JURY QUALIFICATION

157

1. RIGHT. (JUROR STANDS.) YES, MA'AM? TELL ME YOUR
2. NAME, PLEASE.

3. THE JUROR: PATRICIA SHUMAN. I WENT TO
4. SCHOOL WITH ROBBIE ROBBINS.

5. THE COURT: ALL RIGHT. AND DO YOU VISIT
6. IN EACH OTHER'S HOMES, MRS. SHUMAN?

7. MRS. SHUMAN: NO, MA'AM.

8. THE COURT: AS A RESULT OF YOUR
9. FRIENDSHIP, ACQUAINTANCESHIP, DO YOU BELIEVE THAT
10. THAT MIGHT OR COULD IN ANY WAY- INTERFERE WITH YOUR
11. ABILITY TO BE COMPLETELY FAIR AND IMPARTIAL TO THE
12. STATE AS WELL AS TO THE MR. BURDEN AND MS. GADSON?

13. MRS. SHUMAN: NO, MA'AM.

14. THE COURT: THANK YOU SO MUCH. (JUROR
15. STANDS.) YES, MA'AM? YOUR NAME FOR ME?

16. THE JUROR: TARA RAVELINE.

17. THE COURT: MRS. RAVELINE, TELL ME WHO
18. YOU KNOW.

19. MRS. RAVELINE: I MET MRS. MURPHY A LONG
20. TIME AGO. OUR KIDS GO TO SCHOOL TOGETHER.

21. THE COURT: OKAY; GO TO NURSERY SCHOOL
22. TOGETHER?

23. MRS. RAVELINE: MY HUSBAND WENT TO SCHOOL
24. WITH MR. LAFOND.

25. THE COURT: ALL RIGHT. AND NAME

JURY QUALIFICATION

158

1 WENT TO HIGH SCHOOL WITH MR. LAFOND?

2 MRS. RAVELINE: YES, MA'AM.

3 THE COURT: AND WOULD YOU SAY THAT YOU
4 VISIT IN EACH OTHER'S HOMES?

5 MRS. RAVELINE: NO, MA'AM.

6 THE COURT: JUST SEE EACH OTHER AT SCHOOL
7 EVENTS?

8 MRS. RAVELINE: YES, MA'AM.

9 THE COURT: VERY WELL. AS A RESULT OF
10 THOSE RELATIONSHIPS, DO YOU BELIEVE THAT THAT
11 FRIENDSHIP, ACQUAINTANCESHIP, MIGHT OR COULD IN ANY
12 WAY INTERFERE WITH YOUR ABILITY TO BE COMPLETELY
13 FAIR AND IMPARTIAL TO THE STATE AS WELL AS TO MR.
14 BURDEN AND MS. GADSON?

15 MR. RAVELINE: NO, MA'AM.

16 THE COURT: VERY WELL. THANK YOU SO
17 MUCH. (JUROR STANDS.) TELL ME YOUR NAME.

18 MRS. HILL: RITA STILL.

19 THE COURT: YES, NO, MRS. STILL; TELL ME
20 WHO YOU KNOW.

21 MRS. HILL: I WENT A COUPLE OF YEARS TO
22 MR. MESSERVEY FOR LEGAL ADVICE.

23 THE COURT: ALL RIGHT. SO YOU KNOW MR.
24 MESSERVEY, IF YOU WILL, IN A PROFESSIONAL CAPACITY.

WHAT OF THAT PROFESSIONAL RELATIONSHIP. DO

JURY QUALIFICATION

159

1 YOU THINK THAT THAT MIGHT OR COULD IN ANY WAY
2 INTERFERE WITH YOUR ABILITY TO BECOME COMPLETELY
3 FAIR AND IMPARTIAL TO BOTH SIDES, TO THE STATE AS
4 WELL AS TO MR. GADSON AND MR. BURDEN?

5 MRS. HILL: YES, MA'AM.

6 THE COURT: YOU CAN SET THAT RELATIONSHIP
7 COMPLETELY ASIDE AND TRY THIS CASE BASED ON WHAT
8 YOU HEAR IN THIS COURTROOM?

9 MRS. HILL: YES, MA'AM.

10 THE COURT: THANK YOU SO MUCH. PLEASE
11 STAY WITH US. (JUROR STANDS.) YOUR NAME?

12 THE JUROR: MY NAME IS LINDA JEFFERS; AND
13 I HAVE BEEN A CLIENT OF MR. MESSERVEY.

14 THE COURT: ALL RIGHT. DOES THAT MEAN
15 SOME TIME IN THE PAST?

16 MRS. JEFFERS: YES, MA'AM

17 THE COURT: AS A RESULT OF THAT
18 PROFESSIONAL RELATIONSHIP, DO YOU THINK THAT THAT
19 RELATIONSHIP COULD OR MIGHT IN ANY WAY INTERFERE
20 WITH YOUR ABILITY TO BE COMPLETELY FAIR AND
21 IMPARTIAL TO BOTH SIDES?

22 MRS. JEFFERS: YES, MA'AM.

23 THE COURT: VERY WELL. THANK YOU SO
24 MUCH. (JUROR STANDS.) AND YOUR NAME, SIR?

25 THE JUROR: BRAD JONES

JURY QUALIFICATION

160

1

THE COURT: YES, SIR, MR. JONES. TELL ME

2

WHO YOU KNOW.

3

MR. JONES: ROBBIE ROBBINS.

4

THE COURT: ALL RIGHT, SIR. AND HOW

5

WOULD YOU DESCRIBE THAT RELATIONSHIP?

6

MR. JONES: JUST CASUAL.

7

THE COURT: A CASUAL RELATIONSHIP. DO

8

YOU VISIT IN EACH OTHER'S HOMES?

9

MR. JONES: NO, MA'AM.

10

THE COURT: ALL RIGHT, SIR. AND, MR.

11

JONES; WOULD THAT ACQUAINTANCESHIP IN ANY WAY

12

INTERFERE WITH YOUR ABILITY TO BE FAIR AND

13

IMPARTIAL TO THE STATE AS WELL AS TO MS. GADSON AND

14

MR. BURTON.

15

MR. JONES: NO, MA'AM.

16

THE COURT: VERY WELL. THANK YOU SO

17

MUCH. PLEASE STAY WITH US. (JUROR STANDS.) AND

18

YOUR NAME AGAIN, PLEASE?

19

THE JUROR: JOHN ANDREWS.

20

THE COURT: YES, SIR, MR. ANDREWS. TELL

21

ME WHO YOU KNOW.

22

MR. ANDREWS: I KNOW MR. MESSERVEY.

23

THE COURT: AND WOULD YOU SAY THAT'S AN

24

ACQUAINTANCESHIP OR A FRIENDSHIP?

JURY QUALIFICATION

161

1 AND MYSELF.

2 THE COURT: OKAY. THAT'S ENOUGH. IN A
3 PROFESSIONAL CAPACITY?

4 MR. ANDREWS: YES, MA'AM.

5 THE COURT: VERY WELL. AS A RESULT OF
6 THAT PROFESSIONAL -- AND THAT'S SOME TIME IN THE
7 PAST, MR. ANDREWS?

8 MR. ANDREWS: YES, MA'AM.

9 THE COURT: AS A RESULT OF THAT
10 PROFESSIONAL RELATIONSHIP, DO YOU BELIEVE THAT THAT
11 MIGHT OR COULD IN ANY WAY INTERFERE WITH YOUR
12 ABILITY TO BE FAIR AND IMPARTIAL COMPLETELY TO THE
13 STATE OF SOUTH CAROLINA AS WELL AS TO MS. GADSON
14 AND MR. BURDEN?

15 MR. ANDREWS: YES, MA'AM.

16 THE COURT: THANK YOU, MR. ANDREWS. AND
17 PLEASE STAY WITH US. ALL RIGHT. NOW, I WOULD LIKE
18 TO ALSO INTRODUCE YOU TO MR. WILLIAM BURDEN. WOULD
19 MR. BURDEN STAND, PLEASE, AND FACE OUR JURY PANEL?
20 LET ME INTRODUCE YOU TO MR. WILLIAM BURDEN. THIS
21 IS MR. WILLIAM BURDEN, AND I WOULD ASK WHETHER OR
22 NOT ANY MEMBERS OF OUR JURY PANEL ARE RELATED BY
23 BLOOD OR MARRIAGE OR ACQUAINTED WITH MR. WILLIAM
24 BURDEN? IF SO, PLEASE STAND AT THIS TIME. (NO
25 RESPONSE.) I FIND NO ONE STANDING AND MR. BURDEN

JURY QUALIFICATION

162

1 IS REPRESENTED BY MR. GENE DUKES. AND THIS IS MR.
2 GENE DUKES WITH THE BLONDE HAIR. AND I'D ASK
3 WHETHER OR NOT ANY MEMBERS OF OUR JURY PANEL ARE
4 RELATED BY BLOOD OR MARRIAGE, ACQUAINTED WITH; OR
5 IF YOU OR ANY MEMBER OF YOUR FAMILY HAVE EVER BEEN
6 REPRESENTED BY MR. DUKES. IF SO, PLEASE STAND AT
7 THIS TIME. (NO RESPONSE.) THANK YOU GENTLEMEN
8 VERY MUCH. AND MR. DAVIS; IF MS. GADSON; IF YOU
9 COULD PLEASE STAND AND FACE OUR JURY PANEL. AND
10 THIS IS MS. ADRIAN GADSON. AND I WOULD ASK WHETHER
11 OR NOT ANY MEMBERS OF OUR JURY PANEL ARE RELATED BY
12 BLOOD OR MARRIAGE OR ACQUAINTED WITH MS. ADRIAN
13 GADSON. IF SO, PLEASE STAND. (NO RESPONSE.)
14 THANK YOU, MS. GADSON. AND YOU MAY BE SEATED.
15 THIS IS MR. STEVE DAVIS WHO REPRESENTS MS. GADSON.
16 I'D ASK WHETHER OR NOT ANY MEMBERS OF OUR JURY
17 PANEL ARE RELATED BY BLOOD OR MARRIAGE OR
18 ACQUAINTED WITH, OR IF YOU OR ANY MEMBER OF YOUR
19 IMMEDIATE FAMILY TO YOUR KNOWLEDGE HAVE EVER BEEN
20 REPRESENTED BY MR. STEVE DAVIS. IF SO, PLEASE
21 STAND. (NO RESPONSE.) I FIND NO ONE STANDING.
22 MR. DAVIS, ARE YOU STILL A SOLE PRACTITIONER?
23 MR. DAVIS: YES; I'M A SOLE PRACTITIONER
24 IN THE TRI-COUNTY AREA AND SPECIFICALLY IN THE
MONCKE CORNER AREA.

JURY QUALIFICATION

163

1 THE COURT: THANK YOU SO MUCH, MR. DAVIS.

2 NOW, LADIES AND GENTLEMEN, I AM GOING TO BE
3 READING TO YOU A LIST OF POTENTIAL WITNESSES. AND
4 I SAY POTENTIAL WITNESSES BECAUSE IT'S AN
5 ACCOMMODATION TO ME AT THIS TIME. I RECEIVE THE
6 NAMES OF POTENTIAL WITNESSES SO THAT I MAY ASK OF
7 YOU WHETHER OR NOT YOU'RE RELATED BY BLOOD OR
8 MARRIAGE OR ACQUAINTED WITH ANY OF THESE INDIVIDUAL
9 FOLKS. AND I GET THE NAMES. AND I CERTAINLY
10 WOULDN'T WANT YOU TO HOLD IT AGAINST ANYONE IN THE
11 EVENT THAT ALL OF THESE WITNESSES WERE NOT CALLED.
12 IT'S SIMPLY THE TIME THAT I CAN ASK OF YOU YOUR
13 RELATIONSHIP WITH THESE FOLKS. SO, AGAIN, LAWYERS
14 DO THIS AS AN ACCOMMODATION TO ME.

15 NOW, I'M GOING TO BE READING A
16 LIST OF POTENTIAL WITNESSES. AND I WOULD SIMPLY
17 ASK IF THESE FOLKS HAPPEN TO BE IN THE COURTROOM.
18 IF YOU'D JUST STAND. I'LL TRY TO POINT THAT OUT TO
19 YOU, LADIES AND GENTLEMEN. SOMETIMES IT'S GOOD TO
20 PUT A FACE WITH A NAME. AND IF THESE FOLKS ARE
21 PRESENT, I'M GOING TO ASK THAT YOU STAND SO THAT I
22 CAN IDENTIFY YOU TO OUR JURY PANEL. YOU'VE MET MS.
23 GADSON. YOU'VE MET MR. BURDEN. GWENDOLYN
24 WASHINGTON. QUESTION, OF COURSE; ARE YOU RELATED
25 BY BLOOD OR MARRIAGE OR ACQUAINTED WITH ANY OF

JURY QUALIFICATION

164

1. THESE INDIVIDUALS; GWENDOLYN WASHINGTON? JOE
2. WASHINGTON? NORMAN P. PENDERGRASS, JR. WHO'S ALSO
3. KNOWN AS PETE PENDERGRASS. SANDRA PENDERGRASS?
4. WILLIE MAE GADSON? RANDY BOTTEN? DR. MITCHELL
5. GOLDMAN? TOM MARSHALL? THIS IS MR MARSHALL.
6. THANK YOU, MR. MARSHALL. QUINTON JOYNER? THIS IS
7. MR. JOYNER. THANK YOU, MR. JOYNER. DR. SARAH
8. SCHUE? MICHAEL PECK, P-E-C-K; MICHAEL PECK? DR.
9. RICHARD SAUNDERS? DR. BRETT WOODWARD? DR. PENCE,
10. P-E-N-C-E? JANE PENCE, P-E-N-C-E? MARCIE NYGROW?
11. BONETA BROFIE? AND MARY LAMATTIE? IF YOU ARE
12. RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED WITH ANY
13. OF THOSE INDIVIDUALS. THEY'RE SOME HEALTH CARE
14. PROVIDERS. AND I'D ASK IF YOU OR ANY MEMBER OF
15. YOUR IMMEDIATE FAMILY HAVE EVER BEEN TREATED BY THE
16. HEALTH CARE PROVIDERS I MENTIONED AS WELL. SO
17. PLEASE STAND AT THIS TIME. (JUROR STANDS.) YES,
18. SIR, MR. HASS, TELL ME WHO YOU KNOW.

19. THE JUROR: I KNOW DR. PENCE, JUST CASUAL
20. ACQUAINTANCE.

21. THE COURT: AS A RESULT OF YOUR
22. RELATIONSHIP WITH DR. PENZ, DO YOU THINK THAT THAT
23. RELATIONSHIP MIGHT OR COULD IN ANY WAY INTERFERE
24. WITH YOUR ABILITY TO BE COMPLETELY FAIR AND

JURY QUALIFICATION

165

1 MR. BURDEN?

2 THE JUROR: NO.

3 THE COURT: YOU COULD SET THAT
4 RELATIONSHIP ASIDE AND TRY THIS CASE BASED ON WHAT
5 YOU HEAR IN THIS COURTROOM?

6 THE JUROR: YES.

7 THE COURT: THANK YOU SO MUCH. PLEASE BE
8 SEATED. ANYONE ELSE? (NO RESPONSE.) ALL RIGHT.
9 COUNSEL, WOULD Y'ALL APPROACH FOR ME JUST A SECOND,
10 PLEASE?

11 (AT THIS TIME BENCH CONFERENCE IS HELD.)

12 THE COURT: LADIES AND GENTLEMEN, I WOULD
13 ASK WHETHER OR NOT ANY MEMBERS OF OUR JURY PANEL
14 ATTEND CHURCH WITH MRS. MURPHY OR MR. BELL OR
15 WORKS, OR WORKED, ON MR. MURPHY, MR. CHRIS MURPHY'S
16 CAMPAIGN, FOR COUNTY GOVERNMENT OR PROVIDED ANY
17 CAMPAIGN FUNDS FOR MR. MURPHY. IF SO, PLEASE
18 STAND. (NO RESPONSE.) AND I FIND NO ONE
19 STANDING. AND I WOULD ASK WHETHER OR NOT ANY
20 MEMBERS OF OUR JURY PANEL OR MEMBERS OF YOUR
21 IMMEDIATE FAMILY TO YOUR KNOWLEDGE, OR CLOSE
22 PERSONAL FRIENDS, ATTEND THE MIRACLE GOD CHURCH?

23 MR. DAVIS: YOUR HONOR, I THINK THAT'S
24 MIRACLE FAITH TEMPLE CHURCH.

JURY QUALIFICATION

166

1 CHURCH. IF SO, PLEASE STAND. (NO RESPONSE.) I
2 FIND NO ONE STANDING. NOW, LADIES AND GENTLEMEN, I
3 WILL CONCLUDE WITH THIS QUESTION: AND IT IS A VERY
4 GENERAL QUESTION. AND I JUST TELL YOU IN ADVANCE
5 THAT I INTEND FOR IT TO BE A GENERAL QUESTION. THE
6 QUESTION IS THIS: WHETHER OR NOT ANY MEMBERS OF
7 OUR JURY PANEL KNOW ANY REASON WHY YOU COULD NOT,
8 SHOULD NOT, OR HAVE QUESTIONS OR CONCERNS ABOUT
9 YOUR ABILITY TO BE A JUROR IN THIS MATTER. IF YOU
10 ARE A JUROR IN THIS MATTER, IT IS IMPERATIVE THAT
11 YOU BE FAIR AND IMPARTIAL TO THE STATE OF SOUTH
12 CAROLINA AS WELL AS TO MR. GADSON AND MR. BURDEN;
13 THAT YOU'RE ABLE TO LISTEN TO THE EVIDENCE; LISTEN
14 TO MY INSTRUCTION ON THE LAW; AND MAKE A DECISION
15 BASED UPON WHAT YOU HEAR IN THIS COURTROOM BEING
16 FAIR AND IMPARTIAL TO THESE PARTIES.

17 NOW LADIES AND GENTLEMEN, THAT IS
18 A GENERAL QUESTION, AND IT WOULD INCLUDE TRULY
19 ANYTHING. IT VERY WELL MIGHT BE THAT THERE IS
20 SOMETHING THAT YOU THOUGHT ABOUT, THAT'S ONGOING IN
21 YOUR LIFE, THAT YOU DIDN'T FEEL REAL COMFORTABLE
22 TELLING ME ABOUT EARLIER AND NOW YOU FEEL LIKE
23 YOU'VE WARMED UP AND BEEN TOGETHER FOR A SUFFICIENT
24 AMOUNT OF TIME, AND YOU FEEL LIKE YOU CAN TELL ME

JURY QUALIFICATION

167

1 THE BREAK YOU WENT OUT TO YOUR AUTOMOBILE, AND
2 THERE ON THE VISOR WERE TICKETS TO DISNEY WORLD OR
3 TO TAHITI, I THINK I TALKED ABOUT EARLIER. AND YOU
4 NOW REMEMBER THE TRIP TO TAHITI, AND YOU WERE
5 SUPPOSED TO LEAVE ON THURSDAY AFTERNOON. REALLY,
6 ANYTHING, LADIES AND GENTLEMEN. IF YOU HAVE ANY
7 CONCERNS; OR IF THERE'S ANYTHING THAT YOU'RE SHORT
8 OF, DOCTORS APPOINTMENTS, ANYTHING OF THE LIKE.
9 I'D ASK YOU TO COME FORWARD AT THIS TIME. (NO
10 RESPONSE.) VERY WELL. IS THERE ANY FURTHER VOIR
11 DIRE FROM THE STATE?

12 MRS. MURPHY: NOT FROM THE STATE, YOUR
13 HONOR.

14 THE COURT: ANY FURTHER VOIR DIRE FROM
15 THE DEFENSE?

16 MR. DAVIS: NOTHING ON BEHALF OF MY
17 CLIENT, YOUR HONOR.

18 THE COURT: THANK YOU.

19 MR. DUKES: NONE ON BEHALF OF MINE.

20 THE COURT: VERY WELL. LADIES AND
21 GENTLEMEN, NOW LET ME TELL YOU WHAT WILL OCCUR.
22 WHAT WILL HAPPEN IN JUST A MOMENT IS THAT MS.
23 GRAHAM WILL TURN THE HOPPER. I DON'T KNOW THAT YOU
24 CAN SEE THE HOPPER, BUT SHE'S GOING TO TURN THE
25 HOPPER AND YOUR NAMES ARE IN LETTERS ON THE

JURY QUALIFICATION

168

1 AND SHE WILL PULL EACH CAPSULE OUT, AND SHE WILL
2 READ THE NAME, READ YOUR NAME. WHEN SHE -- IF SHE
3 CALLS YOUR NAME, YOU'RE GOING TO ENTER THE CENTER
4 AISLE. AND YOU'LL ACTUALLY COME THROUGH THE LITTLE
5 GATES HERE. AND YOU WILL STAND -- I'LL SHOW YOU
6 WHERE TO STAND. YOU'LL COME THROUGH THE GATES; AND
7 YOU WILL STAND FACING THE AUDIENCE IN APPROXIMATELY
8 THIS LOCATION. (INDICATING.) NOW, YOU'RE NOT
9 GOING TO KNOW WHAT TO DO WITH YOUR HANDS. IT
10 DOESN'T MATTER WHAT YOU DO WITH YOUR HANDS. I WILL
11 TELL YOU THAT I, MYSELF, WENT THROUGH THIS PROCESS
12 MANY, MANY YEARS AGO. AND I WISH THAT I COULD HAVE
13 LEFT MINE IN MY SEAT. HOWEVER, BRING THEM WITH
14 YOU. AND WHEN YOU ARRIVE IN THIS LOCATION, THERE
15 WILL BE A RESPONSE FROM THE STATE. IT WILL EITHER
16 SAY PRESENT THE JUROR OR EXCUSE THE JUROR. THEN
17 THERE WILL BE A PASSING FOR THE DEFENSE. AND
18 YOU'LL EITHER HEAR "SEAT THE JUROR" WHICH MEANS
19 YOU'LL HAVE A SEAT HERE IN THE JURY BOX OR "EXCUSE
20 THE JUROR." LET ME STATE TO YOU THAT THERE ARE ANY
21 NUMBER OF ELEMENTS THAT GO INTO THE DECISION OF
22 WHETHER OR NOT TO SELECT A PARTICULAR JUROR. AND
23 LET ME SHARE WITH YOU THAT NO ONE MEANS ANYTHING
24 WHATSOEVER IF YOU'RE NOT SELECTED. AGAIN, IT IS A

JURY SELECTED

169

1 GOES INTO THE SELECTION OF THE JURY.

2 SO, LADIES AND GENTLEMEN, PLEASE
3 NOTE NO ONE MEANS YOU ANY EMBARRASSMENT
4 WHATSOEVER. IT'S JUST OUR PROCESS OF SELECTING
5 JURIES IN THESE CASES FOR, GOSH, I GUESS HUNDREDS
6 OF YEARS AT THIS POINT. LADIES AND GENTLEMEN, DO
7 IF YOU HAVE BROUGHT SOMETHING WITH YOU, A BOOK OR
8 WHATEVER; JUST BRING IT WITH YOU AS YOU COME
9 THROUGH THE GATES AND STAND HERE. I WOULD ASK
10 WHETHER OR NOT THE STATE WOULD WAIVE SELECTION OF
11 THE JURY BY A BLIND PERSON?

12 MRS. MURPHY: ABSOLUTELY.

13 THE COURT: THANK YOU, SO MUCH. IF YOU
14 WOULD PLEASE GIVE US OUR JURY.

15 (JUROR NO. 153, A WHITE MALE, IS CALLED.)

16 THE CLERK: WHAT SAYS THE STATE?

17 MRS. MURPHY: PRESENT THE JUROR.

18 MS. GRAHAM: THE DEFENSE?

19 MR. DAVIS: SEAT MR. DIVIZZIO.

20 THE COURT: HAVE A SEAT IN OUR JURY BOX,
21 SIR.

22 (JUROR NO. 9, A WHITE FEMALE, IS CALLED.)

23 THE CLERK: WHAT SAYS THE STATE?

24 MRS. MURPHY: PRESENT THE JUROR.

25 THE CLERK: THE DEFENSE?

JURY SELECTED

170

1 MR. DAVIS: SEAT MRS. BENNETT.

2 THE CLERK: HAVE A SEAT IN OUR JURY BOX.

3 (JUROR NO. 70, A WHITE MALE, IS CALLED.)

4 THE CLERK: WHAT SAYS THE STATE?

5 MRS. MURPHY: PRESENT THE JUROR.

6 THE CLERK: THE DEFENSE?

7 MR. DAVIS: WE'LL EXCUSE MR. JONES FROM
8 THIS TRIAL.

9 THE CLERK: HAVE A SEAT BACK IN THE
10 AUDIENCE.

11 (JUROR NO. 67, A WHITE FEMALE, IS CALLED.)

12 THE CLERK: WHAT SAYS THE STATE?

13 MRS. MURPHY: PRESENT THE JUROR.

14 THE CLERK: THE DEFENSE?

15 MR. DAVIS: EXCUSE MRS. JEFFERS.

16 THE CLERK: HAVE A SEAT BACK IN THE
17 AUDIENCE.

18 (JUROR NO. 81, A WHITE FEMALE, IS CALLED.)

19 THE CLERK: WHAT SAYS THE STATE?

20 MRS. MURPHY: PRESENT THE JUROR.

21 THE CLERK: THE DEFENSE?

22 MR. DAVIS: EXCUSE MRS. MARABLE.

23 THE CLERK: JUROR NUMBER 14, A WHITE
24 FEMALE, IS CALLED.

JURY SELECTED

171

1 MRS. MURPHY: PRESENT THE JUROR.

2 THE CLERK: THE DEFENSE?

3 MR. DAVIS: SEAT MRS. BRICKLE.

4 THE CLERK: HAVE A SEAT IN THE JURY BOX.

5 (JUROR NO. 50, A WHITE MALE, IS CALLED.)

6 THE CLERK: WHAT SAYETH THE STATE?

7 MRS. MURPHY: PLEASE EXCUSE THE JUROR
8 FROM THIS TRIAL.

9 (JUROR NO. 161, A WHITE MALE, IS CALLED.)

10 THE CLERK: WHAT SAYS THE STATE?

11 MRS. MURPHY: PRESENT THE JUROR.

12 THE CLERK: WHAT SAYS THE DEFENSE?

13 MR. DUKES: PLEASE EXCUSE THE JUROR.

14 (JUROR NO. 144, A WHITE MALE, IS CALLED.)

15 THE CLERK: WHAT SAYS THE STATE?

16 MRS. MURPHY: PRESENT THE JUROR.

17 THE CLERK: THE DEFENSE?

18 MR. DAVIS: PRESENT THE JUROR.

19 (JUROR NO. 117, A BLACK MALE, IS CALLED.)

20 THE CLERK: WHAT SAYS THE STATE?

21 MRS. MURPHY: PLEASE EXCUSE THE JUROR
22 FROM THIS TRIAL.

23 THE CLERK: YOU MAY HAVE A SEAT BACK IN
24 THE AUDIENCE.

25 (JUROR NO. 24, A WHITE FEMALE IS CALLED.)

JURY SELECTED

172

1 THE CLERK: WHAT SAYS THE STATE?

2 MRS. MURPHY: PLEASE EXCUSE MRS. CLAYTON
3 FROM THIS TRIAL.

4 THE CLERK: HAVE A SEAT, PLEASE.

5 (JUROR NO. 111, A BLACK FEMALE, IS CALLED.)

6 THE CLERK: WHAT SAYS THE STATE?

7 MRS. MURPHY: PLEASE PRESENT THE JUROR.

8 THE CLERK: THE DEFENSE?

9 MR. DAVIS: SEAT THE JUROR.

10 (JUROR NO. 116, A BLACK MALE, IS CALLED.)

11 THE CLERK: WHAT SAYS THE STATE?

12 MRS. MURPHY: PLEASE EXCUSE THE JUROR

13 FROM THIS TRIAL.

14 (JUROR NO. 110, A WHITE FEMALE, IS CALLED.)

15 THE CLERK: WHAT SAYS THE STATE?

16 MRS. MURPHY: PLEASE PRESENT THE JUROR.

17 THE CLERK: THE DEFENSE?

18 MR. DAVIS: PLEASE PRESENT MRS. SALTER.

19 (JUROR NO. 99, A WHITE MALE, IS CALLED.)

20 THE CLERK: WHAT SAYS THE STATE?

21 MRS. MURPHY: PRESENT THE JUROR.

22 THE CLERK: THE DEFENSE?

23 MR. DAVIS: EXCUSE THE JUROR.

24 (JUROR NO. 159, A WHITE FEMALE, IS CALLED.)

--- WHAT SAYS THE STATE?

JURY SELECTED

173

1 MRS. MURPHY: PLEASE PRESENT THE JUROR.

2 THE CLERK: THE DEFENSE?

3 MR. DAVIS: PLEASE SEAT MRS. LONGERDON.

4 (JUROR NO. 101, A WHITE FEMALE, IS CALLED.)

5 THE CLERK: WHAT SAYS THE STATE?

6 MRS. MURPHY: PRESENT THE JUROR.

7 THE CLERK: THE DEFENSE?

8 MR. DAVIS: EXCUSE MRS. RADLIN.

9 (JUROR NO. 115, A WHITE FEMALE, IS CALLED.)

10 THE CLERK: WHAT SAYS THE STATE?

11 MRS. MURPHY: PRESENT THE JUROR.

12 THE CLERK: THE DEFENSE?

13 MR. DAVIS: WE'LL TAKE HER.

14 (JUROR NO. 35, A WHITE FEMALE, IS CALLED.)

15 THE CLERK: WHAT SAYS THE STATE?

16 MRS. MURPHY: PRESENT THE JUROR.

17 THE CLERK: THE DEFENSE?

18 MR. DAVIS: PRESENT MRS. DUKES.

19 (JUROR NO. 113, A WHITE MALE, IS CALLED.)

20 THE CLERK: WHAT SAYS THE STATE?

21 MRS. MURPHY: PRESENT THE JUROR.

22 THE CLERK: THE DEFENSE?

23 MR. DAVIS: PRESENT THE JUROR.

24 (JUROR NO. 122, A WHITE MALE, IS CALLED.)

25

JURY SELECTED

174

1. MRS. MURPHY: PLEASE EXCUSE THE JUROR
2. FROM THIS TRIAL.

3. (JUROR NO. 95, A WHITE FEMALE, IS CALLED.)

4. THE CLERK: WHAT SAYS THE STATE?

5. MRS. MURPHY: PRESENT THE JUROR.

6. THE CLERK: THE DEFENSE?

7. MR. DUKES: SWEAR THE JUROR.

8. THE CLERK: HAVE A SEAT IN OUR JURY BOX.

9. (JUROR NO. 155, A WHITE MALE, IS CALLED.)

10. THE CLERK: WHAT SAYS THE STATE?

11. MRS. MURPHY: PRESENT THE JUROR.

12. THE CLERK: THE DEFENSE?

13. MR. DAVIS: PLEASE EXCUSE MR. HOWARD FROM
14. THE TRIAL.

15. THE CLERK: YOU MAY HAVE A SEAT IN THE
16. AUDIENCE.

17. (JUROR NO. 123, A WHITE FEMALE, IS CALLED.)

18. THE CLERK: WHAT SAYS THE STATE?

19. MRS. MURPHY: PRESENT THE JUROR.

20. THE CLERK: THE DEFENSE?

21. MR. DAVIS: PLEASE EXCUSE MR. STEVENS.

22. (JUROR NO. 93, A WHITE MALE, IS CALLED.)

23. THE CLERK: WHAT SAYS THE STATE?

24. MRS. MURPHY: PRESENT THE JUROR.

WHAT SAYS THE DEFENSE?

JURY SELECTED

175

1 MR. DAVIS: EXCUSE MR. OWENS.

2 (JUROR NO. 127, A WHITE MALE, IS CALLED.)

3 THE CLERK: WHAT SAYS THE STATE?

4 MRS. MURPHY: PRESENT THE JUROR.

5 THE CLERK: THE DEFENSE?

6 MR. DAVIS: SEAT MR. THOMPSON.

7 THE CLERK: ALTERNATE?

8 THE COURT: TWO.

9 (JUROR NO. 162, A WHITE MALE, IS CALLED.)

10 THE COURT: TWO AND ONE FOR EACH

11 ALTERNATE. THERE WILL BE TWO ALTERNATES.

12 THE CLERK: WHAT SAYS THE STATE?

13 MRS. MURPHY: PRESENT THE JUROR.

14 THE CLERK: THE DEFENSE?

15 MR. DAVIS: EXCUSE THE JUROR.

16 (JUROR NO. 160, A WHITE MALE, IS CALLED.)

17 THE CLERK: WHAT SAYS THE STATE?

18 MRS. MURPHY: PLEASE EXCUSE THE JUROR

19 FROM THIS TRIAL.

20 (JUROR NO. 20, A BLACK MALE, IS CALLED.)

21 THE CLERK: WHAT SAYS THE STATE?

22 MRS. MURPHY: PRESENT THE JUROR.

23 THE CLERK: THE DEFENSE?

24 MR. DAVIS: SEAT THE JUROR.

25 THE COURT: ALL RIGHT COUNSEL

MOTIONS

176

1 THERE ANY MATTERS REGARDING THE QUALIFICATION OR
2 THE SELECTION OF THE JURY FROM THE STATE?

3 MRS. MURPHY: NO MOTIONS FROM THE STATE,
4 YOUR HONOR.

5 THE COURT: FROM THE DEFENSE, COUNSEL,
6 EITHER?

7 MR. DAVIS: NO MOTION.

8 MR. DUKES: NOTHING, YOUR HONOR.

9 THE COURT: VERY WELL. THANK YOU SO
10 MUCH. LADIES AND GENTLEMEN, THOSE OF YOU WHO ARE
11 IN OUR AUDIENCE ARE NOW KNOWN AS OUR REMAINING
12 JURORS. AND I NEED TO GIVE YOU SOME FURTHER
13 INSTRUCTION ABOUT HOW WE CAN STAY IN CONTACT WITH
14 EACH OTHER. IT USED TO BE THAT WE HAD TO ASK
15 JURORS TO BE HERE EVERY MORNING AT 9:00 OR 9:30 AND
16 EVERY AFTERNOON AT TWO TO SEE IF THEY WERE NEEDED.
17 BUT AT LAST IN THIS DAY OF TECHNOLOGY, WE HAVE A
18 HANDY, DANDY, JUROR CALL IN INFORMATION LINE. THE
19 CARD THAT YOU WERE SENT IN YOUR PACKET HAS THE JURY
20 INFORMATION NUMBERS ON IT. AND IF YOU'RE LIKE ME,
21 YOU DON'T HAVE A CLUE WHERE THAT CARD IS. BUT DO
22 NOT FEAR. MR. TAYLOR WHO IS STANDING AT THE BACK
23 OF THE COURTROOM HAS A STACK OF THESE CARDS. IF
24 YOU KNOW THAT YOU STILL HAVE YOUR CARD AND YOU WANT
25 AN EXTRA ONE, TAKE IT. IF YOU DON'T -- YOU'RE NOT

MOTIONS

177

1 SURE IF YOU HAVE IT -- TAKE TWO. IN OTHER WORDS,
2 TAKE A CARD IF YOU THINK YOU COULD POSSIBLY NEED IT
3 JUST SO YOU HAVE THE JUROR INFORMATION NUMBER ON
4 THE CARD. I'M GOING TO ASK YOU TO CALL THAT NUMBER
5 AFTER SIX O'CLOCK TOMORROW EVENING; AFTER SIX
6 O'CLOCK TOMORROW EVENING WHICH WOULD BE WEDNESDAY
7 EVENING. ON THE JURY INFORMATION LINE, YOU WILL BE
8 GIVEN ONE OF TWO PIECES OF INFORMATION; EITHER WHEN
9 TO RETURN TO THE COURTROOM, THE COURT HOUSE FOR THE
10 SELECTION OF OUR NEXT JURY; OR WHEN TO CALL BACK.
11 IRRESPECTIVE OF WHAT THE INSTRUCTION MAY BE, PLEASE
12 FOLLOW THE INSTRUCTION ON THE JUROR INFORMATION
13 LINE.

14 NOW, YOU CAN CALL AT 6:01, 6:30,
15 10:00. IF YOU'RE UP WALKING THE FLOOR, CALL AT
16 2:00 A.M. THURSDAY MORNING. IT JUST GIVES US UNTIL
17 SIX O'CLOCK TOMORROW EVENING SO THAT I CAN FIRM UP
18 OUR SCHEDULE AND THEN COMMUNICATE THAT TO YOU VIA
19 THE JURY INFORMATION LINE. LADIES AND GENTLEMEN,
20 LET ME ONCE AGAIN TELL YOU HOW MUCH I APPRECIATE
21 YOU BEING HERE, HOW MUCH I KNOW THAT YOU HAVE GIVEN
22 TO YOUR COMMUNITY, YOUR STATE, YOUR COUNTRY, YOUR
23 PRECIOUS TIME. AND I'M SO GRATEFUL TO YOU FOR
24 THAT. AND AT THIS TIME I'M GOING TO TELL YOU THAT
25 YOU ARE FREE TO GO. AND I'LL LOOK FORWARD TO

MOTIONS

178

1 SEEING YOU LATER IN THIS WEEK. THANK YOU SO MUCH.
2 (AT THIS TIME REMAINDER OF JURY IS EXCUSED FOR THE DAY.)

3 THE COURT: NOW, LADIES AND GENTLEMEN, WE
4 ARE NOT GOING TO BEGIN THIS CASE THIS AFTERNOON.
5 WE'RE GOING TO BEGIN IT IN THE MORNING GIVEN THE
6 TIME OF DAY THAT IT IS. BUT I DID NEED TO GIVE YOU
7 JUST A LITTLE BIT OF INSTRUCTION BEFORE WE PART FOR
8 THIS EVENING. AND THE FIRST THING THAT I'M GOING
9 TO TELL YOU IS THAT -- AND I'LL REPEAT THIS EACH
10 AND EVERY TIME THAT YOU LEAVE THE COURTROOM; AND
11 THAT IS THAT YOU MUST NOT DISCUSS THIS MATTER OR
12 ALLOW ANYONE TO DISCUSS IT WITH YOU. AND YOU'LL
13 SAY "HUH; THE CASE HASN'T EVEN BEGUN; WHAT ARE YOU
14 TALKING ABOUT." WELL, YOU KNOW, YOU'VE HEARD ME
15 READ SOME OF THE ALLEGATIONS IN THE INDICTMENT.
16 YOU'VE MET SOME FOLKS. AND, SO, CERTAINLY HAVING
17 BEEN INTRODUCED TO SOME FOLKS, YOU CERTAINLY HAVE A
18 LITTLE BIT OF INFORMATION. HENCE I JUST INSTRUCT
19 YOU NOT TO DISCUSS THIS MATTER OR ALLOW ANYONE TO
20 DISCUSS IT WITH YOU.

21 NOW, HAVING SAID THAT, YOU'RE
22 GOING TO BE GOING HOME TONIGHT, AND SOMEBODY IS
23 GOING TO BE INTERESTED IN WHAT YOU'VE BEEN UP
24 TODAY. IT IS PERFECTLY FINE TO SAY "YES, I SHOWED
25 UP FOR JURY DUTY." AND "I HAVE BEEN SELECTED TO

MOTIONS

179

1 SERVE ON A JURY; AND IT IS A CRIMINAL AS OPPOSED TO
2 A CIVIL MATTER." BUT BEYOND THAT, YOU MUST NOT
3 DISCUSS THIS MATTER OR ANYONE OR ANYTHING THAT HAS
4 ANYTHING TO DO WITH THE CASE. LET ME TELL YOU
5 WHY. I THINK IT'S SORT OF INTERESTING. WE HAVE
6 LEARNED IN OUR COUNTRY 200 PLUS YEARS, THAT WE'RE
7 ACTUALLY A PRODUCT OF ENGLISH JURIS PRUDENCE. AND
8 THE SAME IS TRUE AS THE HISTORY OF ENGLISH JURIS
9 PRUDENCE. AND THAT IS WHEN WE AS HUMAN BEINGS
10 BEGIN TO TALK AND DISCUSS A MATTER, WE BEGIN TO
11 FORM OPINIONS. AND THEN AS WE HEAR THINGS, WE WANT
12 TO PIGEON HOLE THE INFORMATION. IT IS IMPORTANT AS
13 A JUROR THAT YOU ARE ABLE TO LISTEN OPEN MINDEDLY
14 TO ALL THE EVIDENCE. BECAUSE IT IS SO IMPORTANT IN
15 ORDER TO SUPPORT THAT DUTY OF YOURS TO LISTEN
16 OPEN-MINDEDLY TO ALL THE EVIDENCE, THAT IS THE
17 REASON FOR THE INSTRUCTION NOT TO DISCUSS THIS
18 MATTER OR TO ALLOW ANYONE TO DISCUSS IT WITH YOU.

19 NOW, AFTER YOU HAVE HEARD ALL OF
20 THE EVIDENCE IN THE CASE AND YOU'VE HEARD THE
21 ARGUMENTS OF COUNSEL AND MY CHARGE ON THE CASE,
22 THEN YOU WILL BE PREPARED TO DISCUSS OR TO
23 DELIBERATE THIS MATTER. I PROMISE YOU THERE WILL
24 BE NO DOUBT IN YOUR MINDS WHEN THAT TIME HAS COME.
25 BUT UNTIL THAT TIME HAS COME YOU MUST NOT

MOTIONS

180

1 THIS MATTER OR ALLOW ANYONE TO DISCUSS IT WITH
2 YOU. NOW, WHEN YOU GO HOME TONIGHT, DON'T LET
3 ANYBODY THINK YOU'RE BEING SNOOTY. JUST TELL THEM
4 THAT THE JUDGE HAS TOLD YOU THAT. PUT IT ON THE
5 JUDGE. AND PLEASE KEEP THAT IN MIND.

6 I DON'T KNOW WHETHER OR NOT THERE
7 COULD BE ANY KIND OF PUBLICITY ABOUT THIS
8 PARTICULAR MATTER. I GENUINELY DO NOT. HOWEVER,
9 IN AN ABUNDANCE OF CAUTION, IF YOU HAPPEN TO HEAR
10 SOMETHING ON THE RADIO OR ON THE NEWS, OR SEE
11 SOMETHING IN THE PAPER, YOU MUST IMMEDIATELY TURN
12 OFF THE RADIO, TURN OFF THE TELEVISION. DON'T READ
13 THE ARTICLE. PUT THE PAPER ASIDE. I GUESS I
14 SHOULD SAY THE INTERNET BECAUSE I THINK THERE'S
15 NEWS ON THE INTERNET. AND THE SAME WOULD BE TRUE
16 OF THE INTERNET. IF YOU HAPPEN TO SEE SOMETHING,
17 DO NOT LOOK AT IT. PUT IT IMMEDIATELY ASIDE, AND
18 DO NOT ALLOW YOURSELF TO BE EXPOSED TO THAT
19 INFORMATION.

20 NOW, THE LAW PROVIDES FURTHER
21 THAT THERE SHOULD BE ONE OF YOUR NUMBER WHO IS YOUR
22 PRESIDING JUROR RATHER THAN THE ALTERNATES, ONE OF
23 THE TWELVE. THE LAW PROVIDES THAT THE ALTERNATE
24 CAN BE -- EXCUSE ME; THAT THE PRESIDING JUROR CAN

MOTIONS

181

1 EITHER APPOINT THE PRESIDING JUROR, OR YOU CAN
2 SELECT YOUR OWN PRESIDING JUROR. I'M GOING TO ASK
3 THAT YOU SELECT YOUR OWN PRESIDING JUROR. NOW,
4 WHAT DOES A PRESIDING JUROR DO YOU SHOULD ASK?
5 WELL, A PRESIDING JUROR HAS THREE ADDITIONAL DUTIES
6 THAT A JUROR, A PRESIDING JUROR, WILL ACTUALLY TAKE
7 POSSESSION OF THE VERDICT FORM AT THE CONCLUSION OF
8 THE CASE. AND AT THE CONCLUSION OF THE
9 DELIBERATIONS, IT WOULD BE THE RESPONSIBILITY OF
10 THE PRESIDING JURORS TO SIMPLY WRITE THE VERDICT OF
11 THE JURY ON THE VERDICT FORM.

12 SECONDLY, THE PRESIDING JUROR HAS
13 THE RESPONSIBILITY TO MODERATE THE JURY
14 DELIBERATIONS JUST TO BE SURE THAT EACH AND EVERY
15 JUROR HAS AN OPPORTUNITY TO PARTICIPATE IN THOSE
16 DELIBERATIONS. AND FINALLY IN THE EVENT THAT THE
17 JURY NEEDS TO COMMUNICATE WITH ME FOR WHATEVER
18 REASON, THE PRESIDING JUROR WOULD TAKE THAT DOWN IN
19 WRITING, SIGN IT, AND THEN PROBABLY GIVE IT TO MRS.
20 SALISBURY OR GIVE IT TO ME WHEN YOU RETURN TO THE
21 COURTROOM. IT WILL PROMPTLY BE GIVEN TO ME IF YOU
22 GIVE IT TO EITHER MRS. FLOYD OR MRS. SALISBURY.
23 THOSE ARE THE TASKS OF THE PRESIDING JUROR. I KNOW
24 IT'S THE CAMPAIGN SEASON, BUT KEEP YOUR CAMPAIGNS

MOTIONS

182

1 THE MORNING, IF YOU WOULD SELECT YOUR OWN PRESIDING
2 JUROR OR ON ONE OF OUR BREAKS. I WOULD BE MOST
3 APPRECIATIVE. AND WHEN THE PRESIDING JUROR HAS
4 BEEN SELECTED, THAT PERSON WILL THE SEAT IN WHICH
5 IS HERE IN THE FRONT CLOSEST TO THE DOOR. OFTEN
6 TIMES THAT JUST SEEMS TO BE THE MOST PREEMINENT
7 QUALIFICATION FOR A PRESIDING JUROR. I JUST SHARE
8 THAT WITH YOU, LADIES AND GENTLEMEN; WHOEVER YOUR
9 PRESIDING JUROR IS YOUR TASK COMPLETELY. BUT
10 WHENEVER YOU HAVE SELECTED YOUR PRESIDING JUROR,
11 YOU CAN GIVE ME A NOTE. YOU CAN EITHER TELL MRS.
12 SALISBURY WHO WILL TELL ME. YOU CAN TELL ME AS A
13 PRESIDING JUROR ON YOUR RETURN TO THE COURTROOM, OR
14 YOU CAN JUST SEE IF I'M SMART ENOUGH TO FIGURE IT
15 OUT BECAUSE YOU KEEP THE CHAIR. IN ANY EVENT AS
16 THE PRESIDING JUROR, IF YOU WOULD KEEP THAT SEAT
17 THROUGHOUT THE BALANCE, OR THROUGHOUT THE TRIAL.

18 AS OUR ALTERNATES, I'M GOING TO
19 ASK YOU ALL TO PLEASE KEEP THOSE TWO SEATS. AND
20 Y'ALL CAN SWITCH IF YOU WANT TO SWITCH BACK AND
21 FORTH. BUT IF YOU'LL KEEP BETWEEN THE TWO OF YOU
22 THOSE TWO SEATS SO THAT I MAY KEEP UP WITH YOU AS
23 OUR ALTERNATE. AND I PROMISE, IT'S NOT SO WE'LL
24 KNOW WHERE TO PUT THE WHOOPIE CUSHION. BUT IF

MOTIONS

183

1 AS OUR ALTERNATES. THE REST OF YOU; PLEASE. IF
2 YOU LIKE A SEAT, TAKE THE SEAT, KEEP THE SEAT. IF
3 YOU WANT TO SWITCH AROUND, FEEL FREE TO DO THAT AS
4 WELL. THERE IS NO ASSIGNED SEATING BEYOND THE
5 PRESIDING JUROR'S SEAT AND, OF COURSE, THE SEAT FOR
6 THE ALTERNATE. SO IF YOU WOULD SELECT YOUR JURORS,
7 THAT WOULD BE WONDERFUL. I WILL GIVE YOU A HINT
8 BECAUSE IN A MOMENT, I'M GOING TO BE ASKING YOU TO
9 FOLLOW MRS. SALISBURY BECAUSE SHE'S GOING TO DO TWO
10 THINGS. SHE'S GOING TO SHOW YOU YOUR JURY ROOM
11 WHERE YOU WILL COME IN THE MORNING. SHE'LL ALSO
12 SHOW YOU HOW TO COME AND GO FROM THE COURTHOUSE
13 ACCESSING THE BACK STEPS SO YOU CAN ACCESS THE JURY
14 ROOM. MRS. SALISBURY IS REAL FAMOUS ABOUT THE
15 BREAKFAST THAT SHE SERVES JURORS, SO YOU ALL MIGHT
16 WANT TO DROP A HINT OR TWO FOR HER. SHE JUST DOES
17 A GREAT JOB. IF YOU FEEL LIKE YOU WANT DOUGHNUTS;
18 IF YOU FEEL NOURISHMENT LIKE A CHICKEN BISCUIT OR
19 WHATEVER. BUT YOU MIGHT WANT TO MAKE YOUR
20 SUGGESTION KNOWN TO HER.

21 I WANT TO TELL YOU; WHEN YOU
22 RETURN IN THE MORNING AT 9:30 -- WE WILL BE READY
23 TO GO AT 9:30 IN THE MORNING IN THIS MATTER.
24 HERE'S HOW WE WILL BE PROCEEDING. YOU WILL FIRST

MOTIONS

184

66

1 CHARGE, OR AN OPENING INSTRUCTION. IT'S JUST TO
2 SORT OF GIVE YOU FROM MY PERSPECTIVE SORT OF AN
3 OVERVIEW OF THE PROCEDURE. AND I WILL GIVE THAT TO
4 YOU. THAT WON'T TAKE BUT MAYBE TEN MINUTES. I'LL
5 MAKE THOSE PRELIMINARY REMARKS TO YOU. AND THEN WE
6 WILL GET RIGHT INTO THE TRIAL OF THIS CASE.

7 FINALLY, LET ME MENTION IN THE
8 MORNING, I KNOW SOMEBODY IS GOING TO WANT TO BRING
9 A CUP OF COFFEE INTO THE COURTROOM OR YOUR WATER,
10 OR WHATEVER. I WANT YOU TO KNOW THAT IS PERFECTLY
11 FINE. IF YOU HAVE A LITTLE COFFEE OR THINK YOU
12 MIGHT HAVE A COUGH AND YOU WANT TO BRING A LITTLE
13 COFFEE, I WANT YOU TO FEEL FREE TO DO THAT AS WELL.

14 BUT KIND OF UNWRAP IT, YOU KNOW, GET THE PAPER --
15 YOU KNOW HOW LOUD IT IS WHEN EVERYBODY IS QUIET? I
16 ACTUALLY DO THAT. AND I'M AMAZED WITH HOW LOUD
17 THAT CAN BE. SO IF YOU CAN UNWRAP IT, THAT WOULD
18 BE GREAT.

19 FINALLY, CELL PHONES AND BEEPERS;
20 LEAVE THEM AT HOME. LEAVE THEM IN THE CAR. YOU DO
21 NOT NEED, YOU MUST NOT HAVE IN YOUR POSSESSION
22 WHILE YOU SERVE ON THIS JURY A BEEPER OR A CELL
23 PHONE. AND LET ME TELL YOU WHY. THE REASON FOR
24 THAT IS THAT YOU WILL RECEIVE THE INFORMATION FOR

MOTIONS

185

1 AND NOWHERE ELSE. THERE WAS A CASE IN ANOTHER PART
2 OF THE STATE YEARS AGO WHEN SOMEBODY HAD THEIR CELL
3 PHONE. AND HE SAID "AH! I CAN SOLVE THIS;" AND
4 THEY GOT ON THE CELL PHONE DURING THE JURY
5 DELIBERATIONS. NO; NO; NO; NO; NO; NO.. THE CASE
6 HAD TO BE COMPLETELY REDONE. AND SINCE THEN, WE'VE
7 TRIED TO BE VERY CAREFUL IN REMINDING JURORS NOT TO
8 BRING YOUR BEEPERS, NOT TO BRING YOUR CELL
9 PHONES.

10 NOW, IF YOU FORGET, DON'T WORRY
11 ABOUT IT. JUST LET ME KNOW IN THE MORNING, AND --
12 WE -- MRS. GRAHAM WILL TAKE YOUR BEEPER OR YOUR
13 CELL PHONE FOR SAFE KEEPING. AND I PROMISE SHE
14 WILL NOT MAKE MORE THAN TWO INTERNATIONAL PHONE
15 CALLS ON YOUR CELL PHONE WHILE SHE HAS IT. LADIES
16 AND GENTLEMEN, I THINK THAT WILL GIVE YOU ENOUGH
17 FOR THIS EVENING. I THANK YOU FOR YOUR PATIENCE
18 AND YOUR COOPERATION AS WE'VE GONE THROUGH THIS
19 PROCESS TODAY. AND IF YOU WILL FOLLOW MRS.
20 SALISBURY, SHE WILL SHOW YOU YOUR JURY ROOM AND HOW
21 TO COME AND GO FROM YOUR JURY ROOM. AND LASTLY,
22 LET ME AGAIN REMIND YOU NOT TO DISCUSS THIS MATTER.
23 DO NOT DISCUSS THIS MATTER OR ALLOW ANYONE TO
24 DISCUSS IT WITH YOU. AND HAVE A MARVELOUS AND

MOTIONS

186

1 THE ELEVATOR, JUST GO LET MRS. SALISBURY SHOW YOU
2 YOUR JURY ROOM; THEN YOU CAN ON COME BACK THROUGH
3 THE COURT ROOM AND GO OUT THIS WAY TO THE ELEVATOR.
4 THANK YOU SO MUCH. HAVE A WONDERFUL EVENING.

5 (AT THIS TIME JURY IS EXCUSED FOR THE DAY.)

6 THE COURT: ALL RIGHT. ANYTHING FURTHER
7 THIS EVENING?

8 MR. DAVIS: YOUR HONOR, I JUST WANT TO
9 ADDRESS MY ISSUE ON THAT DEFECTIVE INDICTMENT. I
10 CAN ARGUE IT THIS AFTERNOON.

11 THE COURT: ALL RIGHT. I TELL YOU WHAT.
12 WHY DON'T WE DO THAT IN THE MORNING?

13 MR. DAVIS: OKAY, JUDGE.

14 THE COURT: IF THAT SUITS YOU ALL. I
15 KNOW MRS. ADDISON'S ARMS HAVE GOT TO BE FALLING
16 OFF. AND THE JURY IS NOT COMING IN UNTIL 9:30.
17 VERY WELL. WE NEED TO DO THAT MOTION IN THE
18 MORNING. WE'LL DO THE OTHER MOTIONS IN THE
19 MORNING.

20 MRS. MURPHY: NOTHING FROM THE STATE,
21 YOUR HONOR.

22 THE COURT: VERY WELL.
23
24

1 MOTIONS

2 WEDNESDAY, OCTOBER 23, 2002

3

4 THE COURT: ALL RIGHT.

5 MR. DAVIS: I'M READY WHENEVER YOU'RE
6 READY.

7 THE COURT: I'M READY. MR. DAVIS, YOU
8 HAVE A MOTION?

9 MR. DAVIS: YES, YOUR HONOR. I MOVE TO
10 QUASH THE INDICTMENT. AND THE BASIS FOR IT, YOUR
11 HONOR, IS BECAUSE AS I READ IT IN CONJUNCTION WITH
12 WHAT MY CLIENT IS CHARGED WITH WHICH IS SECTION
13 27-50; IT'S UNLAWFUL FOR A PERSON WHO HAS CHARGE OR
14 CUSTODY OF A CHILD OR WHO IS A PARENT OR GUARDIAN
15 OF A CHILD OR WHO IS RESPONSIBLE FOR THE WELFARE OF
16 THE CHILD AS DEFINED IN SECTION 27-49-50. NUMBER
17 ONE, TO PLACE THE CHILD AT UNREASONABLE RISK OF
18 HARM AFFECTING THE CHILD'S LIFE, PHYSICAL OR MENTAL
19 HEALTH OR SAFETY.

20 THE COURT: ALL RIGHT.

21 MR. DAVIS: AND THAT INDICTMENT THAT HAS
22 BEEN PRESENTED FOR TRIAL THIS MORNING, THIS WEEK;
23 NONE OF THAT LANGUAGE EXISTS IN THAT INDICTMENT.
24 THEN THE SECOND CONDITION SAYS "DO OR CAUSE TO BE
25 DONE UNLAWFULLY OR UNREASONABLY"

MOTIONS

188

1 CHILD SO THAT THE LIFE OR THE HEALTH OF THE CHILD
2 IS IN DANGER OR LIKELY TO BE IN DANGER. AGAIN,
3 BASED ON THE INDICTMENT THAT HAS BEEN SCHEDULED FOR
4 TRIAL THIS WEEK, THERE'S NO LANGUAGE OF ANY OF THAT
5 IN THAT INDICTMENT. AND LASTLY, WILFULLY ABANDONS
6 THE CHILD. THAT'S NOT IN THE INDICTMENT. INSTEAD
7 WHAT WE HAVE IN THE INDICTMENT IS THAT MY CLIENT
8 LEFT HIS CHILD WITH WILLIAM BURDEN WHO HAS BEEN
9 INDICTED FOR ASSAULT AND BATTERY OF A HIGH AND
10 AGGRAVATED NATURE, OR ASSAULT AND BATTERY WITH
11 INTENT TO KILL; TO THAT EFFECT. ON NOVEMBER THE
12 THIRD, 2001, THAT WAS NOT THE CASE. MR. WILLIAM
13 BURDEN HAD NOT AT THAT POINT BEEN INDICTED ON
14 ANYTHING.

15 SO I TAKE THE POSITION THAT THE
16 STATE OF AFFAIRS THAT MY CLIENT STANDS ON TRIAL FOR
17 IS WHAT WERE THE CONDITIONS WHEN SHE LEFT IN
18 REFERENCE TO NOTICE; WHAT WERE THE EXISTING
19 CONDITIONS WHEN SHE PLACED OR CAUSED HER CHILD TO
20 BE LEFT WITH THE NATURAL BIOLOGICAL FATHER ON
21 NOVEMBER THE THIRD, 2001. IF YOU READ THE
22 INDICTMENT, IT REALLY DON'T PUT US IN THE POSITION
23 TO PUT MY CLIENT ON NOTIFICATION WITH THE TRIAL
24 THIS AFTERNOON. BUT I SHARE THIS WITH YOU, JUDGE,

MOTIONS

189

1 THOUGH; THE WARRANT WAS VERY, VERY SUFFICIENT. I
2 THINK IF THE WARRANT -- THE LANGUAGE FROM THE
3 WARRANT WAS ADOPTED IN THE INDICTMENT, I WOULDN'T
4 BE MAKING THIS SAME ARGUMENT. THE WARRANT SAID "IN
5 THAT SHE DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY
6 AS THE MOTHER OF THE FIVE YEARS OF AGE VICTIM DID
7 PLACE THE CHILD AT UNREASONABLE DEGREE OF HARM
8 AFFECTING THE CHILD'S LIFE, PHYSICAL OR MENTAL
9 HEALTH OR SAFETY BY ALLOWING THE CHILD'S FATHER,
10 WILLIAM DEAN BURDEN, BACK INTO THE HOUSE." NOW,
11 THAT WAS THE CONDITION THAT EXISTED. AND THEN IT
12 GOES FURTHER AND SAYS "KNOWING THAT HE WAS THE
13 PERSON WHO WAS IN CHARGE OF CARING FOR THE VICTIM
14 ON OCTOBER THE TWELFTH, 1998, WHEN THE VICTIM
15 RECEIVED A BROKEN FEMUR, LEG, THAT REQUIRED THE
16 CARE OF D.S.S." NOW, THAT'S IMPORTANT BECAUSE
17 BASICALLY WHAT IT PUT ME IN A POSITION IN THAT I
18 KNEW THAT I HAD TO CONTEST WHATEVER OCCURRED IN
19 1998.

20 IF WE LISTENED TO JACKSON VS.
21 DINNO YESTERDAY, IT CAME OUT. I MEAN, DETECTIVE
22 MARSHALL HAD ALREADY PUT THAT IN PLACE. HE'S TAKEN
23 A STATEMENT WHICH IS NOT A STATEMENT THAT YOU RULED
24 ON FROM MY CLIENT. AND THE CRUX OF THAT STATEMENT

MOTIONS

190

1 ON NOVEMBER THE THIRD BUT IMMEDIATELY GOES INTO A
2 COLLOQUY ABOUT WHAT HAPPENED ON OCTOBER THE 12TH,
3 1998, RELATING BACK TO WHEN THE CHILD'S FEMUR, THE
4 BROKEN LEG, COMES INTO PLAY. NOW, THAT BECOMES
5 IMPORTANT BECAUSE THAT IS THE ONLY REASON THAT
6 CAUSED MY CLIENT TO BE INDICTED ON THE CHARGE THAT
7 SHE STANDS FOR. BUT AS YOU READ THE WARRANT THAT
8 WAS IN PLACE THAT CAUSED HER TO BE ARRESTED, I
9 WOULD SUFFICE IT TO SAY THAT I KNEW WHY MY CLIENT
10 WAS ARRESTED ON THAT DAY IN QUESTION. BUT FOR
11 PURPOSES OF THIS INDICTMENT TODAY AND GOING TO
12 TRIAL, WE WERE NOT PUT ON SUFFICIENT NOTICE AS TO
13 WHAT WE HAD TO CONTEST. AND THAT'S ALREADY COME
14 INTO PLAY RIGHT NOW BECAUSE THEY'RE ALREADY
15 ALLUDING BACK TO 1998. THEY'RE ALREADY ALLUDING
16 BACK TO THERE WAS A FEMUR; A BONE WAS BROKEN;
17 THEY'RE ALREADY ALLUDING BACK TO THE FACT THAT MY
18 CLIENT LIED BACK IN 1998. AND I THINK THAT
19 INDICTMENT SHOULD BE A SQUASHED, YOUR HONOR.

20 THE COURT: ALL RIGHT. IN OTHER WORDS,
21 YOUR CONCERN IS THAT THE BODY OF THE INDICTMENT
22 DOES NOT RECITE THE STATUTORY PROVISION, THE
23 SPECIFIC STATUTORY PROVISION. AND IT IS YOUR
24 POSITION THAT THEY'RE INSUFFICIENT, STATEMENTS

MOTIONS

191

1 PUT MS. GADSON STONE ON NOTICE THAT -- AND,
2 ACTUALLY, LET ME SHARE IN THE STATUTORY---

3 MR. DAVIS: I'M SORRY, JUDGE. THIS IS
4 YOUR BOOK. REALLY, AS I UNDERSTAND, IT IS
5 TWO-FOLD. NUMBER ONE, THE CONCERN IS THE STATUTORY
6 PROVISION IS NOT ALLEGED WITHIN THE BODY OF THE
7 INDICTMENT. SECONDLY, THAT THE ALLEGATIONS
8 CONTAINED WITHIN THE BODY OF THE INDICTMENT ARE
9 INSUFFICIENT TO PUT THE DEFENDANT ON NOTICE THAT
10 THE STATUTORY PROVISION IS 27-58-1. AND THE REASON
11 FOR THAT IS THAT CONTAINED WITHIN 27-50 NECESSARILY
12 MUST BE SOME NOTICE PRIOR TO NOVEMBER THE THIRD?

13 MR. DAVIS: THAT'S RIGHT, YOUR HONOR.

14 THE COURT: AND THERE'S NO ALLEGATION OF
15 NOTICE IN THE INDICTMENT?

16 MR. DAVIS: THAT'S CORRECT.

17 THE COURT: YES, MA'AM? MRS. MURPHY, LET
18 ME HEAR FROM YOU.

19 MRS. MURPHY: MAY IT PLEASE THE COURT,
20 YOUR HONOR? THE INDICTMENT DOES SITE THE SPECIFIC
21 STATUTE UNDER WHICH THE DEFENDANT IS CHARGED AS
22 REQUIRED UNDER THIS CASE LAW, YOUR HONOR, TO
23 SUFFICIENTLY PUT HER ON NOTICE OF THE CRIME SHE IS
24 FACING. THERE IS NO REQUIREMENT THAT IT ACTUALLY
25 BE IN THE BODY OF -- THE STATUTE NUMBER IS ON OUR

MOTIONS

192

1 FRONT OF THE INDICTMENT.

2 THE COURT: IT'S NOT SUFFICIENT UNDER THE
3 NEW CASE LAW; I'M SORRY.

4 MRS. MURPHY: YOUR HONOR, I'M JUST GOING
5 THROUGH IT AS FAR AS I'M SAYING THAT THE STATUTE IS
6 ON THE FRONT OF THE INDICTMENT TO PUT THE DEFENDANT
7 ON NOTICE AS TO THE CRIMES SHE'S FACING. AND THEN
8 ON THE TOP WHERE THE BODY OF THE INDICTMENT STARTS,
9 IT STATES WHAT STATUTE SHE IS CHARGED UNDER AND THE
10 REASONS WHY SHE VIOLATED THAT STATUTE; THAT SHE PUT
11 HER CHILD---

12 THE COURT: IN OTHER WORDS, YOU'RE SAYING
13 WHEN IT SAYS UNLAWFUL NEGLECT OF A CHILD BY LEGAL
14 CUSTODIAN IS THE CITING OF THE STATUTORY PROVISION?

15 MRS. MURPHY: RIGHT.

16 THE COURT: OKAY.

17 MRS. MURPHY: AND, YOUR HONOR, IT GIVES
18 HER SPECIFIC NOTICE AS TO HOW SHE VIOLATED THAT
19 STATUTE BY INDICATING THAT SHE WILLFULLY LEFT HER
20 CHILD ALONE WITH THE DEFENDANT HER CHILD WHO -- THE
21 DEFENSE COUNSEL IS ARGUING THAT IT STATES THAT HE
22 WAS INDICTED ON NOVEMBER THE THIRD WHICH IS NOT THE
23 WAY IT READS. HE HAS BEEN INDICTED FOR HIS ACTIONS
24 ON NOVEMBER THE THIRD. SO, YOUR HONOR, THE STATE

MOTIONS

193

1 THE INDICTMENT GIVE THE DEFENDANT SUFFICIENT NOTICE
2 OF -- THAT THEY PUT HER ON NOTICE OF A CRIME WHICH
3 SHE IS FACING WHICH IS THE PURPOSE OF THE
4 INDICTMENT.

5 THE COURT: IN OTHER WORDS, IT'S YOUR
6 POSITION THAT WHAT THIS INDICTMENT DOES IS GIVES
7 SUFFICIENT FACTS TO PUT MRS. GASTON ON NOTICE OF
8 THE CRIME THAT SHE IS CHARGED WITH AND THE
9 STATUTORY PROVISION IN THAT RATHER THAN SAYING THAT
10 SHE PLACED THE CHILD AT UNREASONABLE RISK OF HARM
11 AFFECTING THE CHILD'S LIFE, PHYSICAL OR MENTAL
12 HEALTH OR SAFETY, RATHER THAN USING THAT LANGUAGE
13 THAT THIS INDICTMENT SPECIFICALLY SAYS WHAT THE
14 UNREASONABLE RISK OF HARM WAS, AND THE UNREASONABLE
15 RISK OF HARM WAS PLACING HER FIVE YEAR OLD CHILD IN
16 DANGER BY LEAVING THE CHILD IN THE CUSTODY OF
17 WILLIAM BURDEN ON NOVEMBER THE THIRD?

18 MRS. MURPHY: THAT'S CORRECT, YOUR HONOR.

19 THE COURT: AND THAT THE NOTICE IS PROOF,
20 PERHAPS; A PROOF ISSUE. IN OTHER WORDS, WHAT
21 NOTICE DID SHE HAVE TO KNOW THAT THIS COULD BE A
22 PROBLEM. AND THAT'S A PROOF ISSUE RATHER THAN AN
23 INDICTMENT ISSUE. DO YOU UNDERSTAND WHAT I'M
24 SAYING?

MOTIONS

194

1 THE COURT: IN '98 -- THE DISCUSSION
2 ABOUT '98 GOES TO THE NOTICE; WHAT NOTICE DID SHE
3 HAVE?

4 MRS. MURPHY: YES, MA'AM.

5 THE COURT: THAT THIS WOULD BE AN
6 UNREASONABLE RISK OF HARM RATHER THAN AN ISSUE FOR
7 THE INDICTMENT.

8 MRS. MURPHY: I AGREE WITH WHAT YOU'RE
9 SAYING. I THINK THAT'S ALSO PROOF AS WELL AS -- I
10 THINK THAT THE PROOF IN THE INDICTMENT GIVES HER --
11 OR THE ALLEGATIONS IN THE INDICTMENT GIVE HER
12 NOTICE OF WHAT SHE IS FACING SUFFICIENTLY IN THE
13 INDICTMENT. AND CERTAINLY I THINK WHAT HE'S
14 ARGUING IS A PROOF ISSUE, NOT AN ISSUE WITH THE
15 INDICTMENT.

16 THE COURT: IN OTHER WORDS, MR. DAVIS IS
17 CONCERNED THAT THERE IS NO STATUTORY INDICATION
18 WITHIN THE BODY OF THE INDICTMENT A; AND THAT
19 THERE'S NO NOTICE, OR THERE'S NO STATEMENT IN THE
20 INDICTMENT REGARDING WHY IT WAS AN UNREASONABLE
21 RISK OF HARM.

22 MR. DAVIS: THAT'S THE CRUX OF THE
23 MATTER.

24 THE COURT: I'M WITH YOU.

MOTIONS

195

1 STATUTE GOES SO FAR AS TO ENUMERATE WHICH ITEM YOU
2 WANT TO BRING THIS CLIENT UNDER. WE COULD BE
3 STANDING ON THE FACT THAT SHE JUST ABANDONED HER
4 CHILD -- BUT WE'RE NOT HERE -- THEN MY CLIENT WOULD
5 BE FACED WITH AN OFFENSE AND SAY "WELL, I DIDN'T
6 ABANDON MY CHILD; I WENT TO THE RED AND WHITE AND I
7 WAS COMING RIGHT BACK; I DIDN'T ABANDON HIM." OR
8 IT COULD BE NUMBER TWO OR NUMBER THREE. AND ON
9 THAT REFERENCE THAT THE SOLICITOR IS ALLUDING TO
10 THIS MORNING, THERE IS NO REFERENCE TO EITHER ONE,
11 TWO, OR THREE. AND SO WE GET A SHOTGUN APPROACH IN
12 REFERENCE TO WHAT MY CLIENT IS PLACED IN THIS
13 MORNING.

14 I DON'T KNOW IF WE'RE OFFENDING
15 THE FACT THAT SHE ABANDONED THE CHILD BECAUSE SHE
16 WENT SHOPPING. I DON'T KNOW IF WE'RE HERE TODAY
17 BECAUSE OF THE FACT THAT IT WAS JUST LEFT WITH
18 WILLIAM BURDEN WHO AT THAT TIME THE BIOLOGICAL
19 FATHER. WE'VE LEARNED SINCE THAT HE'S BEEN
20 INDICTED ON THESE SERIOUS CHARGES. BUT HE WAS NOT
21 INDICTED ON THOSE SERIOUS CHARGES ON NOVEMBER THE
22 THIRD. AND THE WORD "WILLFUL" CONNOTES A KNOWING
23 ACT; WHEN YOU'VE WILLFULLY DONE SOMETHING. AND
24 THIS STATUTE USES THE WORD WILLFULLY. WHEN YOU USE

MOTIONS

196

1. OF SOMETHING; I ALLOWED THIS SITUATION TO OCCUR.
2. TELL ME FROM THE BODY OF THAT INDICTMENT WHAT
3. THINGS OR ITEMS THAT SHE WILLFULLY ALLOWED TO
4. HAPPEN OTHER THAN LEAVING HER CHILD WITH WILLIAM
5. BURDEN. UNLESS YOU TAKE THE OTHER PART WHERE WE'VE
6. GOT TO DEFEND THE FACT THAT HE'S BEEN INDICTED. WE
7. CONCEDE THAT HE'S BEEN INDICTED. NO QUESTION ABOUT
8. THAT! THE SOLICITOR INDICTED HIM. BUT, YOU KNOW,
9. WHAT WOULD HAVE BEEN A BETTER APPROACH? THIS
10. WARRANT LANGUAGE HERE WHICH BASICALLY SPELLS OUT
11. SECTION 27-51 PUTS IT INTO PARENTHESIS TO LET ME
12. KNOW WHERE I'M HERE TO DEFEND MY CLIENT. NUMBER
13. TWO, IT SAYS "WILLFULLY, UNLAWFULLY, FELONIOUSLY,
14. UNREASONABLE." THAT'S GOING TO BE AN ISSUE FOR THE
15. JURY TODAY. THE WHOLE ISSUE IS WHETHER MY CLIENT
16. WAS REASONABLE TO LEAVE THIS CHILD WITH THE FATHER.
17. WAS IT UNREASONABLE. THAT'S ONE OF THE ISSUES.
18. I WANT TO ARGUE UNREASONABLENESS
19. BECAUSE IT'S IMPORTANT. WAS IT REASONABLE FOR MY
20. CLIENT TO LEAVE HER CHILD WITH THE NATURAL,
21. BIOLOGICAL FATHER WHO HAD FIVE CHILDREN? WAS IT
22. REASONABLE? THE JURY HAS GOT TO KNOW THAT. BUT
23. ON THIS INDICTMENT, WE'RE JUST PUT IN A POSITION;
24. THE LANGUAGE OF UNREASONABLENESS IS NOT EVEN

MOTIONS

197

1 TALKS ABOUT ONE, TWO AND THREE.

2 THE COURT: YES; LET ME SEE YOU A MINUTE.

3 (AT THIS TIME BENCH CONFERENCE IS HELD.)

4 THE COURT: THAT IS THE ONLY MOTION THIS
5 MORNING BEFORE WE BRING THE JURY OUT; RIGHT, MA'AM?

6 MRS. MURPHY: YES, MA'AM.

7 THE COURT: ALL RIGHT. I'LL BE BACK.

8 (BRIEF RECESS.)

9 THE COURT: ALL RIGHT. WE ARE BACK ON
10 THE RECORD. AND WE'VE HAD BENEFIT OF A LITTLE
11 BREAK TO LOOK AT SOME OF THE CASE LAW. AND, OF
12 COURSE, THE TEST FOR THE SUFFICIENCY OF AN
13 INDICTMENT IS NOT WHETHER OR NOT AN INDICTMENT
14 COULD BE MORE SPECIFIC AND MORE DEFINITE, BUT
15 WHETHER OR NOT IT IS SPECIFIC ENOUGH TO APPRISE THE
16 DEFENDANT OF WHAT CHARGE THE DEFENDANT MUST BE
17 PREPARED TO MEET AND THE PUNISHMENT WHICH WOULD BE
18 IMPOSED BY THE COURT. AND MRS. MURPHY HAS BEEN
19 KIND ENOUGH TO PROVIDE ME WITH A CASE, STATE VS.
20 OWENS, WHICH OF COURSE IS A SOUTH CAROLINA SUPREME
21 COURT, AND MR. DAVIS IS RAPIDLY AT THIS MOMENT
22 HAVING AN OPPORTUNITY TO REVIEW IT. AND I'VE ALSO
23 HAD A CHANCE TO REVIEW THE RECENT CASES, STATE VS.
24 KNUCKLES AND STATE VS. REDDICK WHICH ARE RECENT

MOTIONS

198

1 OF AN INDICTMENT. AND THAT STILL SEEMS TO BE THE
2 -- THERE DOESN'T SEEM TO BE A CHANGE, CERTAINLY,
3 IN THAT STANDARD IN SOUTH CAROLINA. THE COURT OF
4 APPEALS MAKES REFERENCE TO THE PRACTICAL EYE TEST
5 AND TALKS ABOUT COMMON SENSE VIEW OF AN INDICTMENT.
6 AND IN ADDITION, I'D ALSO SAY THAT THE STATE VS.
7 KNUCKLES CASE IS A CASE THAT REFERRING TO AN
8 INDICTMENT OR TO A STATUTORY PROVISION IN THE
9 CAPTION OF THE CASE IS INSUFFICIENT TO NOTIFY A
10 DEFENDANT OF THE STATUTORY PROVISION WITH WHICH
11 THEY ARE CHARGED WITH HAVING VIOLATED BECAUSE THE
12 GRAND JURY PASSES ON THE BODY OF AN INDICTMENT AND
13 NOT ON THE CAPTION OF THE INDICTMENT. OF COURSE
14 THE CAPTION OF THIS INDICTMENT HAS THE STATUTORY
15 PROVISION. BUT THE STATUTORY PROVISION IS NOT
16 FOUND WITHIN THE BODY OF THIS INDICTMENT. AND I'M
17 HAPPY TO HEAR FROM YOU. HAVING HAD THE BENEFIT OF
18 A LITTLE BIT OF THE CASE LAW, I'M HAPPY TO HEAR
19 FROM YOU IN ANY ADDITIONAL ARGUMENT THAT YOU WANT
20 TO MAKE. MR. DAVIS, ANYTHING YOU WANT TO ADD?

21 MR. DAVIS: YES. YOUR HONOR, IN READING
22 THIS QUICKLY, THERE IS NO QUESTION THAT THE
23 INDICTMENT SHOULD AT A MINIMUM SUFFICIENTLY OUTLINE
24 THE ELEMENTS OF THE CRIME FOR WHICH MY CLIENT IS

MOTIONS

199

1 IT'S SIMPLE, PLAIN, WITHOUT ANY FANFARE. IT JUST
2 DOES NOT. FOR THAT REASON ALONE, WE MOVE IN
3 CONJUNCTION WITH OTHER ARGUMENTS THAT THIS
4 INDICTMENT BE SQUASHED. IT JUST DOES NOT, YOUR
5 HONOR. THE STATE SHOULD NOT HAVE THE LUXURY OF
6 USING THE SHOTGUN APPROACH IN REFERENCE TO
7 EVERYTHING. AND THAT INDICTMENT THAT YOU HAVE IN
8 FRONT OF YOU ONLY ALLUDES TO SECTION 27-50. IT
9 DOES NOT EVEN DELINEATE WHAT SECTION. THIS USES
10 FOR EXAMPLE AN ANALOGY. IF A PERSON CHARGED WITH
11 CRIMINAL SEXUAL CONDUCT, THEY HAVE CERTAIN DEGREES;
12 A, B, C OR 1, 2, 3. AND YOU'VE HEARD OF WHICH
13 SPECIFIC BREAKDOWN. AND THERE'S A REASON FOR THAT
14 BECAUSE IT PUTS ME AS AN ATTORNEY REPRESENTING MY
15 CLIENT TO KNOW WHAT ELEMENTS OF THE CRIME FOR WHICH
16 MY CLIENT IS CHARGED.

17 ONE OF THE KEY ELEMENTS OF THIS
18 CASE THAT IS WILLFUL. ANOTHER KEY POINT IS
19 UNREASONABLENESS. AND NOWHERE IS IT OUTLINED IN
20 THAT INDICTMENT THAT MY CLIENT DID ANY ACTS OR HAVE
21 TO CONFRONT ANY ACTS RELATING TO UNREASONABLENESS
22 ON HER PART THAT OCCURRED ON NOVEMBER THE THIRD.
23 NOW, HINDSIGHT WOULD HAVE HER SAY THAT NOW THE
24 SOLICITOR HAS PREPARED AN INDICTMENT THAT SAYS THAT

MOTIONS

200

1 TEST. HE WAS NOT INDICTED ON NOVEMBER THE THIRD.
2 THAT'S THE CRIME I STAND HERE FOR; NOT WHAT
3 HAPPENED SINCE NOVEMBER THE THIRD. THE CRIME IS
4 WHAT OCCURRED ON NOVEMBER THE THIRD. EVERYBODY IS
5 GOING TO BE TESTIFYING TO WHAT HAPPENED ON NOVEMBER
6 THE THIRD. IT REALLY DON'T MATTER WHAT HAPPENS
7 AFTER NOVEMBER THE THIRD BECAUSE SHE'S NOT GUILTY
8 OF ANYTHING OTHER THAN THE FACT THAT THE SOLICITOR
9 HAD THE POWER WITHIN ITS POWERS TO INDICT HER
10 CORRECTLY. I'M SAYING THEY DID NOT. AND, REALLY,
11 TO LEND SUPPORT TO THAT, YOUR HONOR, AT A MINIMUM,
12 THE WARRANT THEY CHARGE HER, THE INDICTMENT, SHOULD
13 BE -- THE WARRANT SPECIFICALLY ALLUDES TO SECTION
14 27-50, ONE, AND PUT IN PARENTHESIS. I CAN
15 UNDERSTAND THAT. I CAN CHALLENGE THAT. I KNOW
16 WHAT THE ELEMENTS ARE. I KNOW WHAT WILLFULLY
17 MEANS. I KNOW WHAT UNREASONABLENESS MEANS. I KNOW
18 THAT IN 1998 SHE LEFT HER -- THE BOY HAD A FEMUR
19 BROKEN IN THE RIGHT LEG. I KNOW WHAT THEY MEAN. I
20 KNOW THE CHARGE. I KNOW HOW TO PREPARE MY
21 DEFENSE. TODAY I DO NOT. AND FOR THOSE REASONS;
22 LIKE I SAID, WE'RE ILL PREPARED TO GO FORWARD IN
23 THIS CASE. I JUST WANTED THAT NOTED ON THE RECORD,
24 YOUR HONOR.

MOTIONS

201

1 I'M GOING TO DENY YOUR MOTION FOR THIS REASON: IF
2 YOU LOOK AND USE THE PRACTICAL EYE TEST, I FIND
3 THAT THERE ARE SUFFICIENT ALLEGATIONS IN THE
4 INDICTMENT TO APPRISE THE DEFENDANT OF THE CHARGE
5 FOR WHICH SHE MUST BE PREPARED TO MEET, AND TO
6 DIRECT THE COURT TO WHAT PUNISHMENT IS APPROPRIATE.
7 AND I DO FIND THAT THE ALLEGATIONS WITHIN THE
8 INDICTMENTS ARE SUFFICIENT TO DO THAT. AS I LOOK
9 AT THE STATUTORY PROVISION, I THINK THAT THERE ARE
10 SUFFICIENT -- I THINK THAT WHAT OCCURRED IS THAT
11 THE UNREASONABLE RISK OF HARM IS PARTICULARLY
12 STATED RATHER THAN THE LANGUAGE OF THE STATUTORY
13 PROVISION, THE ACT WHICH WAS THE UNREASONABLE RISK
14 OF HARM THAT I THINK IS ALLEGED. AND I THINK
15 TAKING THE INDICTMENT -- THE BODY OF INDICTMENT --
16 IN ITS ENTIRETY, I THINK THAT IT IS SUFFICIENT AND
17 WILL RESPECTFULLY DENY YOUR MOTION. I WOULD SAY,
18 THOUGH, FOR THE RECORD, I THINK THAT IT IS -- THERE
19 ISN'T ANY EXTRA LANGUAGE IN HERE.

20 MR. DAVIS: I NEVER ARGUE WITH THE COURT,
21 YOUR HONOR. BUT IT GOES WITHOUT QUESTION THAT NO
22 ACT OF UNREASONABLENESS IN REFERENCE TO WHAT MY
23 CLIENT DID ON NOVEMBER THE THIRD---

24 THE COURT: I UNDERSTAND.

MOTIONS

202

1 THE COURT: I UNDERSTAND YOUR POSITION,
2 MR. DAVIS. BUT I THINK THAT GOES TO THE PROOF. I
3 THINK THAT GOES TO THE KNOWLEDGE OF THE DEFENDANT.
4 AND THE STATUTORY PROVISION DOESN'T ADDRESS PRIOR
5 KNOWLEDGE. IT SAYS THAT -- IT TALKS IN TERMS OF
6 UNREASONABLE RISK OF DANGER.

7 MR. DAVIS: AND, JUDGE, THAT'S MY POINT.
8 WHEN YOU GIVE YOUR CHARGE TO THE JURY, I BET YOU'RE
9 NOT GOING TO CHARGE THAT INDICTMENT THERE. WHEN
10 YOU GIVE YOUR JURY INSTRUCTIONS, YOU'RE GOING TO BE
11 CHARGING SECTION 20-7-50-1. THAT'S WHAT YOU'RE
12 GOING TO BE CHARGING. AND YOU KNOW WHY YOU'RE
13 GOING TO BE CHARGING THAT? BECAUSE THAT'S WHAT MY
14 CLIENT IS CHARGED WITH. SHE'S NOT GOING TO BE
15 CHARGED WITH WHAT'S ON THAT INDICTMENT. AND THAT'S
16 MY WHOLE POINT IN THIS MATTER.

17 THE COURT: I UNDERSTAND. THANK YOU SO
18 MUCH, MR. DAVIS. ANYTHING FURTHER BEFORE WE BRING
19 THE JURY OUT?

20 MRS. MURPHY: NOT FROM THE STATE, YOUR
21 HONOR.

22 THE COURT: ALL RIGHT. LET'S HAVE THE
23 JURY.

24 (AT THIS TIME JURY COMES INTO OPEN COURT.)

MOTIONS

203

1 GENTLEMEN. AND I HOPE YOU ENJOYED YOUR LITTLE BIT
2 OF YOUR NOURISHMENT THIS MORNING. AND I APOLOGIZE
3 FOR KEEPING YOU IN YOUR JURY ROOM THIS MORNING.
4 THERE WERE SOME MATTERS THAT I HAD TO HANDLE AND
5 DETERMINE. SO I APOLOGIZE TO YOU FOR KEEPING YOU
6 IN YOUR JURY ROOM. PLEASE KNOW THAT I WILL DO THAT
7 LIMITEDLY, ONLY AS REALLY AND TRULY ESSENTIAL. SO
8 I APOLOGIZE TO YOU FOR THAT. NOW, I NOTICE THAT
9 SOME OF YOU HAVE BROUGHT SOME PAPERS TO MAKE SOME
10 NOTES. I'M GOING TO ASK YOU NOT TO USE YOUR NOTE
11 PADS, BUT I'M GOING TO PROVIDE YOU WITH ONE. AND
12 I'M JUST GOING TO ASK -- AND WE EVEN HAVE WRITING
13 IMPLEMENTS -- SO, JUST HANG WITH ME. AND I'M GOING
14 TO ASK YOU TO USE THOSE.

15 NOW, LADIES AND GENTLEMEN, I HAVE
16 SOME PRELIMINARY REMARKS THAT I'M GOING TO MAKE TO
17 YOU. AND THEN I'M GOING TO PASS OUT YOUR
18 NOTEBOOKS, AND HOPEFULLY WITH PEN OR PENCIL
19 CONTAINED THEREIN. AND I WANTED TO GIVE YOU A
20 LITTLE BIT OF INSTRUCTION ABOUT THE NOTEBOOKS. BUT
21 BEFORE WE GET INTO ALL THAT, I'M GOING TO SWEAR YOU
22 IN AS THE JURY IN THIS CASE. SO I'M GOING TO ASK
23 THAT YOU PLEASE STAND AT THIS TIME AND RAISE YOUR
24 RIGHT HAND.

MOTIONS

204

1 THE COURT: NOW, LADIES AND GENTLEMEN,
2 YOU ARE NOW THE JURY IN THIS CASE; AND YOU HAVE
3 BEEN SWORN IN AS THE JURY IN THIS CASE. AND I WANT
4 TO MAKE TO YOU SOME PRELIMINARY REMARKS. I WANT
5 YOU TO KNOW THAT AT THE CONCLUSION OF THE CASE, I
6 WILL GIVE YOU MORE DETAILED INSTRUCTIONS. THOSE
7 INSTRUCTIONS WILL CONTROL YOUR DELIBERATIONS. WHAT
8 I INTEND TO DO AT THIS POINT IS TO GIVE YOU AN
9 INTRODUCTION TO THE TRIAL OF THIS CASE. AND I
10 WOULD TELL YOU THAT THE CASE THAT WE ARE ABOUT TO
11 TRY IS THE CASE OF THE STATE OF SOUTH CAROLINA VS.
12 MR. WILLIAM DEAN BURDEN AND MS. ADRIAN GADSON. I
13 WANT AGAIN TO TELL YOU THAT THESE REMARKS THAT I
14 WILL MAKE TO YOU ARE NOT THE CHARGE ON THE LAW IN
15 THIS CASE.

16 I WILL INSTRUCT YOU ON THE LAW AS
17 IT APPLIES TO THIS CASE AT THE END OF THE TRIAL
18 BEFORE YOU RETIRE TO CONSIDER YOUR VERDICTS IN THIS
19 CASE. THIS IS MERELY AN EXPLANATION OF THE
20 PROCEDURE THAT WE WILL FOLLOW IN THE TRIAL OF THIS
21 CASE SO THAT YOU MAY BETTER UNDERSTAND WHAT MAY BE
22 HAPPENING AND WHERE WE ARE IN THE PROCEDURE OR THE
23 PROCESS OF THE TRIAL. THE DEFENDANT, MR. WILLIAM
24 DEAN BURDEN, IS CHARGED BY AN INDICTMENT FILED, OR
25 TWO INDICTMENTS, FILED WITH THIS COURT WITH THE

MOTIONS

205

1 CRIMES OF CHILD ABUSE OR INFLECTION OF GREAT BODILY
2 HARM UPON A CHILD AND ASSAULT AND BATTERY WITH
3 INTENT TO KILL. MS. ADRIAN GADSON IS CHARGED BY AN
4 INDICTMENT FILED IN THIS CASE WITH UNLAWFUL NEGLECT
5 OF A CHILD BY LEGAL CUSTODIAN. THE ELEMENTS OF ALL
6 OF THESE CHARGES WILL BE EXPLAINED TO YOU LATER.
7 AN INDICTMENT -- AND, OF COURSE, WE HAVE THREE
8 INDICTMENTS INVOLVED IN THIS MATTER -- AN
9 INDICTMENT AGAIN IS SIMPLY THE CHARGE BY WHICH A
10 CASE IS BROUGHT INTO COURT. AND IT IS NOT IN ANY
11 SENSE EVIDENCE OF ANY OF THE ALLEGATIONS THAT AN
12 INDICTMENT CONTAINS. BOTH OF THESE DEFENDANTS, MR.
13 BURDEN AND MS. GADSON HAVE PLED NOT GUILTY TO THE
14 INDICTMENT OR THE INDICTMENTS THAT INVOLVE THAT
15 DEFENDANT. THE STATE, THEREFORE, HAS THE BURDEN OF
16 PROVING EACH AND EVERY ELEMENT OF EACH INDICTMENT
17 BEYOND A REASONABLE DOUBT BEFORE A DEFENDANT CAN BE
18 CONVICTED OF THE CHARGE IN THAT INDICTMENT.

19 IT'S VERY IMPORTANT, LADIES AND
20 GENTLEMEN, THAT YOU REMEMBER AND THAT YOU KEEP IN
21 MIND THAT WITH REGARDS TO MS. GADSON, THAT SHE IS
22 CHARGED WITH ONE INDICTMENT, UNLAWFUL NEGLECT OF A
23 CHILD BY LEGAL CUSTODIAN. AND AS TO HER, THE STATE
24 HAS THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF
25 THIS INDICTMENT AGAINST MS. GADSON BEFORE SHE COULD

MOTIONS

206

1 BE FOUND GUILTY OF THAT INDICTMENT. LIKEWISE, WITH
2 REGARDS TO MR. BURDEN, THE STATE HAS THE BURDEN OF
3 PROOF OF PROVING EACH AND EVERY ELEMENT OF THE
4 ASSAULT AND BATTERY WITH INTENT TO KILL BEFORE HE
5 CAN BE FOUND GUILTY OF THIS INDICTMENT; AND
6 LIKEWISE AND SEPARATELY AND INDEPENDENTLY, THE
7 STATE HAS THE BURDEN OF PROVING EACH AND EVERY
8 ELEMENT OF THE OFFENSE OF CHILD ABUSE, INFLICTION
9 OF GREAT BODILY HARM UPON A CHILD. THE STATE HAS
10 THAT BURDEN BEYOND A REASONABLE DOUBT BEFORE HE CAN
11 BE FOUND GUILTY OF THIS INDICTMENT. WHAT I AM
12 SAYING TO YOU IS THAT IT IS IMPORTANT THAT YOU KEEP
13 IN MIND; MRS. GADSON HAS BEEN CHARGED WITH ONE
14 INDICTMENT. MR. BURDEN HAS BEEN CHARGED WITH TWO
15 THE INDICTMENTS. THAT AS TO EACH AND EVERY ELEMENT
16 OF THE INDICTMENT WHICH EFFECTS THAT DEFENDANT, THE
17 STATE HAS THE BURDEN OF PROVING EACH AND EVERY
18 ELEMENT OF THAT INDICTMENT AS IT RELATES TO THAT
19 PERSON BEFORE YOU CAN FIND THAT PERSON GUILTY.
20 AGAIN, THE BURDEN OF PROOF -- I'M GOING TO TALK
21 ABOUT THAT MORE -- IS BEYOND A REASONABLE DOUBT.
22 AND THAT BURDEN OF PROOF, OF COURSE, BELONGS TO THE
23 STATE.

24 NOW, LADIES AND GENTLEMEN, YOUR

DUTY AS JURORS IS TO FIND AND DETERMINE THE

MOTIONS

207

FACTS IN THIS MATTER. YOU ARE THE SOLE JUDGES OF
THE FACTS. AND AT ANY TIME I MAKE ANY COMMENT
REGARDING THE FACTS -- AND PLEASE KNOW THAT I WILL
CERTAINLY INTEND NOT TO DO THAT. BUT IF YOU HEAR
SOMETHING THAT YOU THINK IS A COMMENT REGARDING THE
FACTS, YOU MUST DISREGARD THAT COMMENT BECAUSE IT
IS MY INTENTION NOT TO MAKE ANY COMMENT REGARDING
THE FACTS. AND THE REASON FOR THAT IS BECAUSE,
LADIES AND GENTLEMEN, YOU ARE THE SOUL DETERMINER OF
THE FACTS IN THIS CASE. YOU ARE TO DETERMINE THE
FACTS FROM THE TESTIMONY THAT YOU HEAR FROM THE
WITNESS STAND. AND THERE MAY BE TESTIMONY WHICH IS
PRESENTED BY VIDEOTAPE WHICH IS PERFECTLY
ACCEPTABLE -- WE'LL TALK ABOUT THAT -- AND THE
OTHER EVIDENCE WHICH IS INTRODUCED INTO COURT. IT
IS UP TO YOU TO DETERMINE THE INFERENCES WHICH YOU
FEEL MAY PROPERLY BE DRAWN FROM THE EVIDENCE. IT
IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR DUTY
OF DETERMINING THE FACTS DILIGENTLY AND
CONSCIENTIOUSLY BECAUSE ORDINARILY THERE IS NO WAY
TO CORRECT AN ERRONEOUS DETERMINATION OF THE FACTS
BY A JURY. ON THE OTHER HAND AND WITH EQUAL
EMPHASIS; THE SAME LAW THAT MAKES YOU THE JUDGES OF
THE FACTS MAKES ME THE JUDGE OF THE LAW. THE LAW
AS GIVEN BY THE COURT IS THE ONLY LAW YOU MAY

MOTIONS

208

1 CONSIDER.

2 YOU MUST ACCEPT AND FOLLOW THE
3 LAW AS I GIVE IT TO YOU, EVEN THOUGH YOU MAY
4 DISAGREE WITH IT. I CANNOT TELL YOU WHAT THE FACTS
5 ARE, AND YOU CANNOT DISAGREE WITH ME ABOUT WHAT THE
6 LAW SHOULD BE. YOUR JOB IS TO TAKE THE LAW AS I
7 GIVE IT TO YOU AND APPLY IT TO THE FACTS AS YOU
8 FIND THEM FROM THE TESTIMONY OF THE WITNESSES AND
9 THE OTHER EVIDENCE THAT IS INTRODUCED. AFTER DOING
10 THAT, YOU WILL RENDER THE VERDICT IN THIS MATTER, A
11 TRUE AND JUST VERDICT UNDER THE SOLEMN OATH THAT
12 YOU JUST TOOK AS JURORS. UNTIL I ADVISE YOU TO
13 BEGIN YOUR DELIBERATIONS, YOU MUST NOT DISCUSS THIS
14 CASE WITH ANYONE INCLUDING YOUR FELLOW JURORS, YOUR
15 FRIENDS, FAMILY MEMBERS, AND ANYONE INVOLVED IN
16 THIS CASE. AFTER THE CASE IS SUBMITTED TO YOU, YOU
17 MUST DISCUSS IT ONLY IN THE JURY ROOM WITH YOUR
18 FELLOW JURORS. THE ATTORNEYS AND PARTIES IN THIS
19 CASE HAVE BEEN ADVISED THAT THEY ARE NOT TO TALK TO
20 YOU AT ALL, AND THEY KNOW THAT. SO IF YOU SEE
21 ANYONE INVOLVED IN THIS CASE AND THEY DO NOT EVEN
22 SAY "HELLO;" THEY ARE NOT BEING UNFRIENDLY. THEY
23 ARE JUST FOLLOWING THE INSTRUCTIONS OF THE COURT.

24 DURING THIS TRIAL, DO NOT READ,
LISTEN TO, OR WATCH ANY SORT OF NEWS REPORTS ABOUT

MOTIONS

209

1. THIS CASE. THIS INCLUDES ANYTHING THAT MAY BE IN
2 THE NEWSPAPERS, THE RADIO, THE TELEVISION, OR THE
3 INTERNET. YOU MUST NOT CONSIDER ANYTHING YOU MAY
4 HAVE READ OR HEARD ABOUT THE CASE OUTSIDE THE
5 COURTROOM WHETHER BEFORE OR DURING THE TRIAL. IT
6 IS IMPORTANT THAT YOU KEEP AN OPEN MIND AND NOT
7 DECIDE ANY ISSUE IN THIS CASE UNTIL ALL OF THE
8 EVIDENCE HAS BEEN PRESENTED, THE PARTIES HAVE MADE
9 THEIR CLOSING ARGUMENTS, AND I HAVE INSTRUCTED YOU
10 ON THE LAW IN THIS CASE. IT IS YOUR SOLEMN
11 RESPONSIBILITY TO DETERMINE THE GUILT OR THE
12 INNOCENCE OF THE DEFENDANTS. AND YOUR VERDICT MUST
13 BE BASED SOLELY ON THE EVIDENCE AS IT IS PRESENTED
14 TO YOU IN THIS TRIAL AND ON THE LAW AS I INSTRUCT
15 YOU DURING AND AT THE CLOSE OF THE TRIAL.

16 NOW, IN JUST A MOMENT MRS. MURPHY
17 WILL MAKE WHAT IS CALLED AN OPENING STATEMENT IN
18 WHICH SHE WILL EXPLAIN TO YOU THE ISSUES IN THIS
19 CASE, OR AT LEAST WHAT SHE THINKS THE ISSUES ARE IN
20 THIS CASE. THE ATTORNEYS, EACH OF THEM, MR. DAVIS
21 MR. DUKES, MAY ALSO MAKE AN OPENING STATEMENT
22 ALTHOUGH THEY ARE NOT REQUIRED TO DO SO. WHAT THE
23 ATTORNEYS TELL YOU DURING THEIR OPENING STATEMENTS
24 IS NOT EVIDENCE IN THIS CASE. IT IS ONLY THEIR
25 CONTENTION AS TO WHAT THE ISSUES ARE IN THIS CASE.

MOTIONS

210

1 THE EVIDENCE IN THIS CASE WILL BE PRESENTED TO YOU
2 BY THE TESTIMONY OF SWORN WITNESSES AND/OR BY
3 EXHIBITS THAT MAY BE INTRODUCED INTO EVIDENCE.

4 NOW, LADIES AND GENTLEMEN, DURING
5 THE TRIAL FROM TIME TO TIME, YOU MAY HEAR ONE OF
6 THE LAWYERS SAY SOMETHING LIKE "YOUR HONOR, I
7 BELIEVE THAT WE HAVE A QUESTION OF LAW OR
8 OBJECTION, OR WE HAVE A MATTER OF LAW TO DISCUSS
9 WITH YOU, OR SOMETHING TO THAT EFFECT. AND I WANT
10 YOU TO KNOW THAT SOMETIMES I MAY FIND IT NECESSARY
11 TO EXCUSE YOU FROM THE COURTROOM FOR A SHORT WHILE
12 SO THAT THE ATTORNEYS AND I MAY DISCUSS A MATTER OF
13 LAW. THE REASON FOR THIS IS THAT BECAUSE YOU ARE
14 THE JUDGES OF THE FACTS IN THIS CASE -- AND
15 SOMETIMES WHEN I AM DISCUSSING MATTERS OF LAW WITH
16 THE ATTORNEYS, IT MAY BE NECESSARY FOR ME TO MAKE
17 SOME COMMENTS AS TO THE FACTS IN CONNECTION WITH
18 RULING ON WHETHER OR NOT A PARTICULAR LAW APPLIES.
19 I AM NOT SUPPOSED TO TELL YOU WHAT I THINK THE
20 FACTS ARE, OR COMMENT UPON THE FACTS, SO I WILL
21 EXCUSE YOU FROM THE COURTROOM WHILE THESE
22 DISCUSSIONS TAKE PLACE SO THAT I IN NO WAY WILL
23 INFLUENCE YOU BY ANYTHING THAT I MIGHT SAY OR DO IN
24 CORRECTION WITH THE FACTS.

NOW. IN DETERMINING WHAT THE TRUE

MOTIONS

211

FACTS ARE IN THIS CASE, YOU MUST DECIDE WHETHER OR NOT THE TESTIMONY OF A WITNESS IS BELIEVABLE. IT WILL BE MY RESPONSIBILITY TO RULE AS A MATTER OF LAW AS TO WHETHER OR NOT CERTAIN TESTIMONY IS ADMISSIBLE AT ALL. BUT ONCE THE TESTIMONY IS ADMITTED, WHETHER OR NOT YOU BELIEVE IT, IS SOLELY FOR YOU TO DETERMINE. IN DECIDING WHETHER TO BELIEVE A WITNESSES' TESTIMONY ABOUT A PARTICULAR MATTER, YOU HAVE THE RIGHT TO CONSIDER THE INTEREST OF ANY WITNESS, THE BIAS OF ANY WITNESS, THE PREJUDICE OF ANY WITNESS, THE OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS ABOUT WHICH THE WITNESS MAY TESTIFY, AND THE WAY THAT THE WITNESS ACTS WHEN GIVING THE TESTIMONY. YOU HAVE A RIGHT TO CONSIDER ANYTHING THAT IS IN THE RECORD THAT WILL HELP YOU EVALUATE THE TESTIMONY OF THE WITNESSES. THAT MEANS IT IS YOUR DUTY TO PAY CLOSE ATTENTION TO THE WITNESSES TO OBSERVE THEM, TO LISTEN TO THE WITNESSES, AND TO PAY CLOSE ATTENTION TO THE ATTORNEYS, AND OF COURSE TO THE COURT. DO NOT LET YOUR THOUGHTS WANDER, BUT TO GIVE STRICT ATTENTION TO THE TESTIMONY IN THIS CASE SO THAT AT THE END OF ALL THE TESTIMONY, AFTER THE ARGUMENTS OF COUNSEL AND THE CHARGE ON THE LAW BY THE COURT, YOU WILL THEN BE IN A POSITION TO DETERMINE WHAT

MOTIONS

212

1 THE TRUE FACTS ARE AND TO APPLY THE LAW TO THOSE
2 FACTS AND THUS RENDER YOUR TRUE AND JUST VERDICT.

3 IT IS YOUR ADDED DUTY, MR.

4 PRESIDING JUROR, TO PRESIDE IN THE JURY ROOM AND BE
5 THE JURY'S SPOKESPERSON HERE IN COURT. IT WILL
6 ALSO BE YOUR DUTY TO WRITE THE VERDICT OR VERDICTS;
7 BUT I WILL GIVE YOU FURTHER INSTRUCTIONS ABOUT THAT
8 AT THE CONCLUSION OF THE CASE. NOW IN ORDER TO

9 PRESERVE EVERYONE'S RIGHTS -- WELL, JUST A MOMENT
10 BEFORE I GET TO THAT. I WANT TO TALK ABOUT THE

11 NOTEBOOKS WITH YOU FOR JUST A MOMENT. AND WE'RE
12 GOING TO PASS THOSE ALONG TO YOU IN JUST A MOMENT.

13 AND LET ME JUST ADDRESS THEM AND TELL YOU THAT YOU
14 SEE THAT THIS SAYS JUROR NUMBER TWELVE. AND WE DO
15 THAT SO THAT WE CAN USE THEM FROM TIME TO TIME,

16 FROM TRIAL TO TRIAL, THE NOTEBOOKS THEMSELVES,
17 BECAUSE THIS WILL BE YOUR NOTEBOOK THROUGHOUT THE
18 COURSE OF THE TRIAL.

19 I'M GOING TO HAND THOSE TO YOU IN
20 JUST A MOMENT. THERE'S NO MAGIC TO THE JUROR

21 NUMBER THAT YOU HAVE ON YOUR NOTEBOOK SO LONG AS

22 YOU REMEMBER IT SO THAT YOU CAN GET YOUR JUROR

23 NOTEBOOK WHEN YOU RETURN TO THE COURTROOM ON EACH

24 OCCASION BECAUSE I DO WANT YOU TO KEEP YOUR

25 NOTEBOOK THROUGHOUT THE COURSE OF THE TRIAL. WHEN

MOTIONS

213

1 YOU LEAVE THE COURTROOM, YOU WILL LEAVE YOUR
2 NOTEBOOK IN YOUR CHAIR OR UNDER YOUR CHAIR. AND IN
3 THE EVENT THAT -- AND I THINK IT WILL BE THE EVENT
4 THAT OVERNIGHT WE WILL STILL BE IN THE COURSE OF
5 THIS TRIAL -- YOU WILL LEAVE YOUR NOTEBOOK IN YOUR
6 CHAIR. THEY WILL BE COLLECTED AT THE END OF THE
7 DAY, AND THEY WILL BE SECURED OVERNIGHT. AND THEN
8 WE WILL PLACE THEM BACK IN THE CHAIRS IN THE
9 MORNING. SO I WANT YOU TO KNOW THAT. AT THE
10 CONCLUSION OF THE CASE, ANY NOTES -- AND WE'LL TALK
11 ABOUT NOTES IN A MOMENT -- ANY NOTES THAT YOU MAKE,
12 YOU CAN TAKE THEM WITH YOU BECAUSE THEY ARE YOUR
13 NOTES. OR IF YOU LEAVE THEM, THEN I WILL MYSELF
14 TAKE THEM OUT OF YOUR NOTEBOOKS AND DESTROY THEM.
15 SO I JUST SHARE THAT WITH YOU AS WELL.

16 NOW, LET'S TALK ABOUT THE NOTES.
17 THIS NOTEBOOK IS FOR YOU AND FOR YOU TO HAVE THE
18 ABILITY TO TAKE NOTES IF YOU WANT TO. THERE IS
19 ABSOLUTELY NO REQUIREMENT THAT YOU TAKE NOTES;
20 NONE WHATSOEVER. AND THE NOTES THAT YOU MIGHT TAKE
21 ARE SOLELY FOR YOU. THEY ARE NOT TO BE SHARED WITH
22 ANYONE. THEY ARE FOR YOU TO TAKE DURING THE COURSE
23 OF THE TRIAL AND FOR YOU TO REVIEW IN YOUR JURY
24 ROOM AT THE TIME OF YOUR DELIBERATIONS FOR THE
25 PURPOSE OF REFRESHING YOUR RECOLLECTION, TO ASSIST

MOTIONS

214

1 YOU IN YOUR DELIBERATIONS. IT'S NOT TO BE HELD UP
2 AND POINTED TO AND SAY "THIS IS MY NOTE; THEREFORE
3 THIS IS STRONGER THAN SOMEONE ELSE'S MEMORY." IT'S
4 NOT FOR THAT PURPOSE. IT'S FOR THE PURPOSE FOR YOU
5 TO REFRESH YOUR RECOLLECTION TO HELP YOU DURING
6 YOUR DELIBERATIONS. NOW, IF YOU CHOOSE NOT TO TAKE
7 NOTES, PLEASE KNOW THAT IS PERFECTLY FINE BECAUSE
8 THE DEBATE -- THERE IS A DEBATE ABOUT NOTE-TAKING,
9 AND IT GOES LIKE THIS: THE CONCERN ABOUT
10 NOTE-TAKING IS THAT A JUROR COULD MISS SOMETHING AS
11 IT COMES FROM THE WITNESS STAND. AND I THINK
12 AGAIN; I THINK THERE IS SOME TESTIMONY THAT WILL BE
13 PRESENTED TO YOU BY VIDEO. AND THE CONCERN IS THAT
14 YOU CAN MISS THAT AS YOU TAKE A NOTE. SO I URGE
15 YOU TO BE VERY CAREFUL IN THE TAKING OF NOTES. AND
16 DO NOT ALLOW THE TAKING OF NOTES TO DISTRACT YOU
17 FROM THE ABILITY TO LISTEN. BECAUSE I WOULD TELL
18 YOU THAT IT IS MOST IMPORTANT THAT YOU'RE ABLE TO
19 LISTEN VERY CAREFULLY TO ALL OF THE EVIDENCE, ALL
20 OF THE TESTIMONY, THAT IS BEING PRESENTED. IF YOU
21 CAN TAKE A QUICK NOTE AND THAT WILL HELP YOU, THEN
22 I WANT YOU TO BE ABLE TO DO THAT. BUT I WILL TELL
23 YOU THAT IT IS SO IMPORTANT FOR YOU NOT TO MISS
24 ANYTHING, TO NOT MISS THE TESTIMONY. DO NOT ALLOW
25 THE TAKING OF NOTES. IF I ALLOW THAT, THAT WILL

MOTIONS

215

1 ALLOW YOU TO BECOME DISTRACTED FROM YOUR ABILITY TO
2 LISTEN.

3 NOW, IN THE FRONT OF YOUR
4 NOTEBOOK, IT SAYS SOME SUGGESTIONS ABOUT
5 NOTE-TAKING. IF YOU TAKE NOTES, HOWEVER, IF IT
6 WORKS FOR YOU; IT JUST REMINDS YOU NOT TO ALLOW
7 YOURSELF TO BECOME DISTRACTED IN THE SHORT OF IT.
8 AND, AGAIN, TO REMIND YOU THAT THESE ARE FOR YOU TO
9 PREPARE YOU FOR YOUR DELIBERATIONS; AND THAT'S NOT
10 TO BE SHARED WITH OTHER FOLKS.

11 NOW, THERE SHOULD BE A PEN OR A
12 PENCIL IN YOUR NOTEBOOK. THERE'S THE ONE SHEET
13 THAT TELLS YOU A LITTLE BIT ABOUT NOTE-TAKING; AND
14 THEN THERE'S BLANK NOTEBOOK PAPER. IF DURING THE
15 COURSE OF THIS MATTER YOU RUN OUT OF NOTEBOOK
16 PAPER, WE HAVE PLENTY MORE. I'M GOING TO TRY TO
17 LEAVE SOME IN YOUR JURY ROOM SO THAT IF YOU FEEL
18 LIKE YOU NEED MORE NOTEBOOK PAPER, JUST PULL SOME
19 WITH YOU AND BRING IT WITH YOU; AND THEN YOU CAN
20 JUST PUT IT IN YOUR NOTEBOOK WHEN YOU ARRIVE IN THE
21 COURTROOM. JUST PICK UP YOUR NOTEBOOK AND ADD
22 YOUR OWN NOTEBOOK PAPER. IF YOU SHOULD RUN OUT OF
23 INK -- AND I THINK THEY'RE FAIRLY NEW PENS -- BUT
24 JUST LET ME KNOW. OR IF YOU DON'T HAVE YOUR PEN OR
25 PENCIL, LET ME KNOW BECAUSE WE HAVE PLENTY OF PENS

MOTIONS

216

1 FOR YOU.

2 AT THIS TIME, I'M GOING TO ASK
3 THAT -- FIRST OF ALL THAT WE JUST PASS OUT, FIRST
4 OF ALL TO OUR ALTERNATES, MR. TAYLOR, THEIR
5 NOTEBOOKS. AND JUST OPEN THEM UP. AND JUST BE
6 SURE THERE'S A PEN IN THIS LITTLE SLEEVE. IF NOT,
7 LET ME KNOW. AND THEN WE CAN JUST PASS OUT
8 NOTEBOOKS TO EVERYONE ELSE. WHILE MR. TAYLOR IS
9 DOING THAT; LET ME SAY THAT IN ORDER TO PRESERVE
10 EVERYONE'S RIGHTS, I WILL GIVE THE PARTIES AN
11 OPPORTUNITY TO OBJECT TO ANYTHING THAT I MAY HAVE
12 SAID, ANY EXCEPTIONS TO ANYTHING I'VE SAID TO THE
13 JURY, BY THE STATE?

14 MRS. MURPHY: NOT FROM THE STATE, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. BY THE DEFENDANT?

17 MR. DAVIS: NOT FROM MS. GADSON, YOUR
18 HONOR.

19 THE COURT: THANK YOU.

20 MR. DUKES: NOTHING ON BEHALF OF MY
21 CLIENT EITHER, YOUR HONOR.

22 THE COURT: VERY WELL. ALL RIGHT.
23 COUNSEL, IF YOU WOULD JUST ALLOW FOR MR. TAYLOR TO
24 PASS OUT THE JURY NOTEBOOKS, MRS. MURPHY; YOU MAY
25 BEGIN YOUR OPENING STATEMENTS.

OPENING STATEMENT BY MRS. MURPHY

217

OPENING STATEMENT

BY MRS. MURPHY

1
2
3
4 A CHILD SHOULD BE A PARENT'S
5 PRIMARY, MOST JOYOUS, RESPONSIBILITY. UNFORTUNATELY FOR
6 FIVE YEAR OLD Child [REDACTED], HE WAS BORN INTO A HOME
7 WHERE HE WAS THE PRIMARY TARGET OF VIOLENCE AND NEGLECT.
8 EVIDENCE IN THIS TRIAL, LADIES AND GENTLEMEN, WILL SHOW
9 YOU HOW THOSE TWO DEFENDANTS COMPLETELY DISREGARDED
10 THEIR RESPONSIBILITIES AND Child [REDACTED] RIGHT TO FEEL SAFE
11 AND LOVED IN HIS OWN HOME BY THE TWO PEOPLE WHO HE IS
12 COMPLETELY DEPENDANT UPON.

13 ON NOVEMBER THE THIRD OF 2001,
14 E.M.S. DISPATCH RECEIVED A CALL AT APPROXIMATELY 6:40
15 P.M. FROM THE DEFENDANT, WILLIAM BURDEN. YOU WILL HEAR
16 THAT 911 TAPE AND LISTEN TO IT AS THE DEFENDANT, BURDEN,
17 INITIALLY GIVES A FALSE NAME; ALREADY AVERTING
18 RESPONSIBILITY FOR HIS ACTIONS. LISTEN TO HOW COOL AND
19 CALM HE SOUNDS AS HIS CHILD WAS NEAR DEATH. LISTEN TO
20 THE EXPLANATION OF WHAT'S WRONG WITH THIS CHILD BECAUSE
21 YOU WILL HEAR SEVERAL EXPLANATIONS FROM HIM AS TO WHAT
22 HAPPENED TO HIS SON THAT DAY.

23 E.M.S. ARRIVED, YOU WILL HEAR
24 FROM THE PARAMEDIC WHO TRANSPORTED THE CHILD TO
25 SUMMERVILLE MEDICAL CENTER WHERE HE WAS SEEN BY DR.

OPENING STATEMENT BY MRS. MURPHY

218

1 MITCHELL GOLDMAN. DR. GOLDMAN WILL TESTIFY THAT Child
2 WAS IN CRITICAL CONDITION AND HAD TO BE FLOWN TO MEDICAL
3 UNIVERSITY OF SOUTH CAROLINA VIA HELICOPTER IN AN
4 ATTEMPT TO SAVE HIS LIFE. HE WAS FLOWN TO MEDICAL
5 UNIVERSITY, AND MIRACULOUSLY HE SURVIVED. BY THEN,
6 THOUGH, IT WAS OBVIOUS TO THE MEDICAL EXPERTS THAT
7 Child DID NOT FALL AND HIT HIS HEAD BUT RATHER THAT HE
8 WAS VIOLENTLY BEATEN AND STOMPED ON CAUSING NEAR FATAL
9 SUBDURAL HEMATOMA WHICH SHIFTED HIS BRAIN TO THE LEFT.
10 STATEMENTS WILL BE INTRODUCED INTO THIS TRIAL THAT THE
11 DEFENDANT GAVE. FIRST THAT HE DIDN'T FALL; THEN THAT HE
12 FELL; THEN HE WENT INTO SEIZURES. AND HOW HE TRIED TO
13 REVIVE HIM BY GIVING HIM C.P.R. WITH A SHOE. HE ALSO
14 FINALLY ALERTS TO DETECTIVES UPON HIS ARREST THAT HE
15 LOST IT, AND HE HIT HIS KID WITH THE SHOE.

16 YOU WILL HEAR EXPERT MEDICAL
17 TESTIMONY AS TO HOW THOSE INJURIES ARE INCONSISTENT WITH
18 HIS EXPLANATION; THAT HE HAD TO HAVE BEEN STOMPED ON AND
19 VIOLENTLY BEATEN TO CAUSE THE SEVERITY OF THESE
20 INJURIES.

21 MR. DAVIS: YOUR HONOR, IF IT PLEASE THE
22 COURT? MAY IT PLEASE THE COURT, YOUR HONOR?

23 THE COURT: YES.

24 MR. DAVIS: I DON'T THINK THE SOLICITOR'S
25 CHARACTERIZATION OF STOMPED IS APPROPRIATE. I

OPENING STATEMENT BY MRS. MURPHY

219

1 THINK THAT'S AN IMPROPER OPENING STATEMENT WITH
2 REFERENCE TO THE WORD "STOMPED." I JUST THINK IT'S
3 IMPROPER AND INFLAMES THE JURY; USING THE WORD
4 "STOMPED." I THINK IT'S IMPROPER FOR OPENING
5 STATEMENT.

6 THE COURT: OVERRULED.

7 YOU WILL ALL HEAR STATEMENTS FROM
8 DEFENDANT GADSON, THE MOTHER OF THIS CHILD, AND HOW SHE
9 WROTE A STATEMENT THAT SHE KNOWINGLY LEFT HER CHILD WITH
10 THE DEFENDANT AFTER HAVING KNOWLEDGE THAT HE PREVIOUSLY
11 BROKE THE CHILD'S LEG IN 1998. LADIES AND GENTLEMEN,
12 Child [REDACTED] WAS BORN ON JANUARY THE SECOND OF 1996
13 AND ALMOST LEFT THIS WORLD ON NOVEMBER THE THIRD OF
14 2001. THE TESTIMONY WILL INCLUDE EVIDENCE OF HORRIBLE
15 NEGLECT AND VIOLENCE THAT NO CHILD SHOULD HAVE TO
16 ENDURE.

17 YOU, AS JUDGE GOODSTEIN TOLD YOU,
18 ARE THE JUDGES OF THE FACT. YOU HAVE BEEN SELECTED AS
19 FAIR AND IMPARTIAL JURORS TO TRY THIS CASE BASED UPON
20 WHAT YOU HEAR FROM THAT WITNESS STAND. YOU ALONE WILL
21 JUDGE THE CREDIBILITY OF THE WITNESSES AND WHAT THEY
22 HAVE TO GAIN AND WHAT THEY HAVE TO LOSE BY THEIR
23 TESTIMONY. JUDGE GOODSTEIN IS THE JUDGE OF THE LAW.
24 SHE WILL GIVE IT TO YOU AND ASK YOU TO APPLY THE FACTS
25 THAT YOU HEAR FROM THAT WITNESS STAND TO THE LAW AS SHE

OPENING STATEMENT BY MRS. MURPHY

220

1 GIVES IT TO YOU. NOW, THERE'S A STORY ABOUT THE GREAT
 2 HANK AARON WHEN SOMEONE ASKED HIM "MR. AARON, HOW DO YOU
 3 HIT SO MANY HOMERUNS?" HE SAID, "IT'S EASY; I KEEP MY
 4 EYE ON THE BALL." AND THAT'S WHAT I ASK YOU TO DO
 5 THROUGHOUT THIS TRIAL IS TO KEEP YOUR EYE ON THE BALL,
 6 KEEP YOUR EYE ON THE ISSUES THAT WILL PROVE THE
 7 DEFENDANT IS GUILTY AS CHARGED. AND DON'T LET THE
 8 DEFENSE ATTORNEYS AVERT YOUR ATTENTION FROM THAT BALL.

9 JUDGE GOODSTEIN ALSO TOLD YOU
 10 THAT AS THE PROSECUTOR, I HAVE THE BURDEN OF PROOF IN
 11 THIS CASE. AND I GLADLY ACCEPT THAT BURDEN AS I
 12 REPRESENT THE STATE OF SOUTH CAROLINA IN THIS CASE AND
 13 YOU, THE CITIZENS OF DORCHESTER COUNTY. I AM CONFIDENT
 14 THAT AT THE CLOSE OF THIS CASE WHEN YOU HEAR THE
 15 EVIDENCE PRESENTED FROM THE WITNESSES AND THE EXPERTS
 16 AND THE DOCTORS THAT I WILL BE ABLE TO COME BACK BEFORE
 17 YOU AND LOOK EACH OF YOU IN THE EYE AND ASK YOU FOR THE
 18 ONLY FAIR AND JUST VERDICT IN THIS CASE. AND I WILL ASK
 19 YOU TO RETURN A VERDICT OF GUILTY AGAINST BOTH
 20 DEFENDANTS FOR THE CRIMES AS ALLEGED. THANK YOU.

21 THE COURT: THANK YOU, MRS. MURPHY. MR.

22 DUKES?

23 - - - - -
 24 OPENING STATEMENTS

BY MR. DUKES

OPENING STATEMENT BY MR. DUKES

221

1 MR. FOREMAN AND LADIES AND
2 GENTLEMEN OF THE JURY; THIS MORNING I REPRESENT WILLIAM
3 BURDEN WHO IS SEATED AT THE FAR END OF THE TABLE OVER
4 THERE WITH ME. MRS. MURPHY COMES BEFORE YOU AND TELLS
5 YOU WHAT ALL THESE EXPERTS AND ALL WILL TELL YOU. WELL,
6 LET ME TELL YOU THIS: THIS MAN LIVED IN THE HOUSE. HE
7 WAS THE ONE THAT WAS THERE. HE WAS THE ONE THAT KNEW
8 WHAT WENT ON. YOU LISTEN TO THESE EXPERTS, BUT WE'RE
9 GOING TO PRESENT TO YOU THE PERSON THAT WAS ACTUALLY
10 PRESENT. AND HE'S NOT THE FATHER OF JUST ONE CHILD.
11 HE'S THE FATHER OF TEN CHILDREN. HE LOVES CHILDREN.
12 HE'S NEVER HAD ANY PROBLEMS WITH THEM; ONLY ONE CHILD.
13 AND YOU MUST REALIZE, TOO, THAT THIS CHILD IS A TWIN,
14 BORN WAY PREMATURE. I THINK HE'S ONLY ABOUT 35 POUNDS
15 AND FIVE YEARS OLD AND VERY SMALL. HE'S NOT MATURE.
16 AND HE HAS A LOT OF MEDICAL PROBLEMS.

17 THIS MOTHER AND FATHER; IF THINGS
18 ARE WRONG WITH THESE CHILDREN; AND THEY'VE HAD NO
19 PROBLEMS WITH ANY OF THE OTHER CHILDREN. THIS CHILD HAS
20 HAD SOME MEDICAL PROBLEMS, AND HE HAD BEEN TO THE DOCTOR
21 THAT DAY. WE JUST WANT YOU TO KNOW THAT THE STATE IS
22 GOING TO COME FIRST, AND THEY'RE GOING TO PUT UP ALL
23 THESE EXPERTS WHO WILL GIVE THEIR OPINION. BUT THERE IS
24 ONLY ONE OPINION IN THIS CASE THAT'S IMPORTANT, AND
25 THAT'S YOUR OPINION. YOU LISTEN TO THE FACTS, AND YOU

OPENING STATEMENT BY MR. DUKES

222

1 MAKE UP YOUR OPINION; THAT'S WHAT WE ASK FOR. AND WITH
2 YOUR GOOD COMMON SENSE, WE HAVE CONFIDENCE THAT THE
3 RIGHT DECISION WILL BE MADE. BUT LISTEN TO THE
4 TESTIMONY THAT COMES FROM THIS WITNESS STAND; WHATEVER
5 DOCUMENTS THEY MIGHT PUT IN. BUT REMEMBER THIS: THE
6 DEFENSE HAS THE SECOND HALF. THEY HAVE THE FIRST HALF;
7 BUT WE HAVE OUR CHANCE IN THE SECOND HALF. AND DON'T
8 MAKE UP YOUR MIND UNTIL YOU'VE HEARD EVERYTHING THAT HAS
9 COME FROM THE WITNESS STAND.

10 MR. BURDEN IS GOING TO TAKE THE
11 WITNESS STAND, AND HE'S GOING TO TELL YOU WHAT HAPPENED.
12 KEEP AN OPEN MIND TO THAT POINT. AND THAT'S ALL WE
13 ASK. WE ASK THAT YOU CONSIDER EVERYTHING YOU HEAR. AND
14 IN THE LIGHT OF YOUR GOOD COMMON SENSE, AND WHEN YOU GO
15 INTO THE JURY ROOM, MAKE A GOOD, COMMON, DELIBERATE
16 DECISION. AND WE THINK AFTER YOU HEAR EVERYTHING THAT
17 YOU'LL SEE THAT MR. BURDEN IS NOT GUILTY. THANK YOU
18 VERY MUCH.

19 THE COURT: THANK YOU, MR. DUKES. MR.
20 DAVIS?

21 MR. DAVIS: MAY IT PLEASE THE COURT, YOUR
22 HONOR?

23 THE COURT: YES, SIR.

24

OPENING STATEMENT

OPENING STATEMENT BY MR. DAVIS

223

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25BY MR. DAVIS

I WANT TO RE-INTRODUCE MYSELF.

MY NAME IS STEVE DAVIS. I PRACTICE LAW IN MONCKS
CORNER. FIRST OF ALL, I MAKE NO APOLOGY TO BE HERE THIS
MORNING. YOU KNOW, LAWYERS ARE A HATE-LOVE
RELATIONSHIP. EVERYBODY HATES A LAWYER, SOMEONE ELSE'S
LAWYER; BUT EVERYBODY WILL LOVE THEIR LAWYER. AND
THAT'S KIND OF SAD TO SOME EXTENT. I DON'T COME HERE
REPRESENTING EVERY LAWYER. I COME IN HERE REPRESENTING
ONE CLIENT. MY CLIENT IS MS. ADRIAN GADSON. SHE'S A
MOTHER. SHE HAS FIVE CHILDREN. SHE HAD HER FIRST CHILD
WHEN SHE WAS EIGHTEEN YEARS OF AGE; A LITTLE GIRL WHO IS
NOW EIGHT YEARS OF AGE. NEVER BEEN IN D.S.S. CUSTODY
EXCEPT WHEN THE HARD, GESTAPO TACTIC OF D.S.S. CAME INTO
PLAY AND YANKED ALL HER KIDS AWAY FROM HER ON TWO
DIFFERENT OCCASIONS. NEVER ANY INSTANCE OF ABUSE
AGAINST ANY OF THOSE OTHER CHILDREN; THE EIGHT YEAR OLD,
THE TWO TWINS, A FOUR YEAR OLD AND A ONE YEAR OLD. A
GIRL, TWO BOYS, AND ONE OF THEM, SHYHEAM, WHO'S AN ISSUE
IN THIS CASE. I DON'T KNOW MUCH ABOUT GENETICS. I
DON'T PLAN TO BE AN EXPERT IN THAT AREA. BUT I KNOW
SOMETHING SOMETIMES HAPPENS WHEN YOU TAKE ONE GENE AND
YOU SPLIT IT DOWN THE MIDDLE AND YOU TRY TO HAVE EQUAL
PORTIONS GIVEN TO BOTH SIDES. BASICALLY THAT'S WHAT
TWINS ARE. I DON'T USE THAT AS AN EXCUSE IN REFERENCE

OPENING STATEMENT BY MR. DAVIS

224

1 TO WHY WE'RE HERE TODAY. WE'RE HERE TODAY BECAUSE THE
2 STATE OF SOUTH CAROLINA HAS MADE A DECISION TO INDICT MY
3 CLIENT.

4 NOW, IN THE OLD DAYS, YOU JUST GO
5 OUT AND LYNCH SOMEBODY. YOU THINK THE STATE COULD
6 PARTICIPATE IN A LYNCHING? I THINK SO. THEY'VE GOT
7 STATE LYNCHING, TOO. I SAID STATE LYNCHING BECAUSE, YOU
8 KNOW, THE STATE HAS GOT TO GO FIRST; AND SHE TELLS TO
9 KEEP YOUR EYE ON THE BALL, HANK AARON. IF IT WAS THAT
10 SIMPLE, EVERYBODY WOULD HIT 755 HOMERUNS. IF YOU JUST
11 KEEP YOUR EYE ON THE BALL, IT WILL BE SIMPLE, MR.
12 FOREMAN. IT'S MORE THAN THAT JUST KEEPING YOUR EYE ON
13 THE BALL. I PLAYED BASEBALL. FIRST OF ALL, YOU CAN'T
14 BE AFRAID OF THE BALL. SECOND OF ALL, YOU KNOW,
15 SOMETIMES YOU KEEP YOUR EYE ON THE BALL, YOU'VE GOT TO
16 HIT THE RIGHT PITCHES. SOMETIMES YOU CAN HIT THE WRONG
17 BALL, AND THERE'S A FOUL BALL. I DON'T KNOW; YOU KEEP
18 YOUR EYE ON THE BALL AND YOU GET HOMERUNS, I GUESS; BUT
19 IT'S GOT TO BE A SELECT PITCH.

20 WE'RE NOT HERE TALKING ABOUT HANK
21 ARRON AND TALKING ABOUT BASEBALL, I'M HERE DEFENDING MY
22 CLIENT WHO IS FACED WITH A VERY, VERY SERIOUS MATTER.
23 IF SHE IS NOT ACQUITTED IN THIS CASE, SHE GOES TO
24 PRISON. YOU WOULDN'T HAVE ANYTHING TO DO WITH THAT.

MRS. MURPHY. OBJECTION YOUR HONOR.

OPENING STATEMENT BY MR. DAVIS

225

1 THE COURT: SUSTAINED.

2 BUT THERE'S A PENALTY INVOLVED IN THIS SITUATION; NO
3 QUESTION ABOUT THAT. I WANT -- YOUR HONOR, MAY I HAVE
4 THE INDICTMENT?

5 THE COURT: CERTAINLY.

6 EVERY INDIVIDUAL THAT IS IN THE PRISON IN SOUTH CAROLINA
7 IS IN THERE BECAUSE OF AN AN INDICTMENT; NOT BECAUSE OF
8 AN ARREST WARRANT; BECAUSE OF INDICTMENT. IT'S A
9 PROCESS WHERE---

10 MRS. MURPHY: OBJECTION, YOUR HONOR. I
11 THINK THAT CALLS FOR A MISSTATEMENT OF THE LAW. I
12 DON'T THINK AN INDICTMENT PUTS A PERSON IN PRISON.

13 MR. DAVIS: YOU'VE GOT TO GET INDICTED
14 FIRST.

15 THE COURT: WITH THAT QUALIFICATION, I
16 THINK THAT'S FINE.

17 MR. DAVIS: YOU DON'T GO TO JAIL FOR A
18 WARRANT; YOU GO THERE FROM AN INDICTMENT.
19 THIS INDICTMENT STATES AGAINST MY CLIENT WHICH THE
20 SOLICITOR PREPARED THAT ADRIAN GADSON DID IN DORCHESTER
21 COUNTY ON OR ABOUT NOVEMBER THE THIRD, 2001, WILLFULLY
22 AND UNLAWFULLY PLACE HER FIVE YEAR OLD CHILD IN DANGER
23 BY LEAVING THE CHILD IN THE CUSTODY OF WILLIAM D. BURDEN
24 WHO'S THE NATURAL, BIOLOGICAL FATHER OF ALL HER
25 CHILDREN: THE EIGHT YEAR OLD. THE TWO CHILDREN WHO ARE

OPENING STATEMENT BY MR. DAVIS

226

1 TWINS, THE FOUR YEAR OLD AND THE ONE YEAR OLD WHO HAS
2 BEEN INDICTED FOR ASSAULT AND BATTERY WITH INTENT TO
3 KILL WHEREBY THE SAME CHILD WAS THE VICTIM. WELL, I
4 SHARE WITH YOU THAT ON NOVEMBER THE THIRD, THAT YOUNG
5 MAN HAD NOT BEEN INDICTED FOR ASSAULT AND BATTERY WITH
6 INTENT TO KILL ON NOVEMBER THE THIRD, 2001. AND THAT'S
7 THE DAY THAT WE'RE HERE ABOUT; NOVEMBER THE THIRD, 2001,
8 BECAUSE ON NOVEMBER THE THIRD, 2001, MR. BURDEN DID NOT
9 HAVE ANY CRIMINAL RECORD PERTAINING TO THIS CHILD. AND,
10 THEREFORE, AT SOME POINT AND SOME JUNCTURE, Y'ALL ARE
11 ABOUT TO MAKE A DECISION THAT WAS IT UNREASONABLE FOR MY
12 CLIENT TO LEAVE THIS FIVE YEAR OLD WITH THE NATURAL
13 BIOLOGICAL FATHER WHILE SHE AND HER MOTHER, THE
14 GRANDMOTHER, WENT SHOPPING FOR A SHORT DISTANCE; LESS
15 THAN FIVE MINUTES FROM THE HOUSE. WAS THAT UNREASONABLE
16 FOR HER TO LEAVE HER CHILD WITH SOMEONE WHO IS THE
17 FATHER OF ALL HER CHILDREN. THAT INDICTMENT DON'T SAY
18 ANYTHING ABOUT THAT. IT JUST SAYS THAT BY LEAVING THE
19 CHILD IN THE CUSTODY OF WILLIAM D. BURDEN WHO HAS BEEN
20 INDICTED. WELL, I SHARE WITH YOU ON NOVEMBER THE THIRD,
21 2001, MR. BURDEN WAS NOT INDICTED. THEREFORE, WHAT ARE
22 Y'ALL GOING TO LOOK FOR THAT SAYS THAT SHE DID
23 UNREASONABLE?

24 NOW, SOMETIMES I GET A LITTLE

EXCITED AND THE REASON I GET EXCITED -- I WANT YOU TO

OPENING STATEMENT BY MR. DAVIS

227

1 UNDERSTAND WHY I GET EXCITED. I GET EXCITED, FIRST OF
2 ALL, BECAUSE I ENJOY WHAT I DO. I ENJOY WHAT I DO
3 BECAUSE I THINK IT'S A GOOD THING THAT I DO. I USED TO
4 BE A PROSECUTOR. I DID IT FOR TEN YEARS. I ENJOYED IT
5 THEN BECAUSE I WAS DOING A GOOD THING. I LIKE TO
6 CHARACTERIZE THIS THING -- SOME OF YOU MAY BE MY AGE.
7 YOU KNOW, I HAD TWO FAVORITE CARTOON CHARACTERS. ONE
8 WAS SUPERMAN. I LOVED SUPERMAN BECAUSE SUPERMAN COULD
9 DO ALL KINDS OF THINGS. HE COULD LEAP TALL BUILDINGS.
10 HE COULD OUTFRAN A TRAIN. BULLETS COULDN'T HURT HIM. HE
11 WAS ALWAYS THERE TO DEFEND. AND HE ALWAYS JUST HAD TO
12 BELIEVE IN TRUTH, JUSTICE, AND THE AMERICAN WAY. I GREW
13 UP ON THAT. THAT'S WHY I ENJOY BEING A PROSECUTOR. I
14 FIND MYSELF NOW CHALLENGING THE STATE A LOT. AND I TELL
15 YOU WHO IS MY FAVORITE CARTOON CHARACTER. IT WAS
16 UNDERDOG, A LITTLE DOG WITH A LITTLE CAPE ON, WHO USED
17 TO FLY. BUT OLD UNDERDOG WAS DEPENDABLE. UNDERDOG
18 WOULD FIGHT. I'D FIND MYSELF A LOT OF TIMES AN UNDERDOG
19 BECAUSE THAT'S WHAT I'VE BEEN PUT IN THIS SITUATION THIS
20 WEEK. I HAVE TO CONTEND WITH EXPERTS WAY BEYOND MY
21 KNOWLEDGE TO COME IN AND GIVE YOU AN OPINION. I HAVE TO
22 CONTEND WITH THE SOLICITOR---

23 MRS. MURPHY: OBJECTION, YOUR HONOR.

24 THE COURT: JUST BE CAREFUL ABOUT THE
25 ARGUMENT, MR. DAVIS.

OPENING STATEMENT BY MR. DAVIS

228

1 MR. DAVIS: YES, MA'AM. THERE'S NO
2 QUESTION, THOUGH. AND SO, AGAIN, I WANT YOU TO
3 UNDERSTAND WHY I GET A LITTLE EXCITED. I HAVE BEEN
4 INVOLVED IN THIS WITH THE GADSON FAMILY WAY BACK IN
5 1998 BECAUSE THAT'S GOING TO COME OUT -- I WANT TO
6 SHARE IT. I WAS THERE. I WAS THERE IN 1998, AND
7 MR. MARSHALL WAS THERE IN 1998. THIS DETECTIVE WHO
8 IS GOING TO TESTIFY IN THIS CASE; HE'S GOING TO
9 TAKE THIS WITNESS STAND, AND HE'S GOING TO ALLUDE
10 TO YOU HOW WE GOT HERE, HOW WE GOT HERE; HOW MY
11 CLIENT GOT HERE. I WAS THERE IN 1998. I WASN'T ON
12 THE SIDELINE. I WASN'T ON THE SIDELINE, I WASN'T
13 IN LAW SCHOOL. I WAS HERE. I WAS INVOLVED IN THIS
14 MATTER IN 1998.

15 I CAN'T TESTIFY; BUT I'M GOING TO
16 TRY TO SHED SOME LIGHT WHILE Y'ALL ARE LOOKING AT
17 THAT BALL. I AM GOING TO TRY TO SHED SOME LIGHT
18 WHILE Y'ALL ARE WATCHING THAT BALL. AND I TELL YOU
19 WHY I'M VERY ADAMANT ABOUT THIS. THE JUDGE ASKED
20 ALL OF YOU IN OPENING STATEMENT, DO YOU HAVE ANY
21 BIAS; DO YOU HAVE ANY PREJUDICE. I NOTICE SOME OF
22 YOU KNOW MRS. MURPHY. ALL OF THIS. THERE'S A
23 REASON FOR THAT BECAUSE WHEN I MADE A DETERMINATION
24 THAT I WANTED TO BE A LAWYER, I PUT ON MY CARD
25 INSIGNIA A BLINDFOLD AROUND THAT LADY JUSTICE. AND

OPENING STATEMENT BY MR. DAVIS

229

1. I TELL YOU WHAT BECAUSE THAT IS THE ONLY WAY THIS
2. SYSTEM CAN OPERATE. NO ONE SHOULD HAVE ASSUME THAT
3. JUST BECAUSE THEY COME IN HERE WITH LAW ENFORCEMENT
4. AND EXPERTS, OR WHATEVER, THAT THEY CAN CONVICT
5. SOMEONE. THAT'S WHAT I WANTED YOU TO UNDERSTAND.
6. YOU PROMISE IN YOUR OATH TO KEEP AN OPEN MIND, NOT
7. COME IN HERE WITH BIASES AND PREJUDICES TO HEAR
8. EVERYTHING, BECAUSE I'M CONVINCED, I'M CONVINCED;
9. THAT WHEN EVERYTHING IS SAID AND DONE, YOU WILL
10. ACQUIT MY CLIENT. YOU WILL ALLOW HER TO GO. I'M
11. NOT HERE DEFENDING MR. BURDEN. HE HAS HIS OWN
12. LAWYER FOR THAT PURPOSE. I AM HERE REPRESENTING
13. ONE INDIVIDUAL.

14. THE STATE HAS MADE THE DECISION
15. TO LOCK THESE TWO CASES TOGETHER. I REPRESENT ONE
16. INDIVIDUAL. I WANT YOU TO KEEP YOUR EYE ON THAT
17. ALSO. THEY MADE THIS DECISION. KEEP YOUR EYE ON
18. THAT ALSO, PLEASE. I DIDN'T HAVE ANYTHING TO DO
19. WITH IT. WE ARE FORCED TO BE HERE. WE MUST DEFEND
20. THIS CASE AT THIS TIME. BUT I REPRESENT ONE
21. CLIENT; THAT'S MS. GADSON. AND I BELIEVE WHEN
22. EVERYTHING IS SAID AND DONE THAT YOU WILL COME BACK
23. WITH A VERDICT THAT SPEAKS THE TRUTH.

24. AND I WANT YOU TO DON'T
25. PARTICIPATE WITH A STATE LYNCHING UNTIL YOU'VE

OPENING STATEMENT BY MR. DAVIS

230

1 HEARD BOTH SIDES. BECAUSE I TELL YOU WHY A STATE
2 LYNCHING IS BAD. INDIVIDUALS DO NOT HAVE AN
3 OPPORTUNITY TO SPEAK IN A RUSH FOR RETRIBUTION.
4 IT'S HARD. I STAND UP WHEN I HEARD THE WORD
5 "STOMPED". IT DOES SOMETHING TO ME. I'VE GOT
6 FOUR YEARS KIDS MYSELF. I'VE GOT AN EIGHTEEN YEAR
7 OLD AT THE UNIVERSITY OF SOUTH CAROLINA. I'VE GOT
8 A TEN YEAR OLD. I'VE GOT A FOURTEEN YEAR OLD.
9 I'VE GOT A GRANDBABY... I LOVE MY GRANDBABY. AND
10 WHEN I HEAR WORDS ABOUT STOMP, IT GETS TO ME.
11 THAT'S WHY I STOOD UP. I DON'T LIKE TO HEAR THAT.
12 YOU DON'T LIKE TO HEAR IT EITHER. BUT I'M TELLING
13 THIS: IT AIN'T THE SOLICITOR WITH HER TONGUE
14 THAT'S GOING TO CONVINCING THIS CASE. IT'S WHAT'S
15 GOING TO COME FROM THIS CHAIR. I BEG YOU TO DIFFER
16 ABOUT THE WORD "STOMPED". BUT I'M NOT THERE
17 BECAUSE MY CLIENT WAS NOT AT HOME. AND SHE'S GOING
18 TO COME IN HERE, AND SHE'S GOING TO TESTIFY FROM
19 THIS CHAIR. AND SHE'S GOING TO BRING HER
20 WITNESSES. SHE'S GOING TO BRING SOME WITNESSES TO
21 TELL YOU WHAT A GREAT MOTHER SHE IS. SHE LOVES ALL
22 OF HER CHILDREN. AND SHE LOVES THE TWIN WHO HAS
23 HAD SOME PROBLEMS OVER THE YEARS. SHOULD SHE LOVE
24 WILLIAM BURDEN? I DON'T KNOW. BUT REALLY, I DON'T

CASE

OPENING STATEMENT BY MR. DAVIS

231

1 SHE WAS A YOUNG MOTHER WHEN SHE
2 GOT INVOLVED. D.S.S. GOT INVOLVED AT ONE TIME FROM
3 THE SAME SITUATION WITH MR. BURDEN. SHE WENT TO
4 PARENTING EFFECTIVE TRAINING CLASSES AND COMPLETED
5 EVERYTHING THEY ASKED OF HER. SHE GOT HER OWN
6 RESIDENCY SET UP FOR HER OWN SELF FOR HER CHILD.
7 SHE DID ALL THAT. SHE HAS NOT SEEN HER OWN
8 CHILDREN SINCE NOVEMBER THE THIRD, 2001. HER
9 CHILDREN HAVE NOT LIVED IN HER HOME OR GIVEN THEM A
10 HUG OR STAYED IN THE SAME BEDROOM SINCE NOVEMBER
11 THE THIRD, 2001. LITTLE DO WE THINK ABOUT ALL
12 THAT'S GOING ON IN THE WORLD AT THIS PARTICULAR
13 TIME. YOU KNOW, THAT IS VERY SAD. AND I WANT TO
14 BRING YOU -- PEOPLE ARE GOING TO TALK ABOUT GREAT
15 MOTHERS. BUT I HAVE NO HESITATION THAT SHE'S A
16 GREAT MOTHER; NONE WHATSOEVER. AND THIS AIN'T NO
17 DOLLY PARDON SONG, STAND BY YOUR MAN. IT SURE
18 AIN'T. IT AIN'T; I WANT YOU TO UNDERSTAND THAT.
19 WE'VE BEEN FORCED IN THIS SITUATION, BUT I DEFEND
20 MY CLIENT, MS. GADSON. THANK YOU.

21 THE COURT: THANK YOU, MR. DAVIS. ALL
22 RIGHT, MRS. MURPHY; IF YOU WOULD PLEASE CALL YOUR
23 FIRST WITNESS.

24 MRS. MURPHY: THE STATE WOULD CALL MRS.
25 MARCELOT NIGRO. YOUR HONOR.

STATE OF SOUTH CAROLINA) IN THE
) COURT OF GENERAL SESSIONS
 COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT

STATE OF S.C.,)
)
 PLAINTIFF,)
)
 - VS -) TRANSCRIPT OF RECORD
) #2002-GS-18-0006
 WILLIAM DEAN BURDEN,)
 AND ANDRIAN GADSON) VOLUME II OF III
)
 DEFENDANT.) ST. GEORGE, S.C.
) OCTOBER 21-28, 2002

B E F O R E:

HON. DIANE S. GOODSTEIN; JUDGE, AND A JURY

A P P E A R A N C E S:MAITE MURPHY, ASST. SOLICITOR
ATTORNEY FOR THE STATEMARK LEIENDECKER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

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OPENING STATEMENT BY MR. DAVIS

232

1. MARCELOT NIGRO, YOUR HONOR.

2. THE COURT: ALL RIGHT.

3. - - - - -

4. WHEREUPON,

5. MARCOLET JEAN NIGRO, WHO AFTER BEING
6. FIRST DULY SWORN TO TELL THE TRUTH
7. TO TELL THE TRUTH, TESTIFIED AS FOLLOWS:

8. THE COURT: LADIES AND GENTLEMEN, IF AT
9. ANY POINT YOU HAVE DIFFICULTY HEARING, JUST RAISE
10. YOUR HAND, AND WE'LL BE LOOKING FOR THAT. IT'S
11. IMPORTANT THAT YOU'RE ABLE TO HEAR. CAN EVERYONE
12. HEAR? CAN ANYONE NOT HEAR MRS. NIGRO, RAISE YOUR
13. HAND. (NO RESPONSE.) VERY WELL. THANK YOU, MRS.
14. MURPHY. YOUR WITNESS.

15. MRS. MURPHY: THANK YOU, YOUR HONOR.

16. DIRECT EXAMINATION

17. BY MRS. MURPHY:

18. Q. MRS. NIGRO, WHERE ARE YOU EMPLOYED?

19. A. AT THE DORCHESTER COUNTY SHERIFF'S OFFICE.

20. Q. AND WHAT ARE YOUR DUTIES THERE?

21. A. I'M THE SUPERVISOR FOR THE 911 CENTER.

22. Q. AND CAN YOU TELL US A LITTLE BIT ABOUT WHAT YOUR
23. DUTIES ENTAIL AS A SUPERVISOR THERE?

24. A. I PULL TAPES FOR CALLS WE RECEIVE INTO THE CENTER.

25. I SUPERVISE THE DAILY GOING ON OF THE 911 CENTER

MARCOLET NIGRO - DIRECT/MRS. MURPHY

233

1 TAKES THE CALLS.

2 Q. AND WERE YOU REQUESTED TO PULL A RECORDING OF THE
3 911 CALL OF THIS PARTICULAR INCIDENT ON NOVEMBER
4 THE THIRD OF 2001?

5 A. YES, I WAS.

6 Q. AND WAS THAT ADDRESS FROM PIGEON BAY ROAD?

7 A. YES, IT WAS.

8 Q. AND I'M GOING TO---

9 MRS. MORGAN: MAY I APPROACH THE WITNESS,
10 YOUR HONOR?

11 THE COURT: YOU MAY.

12 Q. AND DID YOU MAKE THAT TAPE OF THAT PARTICULAR CALL?

13 A. YES, I DID.

14 Q. I'D ASK IF YOU RECOGNIZE THIS? (INDICATING.)

15 A. YES; THIS IS MY HANDWRITING ON THE TAPE.

16 Q. THAT'S THE TAPE THAT YOU MADE FROM THE 911 CALL?

17 A. YES, IT IS.

18 Q. DOES IT APPEAR TO BE TAMPERED WITH IN ANY WAY,
19 SHAPE, OR FORM?

20 A. NO, IT DOES NOT.

21 Q. NOW, WHEN YOU MAKE A TAPE FROM A 911 CALL, IS THERE
22 ANY WAY TO EDIT OR CHANGE THE CONTENT OF THAT CALL?

23 A. NO, THERE'S NOT.

24 Q. SO WHAT'S ON THIS TAPE IS THE SUBSTANCE OF THAT
25 CALL?

MARCOLET NIGRO - DIRECT/MRS. MURPHY

234

1 A. YES, IT IS.

2 MRS. MURPHY: YOUR HONOR, AT THIS POINT
3 I'D LIKE TO INTRODUCE THE 911 TAPE INTO EVIDENCE.

4 THE COURT: ANY OBJECTION, MR. DUKES?

5 MR. DUKES: NO OBJECTION.

6 THE COURT: MR. DAVIS?

7 MR. DAVIS: NONE, YOUR HONOR.

8 THE COURT: VERY WELL. STATE'S EXHIBIT
9 NUMBER ONE IN EVIDENCE WITHOUT OBJECTION. IT IS A
10 TAPE.

11 STATE'S EXHIBIT NO. 1

12 ADMITTED AS EVIDENCE

13 MRS. MURPHY: YOUR HONOR, MAY I PUBLISH
14 THIS TO THE JURY?

15 THE COURT: YOU MAY PUBLISH IT TO THE
16 JURY.

17 MRS. MURPHY: YOUR HONOR, I ALSO HAVE IT
18 TRANSCRIBED SO THAT THE JURY CAN FOLLOW ALONG.
19 I'VE ALLOWED DEFENSE COUNSEL TO LOOK AT A COPY OF
20 THE TRANSCRIPT. MAY I HAND THOSE UP TO THE JURY AT
21 THIS TIME?

22 THE COURT: ANY OBJECTION FROM THE
23 DEFENSE? MR. DUKES?

24 MR. DUKES: NO OBJECTION.

25 THE COURT: MR. DAVIS?

MARCOLET NIGRO - CROSS/MR. DUKES

235

1. MR. DAVIS: NONE.

2 THE COURT: VERY WELL.

3 (AT THIS TIME 911 TAPE IS PLAYED FOR THE JURY.)

4 MRS. MURPHY: THANK YOU, MRS. NIGRO.

5 PLEASE ANSWER ANY QUESTIONS DEFENSE COUNSEL MAY
6 HAVE.

7 THE COURT: CROSS-EXAMINATION, MR. DUKES.

8 CROSS-EXAMINATION

9 BY MR. DUKES:

10 Q. DID YOU FOLLOW THIS WHILE THE TAPE WAS GOING ON?

11 A. NO, SIR.

12 Q. YOU DIDN'T?

13 A. NO, SIR.

14 THE COURT: DO YOU NEED HER TO HAVE A
15 COPY OF THE TRANSCRIPT, MR. DUKES?

16 MR. DUKES: YES, MA'AM. AND I NEED THE
17 FIRST FOUR SENTENCES OR SO PLAYED AGAIN. THE FIRST
18 FOUR LINES -- FIRST FIVE LINES.

19 THE COURT: THE FIRST FIVE LINES? ALL
20 RIGHT.

21 (AT THIS TIME TAPE PORTION OF TAPE IS PLAYED AGAIN.)

22 MR. DUKES: THAT'S FINE. AND I WOULD
23 LIKE FOR IT NOTE THAT HE SAID ALFRED GADSON INSTEAD
24 OF ALFRED JACKSON.

25 THE COURT: WHY DON'T YOU ASK HER A

MARCOLET NIGRO - CROSS/MR. DUKES

236

1 THE COURT: WHY DON'T YOU ASK HER A
2 QUESTION.

3 MR. DUKES: ALL RIGHT.

4 Q. DID YOU HEAR THAT REPLY?

5 A. IF HE COULD PLAY IT BACK ONE MORE TIME.

6 (AT THIS TIME TAPE IS RE-PLAYED.)

7 Q. AND WHAT NAME DID HE SAY?

8 A. IT SOUNDS LIKE GADSON OR JACKSON. IT'S NOT VERY
9 CLEAR.

10 Q. BUT YOU WOULDN'T ARGUE WITH JACKSON?

11 A. I WOULDN'T ARGUE WITH IT.

12 Q. OKAY. THAT'S ALL THE QUESTIONS I HAVE.

13 MR. DAVIS: JUST ONE QUESTION, YOUR
14 HONOR.

15 THE COURT: VERY WELL. YES, SIR, MR.
16 DAVIS?

17 RE-DIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q. YOU WEREN'T THERE? YOU WEREN'T THE DISPATCHER?

20 A. NO, SIR.

21 Q. ALL YOU WERE WAS PUT IN A POSITION TO TRY TO TAPE
22 WHAT SOMEBODY ELSE SAID?

23 A. YES, SIR.

24 Q. AND TRANSCRIBE. AND YOU DID THE BEST YOU COULD
25 WITH WHAT YOU HEARD?

MARCOLET NIGRO - RE-DIRECT/MR. DAVIS

237

1 Q. YOU DIDN'T EVEN TRANSCRIBE IT?

2 A. NO, SIR. I JUST PULLED THE TAPE; THE AUDIOTAPE
3 TAPE.

4 Q. OKAY. WELL, WHO DID THE TYPING?

5 A. I'M NOT SURE, SIR; I DON'T KNOW.

6 Q. YOU DON'T KNOW WHO TYPED IT?

7 A. NO, SIR.

8 Q. SO YOU DON'T KNOW WHO WAS THE INTERPRETER OF ALL
9 THE LANGUAGE; JUST THE REFERENCE TO WHAT THE WORD
10 GADSON VS. JACKSON?

11 A. NO, SIR. ALL I WAS ASKED WAS TO PULL THE TAPE.

12 Q. THAT'S IT.

13 A. YES, SIR.

14 Q. THEN SOMEBODY ELSE TYPED IT UP?

15 A. EVIDENTLY YES, SIR.

16 Q. SOMEBODY ELSE IN THE SOLICITOR'S OFFICE?

17 A. I COULDN'T TELL YOU.

18 Q. YOU DIDN'T TYPE IT UP IN THE SHERIFF'S DEPARTMENT?

19 A. I DIDN'T TYPE IT UP; NO, SIR.

20 Q. SO MAYBE IN THE SOLICITOR'S OFFICE?

21 A. YOU WOULD HAVE TO ASK THEM, SIR. I COULDN'T TELL
22 YOU.

23 Q. THANK YOU, MRS. NIGRO. THANK YOU VERY MUCH.

24 THE COURT: ANY RE-DIRECT?

25 MRS. MURPHY: NO RE-DIRECT, YOUR HONOR.

MICHAEL PECK - DIRECT/MRS. MURPHY

238

1 MRS. MURPHY: NO RE-DIRECT, YOUR HONOR.

2 THE COURT: VERY WELL. IS THIS WITNESS
3 FREE TO LEAVE?

4 MRS. MURPHY: YES, MA'AM.

5 THE COURT: ALL RIGHT. YOU'RE FREE TO
6 GO. CALL YOUR NEXT WITNESS, PLEASE.

7 MRS. MURPHY: THE STATE WOULD CALL
8 MICHAEL PECK TO THE STAND.

9 - - - - -

10 WHEREUPON,

11 MICHAEL AARON PECK, WHO AFTER BEING
12 FIRST DULY SWORN TO TELL THE TRUTH,
13 TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MRS. MURPHY:

16 Q. MR. PECK, WHERE ARE YOU EMPLOYED, SIR?

17 A. I'M EMPLOYED WITH DORCHESTER COUNTY E.M.S.

18 Q. AND WHAT IS YOUR JOB DESCRIPTION THERE AT
19 DORCHESTER COUNTY E.M.S.?

20 A. I'M SENIOR MEDIC.

21 Q. AND CAN YOU TELL US A LITTLE BUT ABOUT YOUR
22 BACKGROUND AND TRAINING TO BECOME A MEDIC?

23 A. YES, MA'AM. I STARTED WITH E.M.S. IN 1996 AS AN
24 E.M.T. BASIC. TWO YEARS LATER I RECEIVED THE
25 POSITION AS A PARAMEDIC. I TOOK ABOUT A YEAR AND A

MICHAEL PECK - DIRECT/MRS. MURPHY

239

1 STATE.

2 Q. WHAT KIND OF COURSES DO YOU TAKE TO BECOME
3 QUALIFIED TO BECOME A PARAMEDIC?

4 A. WE TAKE A GENERALIZED COURSE THAT'S APPROXIMATELY
5 NINE MONTHS THAT DOES PARAMEDIC CURRICULUM. WE
6 ALSO DO A.C.L.S. WHICH IS ADVANCED CARDIAC LIFE
7 SUPPORT, B.T.L.S. WHICH IS BASIC TRAUMA LIFE
8 SUPPORT, PALS WHICH IS PEDIATRIC ADVANCED LIFE
9 SUPPORT.

10 Q. AND WERE YOU DISPATCHED TO PIGEON BAY ROAD ON
11 NOVEMBER THE THIRD OF 2001?

12 A. YES, MA'AM.

13 Q. AND WHAT TIME WAS THAT CALL RECEIVED BY YOUR
14 RECORDS?

15 A. BY MY RECORDS THE DISPATCHERS RECEIVED THE CALL AT
16 6:40. AND THEY SENT US OUT AT 6:43; OR THEY SENT
17 US TO THE CALL AT 6:43.

18 Q. AND WAS THAT 240 PIGEON BAY ROAD?

19 A. YES, MA'AM.

20 Q. IS THAT LOCATED IN DORCHESTER COUNTY?

21 A. YES, MA'AM.

22 Q. WHAT TIME DID YOU ARRIVE ON THE SCENE?

23 A. WE GOT TO THE SCENE AT 6:50.

24 Q. WHAT DID YOU FIND AT THE SCENE?

25 A. WHEN WE GOT TO THE SCENE, WE FOUND THE YOUNG BOY

MICHAEL PECK - DIRECT/MRS. MURPHY

240

1 LAYING ON THE GROUND IN A POSITION THAT WAS --
2 WHICH IS TERMED AS DISSCERAPIC POSTURING
3 (PHONETICALLY SPELLED) IN OTHER WORDS, HIS ARMS
4 ARE TURNED OUT AWAY FROM HIS BODY IN A RIGID,
5 STRICT, KIND OF POSITION.

6 Q. WHAT DID YOU DO AT THAT POINT?

7 A. AT THAT POINT WE LOADED THE PATIENT IMMEDIATELY
8 INTO THE BACK OF THE TRUCK AND BEGAN THE STUFF WE
9 HAD TO DO ACCORDING TO PROTOCOL IN ORDER TO TAKE
10 CARE OF HIM.

11 Q. AND DO YOU RECALL WHERE IN THE HOUSE THE CHILD WAS
12 LOCATED?

13 A. I BELIEVE IT WAS IN THE LIVING ROOM; THE FLOOR.

14 Q. AND WHAT CONDITION WAS HE IN? WERE YOU ABLE TO
15 STABILIZE HIM AT THAT POINT?

16 A. AT THAT POINT THE PATIENT WAS UNRESPONSIVE.

17 Q. CAN YOU TELL US WHAT YOU MEAN BY THAT?

18 A. MEANING THAT NO TYPE OF STIMULATION WOULD CAUSE A
19 RESPONSE FROM HIM. IN OTHER WORDS, YOU KNOW, WE DO
20 IT ON A LEVEL; IT'S CALLED AN AB-CU (PHONETICALLY
21 SPELLED) SCALE WHICH IS A VERBAL PAINFUL STIMULI
22 PAINFUL OR UNRESPONSIVE. HE WAS AT THE BOTTOM OF
23 THAT SCALE BECAUSE NO STIMULATION WE COULD DO WOULD
24 GET A PERFECT RESPONSE FROM HIM.

25 Q. AND WHAT DID YOU DO AT THAT POINT?

MICHAEL PECK - CROSS/MR. DUKES

241

1 Q. AND WHAT DID YOU DO AT THAT POINT?

2 A. AT THAT POINT WE LOADED HIM INTO THE TRUCK. WE
3 PLACED HIM ON OXYGEN, STARTED I.V. THERAPY ON HIM,
4 AND INITIATED PROTOCOL FOR AN UNRESPONSIVE PATIENT
5 WHICH INCLUDED THE DRUG CALLED NARCAN WHICH WOULD
6 CHANGE THE EFFECTS OF ANY KIND OF OVERDOSE THAT MAY
7 HAVE HAPPENED.

8 Q. AND WHERE WAS HE TRANSPORTED TO?

9 A. WE TOOK HIM TO SUMMERVILLE MEDICAL CENTER.

10 Q. AND AT THAT POINT WAS HE LEFT IN SUMMERVILLE
11 MEDICAL CENTER'S CARE?

12 A. YES, MA'AM.

13 Q. THANK YOU, SIR. PLEASE ANSWER ANY QUESTIONS
14 DEFENSE COUNSEL MAY HAVE FOR YOU.

15 THE COURT: YES, SIR, MR. DUKES;
16 CROSS-EXAMINATION.

17 CROSS-EXAMINATION

18 BY MR. DUKES:

19 Q. YOU WENT BY YOURSELF, THOUGH, DIDN'T YOU?

20 A. NO, SIR.

21 Q. WHO ACCOMPANIED YOU?

22 A. I HAD A PARTNER. HIS NAME WAS CHRIS KONAVAL. AND
23 OUR SUPERVISOR MET US ON THE SCENE.

24 Q. THERE WERE THREE PEOPLE THERE?

25 A. YES, SIR.

MICHAEL PECK - CROSS/MR. DUKES

242

1. A. IN REGARDS TO?
- 2 Q. PEOPLE IN THE HOUSE?
- 3 A. NOBODY THAT I COULD POINT OUT; NO, SIR.
- 4 Q. WELL---
- 5 A. THERE WERE PEOPLE THERE, BUT I COULDN'T TELL YOU
- 6 WHO OR WHAT OR ANYTHING LIKE THAT.
- 7 Q. YOU DON'T REMEMBER THE DEFENDANT BEING THERE? YOU
- 8 DON'T REMEMBER WILLIAM BURDEN?
- 9 A. NO, SIR.
- 10 Q. YOU DIDN'T TALK WITH HIM?
- 11 A. I DON'T RECALL.
- 12 Q. OKAY.
- 13 A. I TALKED TO SOMEBODY BECAUSE THEY HAD TOLD ME THAT
- 14 THIS CHILD WAS PRESENTING THE WAY HE WAS
- 15 PRESENTING. BUT I COULDN'T TELL YOU SPECIFICALLY
- 16 WHO I SPOKE WITH.
- 17 Q. DID YOU SEE OTHER MINOR CHILDREN?
- 18 A. THERE WERE OTHER CHILDREN PRESENT?
- 19 YES, SIR.
- 20 Q. OKAY. BUT YOU DON'T REMEMBER ANYTHING ABOUT THEM?
- 21 A. NO, SIR.
- 22 Q. SO YOU JUST IMMEDIATELY LEFT THE HOUSE WITH THE
- 23 CHILD?
- 24 A. YES, SIR. WE WERE ONLY AT THE HOUSE FOR FOUR
- 25 MINUTES.

MICHAEL PECK - RE-DIRECT/MR. DAVIS

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1 MINUTES.

2 Q. AND THE CHILD WAS ON THE FLOOR?

3 A. YES, SIR.

4 Q. AND WAS DRESSED?

5 A. TO THE BEST OF MY KNOWLEDGE HE HAD SOMETHING ON
6 FROM THE WAIST DOWN. AS FAR AS THE SHIRTS THAT MR.
7 DAVIS TALKED TO ME ABOUT EARLIER; I DON'T KNOW THAT
8 HE HAD A SHIRT ON OR DIDN'T HAVE A SHIRT ON.

9 Q. YOU CAN'T SAY EITHER WAY?

10 A. NO, SIR.

11 MR. DUKES: THAT'S ALL THE QUESTIONS I
12 HAVE, YOUR HONOR.

13 MR. DAVIS: JUST A FEW, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 RE-DIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q. YES; YOU AND I DID TALK THIS MORNING FOR THE FIRST
18 TIME; ISN'T THAT CORRECT, SIR?

19 A. YES, SIR.

20 Q. AND YOU SHARED WITH ME THAT THERE'S NO QUESTION
21 THAT THE MOTHER WENT ALONG WITH Y'ALL TO E.M.S.?

22 A. YES, SIR.

23 Q. SHE DID. OKAY. BUT YOU CAN'T RIDE IN THE BACK; SO
24 SHE HAD TO ACTUALLY RIDE IN THE FRONT; ISN'T THAT
25 CORRECT?

MICHAEL GOLDMAN - DIRECT/MRS. MURPHY

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1 A. YES, SIR.

2 Q. OKAY. NOW, I KNOW YOU DIDN'T MEAN TO USE THE WORD
3 "GROUND;" BUT I WANT TO MAKE SURE THE CHILD WAS
4 NOT ON THE GROUND; THE CHILD WAS INSIDE THE HOUSE;
5 ISN'T THAT CORRECT?

6 A. YES, SIR; ON THE LIVING ROOM FLOOR.

7 Q. THAT'S ALL. THANK YOU.

8 THE COURT: ANY RE-DIRECT?

9 MRS. MURPHY: NO, MA'AM.

10 THE COURT: YOU MAY STEP DOWN. YOU MAY
11 CALL YOUR NEXT WITNESS.

12 MRS. MURPHY: THE STATE CALLS DR.
13 MITCHELL GOLDMAN.

14 - - - - -

15 WHEREUPON,

16 MITCHELL GOLDMAN, M.D., WHO AFTER BEING
17 FIRST DULY SWORN TO TELL THE TRUTH,
18 TESTIFIED AS FOLLOWS:

19 THE COURT: YOUR WITNESS.

20 MRS. MURPHY: THANK YOU, YOUR HONOR.

21 DIRECT EXAMINATION

22 BY MRS. MURPHY:

23 Q. GOOD MORNING, DR. GOLDMAN.

24 A. GOOD MORNING.

25 Q. WOULD YOU PLEASE TELL THE JURY A LITTLE BIT ABOUT

MICHAEL GOLDMAN - DIRECT/MRS. MURPHY

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1 A. OKAY. WELL, I'M AN M.D., A MEDICAL DOCTOR. I WAS
2 LICENSED IN 1981. I HAVE -- I FINISHED MY
3 RESIDENCY IN 1985. AND I HAVE BEEN -- I AM BOARD
4 CERTIFIED IN EMERGENCY MEDICINE AND ALSO INTERNAL
5 MEDICINE, AND I'VE BEEN PRACTICING EMERGENCY
6 MEDICINE FULL-TIME SINCE 1985.

7 Q. AND CAN YOU TELL US A LITTLE BIT ABOUT YOUR
8 EMPLOYMENT HISTORY?

9 A. YES. WELL, AFTER RESIDENCY I TRAINED WITH
10 METROPOLITAN MEDICAL CENTER IN NEW YORK. AND AFTER
11 THAT I WAS A FULL-TIME EMERGENCY PHYSICIAN IN
12 BELVIEW HOSPITAL IN NEW YORK. FROM '87 TO '94, I
13 WAS EMERGENCY DEPARTMENT DIRECTOR AT SYOCIT MEDICAL
14 CENTER (PHONETICALLY SPELLED), AGAIN IN NEW YORK.
15 AND FROM '94 TO '98, I WAS EMERGENCY DEPARTMENT
16 DIRECTOR AT FRANKLIN MEDICAL CENTER IN VALLEY
17 STREAM, NEW YORK. FROM 1998 TO -- WELL, FROM '97
18 TO '99, I WAS AT ORANGEBURG REGIONAL MEDICAL CENTER
19 IN THE EMERGENCY DEPARTMENT. AND SINCE THEN, I'VE
20 BEEN A FULL-TIME EMERGENCY DEPARTMENT PHYSICIAN AT
21 SUMMERVILLE MEDICAL CENTER AND TRIDENT. WE STAFF
22 BOTH HOSPITALS.

23 Q. AND, SIR, WHAT LICENSES AND SPECIAL CERTIFICATIONS
24 DO YOU HOLD?

MITCHELL GOLDMAN, M.D. - DIRECT/MRS. MURPHY

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1 CAROLINA NOW. I DON'T PRACTICE IN GEORGIA. I AM,
2 LIKE I SAID, BOARD CERTIFIED IN INTERNAL MEDICINE
3 AND EMERGENCY MEDICINE WHICH IS MY FULL-TIME JOB
4 OBVIOUSLY. I AM -- IN NEW YORK STATE, I WAS A
5 CERTIFIED INSTRUCTOR IN CHILD ABUSE. AND I
6 LECTURED AND TRAINED NURSING PERSONNEL SOCIAL
7 WORKERS AND HOSPITAL ANCILLARY PEOPLE AND WOULD
8 CERTIFY THEM IN THE RECOGNITION OF CHILD ABUSE. I
9 HAVE CERTIFICATIONS IN ADVANCED TRAUMA LIFE
10 SUPPORT, PEDIATRIC ADVANCE LIFE SUPPORT, AND
11 ADVANCED CARDIAC LIFE SUPPORT.

12 MRS. MURPHY: YOUR HONOR, AT THIS POINT
13 I'D MOVE TO QUALIFY DR. GOLDMAN AS AN EXPERT IN THE
14 FIELD OF MEDICINE SPECIALIZING IN EMERGENCY
15 MEDICINE.

16 THE COURT: VERY WELL. FIRST OF ALL, IS
17 THERE ANY VOIR DIRE? MR. DUKES?

18 MR. DUKES: I HAVE NONE AS FAR AS
19 EMERGENCY MEDICINE

20 THE COURT: VERY WELL.

21 MR. DAVIS: NONE SO FAR AND HOW HE'S
22 QUALIFIED, YOUR HONOR.

23 THE COURT: VERY WELL, THEN. IS THERE
24 ANY OBJECTION TO HIS BEING QUALIFIED AS AN EXPERT

MITCHELL GOLDMAN, M.D. - DIRECT/MRS. MURPHY

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1 MR. DAVIS: THAT'S CORRECT.

2 THE COURT: MR. DUKES?

3 MR. DUKES: NO, MA'AM.

4 THE COURT: VERY WELL. LADIES AND

5 GENTLEMEN, LET ME EXPLAIN TO YOU WHAT HAS JUST
6 OCCURRED. THERE'S BEEN A PRESENCE -- AND I'M GOING
7 TO FIND THAT DR. GOLDMAN IS AN EXPERT IN THE FIELD
8 OF EMERGENCY MEDICINE. UNDER OUR RULES OF
9 EVIDENCE, NORMALLY AN INDIVIDUAL PERSON IS NOT
10 ALLOWED TO TESTIFY REGARDING THEIR OPINIONS. THERE
11 IS, HOWEVER, AN EXCEPTION, AND THAT IS WHEN BY
12 SOMEONE'S -- BY VIRTUE OF SOMEONE'S KNOWLEDGE,
13 SKILL, EXPERIENCE, TRAINING, OR EDUCATION THAT THEY
14 MAY BE QUALIFIED IN THE FIELD WHICH MAY BE OF
15 ASSISTANCE TO THE JURY; THEY MAY BE QUALIFIED AS AN
16 EXPERT IN THAT FIELD AND THEREFORE GIVE THEIR
17 OPINIONS. AND I HAVE QUALIFIED THIS WITNESS AS AN
18 EXPERT IN THE FIELD OF EMERGENCY MEDICINE WHICH
19 MEANS THAT HE WOULD BE ALLOWED TO GIVE HIS OPINIONS
20 WITHIN THAT FIELD. NOW, I WILL GIVE YOU MORE
21 INFORMATION, MORE INSTRUCTION AT THE CONCLUSION OF
22 THE CASE REGARDING THAT SORT OF TESTIMONY. BUT
23 HOPEFULLY THAT WILL BE HELPFUL TO YOU AT THIS
24 JUNCTURE. YOU MAY CONTINUE.

25 MRS. MURPHY: THANK YOU, YOUR HONOR.

MITCHELL GOLDMAN, M.D. - DIRECT/MRS. MURPHY

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1 Q. DR. GOLDMAN, WERE YOU ON DUTY AT THE SUMMERVILLE
2 MEDICAL CENTER IN THE EMERGENCY ROOM ON NOVEMBER
3 THE THIRD OF 2001?

4 A. YES, I WAS.

5 Q. AND WAS A FIVE YEAR OLD PATIENT BY THE NAME OF
6 Child [REDACTED] BROUGHT TO THE E.R.?

7 A. YES.

8 Q. DID YOU TREAT HIM?

9 A. YES, I DID.

10 Q. CAN YOU TELL THE JURY WHAT TIME Child [REDACTED] WAS BROUGHT
11 TO THE E.R.?

12 A. HE WAS BROUGHT -- I DON'T HAVE THE EXACT MINUTES.
13 IF I COULD REFER TO MY NOTES. BUT I THINK HE WAS
14 BROUGHT THERE AT APPROXIMATELY 7:20 P.M. I WAS
15 STARTING THE NIGHT SHIFT. AND I THINK THAT'S WHEN
16 HE ARRIVED. I TOOK OVER HIS CARE IMMEDIATELY.

17 Q. AND CAN YOU TELL THE JURY WHAT CONDITION THE CHILD
18 WAS IN UPON HIS ARRIVAL AT THE E.R.?

19 A. WELL, HE ARRIVED THERE IN WHAT APPEARED TO BE VERY
20 CRITICAL CONDITION. HE WAS SEIZING; AND HE WAS
21 SEIZING -- SEIZURES WITH TWITCHING AND CONVULSIONS,
22 IF YOU WILL, BUT IN A VERY, VERY UPSETTING WAY IN
23 THE FACT THAT IT WAS NOT A TYPICAL SEIZURE WHERE
24 THERE'S JUST VIOLENT SHAKING. HE WAS MOVING HIS
25 ARMS IN A CERTAIN WAY WHICH I WAS ELUDED TO BEFORE

MITCHELL GOLDMAN, M.D. - DIRECT/MRS. MURPHY

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1 CALLED DECEREBATE POSTURING WHERE YOU STRAIGHTEN
2 YOUR ARMS AND TWIST YOUR ARMS OUTWARD WHICH USUALLY
3 INDICATES SOME VERY SERIOUS EVENT INSIDE THE
4 BRAIN. SO I WAS VERY CONCERNED WHEN I SAW HIM.

5 Q. SO CAN YOU DIFFERENTIATE THAT FROM A REGULAR
6 SEIZURE? HOW IS A REGULAR SEIZURE?

7 A. WELL, A REGULAR SEIZURE, THERE'S JUST VIOLENT
8 SHAKING. IT LOOKS VERY SCARY. BUT THEY TEND TO
9 LOOK VERY SIMILAR, AND THE WHOLE BODY SHAKES AND
10 EVERYTHING. WHAT HE WAS DOING WAS POSTURING AS
11 WELL AS SEIZING. AND THAT USUALLY INDICATES
12 THAT SOMETHING MORE SERIOUS IS POSSIBLY GOING
13 ON.

14 Q. AND, SIR, WHEN YOU MEAN BY VERY CRITICAL CONDITION,
15 CAN YOU EXPLAIN TO US EXACTLY WHAT THAT
16 MEANS?

17 A. WELL, HE WAS UNRESPONSIVE. HE APPARENTLY HAD BEEN
18 SEIZING FOR QUITE A WHILE. MOST SEIZURES, WHETHER
19 THEY'RE FEMORAL SEIZURES OR FROM EPILEPSY, LAST A
20 FEW MINUTES AT WHAT THE MOST AND GO AWAY. THIS
21 SEIZURE HAD BEEN GOING ON ALREADY FOR FIFTEEN
22 MINUTES, MAYBE MORE. AND AS TIME WENT ON IN THE
23 EMERGENCY DEPARTMENT, HE WAS NOT RESPONDING. THESE
24 WERE VERY DISTURBING EVENTS.

25 Q. AND WERE THERE ANY VISIBLE SIGNS OF INJURY ON THE

MITCHELL GOLDMAN, M.D. - DIRECT/MRS. MURPHY

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1 CHILD?

2 A. WELL, I THOUGHT I SAW -- I SAW THREE MARKS ON HIM
3 THAT UPSET ME. THEY WERE BRUISES. AND THERE WERE
4 TWO BRUISES ON HIS CHEST. AND THERE WAS ONE BRUISE
5 ON THE RIGHT SIDE OF THE HEAD. I NOTED THEM WHEN
6 WE DID A FULL BODY EXAM DURING THE INITIAL
7 WORKUP.

8 Q. DID YOU MAKE ANY DIAGNOSIS AT THAT PARTICULAR TIME?

9 A. WELL, THE MOST IMPORTANT THING WAS CONTROLLING HIS
10 SEIZURES AND STABILIZING HIM. IN THE BACK OF MY
11 MIND, I WAS WONDERING IF THERE WAS SOME TYPE OF
12 INJURY THAT HAD GONE ON, ESPECIALLY THE ONE IN THE
13 HEAD BECAUSE IN TAKING THE HISTORY FROM THE FAMILY,
14 THERE WAS NO HISTORY OF SEIZURES. SO NEW ONSET
15 SEIZURES COMBINED WITH A HEAD INJURY USUALLY
16 INDICATES SOMETHING VERY SERIOUS.

17 Q. WHAT WAS THE DETERMINATION YOU MADE AT THAT POINT
18 REGARDING HIS FURTHER TREATMENT?

19 A. WELL, I WAS UNABLE TO CONTROL THE SEIZURES WITH THE
20 STANDARD FRONT LINE MEDICATIONS. AND AS THE
21 MINUTES WENT ON, I BECAME VERY CONCERNED THAT HE
22 WAS GOING TO STOP BREATHING. SO I PUT A TUBE INTO
23 HIS WINDPIPE, THE TRACHEA -- YOU KNOW, IT'S CALLED
24 INTUBATION -- TO PROTECT HIS AIRWAY. THAT GAVE ME
25 THE OPTION AND THE ABILITY TO GIVE HIM MORE

MITCHELL GOLDMAN, M.D. - DIRECT/MRS. MURPHY

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1 POWERFUL MEDICINES TO CONTROL HIS SEIZURES. AND
2 THEN I WAS ABLE TO PROCEED ONCE WE HAD CONTROL OF
3 THE SITUATION BECAUSE HIS CONDITION WAS
4 DETERIORATING.

5 Q. AND HOW WERE YOU ABLE TO PROCEED? WHAT WERE YOU
6 ABLE TO DO?

7 A. WELL, WE CONTROLLED HIS SEIZURES. WE WERE ABLE TO
8 GIVE HIM STRONG ENOUGH MEDICATION THAT YOU COULDN'T
9 GIVE TO SOMEONE WHO WAS NOT ON IT, TOO, BECAUSE IF
10 YOU GAVE THEM THAT LEVEL OF MEDICATION, THEY WOULD
11 STOP BREATHING. BUT IF YOU CONTROL THEIR AIRWAY,
12 YOU CAN CONTROL THE SEIZURES. AND, YOU KNOW, YOU
13 DON'T HAVE TO WORRY ABOUT THE POSSIBILITY OF THEM
14 STOPPING BREATHING BECAUSE YOU'RE DOING IT FOR
15 THEM. AND WE DO THIS IN VERY SERIOUS CONDITIONS.

16 Q. AND BY SERIOUS CONDITIONS, HAD YOU NOT DONE THAT,
17 WOULD THE CHILD HAVE DIED?

18 A. I THINK SO; YES.

19 Q. AND AT THAT POINT DID YOU MAKE A DETERMINATION TO
20 HAVE HIM MEDIVACCED TO M.U.S.C.?

21 A. NO. ONCE WE HAD THE SEIZURES CONTROLLED AND WE HAD
22 CONTROL OF THE SITUATION, I ORDERED A CAT-SCAN OF
23 HIS HEAD. AND THE CAT-SCAN OF THE HEAD CAME BACK
24 POSITIVE. WE GOT THE RESULTS BACK FAIRLY QUICKLY;
25 POSITIVE FOR A INTRACRANIAL BLEED, A HEMORRHAGE.

MITCHELL GOLDMAN, M.D. - DIRECT/MRS. MURPHY

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1 Q. CAN YOU TELL THE JURY AND US IN LAYMAN'S TERMS WHAT
2 YOU MEAN BY THAT?

3 A. OKAY. WELL, THE MEDICAL TERM IS A SUBDURAL
4 HEMATOMA. AND WHAT THAT MEANS IS BLOOD THAT'S
5 INSIDE THE BRAIN; ON THE ACTUALLY -- RIGHT INSIDE
6 THE SKULL. NOT IN THE BRAIN ITSELF, BUT BETWEEN
7 THE BRAIN AND THE SKULL HAS RUPTURED. AND THE
8 BLOOD ITSELF ACTS AS A MASS WHICH CAN COMPRESS THE
9 BRAIN AND CAUSE SERIOUS INJURY IN AND OF ITSELF.

10 Q. AND DOES A SEIZURE ALONE CAUSE THAT SUBDURAL
11 HEMATOMA?

12 A. NO; IT'S THE OTHER WAY AROUND. AN INTRACRANIAL
13 BLEED WILL CAUSE A SEIZURE.

14 Q. WHAT WAS DONE AT THAT POINT, DOCTOR?

15 A. WELL, AT THAT POINT WE CONTACTED THE INTENSIVENESS
16 -- THE PEDIATRIC INTENSIVE CARE SPECIALIST AT
17 M.U.S.C. -- I DO NOT REMEMBER HIS NAME -- AND WE
18 MADE ARRANGEMENTS TO FLY THE CHILD, I THINK, TO
19 M.U.S.C. FOR DEFINITIVE TREATMENT. WE DON'T HAVE
20 THAT CAPABILITY AT SUMMERVILLE MEDICAL CENTER.

21 Q. THANK YOU, DOCTOR. PLEASE ANSWER ANY QUESTIONS
22 DEFENSE COUNSEL MAY HAVE.

23 A. THANK YOU.

24 THE COURT: CROSS-EXAMINATION, MR. DUKES?

25 CROSS-EXAMINATION

MICHAEL GOLDMAN - CROSS/MR. DUKES

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1 BY MR. DUKES:

2 Q. DOCTOR, YOU'RE SAYING THAT SEIZURES ARE CAUSED BY
3 THE RUPTURE OF A BLOOD VESSEL?

4 A. IT IS VERY LIKELY.

5 Q. THAT WAS YOUR OPINION WHAT CAUSED THAT?

6 A. THAT WAS MY OPINION THAT THE SEIZURE WAS CAUSED BY
7 HEAD TRAUMA. YOU CAN HAVE SEIZURES WITHOUT A BLOOD
8 VESSEL BEING BROKEN. BUT THIS INJURY IS VERY OFTEN
9 CONSISTENT WITH HEAD TRAUMA. AND THERE WAS A MARK
10 ON THE OUTSIDE OF THE HEAD. SO I WAS FIRMLY
11 CONVINCED THAT THE SEIZURE WAS CAUSED BY SOMETHING
12 THAT HAD HAPPENED TO THE CHILD.

13 Q. DO YOU HAVE ANY HISTORY OF WHAT HAD HAPPENED TO THE
14 CHILD?

15 A. I SPOKE WITH THE FATHER WHO SAID HE WAS BATHING THE
16 CHILD AND THE CHILD STARTED SEIZING WHILE BEING
17 GIVEN A BATH.

18 Q. DID HE TELL YOU THAT THE CHILD WAS DROPPED IN THE
19 BATHTUB AND HIT HIS HEAD---

20 A. I DO REMEMBER HE TOLD ME THAT APPROXIMATELY --
21 WELL, MANY MINUTES AFTER THE CAT-SCAN RESULTS CAME
22 BACK. I REMEMBER TAKING NOTES THAT THIS CHILD
23 INDEPENDENTLY DEVELOPED A SEIZURE. AND AFTER WE
24 GOT THE CAT-SCAN BACK, I REMEMBERED SPEAKING TO THE
25 FATHER SAYING YOU KNOW "WHAT HAPPENED" AND AT

MICHAEL GOLDMAN - CROSS/MR. DUKES

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1 THAT POINT THE FATHER SAID "WELL, HE FELL IN THE
2 BATHTUB."

3 Q. BUT YOU TALKED WITH HIM OVER THE TELEPHONE?

4 A. NO.

5 Q. HE WAS AT THE HOSPITAL?

6 A. IF I RECALL, EITHER HE OR THE MOTHER. I KNOW THE
7 MOTHER WAS THERE. BUT I REMEMBER BEING TOLD THAT
8 THE CHILD FELL IN THE BATHTUB. AND I CANNOT SAY
9 FOR SURE IF I SPOKE WITH THE FATHER. BUT I
10 REMEMBER AFTERWARDS LEAVING THE ROOM AFTER HEARING
11 THAT THE CHILD HAD FALLEN IN THE BATHTUB WONDERING
12 WHY I WASN'T TOLD THAT, YOU KNOW, INITIALLY.

13 Q. WELL, WOULD IT SURPRISE YOU IF I TOLD YOU THE
14 FATHER NEVER WENT TO THE HOSPITAL; HE WAS AT HOME?

15 A. NO. LIKE I SAID, I REMEMBER SPEAKING TO A FAMILY
16 MEMBER. I COULD IDENTIFY THE FATHER.

17 Q. SO YOU MORE THAN LIKELY SPOKE TO THE MOTHER, OR HER
18 MOTHER?

19 A. YES.

20 Q. THAT'S WHO WAS AT THE HOSPITAL?

21 A. CORRECT.

22 Q. THIS WAS A SMALL CHILD?

23 A. THE CHILD WAS SMALL FOR THE AGE; YES.

24 Q. YOU DIDN'T WEIGH THE CHILD OR---

25 A. I DON'T REMEMBER

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1. Q. BUT HE WAS VERY SMALL FOR HIS AGE? FIVE YEARS OLD?

2 A. THE CHILD WAS SMALL FOR THE AGE. I DON'T KNOW WHAT
3 YOU MEAN BY VERY SMALL. BUT THE CHILD APPEARED TO
4 BE SMALL; YES, SIR.

5 Q. THAT'S ALL THE QUESTIONS I HAVE.

6 THE COURT: MR. DAVIS?

7 MR. DAVIS: JUST A FEW.

8 RE-DIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q. DID YOU HAVE HISTORY THAT THE CHILD WAS PREMATURE
11 AT BIRTH?

12 A. I REMEMBER LOOKING AT MY -- YES; 28 WEEKS. THAT I
13 KNOW; YES, SIR.

14 Q. SIX MONTHS OF AGE. SIX MONTHS IS WHEN THE CHILD
15 WAS CONCEIVED?

16 A. TWENTY-EIGHT WEEKS.

17 Q. OKAY. THERE'S NO QUESTION, THOUGH, THAT THE MOTHER
18 WAS PRESENT?

19 A. I COULD NOT IDENTIFY THE MOTHER. I REMEMBER
20 SPEAKING TO A FAMILY MEMBER WHO I RECALL BEING THE
21 MOTHER; BUT I DID NOT DOCUMENT IT.

22 Q. WOULD YOU DESCRIBE -- WHAT'S THE DIFFERENCE BETWEEN
23 AN ANEURYSM THAT A PERSON HAS ON THE BRAIN?

24 A. WELL, AN ANEURYSM IS A SPONTANEOUS RUPTURE. OR IT

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 OF A PREEXISTING WEAKNESS IN THE BLOOD VESSEL.

2 Q. OKAY. VERY SIMILAR TO THE SAME THING THAT YOU'VE
3 DESCRIBED; RIGHT? THAT CAN HAPPEN WITHOUT ANY
4 INJURY TO THE HEAD; ISN'T THAT CORRECT?

5 A. IT'S CONCEIVABLE.

6 Q. DOCTOR, YOU'RE THE EXPERT, NOW. I'M NOT GOING TO
7 ARGUE WITH YOU. AND I DON'T INTEND TO DO THAT.
8 BUT AN ANEURISM IN WHICH YOU DESCRIBE ARE VERY
9 SIMILAR. IN FACT, BOTH OF THESE THINGS OCCUR IN
10 THE BRAIN WHICH YOU'VE DESCRIBED WHAT HAPPENED TO
11 THIS LITTLE CHILD?

12 A. YES. ANEURYSMS TEND TO PRESENT IN A DIFFERENT
13 PATTERN. THEY TEND TO PRESENT MORE AS A
14 SUBARACHNOID HEMORRHAGE. BUT THIS WAS A SUBDURAL
15 HEMATOMA WHICH IS MORE CONSISTENT WITH BLUNT
16 TRAUMA.

17 Q. ALL RIGHT.

18 A. THERE ARE DIFFERENT TYPES OF INTRACEREBRAL BLEEDS.

19 Q. BOTH OF THEM OCCUR IN THE BRAIN?

20 A. YES.

21 Q. A NORMAL SEIZURE OCCURS IN THE BRAIN; ISN'T THAT
22 CORRECT?

23 A. YES; THAT'S CORRECT.

24 Q. I MEAN, IT'S A CHEMICAL IMBALANCE THAT CAUSES A

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 THERE'S A CHEMICAL THAT IS NOT BEING PROVIDED?

2 A. WELL, IT'S NOT NECESSARILY A CHEMICAL IMBALANCE. A
3 LOT OF SEIZURES, THE BODY CHEMISTRY IS NORMAL.

4 Q. WHY DOES A PERSON HAVE TO TAKE PHENOBARBITAL AND
5 THIS STUFF? I MEAN, WHY DO YOU TAKE THIS
6 MEDICATION, THEN?

7 A. WELL, IF YOU WOULD, SEIZURES ARE CAUSED BY
8 ELECTRICAL ABNORMALITIES AMONG THE NERVE PATHWAYS
9 IN THE BRAIN WHICH TRIGGER MUSCLE SPASMS,
10 UNCONTROLLED MUSCLE SPASMS, AND OFTEN LOSS OF
11 CONSCIOUSNESS.

12 Q. WHY DO YOU TAKE THE MEDICATION?

13 A. YOU TAKE IT BECAUSE THEY MAKE IT HARDER FOR THOSE
14 NERVES TO ACT ABNORMALLY. IT'S CALLED RAISING THE
15 THRESHOLD OF THE SEIZURE.

16 Q. BUT YOU'RE RAISING -- YOU'RE PROVIDING THIS CERTAIN
17 CHEMICAL THAT YOUR BODY IS DEFICIENT IN OR
18 SOMETHING?

19 A. NO; IT'S NOT A DEFICIENCY OF THE CHEMICAL; NO.
20 IT'S JUST, IF YOU WILL, IT COOLS OFF THE
21 ABNORMAL ELECTRICAL CURRENTS. BUT IT'S NOT A
22 DEFICIENCY OF PHENOBARBITAL THAT'S NOT FOUND IN THE
23 BODY.

24 Q. NOT ONLY A DEFICIENCY. I MEAN, YOU TAKE
25 THIS---

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 A. IT SOOTHES OR COOLS OFF THE ABNORMAL NERVE
2 PATHWAYS, IF YOU WILL.

3 Q. SO A PERSON THAT DOES NOT SUFFER FROM SEIZURES,
4 THEIR BODY PRODUCES THIS COOLING MECHANISM TO MAKE
5 SURE THEY DON'T HAVE SEIZURES?

6 A. WELL, THEY DON'T HAVE THE ABNORMAL ELECTRICAL
7 ACTIVITY IN THE BRAIN. THEY JUST DON'T HAVE IT.

8 Q. YOU DIDN'T HAVE NO INFORMATION THAT THE MOTHER WAS
9 PRESENT WHEN ANY OF THIS TOOK PLACE?

10 A. NO, I DON'T.

11 Q. OKAY. THANK YOU, DOCTOR. BUT ONE QUICK QUESTION.
12 IN RELATIONSHIP TO THE CHILD BEING IN DIRE
13 STRAIGHT, WAS IT IMPORTANT FOR THE MOTHER TO STAY
14 IN CLOSE PROXIMITY IN CASE ANY CONSENT OR DECISION
15 HAD TO BE MADE ON BEHALF OF THE CHILD?

16 A. WAS IT IMPORTANT?

17 Q. YES; I MEAN, SAY YOU'VE GOT THIS LITTLE FIVE YEAR
18 OLD KID. HE CAN'T CONSENT FOR HIMSELF IF HE NEEDS
19 SOME EMERGENCY TREATMENT; ISN'T THAT CORRECT?

20 A. WELL, IN A LIFE AND DEATH SITUATION, WE WOULD
21 REALLY START JUST TREATING THE CHILD.

22 Q. YOU MEAN TO TELL ME YOU COULD TREAT MY CHILD AND
23 DON'T HAVE NO CONCERN TO ME AS A PARENT WHETHER YOU
24 COULD TREAT MY CHILD IF IT WAS LIFE OR DEATH?

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 TIME, AND WE WERE GIVEN THE CONSENT TO TREAT.

2 Q. YOU DON'T THINK THAT TREATMENT IS AN ISSUE IN ALL
3 MEDICAL CASES?

4 A. YES, IT IS.

5 Q. ALL RIGHT. SO MY QUESTION AGAIN IS WAS IT
6 IMPORTANT, THEN, FOR THE MOTHER TO BE IN CLOSE
7 PROXIMITY IN CASE THE MEDICAL PROVIDERS WOULDN'T
8 NEED THE MOTHER'S CONSENT FOR CERTAIN ISSUES THAT
9 MAY ARISE AS TO MEDICAL NEEDS THAT THE CHILD MAY
10 HAVE; EMERGENCY NEEDS?

11 A. WELL, I DO KNOW THAT IF THE WELFARE OF A MINOR IS
12 AT STAKE IN A LIFE AND DEATH SITUATION, WE CAN, AND
13 WE MUST, DO WHAT WE HAVE TO DO OVER THE OBJECTIONS
14 ANY FAMILY MEMBER. IF ANY ADULT -- I DON'T MEAN TO
15 BE DISRESPECTFUL; BUT IF ANYONE'S CHILD, FIVE YEAR
16 OLD, CAME IN AND WAS ABOUT TO DIE, WHETHER OR NOT
17 THE PARENT SAYS "DON'T TREAT OR NOT;" WE WOULD GO
18 AHEAD AND TREAT THEM.

19 Q. SO IF A JEHOVAH'S WITNESS COMES IN HERE WHO DON'T
20 BELIEVE IN BLOOD TRANSFUSION, DOCTOR; YOU'RE
21 TELLING ME UNDER OATH THAT YOU'RE GOING TO GO IN
22 AND TREAT THAT CHILD DESPITE THE FACT THAT A
23 JEHOVAH WITNESS DOESN'T WANT TREATMENT FOR THAT
24 CHILD? THAT'S WHAT YOU'RE TELLING ME?

25 A. IT'S NEVER COME BEFORE ME. IT'S VERY CONTROVERSIAL

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 TOPIC IN EMERGENCY MEDICINE. AND I DON'T KNOW IF
2 THAT PARTICULAR -- THAT IS PROBABLY THE ONE ISSUE
3 IN EMERGENCY MEDICINE THAT IS STILL VERY
4 CONTROVERSIAL. IN CASES OF TRAUMA, THERE WOULD BE
5 NO QUESTION WE COULD GO AHEAD AND TREAT. IN CASES
6 OF SEIZURES OR NOT BEING ABLE TO BREATHE, WE WOULD
7 GO AHEAD AND TREAT REGARDLESS..

8 Q. HAVE YOU EVER BEEN CONFRONTED WITH THAT SITUATION?

9 A. NO, SIR.

10 Q. OKAY. SO TO REPHRASE THAT QUESTION. YOU'RE
11 PREPARED TO ADMIT THAT IF A PARENT IS OF THE
12 JEHOVAH'S FAITH AND THERE'S A NEED FOR SOME MEDICAL
13 ATTENTION THAT YOU AS AN EMERGENCY ROOM
14 PHYSICIAN---

15 MRS. MURPHY: OBJECTION, YOUR HONOR.

16 MR. DAVIS: HE'S AN EXPERT, YOUR HONOR.

17 THE COURT: LET ME HEAR THE OBJECTION.

18 MRS. MURPHY: AS TO JEHOVAH'S WITNESS AND
19 SOME HYPOTHETICAL THAT THIS DOCTOR MAY OR MAY NOT
20 BE PRESENTED WITH.

21 THE COURT: COME UP.

22 (AT THIS TIME BENCH CONFERENCE IS HELD.)

23 MR. DAVIS: I CAN MOVE ON.

24 THE COURT: ALL RIGHT.

DOCTOR BUT YOU WOULD READILY ADMIT THAT THERE ARE

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 SITUATIONS WHERE PARENTAL CONSENT IS NECESSARY IN
2 REFERENCE TO TREATMENT OF MINOR CHILDREN?

3 A. IN LIFE-AND DEATH CIRCUMSTANCES WOULD BE -- AGAIN,
4 WHAT YOU WERE ALLUDING TO WITH THE POSSIBLE
5 EXCEPTION OF JEHOVAH'S WITNESSES IN LIFE AND DEATH
6 CIRCUMSTANCES, I WOULD UNHESITATINGLY TREAT THE THE
7 CHILD REGARDLESS.

8 Q. YOU WOULD?

9 A. YES, I WOULD.

10 Q. IS THAT OPINION SHARED THROUGHOUT THE MEDICAL
11 PROFESSION?

12 A. IN THE EMERGENCY MEDICAL PROFESSION, I WOULD SAY
13 YES.

14 Q. IN THE EMERGENCY ROOM THAT IS?

15 A. THAT'S CORRECT. I CAN'T ANSWER ABOUT PEDIATRICS OR
16 ANY OTHER.

17 Q. NOW, DO YOU KNOW WHETHER THE MOTHER WENT WITH THE
18 CHOPPER OR HELICOPTER TO M.U.S.C.?

19 A. NO, I DON'T KNOW.

20 Q. YOU DON'T HAVE ANY INFORMATION ON THAT?

21 A. I DON'T REMEMBER; NO.

22 Q. YOU DON'T REMEMBER?

23 A. NO.

24 Q. SO YOUR TREATMENT MORE THAN ENDED RIGHT THERE AT

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 A. WHEN THE PATIENT LEFT THE EMERGENCY DEPARTMENT, I
2 WAS IN A WAY RESPONSIBLE FOR THE CHILD IN TRANSIT.
3 IF THERE WERE ANY PROBLEMS THAT DEVELOPED, THEY
4 COULD CALL ME OR CALL THE INTENSIVE CARE SPECIALIST
5 AT M.U.S.C., AND I WOULD STILL BE RESPONSIBLE FOR
6 THE CHILD. BUT THERE WERE NO MORE COMMUNICATIONS
7 ONCE THE CHILD LEFT THE EMERGENCY DEPARTMENT. AND
8 THAT WAS THE END OF MY INVOLVEMENT.

9 Q. DO YOU THINK YOU WERE MORE RESPONSIBLE FOR THE
10 CHILD THAN THE MOTHER?

11 A. I DON'T KNOW WHAT YOU MEAN BY THAT.

12 Q. WELL, YOU SAID THAT THEY WERE GOING TO MAINTAIN
13 SOME LINE OF COMMUNICATION BACK WITH YOU, OKAY?
14 YOU KNOW, TO KEEP ABREAST OF WHAT YOU HAD TREATED
15 THE CHILD FOR APPARENTLY. YOU SAID IT WAS
16 IMPORTANT THAT WHEN M.U.S.C. WAS GOING TO COME IN
17 POSSESSION OF THE CHILD THAT A LINE OF
18 COMMUNICATION WAS MAINTAINED WITH YOU. ISN'T THAT
19 -- I MEAN, THAT'S WHAT YOU SAID.

20 A. NO, I DIDN'T SAY THAT.

21 Q. WELL, WHAT ARE YOU SAYING, THEN?

22 A. I SAID THAT IF THE NEED AROSE, THERE ARE TIMES WHEN
23 WE TRANSFER A PATIENT TO ANOTHER HOSPITAL FOR
24 FURTHER CARE. AND THE TRANSPORTING TEAM WILL CALL

MICHAEL GOLDMAN - RE-DIRECT/MR. DAVIS

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1 DO.

2 Q. OKAY.

3 A. AND THEN I WILL GIVE AN ORDER. BUT IF THAT DOESN'T
4 HAPPEN, WE DON'T INTERVENE.

5 Q. SO IT WAS GOOD FOR YOU TO HAVE FEEDBACK WHILE THE
6 CHILD WAS EN ROUTE TO M.U.S.C.; THAT'S WHAT I'M
7 SAYING?

8 A. NO; I GET FEED-BACK ONLY IF IT'S IMPORTANT THAT I
9 GET FEEDBACK.

10 Q. I UNDERSTAND---

11 A. IF THEY'RE BUSY STABILIZING THE CHILD AND TAKING
12 CARE OF THE CHILD. THEY DON'T NECESSARILY HAVE TO
13 CHECK IN WITH US, OKAY?

14 Q. I UNDERSTAND.

15 A. BECAUSE THEY HAVE AN EXPERT TRANSPORT TEAM.
16 THEY'RE EXCELLENT.

17 Q. I UNDERSTAND. BUT A LINE IS ESTABLISHED IN CASE
18 YOU NEED IT?

19 A. THERE'S ALWAYS -- ABSOLUTELY.

20 Q. OKAY.

21 A. AND LIKE I SAID, THEY CAN CALL US, OR THEY CAN CALL
22 AHEAD TO THE EXCEPTING HOSPITAL.

23 Q. THANK YOU.

24 THE COURT: IS THERE ANY RE-DIRECT?

MICHAEL GOLDMAN - RE-CROSS/MRS. MURPHY

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1 MRS. MURPHY: YES, MA'AM. JUST A COUPLE
2 OF FOLLOW-UP QUESTIONS.

3 RE-CROSS EXAMINATION

4 BY MRS. MURPHY:

5 Q. DOES PREMATUREITY CAUSE SUBDURAL HEMATOMAS OF THIS
6 TYPE AT FIVE YEARS OF AGE?

7 A. I COULD NOT ANSWER THAT. I'M NOT AN EXPERT ON
8 THAT.

9 Q. NOW YOU WERE CROSS-EXAMINED REGARDING THE DIFFERENT
10 PRESENTMENT OF AN ANEURISM AND A SUBDURAL HEMATOMA;
11 WAS IT IN YOUR EXPERTISE IN EMERGENCY MEDICINE A
12 DIFFERENT PRESENTMENT?

13 A. WELL, AN ANEURISM -- WHEN AN ANEURISM RUPTURES, IT
14 USUALLY PRESENTS IN A PATTERN CALLED THE
15 SUBARACHNOID HEMORRHAGE. IT IS CONCEIVABLE THAT
16 YOU COULD HAVE A WEAKNESS IN ONE OF THE VEINS ON
17 THE INSIDE OF THE SCALP OF THE SKULL AND GET A
18 SUBDURAL HEMATOMA. I CAN'T SAY. THE MAJORITY OF
19 THE -- THE GREAT MAJORITY -- IN FACT I'M WONDERING
20 IF I'VE EVER SEEN ONE THAT WASN'T. ALMOST ALL
21 SUBDURAL HEMATOMAS ARE ASSOCIATED WITH BLUNT
22 TRAUMA; SOMEONE GETTING HIT ON THE HEAD OR
23 SOMETHING LIKE THAT. AND USUALLY YOU HAVE A
24 HISTORY OF THAT WHEN THEY COME IN, SOMEONE FELL OR
25 WAS HIT WITH SOMETHING; AND THEN THEY'RE

LASER STOCK FORM FMU

THE CORBY GROUP 1-800-255-5040

MICHAEL GOLDMAN - RE-DIRECT/MR. DUKES

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1 UNCONSCIOUS; YOU DO A CAT-SCAN AND THEY HAVE A
2 SUBDURAL HEMATOMA. RUPTURED ANEURYSMS MOST OF
3 THE TIME OCCUR SPONTANEOUSLY, BUT THEY DON'T HAVE
4 TO.

5 Q. AND YOU SAW EVIDENCE OF TRAUMA TO THE SIDE OF THE
6 CHILD'S HEAD?

7 A. CORRECT.

8 Q. WHICH WOULD BE CONSISTENT WITH A SUBDURAL
9 HEMATOMA?

10 A. CORRECT.

11 Q. THANK YOU, SIR. NO FURTHER QUESTIONS.

12 THE COURT: ALL RIGHT. MR. DUKES?

13 RE-DIRECT EXAMINATION

14 BY MR. DUKES:

15 Q. DID YOU TAKE ANY PICTURES OF THAT?

16 A. NO, SIR.

17 Q. WAS ANYTHING BROKEN? DID YOU FEEL TO SEE IF THERE
18 WERE ANY BONES BROKEN?

19 A. NO, THE BONES WERE NOT BROKEN.

20 Q. THERE WERE JUST SOME BRUISING?

21 A. CORRECT.

22 Q. AND HOW BIG A BRUISE WAS IT?

23 A. I DON'T REMEMBER. I DID NOT MEASURE IT. I WOULD
24 THINK ABOUT, YOU KNOW, IF YOU'RE WILLING TO TAKE MY
25 MEMORY OF THIS, I WOULD SAY IT WAS ABOUT A -- I

MICHAEL GOLDMAN - RE-DIRECT/MR. DUKES

266

1 BIGGER.

2 Q. ONE BY ONE INCH? WAS IT ROUND?

3 A. I DON'T REMEMBER. I REMEMBER -- I KNOW ONE OF THE
4 BRUISES ALMOST LOOKED LIKE A SHOE PRINT. I DON'T
5 REMEMBER IF THAT WAS ON THE CHEST OR ON THE HEAD;
6 I'M SORRY.

7 Q. ON THE CHEST?

8 A. YES.

9 Q. BUT THERE WAS NOTHING BROKEN?

10 A. NO. SOMETIMES IT'S VERY HARD TO BREAK A YOUNG
11 CHILD'S BONES. THEY ARE VERY SOFT. AND YOU CAN
12 CAUSE A LOT OF INTERNAL INJURIES AND HAVE
13 ABSOLUTELY NORMAL BONES. IT'S PRETTY MUCH THE
14 OPPOSITE OF ADULTS WHO HAVE MORE BRITTLE BONES. SO
15 YOU CAN HAVE ENORMOUS INJURY TO A CHILD INTERNALLY,
16 AND THEY HAVE NORMAL X-RAYS.

17 Q. BUT YOU DIDN'T NOTICE ANYTHING BROKEN. HOW ABOUT
18 IN THE CHEST AREA?

19 A. NO; I DON'T RECALL. I DON'T RECALL THE CHEST
20 X-RAYS SHOWING NO BROKEN BONES; NO.

21 Q. THERE WERE NO BROKEN BONES ANYWHERE?

22 A. CORRECT.

23 Q. THANK YOU.

24

RE-CROSS EXAMINATION

MICHAEL GOLDMAN - RE-CROSS/MR. DAVIS

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1 Q. DOCTOR, YOU'VE BEEN IN EMERGENCY ROOM MEDICINE HOW
2 LONG NOW?

3 A. SINCE 1985.

4 Q. SO YOU'VE SEEN A LOT IN THE EMERGENCY ROOM?

5 A. CORRECT.

6 Q. YOU'VE SEEN PEOPLE SHOT?

7 A. CORRECT.

8 Q. SEEN PEOPLE STOMPED?

9 A. YES, I HAVE.

10 Q. WAS THIS BABY STOMPED?

11 A. IF YOU WANT MY OPINION, THE INJURIES -- AT LEAST I
12 THOUGHT A SHOE WAS USED ON THE CHILD; YES. A
13 STUMP, I DON'T KNOW. NO; I CAN'T SAY WHETHER THE
14 CHILD WAS PHYSICALLY STOMPED ON THE GROUND, BUT
15 THERE WERE SHOE PRINTS.

16 Q. THANK YOU. NO FURTHER QUESTIONS.

17 THE COURT: VERY WELL. IS THIS WITNESS
18 FREE TO LEAVE?

19 MRS. MURPHY: YES, MA'AM.

20 THE COURT: YOU'RE FREE TO GO.

21 DR. GOLDMAN: THANK YOU.

22 THE COURT: VERY WELL. CALL YOUR NEXT
23 WITNESS, PLEASE.

24 MRS. MURPHY: THE STATE WOULD CALL DEPUTY

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 RANDY BOTTEN.

2 - - - - -

3 WHEREUPON,

4 RANDY WARREN BOTTEN, WHO AFTER BEING
5 FIRST DULY SWORN TO TELL THE TRUTH,
6 TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MRS. MURPHY:

9 Q. DEPUTY BOTTEN, WHERE ARE YOU EMPLOYED, SIR?

10 A. THE DORCHESTER COUNTY SHERIFF'S OFFICE.

11 Q. AND WERE YOU ON DUTY ON NOVEMBER THE THIRD OF
12 2001?

13 A. YES MA'AM, I WAS.

14 Q. WERE YOU DISPATCHED ON A PARTICULAR CALL?

15 A. YES, MA'AM; THE SUMMERVILLE MEDICAL
16 CENTER.

17 Q. AND YOU WERE -- WHAT TYPE OF CALL WAS IT?

18 A. TO A POSSIBLE CHILD ABUSE.

19 Q. WHO WAS AT THE SCENE WHEN YOU ARRIVED AT
20 SUMMERVILLE MEDICAL CENTER?

21 A. I MET WITH DR. GOLDMAN. AND THERE WERE SOME NURSES
22 THAT WERER PRESENT.

23 Q. AND DID YOU SPEAK WITH ANY OF THESE PEOPLE
24 THERE?

25 A. YES, MA'AM. I SPOKE TO DR. GOLDMAN.

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 Q. DID YOU CONDUCT AN INITIAL INVESTIGATION WHILE
2 YOU WERE AT THE SCENE AT SUMMERVILLE MEDICAL
3 CENTER?

4 A. YES, MA'AM. I WENT INTO THE ROOM WHERE THE CHILD
5 WAS. I WAS INSTRUCTED TO WHERE HE WAS AT. I SPOKE
6 TO DR. GOLDMAN ABOUT THE INJURIES THAT WERE ON
7 THE CHILD THAT WERE APPARENT AND TOOK SOME
8 PHOTOGRAPHS.

9 Q. AND AT THAT POINT OR SOME POINT SHORTLY AFTER DID
10 DETECTIVE MARSHALL ARRIVE ON THE SCENE?

11 A. YES, MA'AM, HE DID.

12 Q. AND WAS HE THE LEAD DETECTIVE IN THIS CASE?

13 A. YES, MA'AM, HE WAS.

14 Q. WHAT, IF ANYTHING, DID HE DIRECT YOU TO DO AT THAT
15 POINT?

16 A. HE ADVISED ME TO GO TO 240 PIGEON BAY ROAD WHERE
17 THE INCIDENT ALLEGEDLY OCCURRED.

18 Q. AND WHAT WAS THE PURPOSE OF YOU GOING TO 240 PIGEON
19 BAY ROAD?

20 A. TO CONTINUE WITH THE INVESTIGATION.

21 Q. AND WHO DID YOU MEET AT 240 PIGEON BAY ROAD?

22 A. THE DEFENDANT.

23 Q. SO THAT WOULD BE WILLIAM BURDEN IN THIS CASE?

24 A. YES, MA'AM. I BELIEVE IT WAS GADSON THAT
25 NIGHT.

RANDY BOTTEN - DIRECT/MRS. MURPHY

270

1 Q. AND WOULD YOU -- WHAT HAPPENED WHEN YOU ARRIVED
2 THERE?

3 A. I ADVISED HIM WHY I WAS THERE; THE REASON FOR
4 ME BEING THERE WAS JUST TO CONTINUE THE
5 INVESTIGATION TO SEE WHAT HAPPENED TO THE CHILD.
6 AND HE ALLOWED ME TO COME INSIDE HIS RESIDENCE AND
7 TALK WITH HIM.

8 Q. DID HE CONSENT TO THAT?

9 A. YES, MA'AM.

10 Q. DID HE GIVE YOU ANY PROBLEMS AT THAT TIME?

11 A. NO, MA'AM.

12 Q. AT THAT POINT DID YOU TAKE PICTURES INSIDE THE
13 HOME?

14 A. YES, MA'AM, I DID.

15 Q. DID YOU HAVE INFORMATION OF THE HISTORY OF THE
16 CHILD FALLING INTO A BATHTUB, OR FALLING IN A
17 BATHTUB?

18 A. I BELIEVE SO; YES, MA'AM. I DON'T RECALL.

19 MRS. MURPHY: YOUR HONOR, MAY I APPROACH
20 THE WITNESS?

21 THE COURT: YOU MAY. WELL, WE HAVE A
22 JURY WHO IS NEEDY. DID SOMEBODY RAISE THEIR HAND?
23 YES; THEY NEED TO TAKE A SHORT COMFORT BREAK. WE
24 WILL CERTAINLY DO THAT. WE'LL TAKE A VERY SHORT
25 BREAK. THIS IS A GOOD STOPPING POINT AT ANY EVENT,

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 MRS. MURPHY. WE'LL TAKE A VERY SHORT BREAK. I'M
2 GOING TO COME BACK AND GET A LITTLE BIT MORE WORK
3 DONE BEFORE WE TAKE OUR LUNCH BREAK. SO YOU ALL
4 TAKE YOUR COMFORT BREAK. WHEN YOU FINISH, KNOCK ON
5 THE DOOR AND LET US KNOW, AND WE WILL RECONVENE.
6 REMEMBER, THOUGH, NOT TO DISCUSS THIS MATTER OR
7 ALLOW ANYONE TO DISCUSS IT WITH YOU.

8 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

9 THE COURT: THANK YOU. DEPUTY BOTTEN,
10 JUST REMEMBER YOU'RE ON THE STAND. SO PLEASE DO
11 NOT DISCUSS YOUR TESTIMONY WITH ANYONE. AND WE'LL
12 TAKE A SHORT COMFORT BREAK AS IT'S KNOWN IN
13 BEAUFORT COUNTY. HOWEVER, PLEASE DON'T GO FAR
14 BECAUSE WHEN THE JURY IS READY, I DO WANT TO GET
15 THROUGH AT LEAST HIS DIRECT.

16 (BRIEF RECESS.)

17 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

18 THE COURT: ALL RIGHT, MRS. MURPHY. YOU
19 MAY CONTINUE.

20 MRS. MURPHY: THANK YOU, YOUR HONOR.

21 (CONTINUED DIRECT EXAMINATION OF DEPUTY BOTTEN)

22 DIRECT EXAMINATION

23 BY MRS. MURPHY:

24 Q. DEPUTY BOTTEN, DURING YOUR TESTIMONY YOU WERE

25 TESTIFYING YOU HAD ALREADY TAKEN PICTURES INSIDE

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 THE HOUSE?

2 A. YES, MA'AM.

3 Q. I'M GOING TO SHOW YOU SEVERAL PHOTOGRAPHS AND ASK
4 IF YOU CAN IDENTIFY THESE, PLEASE SIR? (WITNESS
5 EXAMINES PHOTOS.)

6 A. YES, MA'AM. IT'S FROM INSIDE THE BATHROOM
7 WHERE THE INCIDENT WAS SUPPOSED TO HAVE TAKEN
8 PLACE.

9 Q. AND DO THESE PICTURES FAIRLY AND ACCURATELY
10 REPRESENT THE BATHTUB WHERE THE INCIDENT TOOK
11 PLACE?

12 A. YES, MA'AM.

13 Q. AND THESE PICTURE WERE TAKEN BY YOU?

14 A. YES, MA'AM.

15 MRS. MURPHY: YOUR HONOR, AT THIS POINT
16 I'D LIKE TO INTRODUCE THESE THREE PICTURES INTO
17 EVIDENCE.

18 THE COURT: ANY OBJECTION, MR. DUKES?

19 MR. DUKES: WITHOUT OBJECTION.

20 THE COURT: MR. DAVIS?

21 MR. DAVIS: WITHOUT EVIDENCE, YOUR HONOR.

22 THE COURT: ALL RIGHT. STATE'S EXHIBITS
23 TWO, THREE, AND FOUR IN EVIDENCE WITHOUT OBJECTION.

24 STATE'S EXHIBIT NOS. 2, 3, & 4

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 Q. DEPUTY BOTTEN, YOU TESTIFIED EARLIER THAT THE
2 DEFENDANT, MR. BURDEN, WILLIAM BURDEN, WAS
3 COOPERATIVE WHEN YOU ARRIVED AT THE SCENE?

4 A. YES, MA'AM, HE WAS.

5 Q. AND HE WASN'T IN CUSTODY AT THAT POINT OR
6 ANYTHING?

7 A. NO, MA'AM, HE WASN'T.

8 Q. AND HE VOLUNTARILY TALKED TO YOU?

9 A. YES, MA'AM.

10 Q. AND AT THAT POINT DID YOU ACTUALLY GET HIM TO WRITE
11 A STATEMENT AS TO WHAT HAD HAPPENED ON THAT
12 EVENING?

13 A. YES, MA'AM, I DID.

14 Q. I'M GOING TO SHOW YOU THIS DOCUMENT AND ASK YOU IF
15 YOU RECOGNIZE THIS DOCUMENT? (WITNESS REVIEWS
16 DOCUMENT.)

17 A. YES, MA'AM. THAT'S THE STATEMENT THAT HE WROTE
18 THAT NIGHT. IT'S GOT MY SIGNATURE ON IT.

19 Q. AND DOES IT ALSO HAVE HIS SIGNATURE THERE AT THE
20 BOTTOM?

21 A. YES, MA'AM.

22 Q. AND YOUR SIGNATURE THERE THAT IS WITNESSING HIS
23 SIGNATURE?

24 A. YES, MA'AM.

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 STATE'S EXHIBIT AS WELL.

2 THE COURT: VERY WELL. MR. DUKES, ANY
3 OBJECTION?

4 MR. DUKES: NO OBJECTION.

5 THE COURT: AND MR. DUKES, ANY OBJECTION?

6 MR. DAVIS: NONE, YOUR HONOR.

7 THE COURT: VERY WELL. STATE'S EXHIBIT 5
8 IN EVIDENCE WITHOUT OBJECTION. IT IS A STATEMENT.

9 STATE'S EXHIBIT NO. 5

10 ADMITTED AS EVIDENCE

11 MRS. MURPHY: YOUR HONOR, MAY I HAVE THE
12 DEPUTY READ IT AND PUBLISH IT FOR THE JURY?

13 THE COURT: YOU MAY.

14 Q. READ THAT TO THE JURY, PLEASE.

15 A. THIS IS THE STATEMENT OF WILLIAM BURDEN. HIS HOME
16 ADDRESS IS 240 PIGEON BAY ROAD. HIS DATE OF BIRTH
17 IS 1/17 OF '71. THIS STATEMENT IS GIVEN 11/03/2001
18 AT 2200 HOURS WHICH IS 10:00 O'CLOCK P.M. "AT
19 ABOUT 7:30 P.M. I WENT INTO MY TWINS BEDROOM TO
20 CHANGE, BATHE, AND FEED MY TWINS. I CALLED OUT TO
21 THE TYSHEEN AND Child [REDACTED] TY RESPONDED, AND SHY
22 DIDN'T MOVE. I CALLED AGAIN. HE DIDN'T RESPOND.
23 I THEN WENT TO HIM AND STOOD HIM UP, AND HE FELL ON
24 THE FLOOR. I THEN PUT HIM ON THE BED, AND I

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 TO POINT DOWNWARDS, AND HIS ARM STARTED TO GET
2 TENSE. I PUT HIM IN THE TUB. AS I HELD HIM UP, HE
3 FELL BUT DIDN'T LOOK HURT OR ANYTHING, SO I
4 CONTINUED TO TRY TO REVIVE HIM." AFTER A FEW
5 MINUTES HE STILL WASN'T RESPONDING, SO I CALLED 911
6 AND STAYED WITH HIM TRYING TO REVIVE HIM. AT THE
7 BOTTOM OF THE STATEMENT IT'S SCRATCHED OUT WITH HIS
8 INITIALS -- EXCUSE ME; CROSSED OUT WITH HIS
9 INITIALS ON THE STATEMENT. THAT'S THE END OF HIS
10 STATEMENT.

11 Q. AND WHAT DOES IT FURTHER SAY THERE AT THE BOTTOM?

12 A. "I HAVE READ TO FOREGOING STATEMENT OR HAVE HAD IT
13 READ TO ME, AND IT IS TRUE AND CORRECT TO THE BEST
14 OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT
15 FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A
16 COPY OF MY STATEMENT." AGAIN, IT'S SIGNED BY
17 MYSELF AND MR. BURDEN.

18 Q. THANK YOU, DEPUTY BOTTEN. DEPUTY BOTTEN, AT THAT
19 POINT DID YOU REPORT BACK TO DETECTIVE MARSHALL
20 WITH THIS INFORMATION THAT YOU HAD OBTAINED?

21 A. YES, MA'AM, I DID.

22 Q. AND WHAT WERE YOU INSTRUCTED TO DO AT THAT POINT?

23 A. I BELIEVE DETECTIVE MARSHALL, I GUESS BASED ON
24 THEIR FINDINGS, HAD ME PLACE THE CHILDREN INTO
25 EMERGENCY PROTECTIVE CUSTODY.

RANDY BOTTEN - DIRECT/MRS. MURPHY

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1 Q. THE OTHER CHILDREN THAT WERE PRESENT AT THE SCENE?

2 A. YES, MA'AM. I BELIEVE THERE WERE FOUR OTHER
3 CHILDREN PRESENT.

4 Q. AND DID YOU DO SO AT THAT TIME?

5 A. YES, MA'AM. I NOTIFIED MY DISPATCH CENTER THAT I
6 NEEDED AN ON-CALL D.S.S. WORKER TO RESPOND FOR THE
7 E.P.C.

8 Q. AND CAN YOU JUST TELL THE JURY WHAT DOES E.P.C.
9 STAND FOR?

10 A. IT'S EMERGENCY PROTECTIVE CUSTODY WHERE WE TAKE THE
11 CHILDREN OUT OF THE HOME AND PLACE THEM WITH D.S.S.
12 CUSTODY FOR FOSTER CARE.

13 Q. AND DID THE D.S.S. PERSON RESPOND AT THE SCENE?

14 A. YES, MA'AM, SHE DID.

15 Q. AND WERE THE OTHER CHILDREN TAKEN FROM THE HOME?

16 A. YES, MA'AM, THEY WERE.

17 Q. AND WHAT DID YOU DO AT THAT POINT?

18 A. I -- LATER ON AFTER A BIT, I GAVE MR. BURDEN
19 A RIDE TO THE L.E.C. TO SPEAK TO DETECTIVE
20 MARSHALL.

21 Q. AND DID DETECTIVE MARSHALL ASK YOU TO TRANSPORT TO
22 THE L.E.C. AT THAT POINT?

23 A. YES, MA'AM. THAT WAS AT THE DIRECTION OF DETECTIVE
24 MARSHALL.

25 Q. THANK YOU, SIR. PLEASE ANSWER ANY QUESTIONS

RANDY BOTTEN - DIRECT/MRS. MURPHY

277

1. DEFENSE COUNSEL MAY HAVE.

2. THE COURT: WE'RE NOW GOING TO TAKE OUR
3. LUNCH BREAK. AND WE'LL HAVE CROSS-EXAMINATION WHEN
4. WE RETURN. I'M GOING TO ASK YOU ALL TO BE BACK IN
5. YOUR JURY ROOM READY TO CONTINUE WITH THIS MATTER
6. AT A QUARTER 'TIL TWO; A QUARTER 'TIL TWO. BE
7. MINDFUL OVER THE LUNCH -- ABOUT AN HOUR-AND-A-HALF
8. -- NOT QUITE AN HOUR-AND-A-HALF -- BE MINDFUL NOT
9. TO DISCUSS THIS MATTER OR ALLOW ANYONE TO DISCUSS
10. IT WITH YOU. AND I LOOK FORWARD TO SEEING YOU AT A
11. QUARTER 'TIL TWO.

12. (AT THIS TIME JURY IS EXCUSED FOR LUNCH.)

13. THE COURT: ALL RIGHT. ANYTHING FURTHER
14. BEFORE WE TAKE OUR BREAK FOR LUNCH? FROM THE
15. STATE?

16. MRS. MURPHY: NO, MA'AM.

17. THE COURT: MR. DUKES?

18. MR. DUKES: NOTHING FURTHER.

19. THE COURT: ALL RIGHT. VERY WELL. THANK
20. YOU ALL.

21. (LUNCH RECESS.)

22. - - - - -

23. THE COURT: ALL RIGHT. ANYTHING BEFORE
24. WE BRING THE JURY OUT?

25. MRS. MURPHY: NOT FROM THE COURT, YOUR

RANDY BOTTEN - CROSS/MR. DUKES

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1 HONOR.

2 THE COURT: VERY WELL. ARE YOU READY
3 FOR CROSS-EXAMINATION, MR. DUKES? ARE YOU
4 READY?

5 MR. DUKES: YES, MA'AM.

6 THE COURT: MR. DAVIS?

7 MR. DAVIS: I'M READY, YOUR HONOR.

8 THE COURT: VERY WELL.

9 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

10 THE COURT: LADIES AND GENTLEMEN, I
11 CERTAINLY HOPE THAT YOU HAD A VERY PLEASANT LUNCH.
12 AND AT THIS TIME WE WILL CONTINUE WITH THE STATE'S
13 CASE AND THE CROSS-EXAMINATION OF DEPUTY BOTTEN.
14 MR. DUKES?

15 -----

16 WHEREUPON,

17 DEPUTY RANDY BOTTEN, WHO AFTER BEING
18 PREVIOUSLY SWORN TO TELL THE TRUTH,
19 TESTIFIED AS FOLLOWS:

20 CROSS-EXAMINATION

21 BY MR. DUKES:

22 Q. DEPUTY BOTTEN, YOU FIRST WENT TO THE SUMMERVILLE
23 MEDICAL CENTER?

24 A. YES, SIR, I DID.

25 Q. AND THEN YOU WERE SENT TO PIGEON BAY ROAD?

RE-DIRECT/MR. DAVIS

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- 1 A. YES, SIR, I WAS.
- 2 Q. DO YOU KNOW WHAT TIME YOU ARRIVED AT PIGEON BAY
- 3 ROAD?
- 4 A. NOT RIGHT OFF.
- 5 Q. MY CLIENT WAS THERE WHEN YOU GOT THERE, WASN'T HE?
- 6 A. YES, SIR, HE WAS.
- 7 Q. AND THERE WERE OTHER CHILDREN THERE TOO?
- 8 A. YES, SIR, THERE WAS.
- 9 Q. OKAY.. WAS ANYBODY ELSE THERE?
- 10 A. NOT THAT I CAN RECALL; NO, SIR.
- 11 Q. AND HE WAS COOPERATIVE WITH YOU, WASN'T HE?
- 12 A. YES, SIR, HE WAS.
- 13 Q. AND, IN FACT, HE GAVE YOU A STATEMENT?
- 14 A. YES, SIR, HE DID.
- 15 Q. AND EVERYTHING YOU ASKED HIM TO DO, HE DID?
- 16 A. YES, SIR.
- 17 Q. SO YOU HAD NO PROBLEMS WITH HIM?
- 18 A. NO, SIR.
- 19 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

20 THE COURT: VERY WELL. YES, SIR, MR.

21 DAVIS.

22 RE-DIRECT EXAMINATION

23 BY MR. DAVIS:

- 24 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?
- 25 A. AS A DEPUTY, OR---

RE-DIRECT/MR. DAVIS

280

1 Q. JUST LAW ENFORCEMENT IN GENERAL?

2 A. GOING ON 13 YEARS.

3 Q. BEFORE YOU -- WHAT DEPARTMENT DID YOU WORK WITH

4 BEFORE YOU CAME WITH THE DORCHESTER COUNTY

5 SHERIFF'S DEPARTMENT?

6 A. HARLEYVILLE POLICE DEPARTMENT.

7 Q. OKAY. AND THIS IS YOUR SECOND PLACE OF EMPLOYMENT?

8 A. YES, SIR.

9 Q. OKAY. DATING BACK TO NOVEMBER THE THIRD, 2001; DID

10 YOU EVER HAVE ANY CONVERSATION WITH MS. ADRIAN

11 GADSON?

12 A. PRIOR TO 2001---

13 Q. ON NOVEMBER THE THIRD?

14 A. NO, SIR, I HAD NEVER---

15 Q. DID YOU HAVE CONVERSATION WITH HER AT ALL THAT DAY?

16 A. NOT THAT I CAN RECALL; NO, SIR.

17 Q. YOU RESPONDED TO THE HOSPITAL ON NOVEMBER THE

18 THIRD, 2001; ISN'T THAT CORRECT?

19 A. YES, SIR, I DID.

20 Q. DID YOU SPEAK WITH HER AT THAT TIME?

21 A. NOT THAT I CAN RECALL, I DIDN'T.

22 Q. DID YOU HAVE ANY INFORMATION THAT SHE WAS AT HOME

23 WHEN THIS INCIDENT OCCURRED?

24 A. DID I HAVE ANY INFORMATION THAT SHE WAS AT HOME?

25 Q. YES?

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1 A. I HAD NO INFORMATION WHATSOEVER TO GO ON WHEN I GOT
2 TO SUMMERVILLE MEDICAL CENTER.

3 Q. OKAY. HAD YOU EVER PUT THE CHILDREN IN EMERGENCY
4 PROTECTIVE CUSTODY BEFORE?

5 A. HAD I?

6 Q. YES.

7 A. YES, SIR, I HAD.

8 Q. IS IT A PROCEDURE WHEREBY THEY TRY TO PUT THE
9 CHILDREN IN A LESS ABSTRUSIVE ENVIRONMENT? I MEAN,
10 TRY TO FIND SOME FAMILY MEMBER TO PUT THE CHILDREN
11 WITH INSTEAD OF JUST PUTTING THEM IN SOME NEW
12 ENVIRONMENT THAT THE CHILDREN ARE NOT FAMILIAR
13 WITH?

14 A. I DON'T WORK FOR D.S.S. I COULDN'T TELL YOU WHAT
15 THEIR PROTOCOL IS.

16 Q. WELL; BUT D.S.S. CANNOT PUT A CHILD IN EMERGENCY
17 PROTECTIVE CUSTODY WITHOUT THE LAW ENFORCEMENT
18 ASSISTANCE; ISN'T THAT CORRECT?

19 A. MY JOB IS TO PLACE THE CHILDREN INTO EMERGENCY
20 PROTECTIVE CUSTODY. WHAT THEY DO WITH THEM AFTER
21 THAT IS NOT MY JOB.

22 Q. OKAY. SO GO BACK AND ANSWER MY QUESTION. YOU MAKE
23 THE DETERMINATION THAT THE KID GO INTO EMERGENCY
24 PROTECTIVE CUSTODY?

25 A. YES, SIR.

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1 Q. D.S.S. MAKES THE DECISION WHETHER THEY GO AS A
2 FAMILY MEMBER OR GO IN SOME FOSTER HOME?

3 A. CORRECT.

4 Q. OKAY. AND YOU MADE THE DECISION ON NOVEMBER THE
5 THIRD, 2001, BASED ON DR. GOLDMAN'S STATEMENT TO
6 YOU WHICH YOU LEARNED FROM DR. GOLDMAN?

7 A. NO, SIR.

8 Q. WHAT DID YOU MAKE THE DECISION ON?

9 A. IT WAS FROM DETECTIVE MARSHALL.

10 Q. SO BASED ON WHAT DETECTIVE MARSHALL SHARED WITH
11 YOU, THAT WAS YOUR BASIS TO PUT THE CHILDREN IN
12 EMERGENCY PROTECTIVE CUSTODY?

13 A. IT WAS MY BASIS AND AT THE DIRECTION OF DETECTIVE
14 MARSHALL.

15 Q. SO EVERYTHING WAS BASED ON DETECTIVE MARSHALL?

16 A. NOT WHOLLY; BUT THE MAJORITY OF IT, YES, SIR.

17 Q. WELL, TELL ME WHAT INDEPENDENT DECISION YOU MADE
18 SEPARATE AND APART FROM DETECTIVE MARSHALL?

19 A. I HAD MADE THE DECISION BASED ON THE CONDITION OF
20 THE RESIDENCE.

21 Q. OKAY. AND WHAT WAS THE CONDITION OF THE RESIDENCE
22 THAT ADDED AND FACTORED INTO YOU MAKING THAT
23 DECISION?

24 A. IT'S A TWO BEDROOM HOME. THERE WAS APPARENTLY --

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1 AN ADULT THERE WHICH WAS MR. BURDEN. THERE WAS
2 ONLY ONE BED IN THE HOME, AND IT WAS IN DISARRAY.

3 Q. A TWO BEDROOM HOME. BUT IT WAS ONLY ONE BED FOR
4 BOTH BEDROOMS?

5 A. YES.

6 Q. SO THERE WAS ONLY ONE BED IN THAT HOUSE?

7 A. YES, SIR. AND THEN BASED ON WHAT DETECTIVE
8 MARSHALL HAD TOLD ME WAS THE E.P.C.

9 Q. WERE THE OTHER CHILDREN DIRTY, FILTHY; OR HOW WOULD
10 YOU DESCRIBE THE OTHER CHILDREN?

11 A. I WOULDN'T SAY THAT THEY WERE FILTHY, BUT THE
12 CONDITION OF THE HOME WAS NOT CLEAN.

13 Q. SO THE HOUSE WAS UNKEMPT?

14 A. VERY.

15 Q. VERY MUCH UNKEMPT?

16 A. YES, SIR.

17 Q. YOU TOOK THE PHOTOGRAPH OF THAT BATHTUB, DID YOU
18 NOT?

19 A. YES, SIR, I DID.

20 Q. DID YOU TAKE ANY PHOTOGRAPHS OF THE HOUSE OTHER
21 THAN THAT SPECIFIC TUB?

22 A. I RECALL, I BELIEVE I TOOK SOME PICTURES FROM THE
23 OUTSIDE OF THE HOUSE AND SOME OF THE INSIDE OF THE
24 HOUSE.

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1 A. NO. I DO NOT HAVE THE PHOTOGRAPHS.

2 Q. WHAT HAPPENED TO THEM?

3 A. I HAVE NO IDEA.

4 Q. BUT THOSE WERE FACTORS THAT YOU INTERPLAYED TO MAKE
5 THE DECISION TO PUT THIS -- OR PUT THESE CHILDREN
6 IN EMERGENCY PROTECTIVE CUSTODY?

7 A. ALONG WITH WHAT DETECTIVE MARSHALL HAD TOLD ME;
8 YES.

9 Q. I UNDERSTAND THAT. BUT THE QUESTION REMAINS, YOU
10 TOOK SOME PHOTOGRAPHS WHICH WOULD LEND SUPPORT OR
11 SHOW THE UNKEMPT CONDITION OF THE HOME?

12 A. NO; OUR PROTOCOL IS THAT WHEN---

13 Q. NO. EXCUSE ME, OFFICER. I'M NOT CONCERNED WITH
14 THE PROTOCOL.

15 MRS. MURPHY: OBJECTION, YOUR HONOR.
16 HE'S TRYING TO ANSWER THE QUESTION.

17 MR. DAVIS: I'M MORE CONCERNED WITH THIS
18 PARTICULAR CASE; THIS PARTICULAR CASE.

19 THE COURT: MR. DAVIS, WHEN THERE'S---

20 MR. DAVIS: OKAY, JUDGE.

21 THE COURT: --AN OBJECTION, YOU HAVE TO
22 STOP. EVERYBODY STOPS WHEN THERE'S AN OBJECTION.
23 YES, MA'AM; YOUR OBJECTION IS TO LET HIM FINISH?

24 MRS. MURPHY: YES, MA'AM.

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1 RESPONSIVE, MR. DAVIS, ADDRESS THAT TO ME AND I'LL
2 BE HAPPY TO ADDRESS THAT ISSUE.

3 MR. DAVIS: YES, MA'AM.

4 Q. NOW, OFFICER, I'M NOT CONCERNED SO MUCH WITH
5 PROTOCOL---

6 MRS. MURPHY: YOUR HONOR, HE STILL HASN'T
7 ANSWERED. HE HASN'T GIVEN HIM A CHANCE
8 TO ANSWER THAT QUESTION.

9 Q. DO YOU RECALL THE QUESTION?

10 A. NO. COULD YOU RESTATE IT?

11 Q. THAT'S MY POINT. YOU'RE CONCERNED WITH PROTOCOL;
12 CORRECT?

13 A. CORRECT.

14 Q. I'M NOT SO CONCERNED ABOUT THE NORMAL PROTOCOL IN
15 THIS CASE. I WANT TO KNOW WHAT YOU DID IN THIS
16 PARTICULAR CASE, OKAY?

17 A. I FILED A STANDARD PROTOCOL. WE TAKE A PICTURE OF
18 THE MAILBOX WHICH SHOWS THE ADDRESS OF THE HOME.
19 AND I TAKE A PICTURE OF THE OUTSIDE OF THE HOME.

20 Q. DO YOU TAKE ANY PICTURES OF THE INSIDE OF THE HOME?

21 A. I BELIEVE THERE WAS ONE OR TWO TAKEN FROM THE
22 INSIDE; YES.

23 Q. OKAY. AND DO YOU HAVE THOSE PHOTOGRAPHS?

24 A. NO, I DON'T.

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1 A. NO I DON'T.

2 Q. OKAY. AND IT WOULD BE YOUR TESTIMONY THAT THE
3 HOUSE WAS UNKEMPT?

4 A. YES, SIR.

5 Q. AND THAT THE CHILDREN WERE NOT WELL PROVIDED FOR IN
6 REFERENCE TO THEIR PARENTS' APPEARANCE?

7 A. I DIDN'T SAY THAT.

8 Q. WELL, TELL US ABOUT THE CHILDREN.

9 A. I DIDN'T INTERVIEW ANY OF THE OTHER CHILDREN.

10 Q. DID YOU SEE ANY OF THE OTHER CHILDREN?

11 A. YES. THERE WAS A SMALL ONE IN THE BEDROOM WITH MR.
12 BURDEN WHERE HE SHOWED ME WHERE THE INCIDENT TOOK
13 PLACE.

14 Q. ANY OTHER CHILDREN?

15 A. THERE WAS ONE OR TWO RUNNING AROUND. AND I BELIEVE
16 THERE WAS ONE SITTING ON THE COUCH.

17 Q. DID YOU PAY ANY PARTICULAR ATTENTION TO ANY OF
18 THESE CHILDREN OTHER THAN THEM RUNNING AROUND?

19 A. NOT NECESSARILY; NO, SIR.

20 Q. DID YOU EVER GET A STATEMENT OR TAKE A STATEMENT
21 FROM MS. GADSON?

22 A. I'M SORRY, SIR?

23 Q. DID YOU EVER TAKE A STATEMENT FROM HER?

24 A. NO, SIR, I DID NOT.

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1 A. NO, SIR, I DID NOT.

2 Q. WHEN WAS THE DECISION MADE TO ACTUALLY PUT THE
3 CHILD IN EMERGENCY PROTECTIVE CUSTODY? WHAT TIME?

4 A. I DON'T RECALL EXACTLY WHAT TIME IT WAS. I BELIEVE
5 THERE'S A CATALOG THAT SHOWS WHEN D.S.S. WAS
6 NOTIFIED.

7 Q. OKAY. IT GOES WITHOUT QUESTION; YOU HEARD THE
8 TESTIMONY OF E.M.S. PERSONNEL THAT THEY GOT THERE
9 ABOUT 6:50, AND THEY ONLY REMAINED ABOUT FOUR
10 MINUTES?

11 A. CORRECT.

12 Q. AND THEY LEFT?

13 A. YES, SIR.

14 Q. WHAT TIME DID YOU ARRIVE THERE?

15 A. ARRIVE AT THE HOUSE?

16 Q. YES.

17 A. I DON'T REMEMBER WHAT TIME I ARRIVED AT THE HOUSE.

18 Q. HAVE YOU GOT YOUR RECORDS WITH YOU?

19 A. I WAS DISPATCHED ON THE CALL AT 2030 WHICH IS 8:30
20 P.M.

21 Q. SO WOULD IT BE FAIR TO SAY YOU GOT THERE SOME TIME
22 AFTER 8:30?

23 A. I WAS PROBABLY AT SUMMERVILLE MEDICAL CENTER AT
24 8:30. THAT'S WHEN I WAS DISPATCHED TO THE CALL.

RE-DIRECT/MR. DAVIS

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1 DISPATCHED; YOU WENT TO SUMMERVILLE MEDICAL CENTER?

2 A. RIGHT. AS I TESTIFIED, I WENT TO SUMMERVILLE
3 MEDICAL CENTER FIRST.

4 Q. WHEN YOU LEFT SUMMERVILLE MEDICAL CENTER, YOU WENT
5 TO THE HOME?

6 A. RIGHT.

7 Q. DO YOU KNOW WHAT TIME YOU ARRIVED AT THE HOME?

8 A. NOT RIGHT OFFHAND; NO, SIR, I DON'T.

9 Q. HAVE YOU GOT A RECOLLECTION?

10 A. I JUST SAID NOT RIGHT OFFHAND. I DON'T REMEMBER
11 WHAT TIME I WOULD HAVE ARRIVED AT THE HOUSE.

12 Q. THERE'S NO QUESTION THAT YOU TOOK A STATEMENT FROM
13 MR. BURDEN AT ABOUT TEN O'CLOCK?

14 A. ROUGHLY I BELIEVE IT WAS 2147 IS THE STATEMENT
15 TIME, I BELIEVE.

16 Q. WHO DIRECTED YOU TO TAKE THAT STATEMENT?

17 A. DETECTIVE MARSHALL.

18 Q. OKAY. AND WHAT HAD YOU DONE BEFORE YOU WERE
19 DIRECTED TO TAKE THAT STATEMENT? WHAT KIND OF WORK
20 EFFORT HAD YOU PUT IN?

21 A. I DON'T FOLLOW WHAT YOU'RE SAYING.

22 Q. WHAT HAD YOU DONE? YOU HAD RESPONDED TO THE HOUSE
23 SOMEWHERE AFTER 8:30. YOU TOOK THE STATEMENT
24 AROUND 10:20. WHAT DID YOU DO BETWEEN 8:30 AND

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1 A. I DIDN'T SAY ANYTHING ABOUT 10:20.

2 Q. WELL, THEREABOUTS. YOU SAID A STATEMENT WAS TAKEN
3 FROM MR. BURDEN AT---

4 A. AT 2147 WHICH IS 9:47 P.M.

5 Q. WHAT DID YOU DO BETWEEN 8:30 AND 9:47 P.M.?

6 A. I TALKED TO MR. BURDEN; AND THEN I SAT IN MY PATROL
7 CAR.

8 Q. SO YOU TALKED TO HIM INITIALLY BEFORE YOU WERE
9 INSTRUCTED BY DETECTIVE MARSHALL TO GO BACK DOWN
10 AND GET A STATEMENT?

11 A. RIGHT.

12 Q. OKAY. YOU DIDN'T ATTEMPT TO GET A STATEMENT THE
13 FIRST TIME?

14 A. NO, SIR, I DID NOT.

15 Q. OKAY. BUT YOU DID GET A STATEMENT?

16 A. YES, SIR, I DID.

17 Q. OKAY. AND AFTER YOU GOT THAT STATEMENT, BASED ON
18 WHAT DETECTIVE MARSHALL SHARED WITH YOU, THE
19 DECISION WAS MADE THEN TO PLACE THE CHILDREN IN
20 EMERGENCY PROTECTIVE CUSTODY?

21 A. YES, SIR.

22 Q. SO WOULD IT BE FAIR TO SAY -- WHAT TIME DID YOU
23 LEAVE THE HOUSE?

24 A. WHAT TIME I LEFT THE HOUSE?

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A. I THINK IT WAS ALMOST 12:30.

Q. 12:30?

A. SOMEWHERE AROUND IN THERE.

Q. OKAY. SO IT WOULD BE NOVEMBER THE FOURTH NOW?

A. YES, SIR.

Q. NOW, ALL THE TIME THAT YOU WERE AT THE HOUSE, WAS
MS. GADSON AT THE HOUSE AT ALL?

A. I DON'T RECALL, SIR.

Q. DO YOU KNOW WHO WAS AT THE HOUSE WHEN YOU WERE AT
THE HOUSE?

A. AS I STATED BEFORE, THERE WAS FOUR CHILDREN AND
MYSELF AND MR. BURDEN.

Q. WAS THERE ANY ADULTS IN THE HOME?

A. NOT THAT I CAN RECALL.

Q. OTHER THAN MR. BURDEN?

A. LATER ON IN THE EVENING THERE WAS AFTER WE HAD
ALREADY DECIDED TO PUT THE CHILDREN INTO EMERGENCY
PROTECTIVE CUSTODY. I DON'T REMEMBER WHO THE ADULT
WAS. I THINK IT WAS HER MOTHER ASSISTED US WITH
GATHERING CLOTHES.

Q. SO THE CHILDREN WERE PLACED IN EMERGENCY PROTECTIVE
CUSTODY; D.S.S. COMES IN AND TAKES THE KIDS AWAY
ABOUT 12:30 THAT NIGHT?

A. I DON'T THINK IT WAS AT 12:30. I THINK IT WAS MORE

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WE FINALLY REMOVED THE CHILDREN.

Q. 11:30? BUT YET YOU STILL DIDN'T LEAVE THE HOUSE UNTIL 12:30?

A. YES, SIR.

Q. WHAT WERE YOU DOING AFTER THAT?

A. I CAN'T BE SURE OF THE TIME. BUT I'M SAYING SOMEWHERE AROUND 11:30. IT COULD HAVE BEEN MIDNIGHT; IT COULD HAVE BEEN 12:15. I'M NOT SURE.

Q. WOULD IT BE FAIR TO SAY THAT IT COULD HAVE BEEN TWELVE TO FIFTEEN MINUTES THE CHILDREN WERE PLACED IN EMERGENCY PROTECTIVE CUSTODY THEN?

A. IT'S A POSSIBILITY; YES.

Q. OKAY. BECAUSE YOU WOULDN'T HAVE ANY REASON TO REMAIN AT THE HOME ONCE THE CHILDREN WERE PLACED IN EMERGENCY PROTECTIVE CUSTODY, WOULD YOU?

A. UNTIL I CLEAR FROM THE RESIDENCE; YES, SIR.

Q. OKAY. YOU DIDN'T PUT ANYBODY UNDER ARREST THAT NIGHT, DID YOU?

A. NO, SIR, I DID NOT.

Q. OKAY. AND YOU PARTICIPATED IN WHAT YOU CALL THE EMERGENCY PROTECTIVE PROBABLE CAUSE HEARING THAT TAKES PLACE IN FAMILY COURT, DID YOU NOT?

A. YES, SIR, I DID.

O. YOU TESTIFIED IN THAT MATTER, DID YOU NOT?

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Q. NOBODY TESTIFIED IN THE PROBABLE CAUSE HEARING IN FAMILY COURT?

A. NO, SIR.

Q. AND YOU CAN JUST EDUCATE THE JURY A LITTLE BIT. WHY DO WE GO TO FAMILY COURT AFTER A CHILD OR CHILDREN ARE PLACED IN EMERGENCY PROTECTIVE CUSTODY?

A. THE STATE HAS TO SHOW PROBABLE CAUSE ON THE REASON THAT THEY REMOVED THE CHILDREN FROM THE HOUSE.

Q. OKAY.

A. AT THAT HEARING BOTH PARTIES AGREED THAT THE STATE HAD PROBABLE CAUSE TO REMOVE THE CHILDREN FROM THE RESIDENCE.

Q. HAVE YOU GOT ANY RECORD OF THAT?

A. I'M SURE IT'S ON THE FAMILY COURT RECORD.

Q. MY QUESTION IS DO YOU HAVE ANY RECORDS OF THAT?

A. I'M NOT THE FAMILY COURT; SO, NO, SIR, I DON'T.

Q. OKAY. BUT YOU DIDN'T GIVE ANY TESTIMONY IN FAMILY COURT?

A. AS I STATED; NO, SIR, I DID NOT.

Q. OKAY. DO YOU KNOW WHETHER THE CHILDREN ARE STILL IN A FOSTER HOME OR NOT?

A. I BELIEVE THEY ARE; YES, SIR.

Q. DO YOU KNOW WHETHER THERE'S BEEN A HEARING ON THE

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A. I HAVEN'T BEEN NOTIFIED OF ONE.

Q. SO WOULD IT BE FAIR TO SAY THAT IF THERE WERE A HEARING ON THE MERITS IN FAMILY COURT THAT YOU WOULD HAVE TO BE PRESENT; OR YOUR PRESENCE WOULD BE NECESSARY?

A. I DON'T KNOW THAT FOR SURE. BUT I'M SURE THAT I WOULD BE NOTIFIED OF SOME HEARING IF I WERE NEEDED AT IT.

Q. WELL, DON'T YOU THINK YOU WOULD BE NEEDED IN THE SENSE THAT YOU PARTICIPATED IN ACTUALLY THE CHILDREN BEING PLACED IN EMERGENCY PROTECTIVE CUSTODY?

MRS. MURPHY: OBJECTION, YOUR HONOR. THAT'S NOT HIS JOB TO KNOW WHEN HE'S GOING TO BE CALLED AS A WITNESS OR WHAT THE FAMILY COURT MAY OR MAY NOT NEED.

MR. DAVIS: JUDGE, IT'S NOT ABOUT THAT. IT'S ABOUT THIS OFFICER BEING INVOLVED IN THIS CASE AND A BROADER CONTEXT OF JUST WHAT WE'RE HERE TODAY.

THE COURT: JUST ASK HIM IF -- HE MAY HAVE TOLD HIM -- IF HE KNOWS. IF YOU'D JUST REPHRASE YOUR QUESTION, PLEASE.

MR. DAVIS: THANK YOU.

RE-CROSS/MRS. MURPHY

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COURT YET?

A. AS I STATED; NO, SIR, I HAVE NOT.

Q. OKAY. BUT YOU WERE SUMMONED FOR THE PROBABLE CAUSE HEARING?

A. YES, SIR.

Q. NO FURTHER QUESTIONS.

THE COURT: ANY RE-DIRECT?

MRS. MURPHY: YES, MA'AM. JUST A COUPLE OF FOLLOW-UP QUESTIONS.

THE COURT: SURE.

RE-CROSS EXAMINATION

BY MRS. MURPHY:

Q. DETECTIVE BOTTEN, WOULD IT HELP YOU TO LOOK AT THE CAT OPERATIONS REPORT TO REFRESH YOUR RECOLLECTION AS TO WHAT TIME YOU WERE---

A. SURE.

THE COURT: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YOU MAY.

Q. AND CAN YOU PLEASE EXPLAIN TO THE JURY WHAT EXACTLY A CAT OPERATIONS REPORT IS?

A. THE CATS OPERATIONS REPORT IS EACH TIME A CALL IS RECEIVED INTO OUR DISPATCH CENTER AND AN OFFICER IS ASSIGNED TO CALL EITHER IT'S AN OFFICER OF A

RE-CROSS/MRS. MURPHY

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ASSIGNED TO CALL. AND THIS CALL IS INPUT INTO THE COMPUTER. THAT'S HOW WE KEEP A RECORD OF IT. EACH TIME AN OFFICER CHECKS OUT OF A LOCATION OR GOES FROM LEAVING THE LOCATION, WE HAVE TO RECORD IT OVER THE RADIO, AND IT'S RECORDED EACH TIME.

Q. AND WOULD YOU PLEASE REVIEW THAT AND TELL THE JURY AT APPROXIMATELY WHAT TIME YOU DID WHAT ON NOVEMBER THE THIRD?

A. THE CALL WAS RECEIVED ON SATURDAY, NOVEMBER THE THIRD, 2001, AT 8:07 P.M. BY OUR DISPATCH CENTER. I WAS DISPATCHED AT -- I DON'T KNOW HOW THEY GOT -- AT 8:04 I WAS EN ROUTE. ACTUALLY AT 8:30 I WAS ON THE SCENE AT THE MEDICAL CENTER AT 8:30. AND I DEPARTED FROM THE MEDICAL CENTER AT 2128 IT LOOKS LIKE.

Q. AND REGULAR TIME WHAT'S 2128?

A. I'M SORRY; 9:28 P.M.

Q. AND AT 9:23 P.M. YOU DEPARTED SUMMERVILLE MEDICAL CENTER AND HEADED TO 240 PIGEON BAY ROAD?

A. THAT'S WHAT IT'S LOOKING LIKE; YES, MA'AM.

Q. AND DOES IT STATE WHAT TIME YOU ARRIVED THERE?

A. I WAS ON THE SCENE AT 2143 IT LOOKS LIKE.

Q. SO AT 9:43 YOU WERE ON THE SCENE?

A. YES, MA'AM; 9:43.

Q. AND YOUR PRIOR TESTIMONY IS YOU WENT IN AND TALKED

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TO DEFENDANT BURDEN, TOOK PICTURES, AND TOOK A
STATEMENT FROM HIM?

A. YES, MA'AM.

Q. AND I'M GOING TO SHOW YOU THE STATEMENT WHICH HAS
BEEN PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER
FIVE WHICH IS THE DEFENDANT'S STATEMENT. DID YOU
KNOW WHAT TIME YOU TOOK THAT STATEMENT?

A. THE STATEMENT WAS TAKEN AT 2200 HOURS -- I'M SORRY
-- WHICH IS TEN O'CLOCK P.M.

Q. SO TEN O'CLOCK?

A. YES, MA'AM.

Q. AND DOES IT STATE IN THE CAT REPORT AT WHAT TIME
YOU LEFT?

A. I THINK IT WAS THE THIRD PAGE ALSO. I BELIEVE ONE
OF THEM DID HAVE IT ON THERE. (REVIEWS DOCUMENT.)
NO, IT DOESN'T HAVE IT ON THERE.

Q. TO THE BEST OF YOUR RECOLLECTION, ACCORDING TO THE
STATEMENT, YOU TOOK THE STATEMENT AT 2200 HOURS
WHICH IS 10:20?

A. TEN O'CLOCK P.M.

Q. OKAY. TEN O'CLOCK P.M.?

A. YES, MA'AM.

Q. AND YOUR BEST RECOLLECTION IS THAT YOU LEFT THE
HOME AT WHAT TIME?

I WANT TO SAY IT WAS AROUND 12:30 TO THE BEST OF MY

RE-CROSS/MRS. MURPHY

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RECOLLECTION.

Q. AND DURING THOSE TWO, TWO-AND-A-HALF HOURS, WHAT WAS GOING ON DURING THAT TIME PERIOD?

A. AWAITING D.S.S. I WAS TALKING TO DETECTIVE MARSHALL DURING THAT TIME.

Q. AND THEN YOU ALSO TESTIFIED THAT THE VICTIM, OR THE VICTIM'S GRANDMOTHER, HELPED?

A. GATHER CLOTHES FOR THE CHILDREN WHEN THEY WERE PLACED IN PROTECTIVE CUSTODY.

MR. DAVIS: I'M GOING TO OBJECT TO THE LEADING. SHE'S PUTTING WORDS IN HIS MOUTH. NEVER ANY TESTIMONY ABOUT THE GRANDMOTHER HELPING ANYTHING. I THINK THAT'S PUTTING WORDS IN THE OFFICER'S MOUTH. THAT'S IMPERMISSIBLE.

THE COURT: DON'T LEAD, PLEASE, MA'AM.

MRS. MURPHY: YES, MA'AM.

Q. DETECTIVE BOTTEN, YOU ALSO TESTIFIED REGARDING THE E.P.C. HEARING, I BELIEVE. WHAT DATE WAS THAT?

A. ON NOVEMBER THE SIXTH.

Q. AND WERE YOU PRESENT WHEN DETECTIVE MARSHALL ARRESTED DEFENDANT BURDEN?

A. YES, MA'AM, I WAS.

Q. AND WERE YOU PRESENT WHEN DETECTIVE MARSHALL ARRESTED THE DEFENDANT, BURDEN?

YES MA'AM. IT WAS

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Q. AND WERE YOU PRESENT WHEN HE WAS READ HIS RIGHTS?

A. YES, MA'AM, I WAS.

Q. DID HE APPEAR TO UNDERSTAND THOSE RIGHTS?

A. YES, MA'AM.

Q. THANK YOU, SIR. NO FURTHER QUESTIONS.

THE COURT: RE-CROSS, MR. DUKES?

MR. DUKES: I HAVE NONE.

THE COURT: VERY WELL. MR. DAVIS, ANY
RE-CROSS?

MR. DAVIS: YES, I DO HAVE A FEW.

THE COURT: ALL RIGHT.

RE-DIRECT EXAMINATION

BY MR. DAVIS:

Q. DOES THIS THING YOU HAVE, IT'S CALLED A C.A.D.
OPERATION REPORT. DOES IT TELL US HOW MANY TIMES
YOU HAD A CONVERSATION WITH DETECTIVE MARSHALL?

A. NO, SIR. THIS IS A CAD OPERATIONS REPORT. EVERY
TIME I SPEAK ON OUR RADIO, IT'S RECORDED; NOT ON A
CELLULAR TELEPHONE.

Q. DO YOU HAVE ANY INDEPENDENT RECOLLECTION OF HOW
MANY TELEPHONIC OR OTHER MEANS OF COMMUNICATION YOU
HAD WITH DETECTIVE MARSHALL BETWEEN 8:30 AND 12:30
THAT NIGHT?

A. NO, I DON'T.

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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SOME---

A. RIGHT. I GAVE YOU FIVE TO TEN.

Q. DO YOU STILL STICK WITH THAT?

A. SURE.

Q. FIVE TO TEN DIFFERENT TIMES YOU AND DETECTIVE
MARSHALL CONVERSED WITH EACH OTHER?

A. POSSIBLY.

MR. DAVIS: NO FURTHER QUESTIONS.

THE COURT: VERY WELL. YOU MAY COME
DOWN. CALL YOUR NEXT WITNESS.

MRS. MURPHY: THE STATE CALLS DETECTIVE
TOM MARSHALL.

THE COURT: SIR, COME ALONG, PLEASE, AND
BE SWORN.

WHEREUPON,

THOMAS MILES MARSHALL, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MRS. MURPHY:

Q. DETECTIVE MARSHALL, WHERE ARE YOU EMPLOYED, SIR?

A. AT THE DORCHESTER COUNTY SHERIFF'S DEPARTMENT.

Q. AND WHAT IS YOUR TITLE THERE?

A. I'M DETECTIVE SERGEANT; FIRST SERGEANT ACTUALLY

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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NOW. THEY'VE UPGRADED MY RANK TO THE FIRST SERGEANT.

Q. AND CAN YOU TELL US WHAT YOUR DUTIES ARE AS A DETECTIVE SERGEANT?

A. MY DUTIES ARE I'M SECOND IN COMMAND AT THE DETECTIVE DIVISION. DETECTIVE LIEUTENANT JIMMY NETTLES IS FIRST IN COMMAND. WHEN HE'S NOT THERE, I BECOME SECOND IN COMMAND. MY DUTIES ARE TO BE IN CHARGE OF THE SEX OFFENDER REGISTRY. I ALSO HANDLE ALL OF THE MURDERS, MYSELF AND MY PARTNER. AND I ALSO HANDLE ALL THE SEXUAL ASSAULT CASES THAT COME THROUGH. MY SPECIALIZATION THAT I WENT THROUGH SEVERAL TRAININGS WAS ON SEXUAL ASSAULTS BETWEEN CHILDREN AND STUFF LIKE THAT.

Q. AND HOW MANY YEARS HAVE YOU HAD IN LAW ENFORCEMENT?

A. I'M GOING INTO MY 29TH YEAR IN LAW ENFORCEMENT.

Q. AND WERE YOU THE LEAD DETECTIVE IN THIS PARTICULAR CASE?

A. YES, THAT'S CORRECT.

Q. WHERE DID YOU INITIALLY RESPOND, SIR?

A. I INITIALLY RESPONDED TO THE SUMMERVILLE MEDICAL CENTER.

Q. AND WHO DID YOU MEET WITH AT THE SUMMERVILLE MEDICAL CENTER?

A. I MET WITH DEPUTY BOTTEN AT THE SUMMERVILLE MEDICAL

THOMAS MILES MARSHALL - DIRECT/MRS. MURPHY

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CENTER AND GOT A BRIEF OVERVIEW OF WHAT WAS HAPPENING. I WAS ALSO TOLD ON THE PHONE BEFORE I WENT DOWN THAT I WAS GOING TO AN ABUSE CASE.

Q. AND -- TOLD ON THE PHONE THROUGH DISPATCH?

A. YES. SHE CALLED -- WELL, THE DISPATCHERS CALLED WHEN WE HAD CALLED THAT NIGHT. THEY CALLED US AT HOME. AND THEN I RESPOND FROM MY RESIDENCE.

Q. AND YOU SPOKE WITH DEPUTY BOTTEN AT THE SCENE; CORRECT?

A. YES. I SPOKE TO HIM, AND HE GAVE ME A BRIEF OVERALL AND THEN TOLD ME WHERE THE CHILD WAS AND TOLD ME THEY WERE GETTING READY TO TRANSPORT THE CHILD ANY MINUTE NOW TO THE MEDICAL UNIVERSITY BY WAY OF THE METRO CARE UNIT.

Q. AND WHAT DID YOU DO AT THAT POINT?

A. AT THAT POINT I ASKED PERMISSION IF I COULD GO IN THERE AND SEE THE CHILD. AND THE DOCTORS OR NURSES ON THE SCENE POINTED OUT SOME -- SHOWED ME THE CHILD. AND WHEN I WENT IN THERE, THE CHILD APPEARED IN GRAVE CONDITION TO ME; ACTUALLY APPEARED LIFELESS TO ME WHEN I WENT IN THERE. THEY POINTED OUT SOME INJURIES THAT I COULD -- I COULD SEE SOME REDNESS ON THE CHEST AND SOME REDNESS ON THE RIGHT TEMPLE. THEY POINTED THOSE AREAS OUT TO

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THEY WERE WORKING. AS I SAID, WHEN I WENT IN THERE, THE CHILD DID NOT APPEAR TO BE IN GOOD CONDITION.

Q. AND WHAT HAPPENED AFTER THAT POINT?

A. AFTER THAT POINT THE CHILD WAS TRANSPORTED AND TAKEN ON MEDUCARE. I TALKED TO THE DOCTOR BRIEFLY AND WAS INQUIRING IF THE MOTHER OR ANY OF THE RELATIVES WERE THERE, AND WAS FOUND OUT THAT MS. GADSON WAS THERE AT THE HOSPITAL, AND SUBSEQUENTLY I WENT OVER THERE AND TALKED TO HER BRIEFLY.

Q. WAS THE DEFENDANT, BURDEN, AT THE HOSPITAL?

A. NO, HE WAS NOT.

Q. HOW DID YOUR INVESTIGATION PROCEED AT THAT POINT? DID YOU TALK TO MS. GADSON?

A. AFTER TALKING TO MS. GADSON, I THEN WENT AHEAD AND ASKED HER IF SHE WOULD COME DOWN TO THE SHERIFF'S DEPARTMENT SO THAT I COULD GET INFORMATION ON WHAT HAPPENED AND WHAT SHE KNEW HAD HAPPENED SO I COULD TALK TO HER. AND SHE VOLUNTEERED TO GO WITH ME. I SUBSEQUENTLY SENT DEPUTY BOTTEN BACK OUT TO THE SCENE WHERE THE CHILD ALLEGEDLY WAS INJURED. HE WENT BACK OUT THERE. AND I ASKED HIM TO GO BACK OUT THERE AND TALK TO ANYBODY AT THE SCENE, AND ALSO I ASKED HIM TO TAKE PICTURES IF HE COULD, IF

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BACK OUT THERE. AFTER FINDING OUT THE CHILD WAS IN CRITICAL CONDITION, I THEN NOTIFIED ANOTHER DETECTIVE AND TOLD HIM TO IMMEDIATELY HEAD DOWN TO THE MEDICAL UNIVERSITY. AND THAT WAS DETECTIVE JOYNER.

Q. AND WHILE THE CHILD WAS TRANSPORTED TO M.U.S.C., AT THAT POINT DID YOU ASK MS. GADSON WHETHER OR NOT SHE WANTED TO GO TO M.U.S.C.?

A. (NO RESPONSE.)

Q. WAS SHE OFFERED THE OPPORTUNITY?

A. SHE WAS OFFERED. THEY TOLD HER SHE COULD GO; AND SHE DIDN'T GO; SHE WENT WITH ME.

Q. WAS SHE FREE TO GO?

A. YES; SHE COULD HAVE GONE -- IF SHE HAD TOLD ME SHE DIDN'T WANT TO RIDE WITH ME, THEN I WOULD HAVE LET HER GO AHEAD AND GONE ON DOWN THERE. AND I WOULD HAVE HAD TO HAVE WAITED ON THE INTERVIEW WITH HER IN GETTING THE INFORMATION LATER ON UNTIL AFTER SHE WAS FINISHED AT THE HOSPITAL.

Q. DID SHE GO VOLUNTARILY WITH YOU TO THE LAW ENFORCEMENT COMPLEX?

MR. DAVIS: YOUR HONOR, I'M GOING TO OBJECT TO THE PHRASEATION; CHARACTERIZATION OF THIS TESTIMONY.

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MR. DAVIS: YES, MA'AM.

THE COURT: SO JUST OBJECTION, MR. DAVIS.
THE NATURE OF YOUR OBJECTION IS?

MR. DAVIS: THE CHARACTERIZATION OF
WHETHER IT WAS VOLUNTARILY -- MY CLIENT VOLUNTARILY
WENT. THAT'S A BIG ISSUE WE'VE GOT IN FRONT OF THE
JURY.

THE COURT: ARE YOU TALKING ABOUT
LEADING?

MR. DAVIS: YES.

THE COURT: VERY WELL. DON'T LEAD.

Q. WOULD YOU STATE WHETHER OR NOT YOU OFFERED HER A
RIDE TO THE LAW ENFORCEMENT COMPLEX?

A. I OFFERED HER A RIDE; ASKED HER IF SHE WOULD RIDE
WITH ME; AND SHE SAID WE WOULD GET IN THE CAR AND
GO WITH ME.

Q. AND DID SHE DO SO?

A. YES, SHE DID.

Q. WOULD YOU STATE WHETHER OR NOT YOU FORCED HER IN
ANY WAY TO GO WITH YOU?

A. NO, I DID NOT. AS A MATTER OF FACT, POLICY AND
PROCEDURE IS THAT ONCE SHE'S IN THE CAR, ONCE ANY
FEMALE IS IN THE CAR, THAT WE MUST GIVE OUT OUR
MILEAGE. AND I GAVE OUT MY MILEAGE AT THE TIME I

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THE LAW ENFORCEMENT COMPLEX WHICH IS OUT THERE ON
HIGHWAY 78 AND DEMMING WAY.

Q. AND CAN YOU TELL THE JURY WHAT TRANSPIRED WHEN YOU
GOT TO THE LAW ENFORCEMENT COMPLEX ON DEMMING WAY?

A. BASICALLY MYSELF AND MS. GADSON WENT UP TO THE
DETECTIVE DIVISION AND WENT INTO OUR INTERVIEW ROOM
AND CUT THE LIGHTS ON UP INTO THE DETECTIVE
DIVISION, OPENED UP THE INTERVIEW ROOM, CUT THE
LIGHTS ON, THEN PROPPED THE DOOR OPEN, AND HAD HER
SIT DOWN IN A ROOM AND ASK HER IF THERE WAS
ANYTHING SHE NEEDED; AND THEN TOLD HER, YOU KNOW,
THAT I WAS GOING TO TALK TO HER IN JUST A MINUTE
AND NEEDED TO GET SOME INFORMATION ON WHAT
HAPPENED.

Q. AND WAS SHE THERE AS A SUSPECT AT THAT POINT?

A. NO. SHE WAS STRICTLY THERE AS A VOLUNTEER WITNESS
SO WE COULD FIND OUT WHAT HAPPENED.

Q. DID SHE TALK TO YOU AT THAT POINT?

A. YES, SHE DID.

Q. AND DID YOU OBTAIN A WRITTEN STATEMENT FROM HER?

A. YES, I DID.

MR. DAVIS: YOUR HONOR, I WANT TO RENEW
MY MOTION RIGHT HERE IN REFERENCE TO JACKSON VS.
DINNO. I WANT IT TO BE MADE CONTEMPORANEOUSLY.

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AFOREMENTIONED; OVERRULED.

MR. DAVIS: YES. I WANT TO MAKE SURE MY BASIS -- TWO ISSUES. AND I THINK---

THE COURT: I UNDERSTAND. WHAT WE'LL DO IS PUT THAT -- WE'LL RESERVE THAT. YOUR OBJECTION IS MADE AT THIS POINT.

MR. DAVIS: THAT'S CORRECT.

THE COURT: OVERRULED. YOU CAN MAKE IT MORE FULLY IN A LITTLE WHILE.

MR. DAVIS: I WOULD ALSO OBJECT TO IT.

THE COURT: VERY WELL. OVERRULED.

Q. DETECTIVE MARSHALL, IS THAT STATEMENT CONTAINED IN YOUR ORIGINAL FILE?

A. IT SHOULD BE. I DON'T THINK IT HAS BEEN PUT IN---

MRS. MURPHY: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YES, MA'AM.

Q. DETECTIVE, FOR THE RECORD, I'D ASK YOU TO IDENTIFY THIS, PLEASE.

A. THIS IS OUR DORCHESTER COUNTY STATEMENT FORM. IT SAYS AT THE TOP OF THE STATEMENT FORM "DORCHESTER COUNTY SHERIFF'S OFFICE." AND IT SAYS "STATEMENT." AND THIS IS OUR FORM. OF COURSE IT IS A CARBON TREATED FORM. THERE IS A YELLOW PIECE OF PAPER

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YELLOW PIECE OF PAPER ATTACHED TO THE SECOND PAGE. AND BASICALLY WHAT THAT YELLOW PIECE OF PAPER IS CARBON TREATED, LIKE I SAID, AND HAS THE -- GOES TO THE VICTIM, OR OUR WITNESSES, DEPENDING ON WHO GIVES THE STATEMENT.

Q. WAS SHE A WITNESS AT THIS POINT?

A. YES, SHE WAS.

Q. AND DID SHE SIGN THAT STATEMENT FORM?

A. YES, SHE DID. SHE SIGNED DOWN AT THE BOTTOM OF IT; DOWN AT THE VERY BOTTOM OF THE STATEMENT FORM IT SAYS "I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME. AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY, AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT." AND THERE'S TWO PLACES FOR A WITNESS. AND MY NAME IS ON THERE AS T.M. MARSHALL; AND HER SIGNATURE IS ON THERE AS ADRIAN GADSON. AND ON PAGE TWO, IT HAS THE SAME THING AT THE END OF PAGE TWO. IT SAYS "I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME, AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT." AND THERE AGAIN, MY SIGNATURE IS ON THERE, AND HER SIGNATURE IS ON THERE ALSO.

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MRS. MURPHY: YOUR HONOR, AT THIS POINT I'D INTRODUCE THE DEFENDANT'S STATEMENT INTO EVIDENCE, YOUR HONOR.

THE COURT: VERY WELL. AS HERETOFORE INDICATED, AN OBJECTION IS INTERPOSED PRIOR. AND I'VE OVERRULED THE OBJECTION ON THE SAME BASIS AS EARLIER.

DEFENDANT'S EXHIBIT NO 6

MARKED FOR IDENTIFICATION

Q. DETECTIVE, YOU TESTIFIED THAT YOU HAVE YOUR WITNESS SIGNATURE HERE?

A. THAT'S CORRECT. MY SIGNATURE; I SIGNED IT AS T.M. MARSHALL.

Q. AND IS THERE ANY REASON OR PROTOCOL AS TO WHY YOU DON'T HAVE TWO SIGNATURES?

A. NO; NOT ONE WORD; DOING WITNESS STATEMENTS OR VICTIM'S STATEMENTS. WE CALL WITNESS OR VICTIMS DEPENDING ON WHICH ONE WE'RE TALKING TO AT THAT PARTICULAR TIME.

Q. AND, DETECTIVE, AT THIS POINT I'D---

MRS. MURPHY: I'D LIKE TO ASK IF HE COULD PUBLISH THIS TO THE JURY, YOUR HONOR.

THE COURT: ALL RIGHT. VERY WELL.

A. IT SAYS "DORCHESTER COUNTY SHERIFF'S OFFICE STATEMENT " IT SAYS "STATEMENT OF ANDREA CARSON-

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HOME ADDRESS PIGEON BAY ROAD; HOME TELEPHONE
NUMBER 821-4256." AND SHE DID NOT LIST HER
EMPLOYER OR BUSINESS OCCUPATION. IT GOES DOWN TO
HER DATE OF BIRTH "6-13-76; HER SOCIAL SECURITY
NUMBER IS STATEMENT IS GIVEN ON
11-03-2001 AT 2217 WHICH IS 17 MINUTES AFTER TEN
O'CLOCK. AND THE LOCATION IS DORCHESTER COUNTY
L.E.C." PUT AN "X" MARK WHERE I WANTED HER TO
START WRITING. THEN IT SAYS "ON NOVEMBER THE
THIRD, 2001, I, ADRIAN GADSON, WENT SHOPPING WITH
MY MOTHER. THE STORES WE WENT TO WERE CATOS,
WAL-MART, ITS FASHION, SEVEN DOLLAR STORE, AND
FAMILY DOLLAR. I MADE A PHONE CALL TO MY HOUSE TO
LET THEM KNOW WHERE I WAS WHEN DEAN TOLD ME TO
HURRY UP AND COME HOME BECAUSE -- AND SHE SCRATCHED
OUT Child AND SAID SOMETHING WAS WRONG WITH MY
SON, Child SO ME AND MY MOTHER RUSHED HOME TO
SEE WHAT WAS WRONG. WHEN I GOT THERE, Child WAS
LYING ON THE LIVING ROOM FLOOR UNRESPONSIVE LIKE HE
WAS HAVING A SEIZURE. HE HAD ALREADY MADE A CALL
TO E.M.S. BEFORE WE GOT THERE. HE TOLD US THAT HE
WAS FEEDING THEM AND AFTERWARDS HE WAS GIVING HIM A
BATH. DEAN TOLD -- AND SHE SCRATCHED OUT "US" AND
THEN WENT TOLD ME THAT Child WAS WEAK AND COULD

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ACTING LIKE HE COULDN'T BREATHE. SO HE WAS TRYING TO HELP HIM. IN THE YEAR OF 1998 Child [REDACTED] HAD A BROKEN LEG BECAUSE I WAS TOLD THAT HE HAD FALLEN FROM THE CRIB AND LANDED ON A HARD TOY. BASED ON WHAT HE TOLD ME, I DIDN'T THINK IT WAS TRUE. BACK IN 1998 I WAS WORKING FOR BURGER KING. DEAN CALLED ME AT WORK AND SAID THAT HE THINK Child [REDACTED] LEG IS BROKEN. WHEN I GOTTEN -- AND IT'S WHEN I GOT THERE, BUT IT'S TOGETHER -- SO WHEN I GOTTEN THERE, HE WAS HOLDING [REDACTED], AND I THINK HIS LEG IS BROKEN. SO I RUSHED Child [REDACTED] TO THE HOSPITAL. I ASKED HIM HOW Child [REDACTED] BREAK HIS LEG, AND HE SAID THAT HE HAD FALLEN FROM THE CRIB ON A TOY. AFTER I COME FROM THE HOSPITAL, HE TOLD ME THAT HE HAD SPANKED HIM.

Q. THANK YOU, SIR.

STATE'S EXHIBIT NO. 6

ADMITTED AS EVIDENCE

Q. DETECTIVE MARSHALL, AT THAT POINT DID YOU MAKE CONTACT WITH --- DID YOU HAVE CONTACT WITH DEPUTY BOTTEN AT ANY POINT DURING THIS PROCESS?

A. IN-BETWEEN THE INTERVIEWS AND DURING THE TIME THAT SHE WAS WRITING THE STATEMENT FOR ME, I WAS IN CONTACT WITH DEPUTY BOTTEN AND DETECTIVE JOYNER.

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E.P.C. THE OTHER CHILDREN IN THE HOME?

A. YES. BASED ON THE INFORMATION I WAS GETTING FROM THE HOSPITAL AND WHAT WAS GETTING FAXED TO ME ON THE MECHANISM OF THE INJURIES, AND BASED ON WHAT DEPUTY BOTTEN WAS TELLING ME WHAT MR. BURDEN HAD WRITTEN DOWN ON HIS STATEMENT, AND BASED ON WHAT I WAS GETTING FROM THE HOSPITAL DOWN AT THE MEDICAL UNIVERSITY, IT APPEARED TO ME THERE WAS A BIG DISCREPANCY IN THERE AND THE INJURIES WERE NOT FITTING THE MECHANISM AND THE INJURIES WERE NOT FITTING. SO BASED ON THAT INFORMATION, I DIRECTED HIM TO E.P.C. THE CHILDREN AND TO CALL D.S.S. AND GET THEM INVOLVED.

Q. AND PART OF YOUR INVESTIGATION IS OBVIOUSLY TO DETERMINE WHETHER OR NOT THERE WERE OTHER CHILDREN IN THE HOME; IS THAT CORRECT?

A. YES.

Q. AND WOULD YOU STATE WHAT OTHER CHILDREN WERE IN THE HOME AND WHAT THEIR AGES WERE?

A. I'LL HAVE TO GET -- THERE WERE FOUR OTHER CHILDREN LEFT THERE WHICH WOULD HAVE BEEN THE OLDEST SISTER, AND THEN Child [REDACTED] TWIN BROTHER WHICH WOULD HAVE BEEN TYSHEEM. AND -- GIVE ME A MINUTE. IT WAS SHANTAE GADSON WHICH IS A GIRL. SHE WAS SEVEN. TYSHEEN WHICH WAS FIVE. Child [REDACTED] WAS ALREADY TAKEN

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OUT. THEN IT WAS WILLIAM BURDEN, JR. AND THEN EUNICE BURDEN WHICH IS -- SHE'S FIVE MONTHS OLD. AND THAT WAS THE LAST BABY THAT WAS IN THERE. AND THE FIRST TWO AND THE LAST TWO THAT I READ WERE THE ONES THAT WERE TAKEN INTO EMERGENCY PROTECTIVE CUSTODY ACTUALLY ALONG WITH Child

Q. AND BACK TO DEFENDANT GADSON'S STATEMENT REGARDING THE 1998 LEG BREAK; WERE YOU INVOLVED IN THAT INVESTIGATION?

A. I BECAME INVOLVED IN A CASE IN 1998, AN ALLEGED CHILD ABUSE CASE BACK IN 1998 WHERE THE SAME CHILD, SYTHEEM, HAD A BREAK TO THE RIGHT LEG OF THE -- I CALL IT THE FEMUR BONE UP AT THE TOP PART OF THE LEG.

Q. WAS ANYONE CRIMINALLY CHARGED BACK IN 1998?

A. NOT CRIMINALLY CHARGED. THE INVESTIGATION LED TO A D.S.S. FINDING.

Q. WERE YOU INVOLVED IN THAT?

A. I WASN'T INVOLVED IN THE ACTUAL D.S.S. -- I DID NOT GO TO THE COURT HEARING. I GOT THIS INFORMATION FROM VARIOUS SOURCES AND ALSO THROUGH THE GUARDIAN AD LITEM, AND WAS TOLD LATER ON AFTER THE TRIAL WAS OVER WITH THAT THERE HAD BEEN A SUBSTANTIATED FINDING---

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HONOR, WITH WHAT HE WAS TOLD. THAT'S HEARSAY.

THE COURT: SUSTAINED.

Q. IN YOUR INVESTIGATION IN 1998, WERE YOU ABLE TO --
OR ACTUALLY IN THIS CURRENT INVESTIGATION REGARDING
HER STATEMENT AS TO BEING AT BURGER KING DURING THE
1998 LEG INJURY; WERE YOU ABLE TO INVESTIGATE AND
CORROBORATE WHETHER OR NOT SHE ACTUALLY WORKED AT
BURGER KING AT THAT POINT AND TIME?

A. YES. IT WAS MR. WHITFIELD'S STORE THAT WAS OVER
THERE ON HIGHWAY 17-A ON MAIN STREET AND SPOKE TO
HIM. AND HE HAS---

MR. DAVIS: OBJECTION.

THE COURT: SUSTAINED.

Q. DON'T TELL US WHAT HE SAID; BUT WERE YOU ABLE TO
CORROBORATE WHETHER OR NOT SHE DID IN FACT WORK
THERE?

A. AS I WAS GETTING READY TO -- YES. I SPOKE TO HIM.
BUT WHAT I WAS GETTING READY TO SAY WAS I CONFIRMED
THAT THERE WAS; AND SHE DID WORK THERE.

Q. AND DID YOU ACTUALLY GO TO THE HOME AND LOOK AT THE
CRIB IN QUESTION?

A. YES. BACK IN 1998, PART OF THE INVESTIGATION WAS I
DID GO TO THE HOME AND WENT TO SPEAK TO MS. GADSON
ABOUT THE INJURY TO THE LEG AND FIND OUT -- FOR
LACK OF A BETTER WORD; IF YOU WANT TO CALL IT CRIB

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-- I'LL CALL IT CRIB; BUT IT WAS LIKE A PLAYPEN.

THE CHILD WAS ALLEGED TO HAVE CRAWLED OUT OF THIS PLAYPEN, FLIPPED OUT OF THE PLAYPEN, AND ALLEGED TO HAVE HIT A PLASTIC TOY THAT TO ME RESEMBLED LIKE A PLASTIC LAWNMOWER. WHEN I GOT TO THE HOUSE IN 1998, THIS PLAYPEN STOOD ABOUT THAT TALL (INDICATING) WHICH WAS MAYBE TWO FEET. AND WHERE IT WAS SET WITH SOME MATTRESSES AND ALL; AND THE TOY, ACCORDING TO HOW IT WAS TOLD, THE TOY WAS LIKE RIGHT THERE NEXT TO THE CRIB. THE CHILD ALLEGEDLY CAME OUT OF THIS CRIB OR PLAYPEN, FELL ONTO THIS, AND ALLEGEDLY BROKE HIS LEG. WHEN I SAW THE TOY WHICH WAS STILL IN ONE PIECE, I WAS EXPECTING TO SEE IT IN MANY PIECES. THIS PIECE OF CHILD TOY WAS IN ONE PIECE; LOOKED LIKE IT WAS BRAND NEW, AND WAS STILL SITTING THERE. BASED ON THAT INFORMATION, IT WAS CLEAR TO ME THAT THIS COULD NOT HAVE BEEN -- THE INJURY COULD NOT HAVE COME FROM A SMALL FALL FROM TWO FEET FROM HERE TO HERE AND BREAK A BONE IN THIS MAGNITUDE THAT THE BONE WAS BROKEN.

Q. SIR, AT SOME POINT DURING THE NIGHT OF NOVEMBER THE THIRD, DID YOU DEVELOP DEFENDANT BURDEN AS A SUSPECT IN THIS PARTICULAR CASE?

A. YES, I DID. BASED ON -- AS I SAID, I WAS IN CONTACT WITH BOTH DEPUTY ROTTEN AND DETECTIVE

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JOYNER AT THE HOSPITAL. WHEN DETECTIVE JOYNER INFORMED ME THAT THE HOSPITAL CONFIRMED THAT THERE WAS A SUBDURAL HEMATOMA TO THE CHILD, AND BASED ON THE STATEMENT BEING READ BACK TO ME OVER THE PHONE, I MADE THE DETERMINATION AT THAT TIME THAT IT WAS NOT JIBING; THE MECHANISM OF HOW YOU'RE SAYING THAT THE CHILD FELL OVER AND HIT HIS HEAD AND THEN FELL OVER IN A BATHTUB; AND KNOWING THAT -- IN MY PAST INVESTIGATIONS AND BEING IN THERE; KNOWING THIS INJURY DID NOT COME FROM A SMALL FALL BECAUSE THIS CHILD IS FIVE YEARS OLD AND STOOD ABOUT TWO FEET TALL AND WEIGHED ABOUT 25 OR 30 POUNDS. SO FALLING OVER AND BEING TOLD IT FELL OVER WAS NOT FITTING THE MECHANISM OF THE INJURY. AND WHEN THE INJURY IS TELLING THEM YOU'VE GOT A SUBDURAL HEMATOMA; THEN I KNEW THERE HAD TO BE MORE FORCE THAN THAT. SO AT THAT POINT HE BECAME A SUSPECT.

Q. AND WOULD YOU STATE WHETHER OR NOT YOU DIRECTED DEPUTY BOTTEN TO BRING DEFENDANT BURDEN TO THE LAW ENFORCEMENT COMPLEX AT THAT POINT?

A. YES. DUE TO THE FACT THAT HE WAS THE SOLE PERSON IN THE HOUSE, THE SOLE CARE OF THE CHILDREN AT THAT TIME, I DIRECTED DEPUTY BOTTEN TO ASK HIM IF HE'D COME DOWN TO THE SHERIFF'S DEPARTMENT. AND HE

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Q. AND AT THAT POINT DID YOU TALK TO THE DEFENDANT, BURDEN?

A. YES. AT THAT POINT DETECTIVE JOYNER WAS DIRECTED TO COME BACK. THE CHILD WENT INTO I.C.U. WHERE HE COULD NOT GO IN THERE AND BE THERE. SO HE LEFT DOWN THERE OF EVERYTHING THAT HE COULD DO; CAME BACK TO THE STATION; AND WHEN WE GET READY TO INTERVIEW A SUSPECT, WE TRY TO HAVE TWO OFFICERS IN THE ROOM AT THE SAME TIME TO INTERVIEW A SUSPECT. SO I WAITED UNTIL DEPUTY JOYNER GOT TO THE SCENE. AND THEN WE WENT INTO THE INTERVIEW ROOM AND CLOSED THE DOOR AND WAS GOING TO CONDUCT AN INTERVIEW.

Q. AND DID YOU READ THE DEFENDANT HIS RIGHTS AT THAT TIME?

A. YES, I DID. I READ HIM THE MIRANDA WARNINGS. AND WE HAVE A FORM. AND I READ THOSE WARNINGS TO HIM. AND MR. BURDEN ACKNOWLEDGED THAT HE UNDERSTOOD THEM.

Q. ALL RIGHT, SIR. AND DETECTIVE JOYNER WAS PRESENT DURING THAT TIME?

A. YES; THAT'S CORRECT.

Q. NOW FOLLOWING SEVERAL DAYS LATER ON NOVEMBER THE SIXTH, DID YOU HAVE OCCASION TO COME IN CONTACT WITH THE DEFENDANT, BURDEN, AGAIN?

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THERE, THERE WAS ENOUGH PROBABLE CAUSE TO DRAW UP A WARRANT. AND I DREW UP A WARRANT ON MR. BURDEN FOR UNLAWFUL NEGLECT BY LEGAL CUSTODIAN. AND I WENT TO THE E.P.C. HEARING WHICH WAS ON NOVEMBER THE SIXTH. MYSELF AND DEPUTY BOTTEN WENT TO THE E.P.C. HEARING.

Q. AND THE E.P.C. HEARING, AGAIN, IS EMERGENCY PROTECTIVE---

A. EMERGENCY PROTECTIVE CUSTODY. WE CALL IT AN E.P.C. HEARING. BUT WHAT IT IS IS THE 48 HOUR PROBABLE CAUSE HEARING IS THE ACTUAL TERMINOLOGY I SHOULD HAVE USED. IT WAS THE PROBABLE CAUSE HEARING TO DETERMINE WHETHER WE HAD PROBABLE CAUSE TO TAKE THE CHILDREN INTO EMERGENCY PROTECTIVE CUSTODY.

Q. AND YOU WERE PRESENT AT THAT HEARING?

A. YES.

Q. AND WHAT HAPPENED AT THAT HEARING?

A. BASICALLY HE WAS READ HIS RIGHTS AGAIN IN FRONT OF THE JUDGE. AND SUBSEQUENTLY THERE WAS AN AGREEMENT. AND THE CHILDREN WENT INTO RELATIVE -- WELL, STAYED IN FOSTER CARE AND THEN WENT INTO RELATIVE PLACEMENT.

Q. SIR, AFTER THE COURTROOM PROCEEDING, DID YOU HAVE CONTACT WITH MR. BURDEN THAT SAME MORNING?

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CONTACT WITH MR. BURDEN AGAIN.

Q. AND HOW DID THAT COME ABOUT?

A. AFTER THE HEARING WAS OVER AND HE EXITED THE COURTROOM, MYSELF AND DEPUTY BOTTEN; I PLACED MR. BURDEN UNDER ARREST AND ASKED HIM TO FOLLOW ME AND ESCORTED HIM OVER TO THE SECOND BUILDING WHICH IS THE ACTUAL SHERIFF'S OFFICE INTO THE BACK TO THE JAIL.

Q. AND AT THAT POINT WHEN YOU PLACED HIM UNDER ARREST, WOULD YOU STATE WHETHER OR NOT YOU READ HIM HIS RIGHTS AGAIN?

A. AS I WAS TELLING HIM WHAT THE CHARGE WAS, I TOLD HIM HIS CHARGE WAS UNLAWFUL NEGLIGENCE BY LEGAL CUSTODIAN. AT THAT POINT MR. BURDEN MADE A SPONTANEOUS UTTERANCE TO ME AND SAID---

Q. WHAT WAS THAT UTTERANCE?

A. HE SAID THAT HE HAD LOST CONTROL AND HAD USED A SHOE AND HIT HIS CHILD A COUPLE OF TIMES TRYING TO REVIVE HIM.

Q. DID YOU HAVE INFORMATION BACK IN 1998 WHETHER OR NOT THE CHILDREN WERE TAKEN FROM THE HOME IN 1998?

A. IN 1998, THE ONE THAT I KNOW THAT WAS ACTUALLY TAKEN OUT OF THE HOME AND PLACED IN CARE WAS

Child

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WAS THAT PART OF YOUR INVESTIGATION?

A. YES. I'VE GOT A SHEET THAT TELLS ME. (AT THIS TIME WITNESS REVIEWS DOCUMENTS.) THEY WERE REMOVED ON OCTOBER THE 12TH, 1998. AND THEY WERE RETURNED BACK TO MS. GADSON ON JUNE THE EIGHTH OF 2000.

Q. AND DETECTIVE MARSHALL, WHEN WE REFER TO DEFENDANT BURDEN THE DEFENDANT, AND GADSON; DO YOU SEE THEM PRESENT IN THE COURTROOM?

A. YES. WILLIAM BURDEN IS SITTING TO THE FAR LEFT IN THIS COURTROOM ALL THE WAY OVER THERE BY HIMSELF; THE BLACK MALE WITH THE LONG BLACK COLLAR ON HIS SHIRT THERE AND A COAT THAT APPEARS TO BE GREEN FROM OVER HERE. MS. ADRIAN GADSON IS SITTING NEXT TO MR. STEVE DAVIS, HER ATTORNEY. SHE'S WEARING SOME TYPE OF SILVER SHIRT.

Q. THANK YOU, SIR. PLEASE ANSWER ANY QUESTIONS THE DEFENSE COUNSEL MAY HAVE.

THE COURT: MR. DUKES; CROSS EXAMINATION.

CROSS-EXAMINATION

BY MR. DUKES:

Q. DETECTIVE MARSHALL, WHAT SIZE DO YOU Child WAS?

A. I DIDN'T SAY. I WAS JUST GIVING A ROUGH ESTIMATE THAT HE WAS ABOUT THIS TALL.

Q. YOU SAID ABOUT TWO FOOT TALL? (INDICATING.)

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Q. WEIGHED ABOUT 25 POUNDS?

A. THE LAST TIME I REMEMBER HE WAS -- YES; HE WAS UNDER WEIGHT FOR HIS AGE, SO IT WAS EITHER 25 OR 35 POUNDS. HE WAS UNDER WEIGHT.

Q. SO HE'S EXTREMELY SMALL?

A. YES; BOTH TWINS WERE.

Q. BUT THIS ONE IS SMALLER THAN THE OTHER ONE?

A. ONE OF THEM -- THERE'S ONE THAT WEIGHS A COUPLE OF POUNDS EITHER WAY.

Q. SO THIS CRIB YOU SAY THAT HE ALLEGEDLY FELL OUT OF WAS ABOUT TWO FEET HIGH?

A. AND I HATE CALLING IT A CRIB BECAUSE IT'S NOT AN ACTUAL CRIB. A CRIB IS GOING TO BE STANDING. IT'S GOING TO BE AT LEAST THREE FEET UP OFF THE GROUND, AND IT HAS THE SIDES THAT COME DOWN AND GO UP, AND HAS A MATTRESS IN THERE. THIS WAS NOT A CRIB. I'M CALLING IT A CRIB FOR LACK OF A BETTER WORD; BUT TO ME THEY WERE USING IT AS A CRIB, BUT IT'S ACTUALLY A PLAYPEN OF SOME SORT. THE FLOOR IS NOT A SOLID FLOOR. IT'S GOING TO FOLD UP. IT'S GOING TO BE A PORTABLE PLAYPEN. I DON'T KNOW IF ANYONE KNOWS WHAT I'M TRYING TO EXPLAIN. YOU CAN PICK IT UP, FOLD IT, CARRY IT, AND TAKE IT TO YOUR RELATIVES' HOUSE, OPEN IT UP, AND STICK THE CHILDREN IN THERE.

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A. THOSE ARE ONLY -- THE LEGS ARE I THINK PROBABLY ABOUT SIX INCHES, AND THE SIDES ARE MAYBE TWO FEET IF THAT, YOU KNOW, BECAUSE I'M TALKING; THIS IS JUST A LITTLE PLAYPEN. A CHILD CAN STAND UP AND PUT HIS HANDS ON THE SIDE AND HANG ITS HEAD UP OVER THE CORNER.

Q. AND HE'S THE ONE THAT FELL OUT OF THE PLAYPEN?

A. THAT'S WHAT I WAS TOLD. IF THAT HAPPENED, I CAN'T DISPUTE ONE WAY OR THE OTHER.

Q. AND IT WOULD BE A LONGER FALL FOR HIM THAN THE AVERAGE CHILD BECAUSE OF HIS SIZE?

A. I CAN TELL YOU THAT---

Q. WOULDN'T IT?

A. NO. I CAN'T ANSWER THAT IN ITSELF. ALL I CAN SAY IS THAT HE'S ALLEGED TO HAVE FALLEN OUT OF THAT CRIB, OR OUT OF THAT PLAYPEN.

Q. AND HE WAS A VERY SMALL CHILD?

A. YES; THAT'S CORRECT.

Q. SO A SMALL CHILD FALLS FURTHER AT A SHORT DISTANCE THAN A BIG CHILD?

A. NOT NECESSARILY. THE FALL IS NOT GOING TO BE THE MECHANISM OF THE INJURY. THERE'S GOING TO HAVE TO BE A GREAT FALL FOR THAT LEG TO BE BROKEN THAT I SAW BROKEN.

Q. ARE YOU A SPECIALIST IN BROKEN LEGS?

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A. I'VE BEEN TO THE DOCTORS AND TALKED TO THEM ON THE INJURES; AND THEY'VE DESCRIBED TO ME HOW YOU HAVE TO BREAK A LEG. AND THAT'S WHAT I'M BASING THAT INJURY ON.

Q. SO YOU'RE AN EXPERT ON BROKEN LEGS?

A. NO, SIR, I DID NOT SAY THAT. I SAID I'VE TALKED TO THE DOCTORS, AND THEY'VE TOLD ME THE FORCE NEEDED TO BREAK A LEG IN A CHILD AND WHERE THEY HAVE TO FALL FROM, AND WHAT HAS TO BE USED TO BREAK THAT. AFTER TWENTY YEARS IN LAW ENFORCEMENT, THAT'S WHAT THEY'VE TOLD ME. AND I CONCEDE TO THE BREAKS AND THE TWISTS.

Q. ALL CHILD'S LEGS BREAK AT THE SAME PLACE?

A. I CAN'T SAY THEY BREAK AT THE SAME PLACE, BUT EACH CHILD HAS, YOU KNOW -- THERE'S DIFFERENT THINGS THAT CAUSE DIFFERENT THINGS TO BREAK. EACH OF US HAS BROKEN OUR ARMS AT DIFFERENT TIMES IN OUR LIVES. BUT IT'S HARD TO BREAK A BONE IS WHAT I'VE BEEN TOLD.

Q. THAT'S WHAT YOU'VE BEEN TOLD?

A. THAT'S WHAT THE DOCTOR HAS TOLD ME; ESPECIALLY THAT BONE THERE THAT WAS BROKEN.

Q. BUT YOU DON'T HAVE ANY KNOWLEDGE OF IT YOURSELF? YOU'VE BEEN TOLD THAT?

A. I HAVE TO BASE MY INVESTIGATION ON WHAT THE EXPERT

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IS TELLING ME; WHAT IS USED AND WHAT FORCE IS USED
TO BREAK A BONE.

Q. WE KNOW DIFFERENT PEOPLE BREAK BONES MORE EASILY
THAN OTHER PEOPLE? PEOPLE THAT HAVE DIFFERENT---

MRS. MURPHY: OBJECTION, YOUR HONOR.
HE'S ALREADY TESTIFIED THAT HE'S NOT A MEDICAL
EXPERT AND CAN'T---

MR. DUKES: HE'S GIVING ALL KIND OF
ADVICE.

MRS. MURPHY: HE CAN'T TELL HOW THE---

THE COURT: LET ME HEAR THE QUESTION.
YES, MA'AM, MRS. MURPHY; LET ME HEAR THE QUESTION.
AND DON'T ANSWER IT UNTIL I'VE HAD A CHANCE TO
HANDLE THE OBJECTION. LET ME HEAR FROM YOU, MR.
DUKES.

MR. DUKES: DON'T DIFFERENT PEOPLE'S
BONES BREAK AT DIFFERENT RATES?

THE COURT: OKAY. DIFFERENT PEOPLE'S
BONES BREAK AT DIFFERENT RATES. ALL RIGHT. AND
THE OBJECTION IS?

MRS. MURPHY: YOUR HONOR, HE'S NOT A
MEDICAL EXPERT AS TO TESTIFY HOW DIFFERENT BONES
BREAK.

MR. DUKES: IT'S ALREADY BEEN TESTIFIED

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THE COURT: I'LL ALLOW THAT. YOU MAY
RESPOND TO THAT IF YOU KNOW.

MR. DUKES: NO; I CAN'T ANSWER THAT.

THE COURT: OKAY.

Q. YOU DIDN'T SEE MY CLIENT THAT NIGHT UNTIL HE WAS AT
THE L.E.C.?

A. THAT'S CORRECT; WHEN HE WAS BROUGHT TO THE LAW
ENFORCEMENT COMPLEX WAS THE FIRST TIME I SAW MR.
BURDEN.

Q. HE HAD ALREADY GIVEN A STATEMENT?

A. YES; THAT'S CORRECT.

Q. AND HE GAVE A STATEMENT BEFORE HE WAS ARRESTED
WITHOUT BEING ARRESTED OR ANYTHING; AS PART OF THE
INVESTIGATION?

A. HE GAVE A STATEMENT AT THE SCENE WHERE THE ALLEGED
INCIDENT TOOK PLACE. AND THAT WAS TAKEN AT 240
PIGEON BAY ROAD; YES; THAT'S CORRECT.

Q. AND SO WHEN HE GOT TO THE L.E.C., HE TOLD YOU HE
HAD ALREADY GIVEN A STATEMENT; AND HE DIDN'T FEEL
HE SHOULD GIVE ANOTHER ONE?

A. WELL, WHEN HE GOT TO THE LAW ENFORCEMENT COMPLEX,
HE WAS THEN CLASSIFIED AS A SUSPECT, AND I READ HIM
HIS RIGHTS.

Q. AND THEN HE SAID THAT HE HAD ALREADY GIVEN A

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- A. THAT'S CORRECT. AND HE WENT HOME.
- Q. OKAY. IN '98, THE INCIDENT IN '98 INVOLVING THIS FAMILY; MY CLIENT WASN'T EVEN CHARGED, WAS HE?
- A. CRIMINALLY THERE WAS NOBODY CHARGED IN THAT CASE.
- Q. THERE WAS NO FINDING AGAINST HIM IN '98?
- A. ON THE FAMILY COURT CIVIL SIDE, THERE WAS NO FINDING ON YOUR CLIENT; THAT'S CORRECT.
- Q. BEING AT FAULT. AND, SO, THEN YOU SAW HIM A COUPLE OF DAYS LATER AT THE PROBABLE CAUSE HEARING?
- A. YES, SIR; THAT'S CORRECT.
- Q. AND THAT'S WHEN YOU HAD A WARRANT FOR HIS ARREST?
- A. YES, SIR; THAT'S CORRECT.
- Q. AND YOU TOOK HIM OVER TO THE L.E.C.?
- A. YES, SIR.
- Q. AND THAT'S WHEN YOU SAY HE BLURTED OUT AND SAID THAT I PANICKED?
- A. YES, SIR, THAT'S CORRECT. HE BLURTED OUT SAYING THAT HE LOST CONTROL AND HIT HIS CHILD TWO OR THREE TIMES WITH A SHOE.
- Q. WITH A SHOE. AND YOU HAVEN'T TALKED WITH HIM SINCE THEN?
- A. NO, SIR, I HAVE NOT.
- Q. OKAY.

MR. DUKES: EXCUSE ME JUST ONE MINUTE.

THE COURT: ALL RIGHT SIR

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Q. WHO ALL WAS PRESENT WHEN HE MADE THAT STATEMENT
THAT HE LOST CONTROL?

A. DEPUTY BOTTEN.

Q. HE WAS PRESENT?

A. YES, SIR. AND THERE WERE SOME OTHER PEOPLE AND THE
REGULAR JAIL STAFF; AND I CAN'T TELL YOU WHO WAS --
DEPUTY BOTTEN WAS THE CLOSEST TO ME AT THAT TIME.

Q. AND THAT WAS SAID AT A LOUD PACE?

A. YES, SIR. HE MADE THE STATEMENT THAT HE WANTED TO
TALK TO ME. AND THEN I TURNED TO HIM AND SAID "DO
YOU WANT TO TALK TO ME WITHOUT YOUR ATTORNEY?" AND
THAT'S WHEN THE STATEMENT CAME OUT "I LOST CONTROL
AND HIT HIM WITH A SHOE."

Q. AND YOU THINK OTHER PEOPLE HEARD THAT, TOO?

A. DEPUTY BOTTEN WAS THERE, AND IT WAS THE ONE I NOTED
ON MY NOTES.

Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

MR. DAVIS: MAY IT PLEASE THE COURT, YOUR
HONOR?

THE COURT: YES, SIR, MR. DAVIS;
CROSS-EXAMINATION.

RE-DIRECT EXAMINATION

BY MR. DAVIS:

Q. YOU SAID, MR. MARSHALL, YOU'VE BEEN IN LAW

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A. I'M GOING INTO MY 29TH YEAR.

Q. HOW LONG HAVE YOU BEEN WITH THE DORCHESTER
SHERIFF'S DEPARTMENT?

A. I'M HITTING MY TENTH YEAR NOW.

Q. WHERE WERE YOU AT BEFORE THEN?

A. I STARTED MY CAREER WITH THE CITY OF CHARLESTON.

Q. I ASKED YOU WHERE YOU STARTED, NOW. LISTEN TO MY
QUESTION. I ASKED YOU WHERE WERE YOU AT BEFORE YOU
CAME TO DORCHESTER SHERIFF'S DEPARTMENT?

A. THE BERKELEY COUNTY SHERIFF'S DEPARTMENT.

Q. OKAY. WHEN DID YOU LEAVE THE BERKELEY COUNTY
SHERIFF'S DEPARTMENT?

A. I THINK IT WAS 1993.

Q. HOW LONG WERE YOU WITH THEM?

A. MAYBE A YEAR, OR MAYBE JUST A LITTLE LESS THAN A
YEAR.

Q. 19 WHAT YEAR, SIR?

A. 1993, I THINK. I'D HAVE TO GO BACK AND---

Q. AND BEFORE YOU WERE AT THE BERKELEY COUNTY
SHERIFF'S DEPARTMENT, WHO WERE YOU WITH THEN JUST
BEFORE THE BERKELEY COUNTY SHERIFF'S DEPARTMENT?

A. I WAS WITH THE FOLLY BEACH PUBLIC SAFETY
DEPARTMENT. AND I WAS THE ACTING CHIEF OVER THERE.

Q. SO YOU WERE THE CHIEF OF POLICE FOR FOLLY BEACH?

A. NO, SIR. I WAS ACTING CHIEF ON SEVERAL DIFFERENT

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OCCASIONS. MY ACTUAL RANK OVER THERE WAS JUST PUBLIC SAFETY OFFICER.

Q. BUT YOU FILLED IN THE ROLE AS ACTING CHIEF OF FOLLY BEACH?

A. THAT'S CORRECT.

Q. HOW LONG?

A. WE HAD -- I STAYED THERE APPROXIMATELY SEVEN YEARS. AND DURING THAT TIME, WE HAD -- I THINK THERE WERE FOUR CHIEF CHANGES WHILE I WAS THERE.

Q. OKAY. AND ANY LAW ENFORCEMENT BEFORE FOLLY BEACH?

A. CITY OF CHARLESTON. THAT'S WHAT I WAS GETTING READY TO START OFF.

Q. HOW LONG DID YOU STAY WITH THE CITY OF CHARLESTON?

A. THE CITY OF CHARLESTON; I STARTED MY CAREER AT THE CITY OF CHARLESTON IN 1974. WENT THERE, AND WENT INTO CHARLESTON COUNTY. AND IT WAS CALLED CHARLESTON COUNTY POLICE DEPARTMENT.

Q. YOU USED TO WORK WITH CHIEF GREENBURG?

A. NO, SIR. I WORKED FOR CHIEF CONROY.

Q. OH, CONROY. SO YOU LEFT CHARLESTON WHEN?

A. LET'S SEE. I STARTED IN 1974. I THINK I LEFT CHARLESTON IN 1976; JOINED THE CHARLESTON COUNTY POLICE DEPARTMENT IN 1976; STAYED WITH THEM UNTIL 1983; 1983 I WENT TO FOLLY BEACH; STAYED THERE;

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BERKELEY COUNTY SHERIFF'S DEPARTMENT, AND LEFT
BERKELEY COUNTY, AND HAVE BEEN HERE EVER SINCE.

Q. WERE YOU TERMINATED FROM FOLLY BEACH?

A. NO.

Q. CITY OF CHARLESTON?

A. NO.

Q. BERKELEY COUNTY?

A. I WAS TOLD THAT I WAS NO LONGER NEEDED -- MY
SERVICES WERE NO LONGER NEEDED.

Q. EQUIVALENT OF A TERMINATION?

A. NO. THE SHERIFF -- THIS IS THE RIGHT TO WORK; AND
SHERIFF HAS -- I WORKED AT HIS PLEASURE. AND ANY
TIME HE CAN WALK IN THERE AND TELL ME HE NO LONGER
NEEDS MY SERVICES; AND THAT'S WHAT I WAS TOLD BY
HIS SECOND IN COMMAND, THAT HE NO LONGER NEEDED MY
SERVICES.

Q. THE SHERIFF AT THAT TIME WAS RAY ISGETT?

A. THAT'S CORRECT.

Q. YOU AND I HAVE DEALT BEFORE, HAVE WE NOT?

A. AS IN?

Q. AS IN THIS SAME PARTICULAR CASE IN 1998 WHERE YOU
WERE THE LEAD INVESTIGATING OFFICER IN THIS SAME
MATTER; IS THAT CORRECT?

A. I TALKED TO YOU ON THE PHONE.

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DIDN'T YOU AND I HAVE OCCASION TO ACTUALLY PARTICIPATE IN A PROBABLE CAUSE HEARING IN THIS SAME MATTER WHERE YOU'RE TALKING ABOUT THE FEMUR, THE BROKEN LEG?

A. NO. I NEVER WENT TO ANY OF THE HEARINGS ON THE CHILD. I OPENED UP AN INVESTIGATION AND WAS TOLD ABOUT THE BROKEN BONES AND NEVER WENT TO COURT ONCE.

Q. NEVER WERE AT FAMILY COURT?

A. NO.

Q. NEVER SAW MRS. LOMATTY?

A. NO. ACTUALLY IT WAS G.W. PARKER WHO WAS ORIGINALLY IN CHARGE OF THAT.

Q. YES. NOW, LET'S BACK UP A LITTLE BIT HERE ABOUT WHAT HAPPENED ON NOVEMBER THE THIRD BECAUSE THAT'S WHY WE'RE HERE; ISN'T THAT CORRECT?

A. WE'RE HERE BECAUSE OF AN INJURY ON NOVEMBER THE THIRD; THAT'S CORRECT.

Q. THAT'S RIGHT. NOW, ON NOVEMBER THE THIRD, WOULD IT BE FAIR TO SAY THAT -- CAN WE AGREE ON SOME THINGS? CAN WE AGREE ON, FIRST OF ALL, THAT MS. GADSON WAS NOT AT HOME? CAN WE AGREE ON THAT WHEN THIS INCIDENT OCCURRED?

A. YES; SHE WAS OUT SHOPPING.

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SHOPPING; ISN'T THAT CORRECT?

A. THAT'S CORRECT.

Q. AND YOU AGREE, THEN, THAT THAT'S NOT AN ISSUE. SHE WAS NOT AT HOME?

A. THAT'S CORRECT.

Q. OKAY. NOW, YOU RESPONDED TO THE SUMMERVILLE MEDICAL CENTER AT WHAT TIME?

A. AROUND 8:00, 8:30.

Q. AROUND 8:00; 8:30; SUMMERVILLE MEDICAL CENTER. AND IT'S YOUR TESTIMONY THAT MY CLIENT, MS. GADSON, VOLUNTARILY WENT WITH YOU?

A. THAT'S CORRECT. SHE LEFT FROM THERE, AND WE DROVE TO THE SHERIFF'S DEPARTMENT.

Q. THERE'S NO QUESTION THAT Child [REDACTED] THOUGH, WENT WITH MEDUCARE IN A HELICOPTER TO THE MEDICAL UNIVERSITY; ISN'T THAT CORRECT?

A. THAT'S CORRECT.

Q. CAN YOU GIVE THIS JURY ANY EXPLANATION WHY A MOTHER WOULD BE INCLINED TO WANT TO RIDE WITH YOU WHEN IN FACT HIS CHILD IS GOING TO THE MEDICAL UNIVERSITY IN REFERENCE TO SOME SEVERE INJURIES WHEN THE MOTHER WAS NOT AT HOME?

A. I CAN'T ANSWER THAT.

Q. WELL -- YOU CANNOT ANSWER THAT. DID YOU LEARN THAT THE MOTHER HAD RODE WITH THE EMERGENCY VEHICLE FROM

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THE HOUSE, PIGEON BAY, TO THE SUMMERVILLE MEDICAL CENTER?

A. I LEARNED IT FROM BEING IN HERE. I DID NOT KNOW THAT SHE RODE WITH THE AMBULANCE FROM PIGEON BAY; NO.

Q. BUT IT WAS NO QUESTION THAT SHE WAS AT THE SUMMERVILLE MEDICAL CENTER; IS THAT CORRECT?

A. SHE WAS THERE. THAT'S WHERE I PICKED HER UP FROM; YES, SIR.

Q. OKAY. THAT'S CORRECT. YOU PICKED HER UP. AND WHEN YOU PICKED HER UP, WHEN HER SON WAS HEADED TO CHARLESTON -- THAT'S WHERE THE MEDICAL UNIVERSITY IS LOCATED; RIGHT?

A. YES, SIR.

Q. YOU TOOK -- DEMMING WAY IS ON 378; IS THAT CORRECT?

A. YES, SIR.

Q. 278; THAT'S CORRECT; RIGHT?

A. NO, SIR; IT'S ON HIGHWAY 78.

Q. OH, I'M SORRY, HIGHWAY 78. SOMETIMES IT INTERCHANGES; SOMETIMES IT'S 278, 78; BUT THAT'S OKAY. IT'S ON HIGHWAY 78; THAT'S CORRECT, IS IT NOT?

A. IT'S ON HIGHWAY 78 AND APPROXIMATELY THREE MILES OUTSIDE OF SUMMERVILLE HEADING TOWARDS ST. GEORGE.

O. WELL, CAN WE AGREE ON THIS? THAT IT'S IN THE

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OPPOSITE DIRECTION OF M.U.S.C.?

A. YES, SIR.

Q. OKAY. AND, SO, YOU PICKED HER UP -- USING YOUR WORDS -- AND SHE WENT WITH YOU TO THE LAW ENFORCEMENT CENTER THERE ON 78, HIGHWAY 78?

A. THAT'S CORRECT.

Q. AND WHEN SHE GOT THERE, YOU COMMENCED TO ASK HER WHAT HAPPENED; ISN'T THAT CORRECT?

A. I INQUIRED ON WHERE SHE WAS AT AND WHAT HAPPENED AND WHAT WAS---

Q. MY QUESTION IS YOU COMMENCED TO ASK HER WHAT HAPPENED; ISN'T THAT CORRECT?

A. I ASKED HER WHAT HAPPENED, WHAT WENT ON.

Q. NOW, I WANT TO ASK YOU THIS QUESTION JUST FOR A SIDE ISSUE FOR THE JURY. DO YOU HAVE RECORDING CAPABILITIES THERE AT DEMMING WAY?

A. NOW WE DO; YES.

Q. WHEN? NOVEMBER THE THIRD, YOU DIDN'T?

A. NO, WE DID NOT.

Q. DID YOU HAVE VIDEOTAPING CAPABILITY ON NOVEMBER THE THIRD?

A. NO, WE DID NOT.

Q. BUT NOW YOU DO?

A. YES.

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DOWN TO -- AND I'M GOING TO HAND YOU---

MR. DAVIS: JUDGE, MAY I APPROACH THE
WITNESS?

THE COURT: YOU MAY.

Q. I WANT YOU TO RE-PUBLISH IT. BUT I WANT YOU TO
STOP RIGHT THERE WHERE IT SAYS "TO HELP HIM." AND
YOU DON'T HAVE TO GIVE THAT INTRODUCTION YOU GAVE
THE FIRST TIME. BUT JUST GO RIGHT INTO THE HEART
OF THE STATEMENT.

A. DO YOU WANT THE WHOLE THING READ AGAIN?

Q. NOT THE WHOLE THING. YOU HEARD WHAT I SAID.

A. I KNOW. I'M TALKING ABOUT -- YOU POINTED RIGHT
HERE AT THE THING WHERE MY "X" IS AT. OKAY.

"NOVEMBER THE THIRD, 2001. I, ADRIAN GADSON, WENT
SHOPPING WITH MY MOTHER. THE STORES THAT WE WENT
TO WERE CATOES, WAL-MART, ITS FASHION, SEVEN DOLLAR
STORE, FAMILY DOLLAR. I MADE A PHONE CALL TO MY
HOUSE TO LET THEM KNOW WHERE I WAS AT; WHEN DEAN
TOLD ME TO HURRY UP AND COME HOME BECAUSE -- SHE
WROTE DOWN Child BUT SHE SCRATCHED THROUGH IT;
AND THEN SAID SOMETHING WAS WRONG WITH MY SON,
Child SO ME AND MY MOTHER RUSHED HOME TO SEE
WHAT WAS WRONG. WHEN I GOT THERE, Child WAS
LYING ON THE FLOOR UNRESPONSIVE LIKE HE WAS HAVING

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BEFORE WE GOT THERE. HE TOLD US THAT HE WAS FEEDING THEM AND AFTERWARDS HE WAS GIVING HIM A BATH. DEAN -- AND THEN SHE CRASHED THROUGH "US" AND THEN SAID "DEAN TOLD ME THAT Child WAS WEAK AND COULD BARELY STAND UP AND BUMPED HIS HEAD, AND HE STARTED ACTING LIKE HE COULDN'T BREATHE. SO HE WAS TRYING TO HELP HIM."

Q. NOW, I WANT YOU TO STOP. NOW, THERE'S A REASON I WANT YOU TO STOP THERE BECAUSE YOU HAVE BEEN IN LAW ENFORCEMENT HOW LONG?

A. I TOLD YOU I WAS IN MY 29TH YEAR.

Q. YOUR 29TH YEAR. AND YOU'RE FAMILIAR WITH MIRANDA WARNINGS, ARE YOU NOT?

A. YES, SIR.

Q. AND JUST TO EDUCATE OUR JURORS; WHY DO YOU HAVE MIRANDA WARNINGS?

A. IT'S TO PREVENT SELF-INCRIMINATION.

Q. SELF-INCRIMINATION. NOW, IF WE STOP THIS STATEMENT RIGHT HERE; HAS SHE SAID ANYTHING TO INCRIMINATE HERSELF AT THIS POINT; MS. GADSON?

A. (NO RESPONSE.)

Q. DO YOU WANT ME TO READ IT AGAIN? HAS SHE SAID ANYTHING TO INCRIMINATE HERSELF?

A. NO.

Q. NOT A THING AND YOU KNEW THAT BECAUSE YOU'VE GOT

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29 YEARS OF LAW ENFORCEMENT; ISN'T THAT CORRECT?

A. (NO RESPONSE.)

Q. SIR?

A. I DIDN'T ASK HER ANYTHING TO INCRIMINATE HERSELF.

Q. ALL RIGHT. OKAY.

A. NOT AT THAT POINT.

Q. NOT AT THAT POINT? BUT IT CHANGES. NOW I WANT YOU TO JUST READ THAT FIRST SENTENCE; JUST THE FIRST SENTENCE AFTER SHE STOPPED, BECAUSE UP TO THAT POINT YOU AND I AGREE THAT MY CLIENT HAD NOT MADE ANY INCRIMINATING STATEMENT AT THAT POINT. DO WE AGREE ON THAT, OFFICER MARSHALL?

A. SHE'S WRITING DOWN WHAT WE TALKED ABOUT; YES.

Q. MY QUESTION IS DO YOU AGREE WITH ME?

A. YES.

Q. THANK YOU. NOW, GIVE ME THAT FIRST SENTENCE.

A. SHE SAID "IN THE YEAR OF 1998, Child- [REDACTED] HAD BROKEN HIS LEG BECAUSE I WAS TOLD HE HAD FALLEN FROM A CRIB AND LANDED ON A HARD TOY."

Q. STOP RIGHT THERE. NOW, DETECTIVE MARSHALL, IN ALL DUE FAIRNESS TO YOU AND EVERYBODY INVOLVED, YOU KNEW ABOUT THAT; ISN'T THAT CORRECT? I MEAN, THIS WASN'T NOTHING NEW TO YOU. YOU KNEW ABOUT THIS; ISN'T THAT CORRECT?

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ABOUT IT.

Q. THANK YOU. AND YOU KNEW ABOUT THIS BECAUSE YOU WERE INVOLVED IN 1998; ISN'T THAT CORRECT?

A. YES; THAT'S CORRECT.

Q. AND SO WHEN 1998 CAME UP, DIDN'T IT DAWN ON YOU THEN THAT MY CLIENT MAYBE WAS STEPPING OVER INTO THE AREA OF INCRIMINATING HERSELF?

A. NO, BECAUSE I KNOW SHE DIDN'T BREAK THE LEG OF THE CHILD IN 1998.

Q. YOU KNEW THAT SHE DIDN'T BREAK THE LEG IN 1998; BUT IS IT A CRIME TO CONCEAL KNOWLEDGE ABOUT A CRIME, SIR?

A. NO, SIR. I KNEW THAT SHE WAS NOT INVOLVED IN 1998.

Q. MY QUESTION IS -- LET ME ASK MY QUESTION. ISN'T IT ALSO A CRIME---

MRS. MURPHY: YOUR HONOR, HE'S TRYING TO ANSWER THE QUESTION.

THE COURT: I SUSTAIN IT. LET HIM FINISH HIS ANSWER.

Q. ARE YOU FINISHED?

A. IN 1998, THE EVIDENCE WAS NOT THERE. THERE WAS NOT ENOUGH EVIDENCE TO EVEN SHOW THAT SHE WAS INVOLVED IN A CRIME. I KNEW THAT THAT LEG WAS NOT BROKEN BY HER AND HAD REASON TO BELIEVE IT WAS NOT BROKEN BY

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Q. I COMMEND YOU FOR SEEKING THE TRUTH. BUT YOU AND TRUTH HAVE GOT A FUNNY WAY OF INCRIMINATING PEOPLE; ISN'T THAT CORRECT?

A. I WOULDN'T SAY THAT IT INCRIMINATED HER THERE.

Q. YOU WOULDN'T SAY. BUT THERE'S NO QUESTION ON DECEMBER THE SEVENTH---

A. DECEMBER THE---

Q. DECEMBER THE 7TH, 2001, YOU USED THIS EXACT SAME LANGUAGE TO CAUSE A WARRANT TO BE ISSUED AGAINST HER?

A. SHE WAS ARRESTED ON DECEMBER THE FOURTEENTH IF I'M NOT MISTAKEN.

Q. WELL, I'LL HAND YOU THIS FOR IDENTIFICATION PURPOSES AND ASK IF YOU CAN IDENTIFY IT.

A. I ARRESTED HER ON THE FOURTEENTH.

Q. OKAY. WELL LET'S GO BACK AND PLAY THAT. WHEN DID YOU MAKE THE DECISION IN AN AFFIDAVIT FORM TO TAKE OUT A WARRANT?

A. AFTER I COMPILED THE INFORMATION THROUGH THE INVESTIGATION THAT SHOWED THAT IN 2000 WHERE THE CHILD WAS RETURNED BACK HOME THAT MS. BURDEN, AFTER GETTING THE CHILDREN TURNED BACK INTO HER AND BEING -- AND D.S.S. BEING COMPLETELY OUT OF THE CASE IN 2000, SHE THEN ALLOWED MR. BURDEN BACK INTO THE

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ME IN THE STATEMENT, AND BASED ON INFORMATION I GOT WHEN THE KIDS WERE RETURNED BACK TO HER, WITHIN ABOUT TWO MONTHS AFTER THAT, HER AND MR. BURDEN -- SHE BECAME PREGNANT AND GAVE BIRTH TO THE LITTLE GIRL WHICH IS FIVE MONTHS OLD. IT SHOWS ME THAT SHE ALLOWED MR. BURDEN BACK IN THE HOME, A MAN THAT HAD BROKEN Child LEG. AND BASED ON THAT INFORMATION IS THE REASON WHY I DRAW THIS WARRANT UP AND CHARGED HER WITH UNLAWFUL NEGLECT BECAUSE SHE ALLOWED A MAN THAT HAD BROKE THE CHILD'S LEG WHICH SHE GAVE ME A STATEMENT ON, AND THAT SHE ALLOWED HIM TO HAVE CONTROL OF THE CHILDREN AND THAT Child GOT INJURED AGAIN AND ALMOST DIED..

Q. I ASKED YOU ONE SIMPLE QUESTION. MY QUESTION WAS: WHEN DID YOU SIGN THAT AFFIDAVIT? WHAT DATE DO YOU HAVE ON THERE?

A. DECEMBER THE SEVENTH. SHE WAS ARRESTED ON DECEMBER THE 14TH IF I'M NOT MISTAKEN.

Q. THAT'S CORRECT. DECEMBER THE SEVENTH. BASED ON MY CLIENT'S STATEMENT NOW WHICH YOU'RE SAYING I'D OBJECT TO WHETHER THIS IS VOLUNTARY OR WHETHER YOU HAD A RIGHT, AND THE JUDGE WILL RULE ON THAT ISSUE ABOUT WHETHER SHE WAS IN CUSTODY BECAUSE YOU PICKED HER UP. DO YOU AGREE OR DISAGREE THAT HER RECORDS

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TO HER?

A. NOT ON THE WAY YOU'RE TRYING TO EXPLAIN IT; NO, SIR. I DON'T THINK THAT'S INCRIMINATING TO HER THERE.

Q. DID YOU USE THAT LANGUAGE IN YOUR WARRANT?

A. I'M BASING IT ON EVERYTHING. THE LANGUAGE THAT I USE, AND THE LANGUAGE WHAT I USE IN THERE IS THE WORDING OF THE WARRANT WHERE I GET UP THERE WHERE THE CHILD IS WILLFULLY, UNLAWFULLY, AND FELONIOUSLY AT RISK OF HARM EFFECTING THE CHILD'S LIFE. AND THAT IS JUST GOING---

Q. KEEP ON.

A. AND THAT IS JUST---

Q. CONTINUE ON TO READ ABOUT THE STATEMENT.

A. THAT IS PART OF THE ACTUAL ELEMENT OF THE LAW, THE WAY THE LAW IS WRITTEN. I PUT IN HERE THAT SHE DID WILLFULLY AND UNLAWFULLY AND FELONIOUSLY AS A MOTHER OF A FIVE YEAR OLD VICTIM DID PLACE THE CHILD AT REASONABLE RISK AND HARM AFFECTING THE CHILD'S LIFE, PHYSICAL OR MENTAL OR SAFETY BY KNOWING THAT -- EXCUSE ME; I DROPPED DOWN -- BY ALLOWING THE CHILD'S FATHER, WILLIAM BURDEN, BACK INTO THE HOUSE. AND I'M SAYING BACK INTO THE HOUSE AS FROM THE 2000.

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LEG? IT'S IN RIGHT---

A. I DIDN'T. I STOPPED RIGHT HERE WHEN I SAID THE FACT THAT THE LIFE, PHYSICAL AND MENTAL HEALTH AND SAFETY BY ALLOWING THE CHILD'S FATHER -- QUOTATION MARKS -- "WILLIAM DEAN BURDEN BACK INTO THE HOUSE KNOWING THAT HE WAS THE PERSON WHO WAS IN CHARGE OF CARING FOR THE VICTIM ON OCTOBER THE 12TH, 1998 WHEN THE VICTIM RECEIVED A BROKEN FEMUR BONE THAT REQUIRED THE CHILD TO BE TAKEN INTO EMERGENCY PROTECTIVE CUSTODY."

Q. STOP RIGHT THERE. THAT'S MY POINT. WHEN YOU TOOK THIS STATEMENT FROM HER ON NOVEMBER THE THIRD AROUND -- YOU SAID 10/17 AT NIGHT -- AND YOU GET THIS CHANGE AND START TALKING ABOUT OCTOBER THE 12TH, 1998 -- DO YOU AGREE WITH ME? OCTOBER THE 12TH, 1998?

A. I ASKED HER ABOUT WHAT HAPPENED IN 1998 IS HOW I ASKED THE QUESTION.

Q. ABOUT THE BROKEN FEMUR?

A. YES, SIR.

Q. SOMETHING THAT YOU HAD PRIOR KNOWLEDGE ABOUT?

A. THAT CORRECT'S.

Q. YOU HAD SOPHISTICATION IN REFERENCE TO LEGAL KNOWLEDGE COMPARED TO MY CLIENT, 29 YEARS EXPERIENCE. YOU KNEW THE SIGNIFICANCE OF GOING

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FURTHER, SIR, BECAUSE -- I REITERATE THE QUESTION. THERE'S NO QUESTION THAT THE CHILD HAD A BROKEN FEMUR AT THIS TIME, IS IT? AND SHE WASN'T AT HOME; ISN'T THAT TRUE?

A. THE CHILD DIDN'T HAVE A BROKEN THIS TIME IN 2001. THE CHILD HAD A SUBDURAL HEMATOMA.

Q. MY QUESTION CAN BE ANSWERED YES OR NO. THAT'S MY POINT. IT WAS NO QUESTION THAT THE CHILD DIDN'T HAVE A BROKEN FEMUR AT THIS TIME; ISN'T THAT CORRECT?

A. I MISUNDERSTOOD YOU... YOU'RE ASKING ME DID THE CHILD HAVE A BROKEN BONE THIS TIME. NO; THE CHILD DID NOT HAVE A BROKEN BONE THIS TIME.

Q. THAT'S MY POINT. SO THE ONLY POINT, OFFICER, FOR YOU REACHING TO 1998 WITH YOUR SOPHISTICATION AS AN OFFICER IS THAT YOU KNEW AT THAT POINT THAT SHE WAS INCRIMINATING HERSELF; ISN'T THAT CORRECT?

A. NO, SIR, SHE WASN'T INCRIMINATING HERSELF.

Q. AND I ASK YOU THIS POINT. IS IT---

A. I WAS ASKING HER THE TRUTH.

Q. OKAY; GOOD. THE POINT REMAINS THE SOLICITOR POINTED OUT THAT THERE'S ONLY ONE WITNESS ON THIS PIECE OF PAPER. ISN'T THERE A REQUIREMENT, OR ISN'T THERE A SPOT FOR TWO WITNESSES TO BE LISTED ON THIS DOCUMENT?

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A. THERE IS A SPOT FOR TWO, BUT THAT DOESN'T MEAN WE HAVE TO PUT TWO THERE.

Q. MY QUESTION AGAIN; DID YOU GIVE HER ANY MIRANDA WARNINGS AT THAT POINT WHEN YOU STARTED GOING INTO 1998?

A. SHE WAS NOT A SUSPECT. SHE WAS THERE AS A WITNESS.

Q. THE QUESTION WILL BE ANSWERED YES OR NO; THEN YOU CAN EXPLAIN IT.

A. NO, IT DID NOT. I'M TELLING YOU SHE WAS NOT A SUSPECT.

Q. ALL RIGHT; YOU DID NOT. EVEN THOUGH, OFFICER, YOU HAD PRIOR KNOWLEDGE, THOUGH, WHICH IS DIFFERENT FROM WHAT SOME OTHER OFFICERS MAY HAVE SAID. THERE IS NO QUESTION AT THIS POINT YOU HAD PRIOR KNOWLEDGE OF HER WHEREABOUTS, OR KNOWLEDGE AS OF OCTOBER THE 12TH, 1998; ISN'T THAT CORRECT?

A. NO; I HAD NO PRIOR KNOWLEDGE WHERE SHE WAS AT IN OCTOBER OF 1998.

Q. MY POINT IS YOU KNEW ABOUT HER INVOLVEMENT; AND YOU KNEW ABOUT THE INCIDENT THAT OCCURRED ON OCTOBER THE TWELFTH, 1998; ISN'T THAT CORRECT?

A. I KNOW THAT THE CHILD HAD A BROKEN LEG. I DID NOT KNOW WHO BROKE THE CHILD'S LEG IN 1998. I SUSPECTED THAT WILLIAM BURDEN BROKE THE CHILD'S

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Q. THANK YOU. THANK YOU VERY MUCH, DETECTIVE MARSHALL. AND BASED ON THAT SUSPICION, YOU CONTINUED TO INQUIRE OF MS. GADSON ABOUT OCTOBER THE TWELFTH, 1998; ISN'T THAT CORRECT?

A. I ASKED HER WHAT HAPPENED.

Q. THAT'S CORRECT. NOW, DON'T YOU BELIEVE IN 29 YEARS OF LAW EXPERIENCE, AT THAT POINT IT WAS CRITICAL FOR HER TO HAVE SOME LEGAL REPRESENTATION?

MRS. MURPHY: OBJECTION, YOUR HONOR. HE'S ASKED AND ANSWERED THAT THREE TIMES NOW.

THE COURT: I'LL ALLOW IT.

Q. SIR?

A. SHE WAS NOT A SUSPECT; AND I WAS NOT INQUIRING IF SHE DID ANYTHING. I ASKED HER WHERE SHE WAS AT BECAUSE I DID NOT BELIEVE SHE WAS IN THE HOME IN 1998. SHE TOLD ME THE TRUTH AND TOLD ME SHE WAS WORKING WHICH PUTS US BACK TO WILLIAM BURDEN WHO WAS THE ONE INSIDE THE HOUSE IN 1998 WHEN THE CHILD WAS INJURED.

Q. NOW, BASED ON WHAT INFORMATION YOU RECEIVED BECAUSE YOU THINK IT WAS MORE IMPORTANT FOR MS. BURDEN TO BE WITH YOU AT THE SUMMERVILLE LAW ENFORCEMENT CENTER THAN FOR HER TO BE WITH HER CHILD AT M.U.S.C. BASED ON YOUR PRIOR KNOWLEDGE THAT SHE HAD

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CHILD?

A. YOU'RE ASKING ME IF I THINK IT'S MORE IMPORTANT?

Q. YES?

A. I HAD TO FIND OUT WHAT HAPPENED. AND THERE WAS A CHILD THAT APPEARED TO BE DEAD TO ME WHEN I WALKED IN THERE. SO I NEEDED TO CONDUCT MY INVESTIGATION. AND I HAD TO ACT ON THINGS THAT I HAD TO DO. SO I DID WHAT I THOUGHT WAS NECESSARY. AND I WENT AND ASKED THE WITNESS, THE ONLY ONE THAT WAS POSSIBLY THERE OR KNEW SOME INFORMATION.

Q. POSSIBLY THAT YOU KNEW THAT SHE WAS NOT AT HOME WHEN THIS HAPPENED. YOU KNEW THAT. YOU KNEW SHE WAS NOT AT HOME.

A. I HAD CONFIRMED THAT; AND THAT'S WHAT SHE TOLD ME. SO I GOT THAT FROM HER.

Q. THAT'S CORRECT. YOU KNEW THAT OFFICER BOTTEN HAD ALREADY SHARED WITH YOU THAT THE MOTHER WAS NOT AT HOME WHEN THIS HAPPENED?

A. THAT'S CORRECT.

Q. SO THEREFORE, OFFICER MARSHALL, DETECTIVE MARSHALL---

MRS. MURPHY: YOUR HONOR, HE CUT HIM OFF. HE'S SAYING THAT'S CORRECT; AND HE ISN'T---

THE COURT: ALL RIGHT, GENTLEMEN. LET'S TRY THIS ONCE MORE. THIS IS THE WAY WE'RE GOING TO

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1 PROCEED. MR. DAVIS IS GOING TO ASK A QUESTION. IF
2 IT IS A YES OR NO QUESTION, DETECTIVE MARSHALL, YOU
3 MUST ANSWER IT YES OR NO IF YOU CAN ANSWER IT YES
4 OR NO.

5 MR. DAVIS: YES, MA'AM.

6 THE COURT: YOU MAY EXPLAIN HER ANSWER
7 BRIEFLY, BUT YOU MUST ANSWER THE QUESTION YES OR
8 NO. MR. DAVIS, YOU CANNOT CUT HIM OFF.

9 MR. DAVIS: I WON'T, JUDGE.

10 THE COURT: IF YOU FEEL HE IS NOT BEING
11 RESPONSIVE, DIRECT THAT TO ME.

12 MR. DAVIS: THANK YOU, JUDGE.

13 THE COURT: THANK YOU. YOU MAY PROCEED.

14 Q. YOU KNEW THROUGH OFFICER BOTTEN THAT MS. GADSON WAS
15 NOT PRESENT WHEN THIS INCIDENT OCCURRED?

16 A. HE GAVE ME A SYNOPSIS AND TOLD ME; AND I ASKED HER
17 LATER ON IF SHE WAS THERE OR NOT.

18 MR. DAVIS: MY QUESTION TO BE ANSWERED,
19 JUDGE; AND THIS WILL BE IT.

20 THE COURT: DIRECTED TO ME?

21 MR. DAVIS: THAT'S CORRECT.

22 THE COURT: DETECTIVE MARSHALL, THAT WAS
23 A YES OR NO QUESTION. YOU MUST ANSWER IT YES OR
24 NO. AND THEN YOU CERTAINLY MAY EXPLAIN YOUR
25 ANSWER. BUT PLEASE ANSWER IT YES OR NO. THANK

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1. YOU. YOU MAY PROCEED.

2. Q. AND THE REASON YOU KNEW IS BECAUSE IF WE ACCEPT
3. OFFICER BOTTEN'S TESTIMONY, Y'ALL HAD
4. COMMUNICATIONS OVER FIVE OR TEN DIFFERENT TIMES
5. TOGETHER; ISN'T THAT CORRECT?

6. A. YES.

7. Q. AND THIS COMMUNICATION IS GOING ON WHILE MY CLIENT,
8. MS. GADSON, IS AT THE SUMMERVILLE LAW ENFORCEMENT
9. CENTER; ISN'T THAT CORRECT?

10. A. THAT'S CORRECT.

11. Q. AND BOTTEN IS IN THE HOME; ISN'T THAT CORRECT?

12. A. THAT'S CORRECT.

13. Q. AND SO AT SOME POINT AND TIME YOU HAD SUFFICIENT
14. INFORMATION TO KNOW THAT SHE WAS NOT AT HOME WHEN
15. THIS INCIDENT OCCURRED; ISN'T THAT CORRECT?

16. A. I WOULD SAY YES, I HAD IT AFTER I GOT DOWN TO THE
17. STATION.

18. Q. IT'S IMPORTANT FOR YOU TO SAY AFTER YOU GOT TO THE
19. STATION BECAUSE THEN THAT KIND OF GIVES YOU
20. JUSTIFICATION OF WHY MY CLIENT WASN'T ALLOWED TO GO
21. TO M.U.S.C.?

22. MRS. MURPHY: OBJECTION. HE'S
23. TESTIFYING. IS THERE A QUESTION IN THERE
24. SOMEWHERE?

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1 MR. DAVIS: OKAY, JUDGE. I'LL RE-PHRASE
2 THE QUESTION.

3 THE COURT: THANK YOU. END IT WITH A
4 QUESTION MARK. THERE'S NO QUESTION.

5 MR. MARSHALL: OH, OKAY. I THOUGHT THERE
6 WAS.

7 THE COURT: THERE'S NO QUESTION POSED AT
8 THIS POINT. THERE MAY BE IN A MOMENT.

9 Q. YOU SAID THAT THE DORCHESTER COUNTY SHERIFF'S
10 DEPARTMENT HAS A POLICY THAT IF YOU'VE GOT A FEMALE
11 IN THE VEHICLE, YOU'VE GOT TO CALL. WHY IS
12 NECESSARY?

13 A. TO GIVE YOUR MILEAGE AND THE DATE AND TIME OF
14 DOCUMENT SO THAT NOBODY CAN COME BACK AND SAY THAT
15 SOMETHING HAPPENED ON THE WAY THERE.

16 Q. WELL, YOU MEAN TO SAY THAT IF HE TAKES LONGER THAN
17 FIVE MINUTES OR TEN MINUTES, THEN TIME CAN SUGGEST
18 WHAT INACTION OR ACTION THAT WAS DONE BY AN
19 OFFICER?

20 A. IT'S SAFETY FOR BOTH PARTIES; THE OFFICER AS WELL
21 AS THE PERSON RIDING IN THE CAR.

22 Q. ISN'T IT A BETTER PROCEDURE IN SOME LAW ENFORCEMENT
23 DEPARTMENT TO HAVE A FEMALE ACCOMPANY THE FEMALE
24 WHEN YOU'RE TRANSPORTING A FEMALE SUSPECT, WITNESS,

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1 A. NOT NECESSARILY. WE'RE PROFESSIONALS; SO WE CAN
2 TRANSPORT A MALE AND A FEMALE. IN FACT FEMALES
3 TRANSPORT MALES. IT'S JUST CUSTOMARY FOR

4 PROTECTION FOR BOTH PARTIES TO GIVE OUT THE
5 MILEAGE. AND SHE DOCUMENTS OUR TIME -- MEANING,
6 SHE, THE DISPATCHER -- DOCUMENTS OUR TIME AND THE
7 ENDING MILEAGE AND THEN THE TIME WE GET THERE.

8 Q. AND YOU DON'T HAVE A HIGH REGARD OF MY CLIENT, MS.
9 GADSON, IN REFERENCE TO THE POINT THAT SHE WENT
10 BACK WITH THIS MAN AND HAD ANOTHER CHILD WITH HIM?

11 A. DO I DISAPPROVE OF THAT?

12 MRS. MURPHY: OBJECTION, YOUR HONOR.
13 WHAT HIS REGARD IS IN COMPLETELY IRRELEVANT TO THE
14 CASE.

15 THE COURT: OVERRULED. YOU MAY PROCEED.

16 A. I DON'T HAVE A REGARD EITHER WAY. IF SHE WENT BACK
17 WITH THIS MAN, THEN THAT'S HER RIGHT TO PERFECTLY
18 MOVE IN WITH HIM.

19 Q. WELL, YOU SEEM TO SUGGEST THAT HE HAD A FIVE MONTH
20 OLD CHILD LIKE SOMETHING WAS WRONG THAT SHE WENT
21 BACK AND HAD A CHILD WITH THIS -- SHE WAS SINGLE,
22 IS SHE NOT?

23 A. I WAS STATING IT TO SHOW YOU THAT SHE LET HIM BACK
24 INSIDE THE HOUSE AFTER SHE KNEW THAT THE GENTLEMAN
25 HAD BROKEN HER PREVIOUS CHILD'S LEG. AND THAT'S

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1 WHERE THE UNLAWFUL NEGLECT COMES FROM.

2 Q. WAS THERE ANY RESTRAINING ORDER THAT PREVENTED HER
3 FROM REUNIFICATION WITH THE BIOLOGICAL FATHER OF
4 HER CHILDREN?

5 A. NO, SIR.

6 Q. OKAY. AND THERE'S NO QUESTION THAT ACCORDING TO
7 YOUR RECORDS, FROM JUNE THE EIGHTH, 2000 -- THAT'S
8 WHEN YOU SAY SHE GOT THE CHILDREN BACK; RIGHT?

9 A. THAT'S WHAT THEY GAVE ME FROM THE---

10 Q. THAT'S WHAT YOU TESTIFIED TO---

11 A. MY INVESTIGATION TURNED THAT UP; YES, IT DID.

12 Q. THAT'S WHAT YOU TESTIFIED TO. SO THERE'S NO
13 QUESTION THAT FROM JUNE THE 8TH, 2000, UNTIL
14 NOVEMBER THE THIRD, 2001, THE DORCHESTER SHERIFF'S
15 DEPARTMENT IS NOT ACTIVELY INVOLVED WITH THIS
16 FAMILY IN ANY FORM OR FASHION?

17 A. ARE YOU ASKING ME DID I DO ANYTHING?

18 Q. FROM JUNE THE EIGHTH, 2000 TO NOVEMBER THE THIRD,
19 2001, IS THERE ANY INDICIA THAT THE DORCHESTER
20 SHERIFF'S DEPARTMENT OR ANYONE ASSOCIATED THERETO
21 HAD TO RESPOND TO THE RESIDENCY THERE INVOLVING MS.
22 ADRIAN GADSON?

23 A. I DIDN'T RESPOND THERE. AND I HAD NO KNOWLEDGE IT
24 WAS BACK THERE UNTIL THIS INVESTIGATION.

25 Q. WELL, I KNEW YOU DID A THOROUGH INVESTIGATION,

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- 1 DETECTIVE MARSHALL. AND IN YOUR RECORDS, DO YOU
2 HAVE ANYTHING IN YOUR RECORDS SAYING THAT THESE
3 CHILDREN WERE ABUSED OR NEGLECTED OR PUT IN A
4 FOSTER HOME BETWEEN JUNE THE 8TH, 2000, AND BETWEEN
5 NOVEMBER THE, 2001?
- 6 A. I DID NO INVESTIGATION.
- 7 Q. ANYBODY IN THE SHERIFF'S DEPARTMENT? YOU WERE
8 SECOND IN COMMAND WERE YOU NOT, DETECTIVE?
- 9 A. THAT'S WHAT I'M TRYING TO EXPLAIN TO YOU. I DID NO
10 INVESTIGATION. I WOULD HAVE GOTTEN THE
11 INVESTIGATION. I DID NO INVESTIGATION FROM THERE;
12 AND I GOT NOTHING FROM D.S.S. TO INDICATE ANYTHING.
- 13 Q. SO THAT'S A NO ANSWER?
- 14 A. YES.
- 15 Q. OKAY. NOW, DOES MS. ADRIAN GADSON HAVE ANY
16 CRIMINAL RECORD?
- 17 A. I THINK I RAN A RAP SHEET, OR TRIED TO RUN ONE, AND
18 THERE WAS NOTHING. I'D HAVE TO LOOK BACK THROUGH
19 THERE; BUT I THINK IT'S NO.
- 20 Q. YOU TRIED TO RUN ONE?
- 21 A. I DON'T REMEMBER -- I'M GOING TO TELL YOU RIGHT
22 NOW. HOLD ON.
- 23 Q. BUT I'M CONCERNED WHY YOU HAVE TO TRY TO DO
24 SOMETHING.

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1 COMPUTER, AND IF IT WAS WORKING, IT WORKED; IF IT
2 DIDN'T, IT DIDN'T.

3 Q. SO YOU WERE STOPPED AND DOING A CHECK AGAIN? IF IT
4 DIDN'T WORK THE FIRST TIME, YOU WERE STOPPED, SIR?

5 A. I'M TRYING TO TELL YOU---

6 Q. MY ANSWER IS IF IT DIDN'T WORK THE FIRST TIME---

7 A. IF IT---

8 Q. --AND IT---

9 THE COURT: GENTLEMEN. LADIES AND
10 GENTLEMEN, I'M GOING TO ASK YOU TO PLEASE STEP TO
11 YOUR JURY ROOM. THIS IS A GOOD TIME FOR OUR BREAK.
12 I'M GOING TO ASK THAT YOU DO NOT DISCUSS THIS
13 MATTER OR ALLOW ANYONE TO DISCUSS IT WITH YOU.
14 LET'S TAKE OUR AFTERNOON BREAK. LEAVE YOUR
15 NOTEBOOKS, PLEASE, IN YOUR CHAIR. THANK YOU.

16 (AT THIS TIME JURY RETIRES TO JURY ROOM FOR A SHORT
17 BREAK.)

18 THE COURT: ALL RIGHT. WHAT IS THAT
19 WONDERFUL LINE FROM THAT MOVIE? I FEEL WE ARE
20 HAVING A FAILURE TO COMMUNICATE. LET ME
21 JUST REITERATE MY RULING EARLIER. AND I'M NOT
22 GOING TO DO IT AGAIN. BUT I AM GOING TO DO IT THIS
23 TIME; AND THAT IS GENTLEMEN, YOU'RE BOTH STRONG
24 WILLED. THIS IS HOW WE'RE GOING TO PROCEED. SO

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1 QUESTION. MR. DAVIS HAS A RIGHT TO ASK A
2 QUESTION. IF THERE IS AN OBJECTION TO THE
3 QUESTION, IF HE'S NOT ASKING AN APPROPRIATE
4 QUESTION, MRS. MURPHY IS WELL ABLE TO OBJECT TO THE
5 QUESTION. ONCE THE QUESTION IS ASKED, IF IT IS A
6 YES OR NO ANSWER; YOU WILL ANSWER IT YES OR NO IF
7 IT HAS A YES OR NO ANSWER. IF YOU DO NOT KNOW THE
8 ANSWER, SAY "I DON'T KNOW." NOW, YOU MAY GIVE A
9 SHORT EXPLANATION OF YOUR ANSWER. IF HE CHOOSES TO
10 GIVE A SHORT EXPLANATION OF HIS ANSWER, IF YOU DO
11 NOT THINK THAT IT IS RESPONSIVE; "OBJECTION, YOUR
12 HONOR, WITNESS IS NOT BEING RESPONSIVE." ENOUGH
13 ALREADY WITH THE DIALOGUE, THE SIDE BAR, IF YOU
14 WILL, BETWEEN THE TWO OF YOU. ARE Y'ALL WITH ME?

15 MR. DAVIS: I'M WITH YOU.

16 THE COURT: THANK YOU SO MUCH. AND IT
17 ALSO GAVE US A TERRIFIC OPPORTUNITY TO TAKE OUR
18 AFTERNOON BREAK. SO LET US DO THE SAME. TERRIFIC.
19 I KNOW YOU KNOW NOT TO TALK ABOUT YOUR TESTIMONY.

20 MR. MARSHALL: YES, MA'AM.

21 MR. DAVIS: YOUR HONOR, IF I COULD ASK
22 THAT HE NOT HAVE ANY CONVERSATION WITH THE
23 SOLICITOR.

24 THE COURT: WE JUST TALKED ABOUT THAT;
25 DON'T TALK ABOUT HIS TESTIMONY.

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1 MR. MARSHALL: I'LL JUST STAY RIGHT HERE.

2 THE COURT: NO; YOU CAN GO GET SOMETHING
3 TO DRINK, GO TO THE BATHROOM. YOU CAN DO ALL THOSE
4 THINGS.

5 (BRIEF RECESS.)

6 -----
7 THE COURT: ANYTHING BEFORE WE BRING THE
8 JURY OUT?

9 MRS. MURPHY: NOT FROM THE STATE.

10 THE COURT: VERY WELL. LET US HAVE THE
11 JURY.

12 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

13 THE COURT: ALL RIGHT, MR. DAVIS, YOU MAY
14 CONTINUE.

15 MR. DAVIS: THANK YOU, YOUR HONOR

16 CONTINUED RE-DIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. DETECTIVE MARSHALL, YOU WERE CHECKING ON YOUR
19 N.C.I.C. TO SEE WHETHER MY CLIENT HAD ANY CRIMINAL
20 RECORD.

21 A. YES. AND I SAID I COULDN'T REMEMBER IF I DID. AND
22 I DID RUN IT.

23 Q. AND THE ANSWER TO THE QUESTION IS?

24 A. SHE DOESN'T HAVE A CRIMINAL RECORD.

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- 1 ABLE TO CALL YOUR DISPATCHER OR WHATEVER TO LET
2 THEM KNOW THAT YOU HAD A FEMALE IN YOUR POSSESSION,
3 AND THEREFORE THEY WOULD KNOW WHAT TIME IT TOOK TO
4 TRAVEL; ISN'T THAT CORRECT?
- 5 A. THAT'S OUR STANDARD TO CALL IN; YES.
- 6 Q. WHAT TIME DO YOUR RECORDS REFLECT THAT YOU CALLED
7 IN?
- 8 A. HOLD ON JUST A MINUTE. (WITNESS REVIEWS RECORDS.)
9 GIVE ME A MINUTE. AT 2128 WHICH IS 28 MINUTES
10 AFTER.
- 11 Q. YES, SIR; THANK YOU. GIVE US REGULAR TIME IF YOU
12 CAN.
- 13 A. IT WAS 28 MINUTES AFTER NINE.
- 14 Q. 28 MINUTES AFTER NINE. 9:28. THAT'S WHEN YOU
15 DEPARTED FROM THE SUMMERVILLE MEDICAL CENTER?
- 16 A. THAT'S CORRECT.
- 17 Q. AND WHAT TIME DID YOU ARRIVE AT 212 DEMMING WAY
18 WHICH IS LOCATED ON HIGHWAY 78?
- 19 A. THE TIME DISPATCHED ON HERE IS 2143 WHICH IS ABOUT
20 -- I'D SAY 15 MINUTES UNTIL NINE -- I MEAN, 15
21 MINUTES UNTIL TEN.
- 22 Q. SO IT'S FAIR TO SAY 9:45?
- 23 A. YES; THAT WILL BE FINE.
- 24 Q. OKAY. NOW, DO YOU HAVE ANY RECOLLECTION OF WHEN MY
25 CLIENT LEFT THE SUMMERVILLE LAW ENFORCEMENT CENTER?

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1 A. NO. IT WAS SOME TIME AFTER TWELVE, I THINK. I
2 CAN'T SWEAR TO THAT.

3 Q. SOME TIME AFTER TWELVE, ISN'T THAT CORRECT? BUT IT
4 COULD BE 12:30; IT COULD BE 1:30?

5 A. I'M JUST GOING TO HAVE TO SAY SOME TIME AFTER
6 TWELVE.

7 Q. OKAY. WE'LL SPLIT THE DIFFERENCE THEN; 12:30.
8 NOW, THERE'S NO QUESTION THAT DURING THAT TIME
9 FRAME FROM 9:28 TO 12:30, ADRIAN GADSON IS IN AN
10 INTERVIEW ROOM WITH YOU?

11 A. YES; SHE'S IN THERE.

12 Q. NOW, LET'S GO BACK TO THAT INTERVIEWING ROOM. HOW
13 WOULD YOU DESCRIBE HER DEMEANOR?

14 A. JUST CALM; SITTING THERE TALKING.

15 Q. DESPITE THE FACT -- IT'S A QUESTION -- DESPITE THE
16 FACT THAT HER CHILD IS IN ROUTE TO M.U.S.C., SHE'S
17 CALM?

18 A. YES.

19 Q. OKAY. DID SHE APPEAR TO BE UPSET?

20 A. NO.

21 Q. DISTRAUGHT?

22 A. NO.

23 Q. VISIBLY UPSET?

24 A. NO.

25 Q. NEVER TELL YOU THAT SHE WANTED TO INQUIRE ABOUT THE

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1 CONDITION OF HER CHILD?

2 A. NEVER ONCE DID SHE INQUIRE ABOUT IT.

3 Q. AND YOU NEVER GAVE HER ANY APPRISALS OR UPDATE ON
4 HER CHILD?

5 A. I CAN'T ANSWER IT. I CAN'T REMEMBER RIGHT NOW IF I
6 DID OR NOT.

7 Q. BUT YOU CAN CLEARLY RECALL THAT SHE DIDN'T ASK
8 ANYTHING ABOUT HER CHILD?

9 A. YES; SHE NEVER ASKED ABOUT HER CHILD.

10 Q. ISN'T IT THE TRUTH, MARSHALL, THAT SHE DONE HER
11 DARDEST (PHONETICALLY SPELLED) TO GET AWAY FROM
12 YOU? ISN'T THAT THE TRUTH?

13 MRS. MURPHY: OBJECTION, YOUR HONOR.

14 MR. DAVIS: IT'S CROSS-EXAMINATION, YOUR
15 HONOR.

16 THE COURT: REPHRASE YOUR QUESTION.

17 Q. ISN'T IT THE TRUTH THAT IN AN EFFORT TO GET TO HER
18 CHILD, SHE WROTE THAT STATEMENT?

19 A. NO.

20 Q. DID YOU PROVIDE HER WITH TRANSPORTATION BACK TO
21 M.U.S.C., SIR?

22 A. NOT THERE. WE TOOK HER HOME.

23 Q. YOU TOOK HER HOME?

24 A. I SAID "WE" MEANING THE SHERIFF'S DEPARTMENT TOOK

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1. Q. YOU THINK THAT'S WHAT HAPPENED. NOW, LOOK ON YOUR
2 DISPATCH LOG BECAUSE ANY TIME A FEMALE RIDES IN
3 YOUR VEHICLE, YOU'VE GOT TO TELL THEM. SO CHECK
4 YOUR RECORDS -- WAIT A MINUTE -- CHECK YOUR RECORDS
5 AND SEE AT ANY TIME WHETHER YOU TRANSPORTED THIS
6 YOUNG LADY BACK HOME, TO SUMMERVILLE MEDICAL
7 CENTER, OR M.U.S.C.

8 A. I TOLD YOU, I DID NOT TRANSPORT HER BACK HOME.

9 Q. WAS SHE TRANSPORTED AT YOUR DIRECTION SINCE YOU
10 WERE SECOND IN COMMAND IN DETECTIVE?

11 A. I CAN'T ANSWER THAT. I HONESTLY DON'T REMEMBER IF
12 WE GAVE HER A RIDE HOME OR NOT. I WOULD ASSUME WE
13 DID.

14 Q. YOU WOULD ASSUME YOU DID? WELL, OFFICER, I BEG TO
15 DIFFER. ISN'T IT A FACT THAT SHE DID NOT RECEIVE A
16 RIDE BACK HOME?

17 A. I CAN'T ANSWER THAT.

18 Q. ISN'T IT A FACT THAT SHE STOOD ON THE OUTSIDE OF
19 212 DEMMING WAY AWAITING---

20 MR. DAVIS: OBJECTION, YOUR HONOR. HE'S
21 TESTIFYING.

22 THE COURT: LET ME HEAR THE QUESTION.

23 MR. DAVIS: I SAID ISN'T IT A FACT. HE
24 CAN SAY NO OR YES.

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1 OUTSIDE PAST 12:30, 1:00 O'CLOCK WAITING ON A RIDE
2 BACK HOME? ISN'T THAT THE TRUTH?

3 A. I CAN'T ANSWER THAT.

4 Q. YOU DON'T RECALL SEEING HER ON THE OUTSIDE?

5 A. NO, SIR.

6 Q. THE TRUTH OF THE MATTER, THOUGH, IS THAT OFFICER
7 BUNTON BRINGS MR. GADSON TO THE SUMMERVILLE POLICE
8 DEPARTMENT SOME TIME AFTER 12:30; ISN'T THAT
9 CORRECT?

10 A. IT WOULD -- ACCORDING TO THE MIRANDA WARNINGS, IT
11 HAD BEEN ABOUT -- I THINK THE MIRANDA WARNING SAYS
12 1:47.

13 Q. AT NIGHT?

14 A. 1:47 A.M. IN THE MORNING; YES; NIGHT TIME.

15 Q. AND WHAT WE'RE TALKING ABOUT IN REFERENCE TO MY
16 QUESTION, THEN THAT'S THE TRUTH THAT IN FACT
17 OFFICER BUNTON THEN BROUGHT ADRIAN GADSON UP TO 212
18 DEMMING WAY ABOUT 1:40 SOMETHING THAT MORNING?

19 A. NOT ADRIAN GADSON.

20 Q. NOT ADRIAN GADSON. YOU KNOW WHAT I MEAN. MR.
21 BURDEN?

22 A. MR. BURDEN; YES.

23 Q. YOU WERE STILL THERE, SIR?

24 A. YES, SIR.

25 Q. DO YOU RECALL WHETHER ADRIAN GADSON WAS STILL

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1 THERE, ON THE OTHER SIDE, OR THERE ABOUT?

2 A. AS I TOLD YOU BEFORE, I CAN'T ANSWER THAT. I WAS
3 UPSTAIRS.

4 Q. THE TRUTH OF THE MATTER, OFFICER MARSHALL, YOU HAD
5 WHAT YOU WANTED, AND YOU DIDN'T HAVE NO FURTHER
6 NEED FOR MS. GADSON; ISN'T THAT THE TRUTH?

7 A. NO, SIR.

8 Q. I'M GOING TO HAND YOU THIS.

9 MR. DAVIS: AND I WANT THIS MARKED JUST
10 FOR IDENTIFICATION PURPOSES RIGHT NOW.

11 DEFENDANT'S EXHIBIT NO. 1
12 MARKED FOR IDENTIFICATION

13 MR. DAVIS: JUDGE, I'LL SHARE THIS WITH
14 HER.

15 MRS. MURPHY: I HAVEN'T SEEN IT, YOUR
16 HONOR.

17 MR. DAVIS: WELL, YOU SAW IT IN THE
18 JACKSON VS. DINNO, BUT I'LL SHOW YOU AGAIN.

19 (AT THIS TIME MRS. MURPHY REVIEWS EXHIBIT.)

20 MR. DAVIS: DO YOU RECALL SEEING IT?

21 THE COURT: ALL RIGHT. ANY OBJECTION?

22 MRS. MURPHY: NO OBJECTION.

23 THE COURT: VERY WELL. ARE YOU PLACING
24 IT IN EVIDENCE AT THIS TIME, MR. DAVIS?

MR. DAVIS: YES: I SURE AM.

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1 THE COURT: ALL RIGHT. DEFENDANT'S
2 EXHIBIT NUMBER ON INTO EVIDENCE.

3 MR. DAVIS: ALL RIGHT. DEFENDANT'S
4 EXHIBIT NUMBER ONE INTO EVIDENCE.

5 DEFENDANT'S EXHIBIT NO. 1
6 ADMITTED AS EVIDENCE

7 MR. DAVIS: THANK YOU, JUDGE.

8 Q. IDENTIFY THAT FOR US, SIR.

9 A. IT IS A FAXED COVER SHEET FROM THE DORCHESTER
10 COUNTY D.S.S.

11 Q. WHO CAUSED THAT FAX TO BE TRANSMITTED?

12 A. I'M SORRY. WHO CAUSED IT?

13 Q. YES.

14 A. IT WOULD HAVE HAD TO BE I CALLED AND ASKED FOR
15 SOMETHING, SO I GOT FAXED SOMETHING.

16 Q. THAT'S ALL. THAT'S A SIMPLE RESPONSE. YOU KNOW,
17 THE GOOD THING ABOUT FAXING IS IT HAS A TIME STAMP
18 ON IT; ISN'T THAT CORRECT? IT TELLS YOU WHEN IT
19 HAPPENS, DOESN'T IT? DO YOU WANT TO CHECK ON THAT
20 AND SEE WHAT TIME THAT WAS FAXED TO YOU?

21 A. ON NOVEMBER THE THIRD, 2001, AT SEVEN MINUTES AFTER
22 11:00 P.M.

23 Q. OKAY. AND SO MY CLIENT IS STILL IN YOUR CUSTODY AT
24 THAT TIME; ISN'T THAT RIGHT?

25 A (NO RESPONSE)

THOMAS MILES MARSHALL - CONT'D RE-DIRECT/MR. DAVIS

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1 Q. HE'S STILL IN YOUR INTERROGATION ROOM?

2 A. YES.

3 Q. AND THIS INFORMATION THAT YOU ARE SENDING FOR IS
4 INFORMATION THAT IS TIED TO NOVEMBER THE TWELFTH,
5 1998; ISN'T THAT CORRECT?

6 A. I DON'T RECALL EVERYTHING THAT WAS IN THERE. I
7 THINK IT HAS SOMETHING TO DO WITH WHAT HAPPENED TO
8 HER. IF THERE WAS A SUBSTANTIATED CASE WAS THE
9 QUESTION I WAS ASKING.

10 Q. SHE WASN'T CHARGED WITH ANYTHING FROM NOVEMBER THE
11 TWELFTH -- OCTOBER THE 12TH, 1998; ISN'T THAT
12 CORRECT?

13 A. NO, SIR, SHE WASN'T CHARGED WITH ANYTHING.

14 Q. NO FURTHER QUESTIONS.

15 THE COURT: ALL RIGHT; VERY WELL. IS
16 THERE ANY RE-DIRECT?

17 MRS. MURPHY: NO RE-DIRECT, YOUR HONOR.

18 THE COURT: VERY WELL. YOU MAY COME
19 DOWN. CALL YOUR NEXT WITNESS, PLEASE.

20 MRS. MURPHY: THE STATE WOULD CALL DR.
21 SARA SCHUH.

22 MR. DAVIS: YOUR HONOR, I'D LIKE TO HAVE
23 THAT MARKED JUST FOR IDENTIFICATION PURPOSES.

24 THE COURT: FOR IDENTIFICATION PURPOSES?

SARA ELIZABETH SCHUH - DIRECT/MRS. MURPHY

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1 THE COURT: CERTAINLY. ALL RIGHT.
2 THAT'S DEFENSE EXHIBIT NUMBER TWO FOR
3 IDENTIFICATION PURPOSES.

4 DEFENDANT'S EXHIBIT NO. 2
5 MARKED FOR IDENTIFICATION

6 - - - - -

7 WHEREUPON,

8 SARAH ELIZABETH SCHUH, M.D., WHO AFTER
9 BEING FIRST DULY SWORN TO TELL THE TRUTH,
10 TESTIFIED AS FOLLOWS:

11 THE COURT: YOUR WITNESS.

12 MRS. MURPHY: THANK YOU, YOUR HONOR.

13 DIRECT EXAMINATION

14 BY MRS. MURPHY:

15 Q. GOOD AFTERNOON, DR. SCHUH.

16 A. GOOD AFTERNOON.

17 Q. DR. SCHUH, WILL YOU PLEASE TELL THE JURY A LITTLE
18 BIT ABOUT YOUR EDUCATIONAL BACKGROUND, PLEASE?

19 A. I RECEIVED A COLLEGE DEGREE FROM VASER COLLEGE IN
20 POUGHKEEPSIE, NEW YORK, FOR A MEDICAL DEGREE FROM
21 COLUMBIA UNIVERSITY IN NEW YORK CITY IN 1961. AND
22 FOLLOWING THAT, I DID A RESIDENCY IN PEDIATRICS AT
23 ST. LUKES HOSPITAL CENTER IN NEW YORK. AFTER I
24 COMPLETED THAT, I WORKED FOR TWO YEARS FOR THE
25 FULTON AND DEKALB COUNTY DEPARTMENTS OF HEALTH AND

SARA ELIZABETH SCHUH - DIRECT/MRS. MURPHY

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1 HEADSTART; AND THEN IN 1967 TOOK A BOARD
2 EXAMINATION AND WAS BOARD CERTIFIED IN PEDIATRICS.
3 I WENT BACK TO NEW YORK AFTER THAT AND RECEIVED A
4 MASTERS DEGREE IN PUBLIC HEALTH FROM COLUMBIA
5 UNIVERSITY AND WORKED IN NEW YORK AND A YEAR BEFORE
6 COMING TO SOUTH CAROLINA WHERE I CAME AS A MEMBER
7 OF THE FACULTY IN THE DEPARTMENT OF PEDIATRICS AT
8 THE MEDICAL UNIVERSITY.

9 Q. AND WHAT IS YOUR CURRENT EMPLOYMENT?

10 A. I'M STILL AT THE MEDICAL UNIVERSITY; AND MY CURRENT
11 EMPLOYMENT IS AS AN ASSOCIATE PROFESSOR OF
12 PEDIATRICS IN THE DEPARTMENT OF PEDIATRICS WITH A
13 SPECIAL RESPONSIBILITY IN THE AREA OF THE CARE OF
14 CHILDREN WHEN THERE IS AN ALLEGATION OR SUSPICION
15 OR ABUSE OR NEGLECT.

16 Q. AND WOULD YOU CONSIDER THAT YOUR SPECIALTY, DOCTOR?

17 A. I SHARE THAT SPECIALTY WITH GENERAL PEDIATRICS;
18 YES.

19 Q. AND DO YOU ACTUALLY CONDUCT EXAMINATIONS OF
20 CHILDREN WHO HAVE BEEN PHYSICALLY ABUSED?

21 A. YES, I DO.

22 Q. IN WHAT SITUATIONS WOULD YOU EXAMINE THESE
23 CHILDREN?

24 A. CHILDREN WHO COME TO THE MEDICAL UNIVERSITY FROM A
25 VARIETY OF REFERRAL BASES; SOME THAT JUST WALK INTO

SARA ELIZABETH SCHUH - DIRECT/MRS. MURPHY

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1 OUR EMERGENCY ROOM; SOME THAT ARE BROUGHT BY
2 AMBULANCE BECAUSE OF SEVERE PROBLEMS THAT NEED TO
3 BE HOSPITALIZED IN OUR INTENSIVE CARE UNIT. SOME
4 THAT ARE REFERRED BY THE DEPARTMENT OF SOCIAL
5 SERVICES; OR THAT ARE BROUGHT IN BY PARENTS WHO ARE
6 CONCERNED ABOUT POSSIBLY THE CHILDREN HAVING BEEN
7 INJURED BY SOMEONE ELSE; AND SOME THAT ARE REFERRED
8 BY ATTORNEYS OR OTHER PHYSICIANS.

9 Q. AND HOW MANY CHILDREN WOULD YOU SAY THAT YOU HAVE
10 PERSONALLY EXAMINED IN YOUR CAREER WHO HAVE COME IN
11 WITH PHYSICAL ABUSE OR ASSAULT COMPLAINTS?

12 A. AT LEAST A COUPLE OF HUNDRED. I'M NOT SURE HOW
13 MANY.

14 Q. AND HAVE YOU GIVEN LECTURES IN THE AREA OF CHILD
15 PHYSICAL ABUSE IN THE PAST?

16 A. YES, I HAVE. I LECTURE REGULARLY IN THAT AREA TO
17 MEDICAL STUDENTS AND THE HOUSE STAFF. AND I'VE
18 ALWAYS LECTURED TO THE DEPARTMENT OF SOCIAL
19 SERVICES AND A VARIETY OF OTHER ORGANIZATIONS WHEN
20 ASKED TO DO SO.

21 Q. AND ARE YOU AWARE OF THE NEW LITERATURE WHICH COMES
22 OUT IN THIS PARTICULAR AREA?

23 A. I READ WHAT I HAVE TIME FOR; YES.

24 Q. DOCTOR, HAVE YOU TESTIFIED BEFORE AS AN EXPERT IN
25 THE AREA OF CHILD PHYSICAL ABUSE?

SARA ELIZABETH SCHUH - VOIR DIRE/MR. DAVIS

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1 PERTAIN TO PHYSICAL ABUSE?

2 A. YES, I HAVE.

3 Q. HOW OFTEN?

4 A. A COUPLE OF DOZEN TIMES, MAYBE. I'M NOT SURE
5 EXACTLY.

6 MRS. MURPHY: YOUR HONOR, AT THIS POINT I
7 WOULD MOVE TO QUALIFY DR. SCHUH AS AN EXPERT IN THE
8 AREA OF CHILD PHYSICAL ABUSE AND INJURIES AS THEY
9 PERTAIN TO PHYSICAL ABUSE

10 THE COURT: IS THERE ANY VOIR DIRE? MR.
11 DUKES?

12 MR. DUKES: I HAVE NONE.

13 MR. DAVIS: I HAVE A FEW.

14 THE COURT: VERY WELL.

15 VOIR DIRE EXAMINATION

16 BY MR. DAVIS:

17 Q. HEY, DR. SCHUH, HOW ARE YOU DOING?

18 A. HOW DO YOU DO?

19 Q. DO YOU KNOW ME?

20 A. I DO.

21 Q. AND I KNOW A LOT ABOUT YOU, TOO.

22 A. I HAVE NO DOUBT.

23 Q. IS IT FAIR TO SAY THAT PRIMARILY YOUR EXPERTISE IS
24 ALONG THE LINE OF SEXUAL ABUSE MORE SO THAN

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 A. I SEE MORE PATIENTS FOR SEXUAL ABUSE ALLEGATIONS
2 THAN PHYSICAL ABUSE ALLEGATIONS.

3 Q. AND AS A MATTER OF FACT, YOU SOMEWHAT HAVE BEEN
4 KIND OF THE FOREFRONT IN THE SEXUAL ABUSE OF
5 CHILDREN MORE SO THAN PHYSICAL ABUSE OF CHILDREN?

6 A. I'VE WORKED MORE IN THAT AREA; YES.

7 Q. MORE SO IN THE SEXUAL ABUSE AREA?

8 A. YES.

9 MR. DAVIS: I FIND HER QUALIFIED.

10 THE COURT: VERY WELL. AND I WILL SO
11 QUALIFY HER; AND YOU MAY PROCEED.

12 MRS. MURPHY: THANK YOU, YOUR HONOR.

13 THE COURT: I AM SORRY. MR. DUKES, I
14 GATHERED THERE WAS NO VOIR DIRE? IS THERE ANY
15 OBJECTION?

16 MR. DAVIS: NO OBJECTION.

17 THE COURT: VERY WELL. SHE IS SO
18 QUALIFIED. AND YOU MAY PROCEED, MRS. MURPHY.

19 MRS. MURPHY: THANK YOU, YOUR HONOR.

20 CONTINUED DIRECT EXAMINATION

21 BY MRS. MURPHY:

22 Q. DOCTOR, WERE YOU INVOLVED IN THE CARE OF Child
23 DURING HIS HOSPITALIZATION AT M.U.S.C. IN
24 NOVEMBER OF 2001?

25 A. YES, I WAS.

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 Q. AND WHEN AND HOW WAS HE TRANSPORTED TO THE MEDICAL
2 UNIVERSITY?

3 A. HE WAS TRANSPORTED TO OUR EMERGENCY ROOM FOR
4 ADMISSION TO OUR INTENSIVE CARE UNIT FROM THE
5 SUMMERVILLE MEDICAL CENTER BY AMBULANCE.

6 Q. AND WHAT CONDITION -- WHAT WAS HIS CONDITION UPON
7 ARRIVAL TO THE MEDICAL UNIVERSITY?

8 A. HE WAS UNCONSCIOUS AT THE TIME OF HIS ARRIVAL AND
9 HAD BEEN INTUBATED. THAT IS A TUBE HAD BEEN PUT
10 INTO HIS TRACHEA IN ORDER TO ASSIST HIS BREATHING.

11 Q. AND WHAT DEGREE OF SEVERITY WAS HIS CONDITION?

12 A. SEVERE.

13 Q. AND CAN YOU EXPLAIN THAT TO THE JURY WHAT YOU MEAN
14 BY A SEVERE CONDITION?

15 A. FROM THE REVIEW OF THE RECORDS THAT ARE AVAILABLE
16 TO ME, WHEN HE ARRIVED AT THE SUMMERVILLE MEDICAL
17 CENTER, HE WAS HAVING DIFFICULTY BREATHING AND WAS
18 HAVING UNCONTROLLED SEIZURE ACTIVITY. AND FOR THAT
19 REASON THEY HAD TO PARALYZE HIM AND PROVIDE
20 MEDICATIONS TO STOP THE SEIZURES. AND THEY HAD TO
21 INTUBATE HIM; THAT IS TO PUT A TUBE INTO THE
22 TRACHEA IN ORDER TO ASSIST HIS BREATHING. AND AT
23 THE TIME OF HIS ARRIVAL AT THE MEDICAL UNIVERSITY,
24 HE WAS STILL UNCONSCIOUS. AND IT WAS HARD TO JUDGE
25 THE DEGREE OF DAMAGE AT THAT TIME BECAUSE HE WAS

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 BOTH UNCONSCIOUS AND PARALYZED.

2 Q. AND WERE YOU SUBSEQUENTLY ABLE TO DETERMINE THE
3 DEGREE OF INJURY?

4 A. SUBSEQUENT TO HIS ARRIVAL, THE MEDICATION THAT
5 PARALYZED HIM WAS ALLOWED TO WEAR OFF. AND AS IT
6 WORE OFF, HE WAS ABLE TO RESPOND TO PAINFUL STIMULI
7 AND TO TOUCH. BUT HE WAS NOT ABLE TO VERBALIZE OR
8 TO BREATHE WITHOUT THE TUBE FOR A DAY; ABOUT A DAY.
9 THE FOLLOWING MORNING, HE ACTUALLY WAS ABLE TO --
10 THEY WERE ABLE TO REMOVE THE BREATHING TUBE. BUT
11 HE STILL WAS NOT ABLE TO TAKE ANYTHING BY MOUTH OR
12 TO FOLLOW ANY COMMANDS AT ALL UNTIL LATE IN THAT
13 DAY. AND THE FOLLOWING DAY HE BEGAN TO RECOVER
14 NEUROLOGICALLY SO THAT HE WAS ABLE, FIRST OF ALL,
15 TO BEGIN TO BREATHE ON HIS OWN AND THEN TO SWALLOW
16 AND THEN TO BEGIN TO MOVE HIS HANDS AND LEGS. AND
17 ULTIMATELY HE WAS ABLE TO, BEFORE THE END OF HIS
18 HOSPITALIZATION, TO BE UP AND TO WALK, ALTHOUGH HE
19 WALKED WITH A LIMP. AND SOME OF HIS PREEXISTING
20 PROBLEMS, OF COURSE, WERE UNCHANGED.

21 Q. AND, DOCTOR, ON NOVEMBER THE THIRD AND THE DAY
22 AFTER, DID THE MEDICAL UNIVERSITY -- WERE PICTURES
23 TAKEN OF Child INJURIES?

24 A. YES, THEY WERE.

25 Q. I'M GOING TO APPROACH.

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 MR. DAVIS: YOUR HONOR, WE HAVE SEEN THE
2 PICTURES; AND FROM OUR STANDPOINT THERE IS NO
3 OBJECTION TO THE PHOTOGRAPHS.

4 MR. DAVIS: MAY I APPROACH THE WITNESS,
5 YOUR HONOR?

6 THE COURT: YOU MAY.

7 Q. DR. SCHUH, I'M GOING TO HAND YOU SOME PHOTOGRAPHS
8 AND ASK YOU ONE AT A TIME IF YOU CAN RECOGNIZE
9 THESE AND WHAT'S IN THESE PHOTOGRAPHS?

10 A. THIS IS A PHOTOGRAPH OF THE LEFT JAWLINE AND EAR
11 AND PART OF THE SCALP OF Child [REDACTED] THAT WAS
12 TAKEN AT MY DIRECTION AND IN MY PRESENCE IN THE
13 INTENSIVE CARE UNIT OF THE MEDICAL UNIVERSITY.

14 Q. AND DOES THAT FAIRLY AND ACCURATELY DEPICT WHAT YOU
15 SAW THAT DAY?

16 A. YES, IT DOES.

17 MRS. MURPHY: YOUR HONOR, I'D LIKE TO
18 INTRODUCE THIS AS A STATE'S EXHIBIT.

19 THE COURT: ANY OBJECTION, MR. DUKES?

20 MR. DUKES: WITHOUT OBJECTION.

21 MR. DAVIS: NONE ON BEHALF OF MY CLIENT,
22 JUDGE.

23 THE COURT: VERY WELL. THIS WILL BE
24 STATE'S EXHIBIT NUMBER SIX?

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 THE COURT: SEVEN.

2 MR. DAVIS: YOUR HONOR, JUST TO EXPEDITE
3 THE MATTER; WE DON'T OBJECT TO ANY PHOTOGRAPHS THAT
4 SHE HAS RIGHT HERE ON BEHALF OF MY CLIENT.

5 THE COURT: THANK YOU VERY MUCH. MR.
6 DUKES, YOU HAVE SOME OBJECTION TO SOME OF THE
7 PHOTOGRAPHS THAT YOU'VE JUST SEEN?

8 MR. DUKES: NO, MA'AM.

9 THE COURT: ALL RIGHT. VERY WELL. WELL,
10 LET US TAKE A MOMENT, AND WE'LL ASK MRS. ADDISON TO
11 MARK; AND WE WILL PLACE INTO EVIDENCE ALL OF THE
12 PHOTOGRAPHS THAT YOU INTEND TO USE; FROM EIGHT
13 RIGHT ON, MRS. ADDISON. AND THAT WAY WE WON'T HAVE
14 TO STOP.

15 STATE'S EXHIBIT NOS. 7-12

16 MARKED FOR IDENTIFICATION

17 Q. AND DOCTOR, WHILE WE DO THAT; IF YOU COULD STEP
18 DOWN HERE, I'LL PUT IT UP HERE ON THE MACHINE.

19 THE COURT: AND WE HAVE A MICROPHONE THAT
20 WE CAN PROVIDE FOR YOU. JUST A SECOND. WE'RE NOT
21 QUITE AS SOPHISTICATED AS THE TODAY SHOW, BUT WE
22 HAVE A LITTLE MICROPHONE THAT WE'RE GOING TO GET TO
23 USE.

24 DR. SCHUH: I HAVE A LITTLE VOICE.

25 THE COURT: MRS. ADDISON, HAVE YOU HAD A

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 CHANCE TO MARK THOSE EXHIBITS? TELL ME WHAT
2 NUMBERS THEY ARE.

3 THE COURT REPORTER: STATE'S NUMBER 7
4 THROUGH 12.

5 THE COURT: STATE'S EXHIBITS 7 THROUGH 12
6 IN EVIDENCE WITHOUT OBJECTION. THEY'RE ALL
7 PHOTOGRAPHS.

8 DEFENDANT'S EXHIBIT NOS. 7-12
9 ADMITTED AS EVIDENCE

10 THE COURT: YOU MAY PROCEED, MRS. MURPHY.

11 MRS. MURPHY: THANK YOU, YOUR HONOR.

12 Q. DR. SCHUH, STATE'S EXHIBIT NUMBER 7 IS ON THE
13 MACHINE NOW. CAN YOU ILLUSTRATE FOR THE JURY, OR
14 POINT OUT TO THE JURY, WHAT EXACTLY THAT PHOTOGRAPH
15 DEPICTS?

16 A. THIS PHOTOGRAPH IS A PICTURE OF THE LEFT SIDE OF
17 THE CHILD'S JAWLINE AND SCALP WITH HIS EAR
18 SHOWING. AND IT SHOWS A RECENT OR ACUTE BRUISE
19 WHICH IS STILL RED WHICH -- WITH A LITTLE BLUE
20 TINGE IN IT -- WHICH MEANS THAT IT OCCURRED
21 RECENTLY, VERY RECENTLY. BUT ALSO ON THE EAR,
22 THERE'S AN OLDER INJURY HERE WHICH IS ALREADY
23 SCABBED AND PEELING. AND THE EXACT NATURE OF THAT
24 IS DIFFICULT TO SAY. BUT IT TOOK SEVERAL DAYS TO
25 MAYBE A WEEK OR MORE.

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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- 1 Q. AND DOCTOR, PUT ON THE MACHINE STATE'S EXHIBIT
2 NUMBER EIGHT AND ASK IF YOU CAN EXPLAIN WHAT THAT
3 IS.
- 4 A. THIS IS A PICTURE OF THE RIGHT SIDE OF THE CHILD'S
5 FACE. AND IT SHOWS -- IT'S NOT AS CLEAR AS I WOULD
6 LIKE IT TO BE. BUT THERE IS A SMALL AREA OF
7 BRUISING IN THE EAR. BUT THIS IS ACTUALLY A CURVED
8 LESION WHICH IS VERY SIMILAR TO SOME THAT ARE ON
9 THE ABDOMEN WHICH WE HAVEN'T SEEN YET. AND IT HAD
10 APPROXIMATELY THE SAME MEASUREMENTS. AND IT HAS A
11 VERY IRREGULAR PATTERN TO IT AS IF THE CHILD WAS
12 HIT WITH A PATTERNED INSTRUMENT OF SOME TYPE. AND
13 WE'LL LOOK, I'M SURE, AT THE OTHERS. AND THERE
14 ALSO APPEARS TO BE A LITTLE BRUISING AROUND THE
15 EYE.
- 16 Q. AND STATE'S EXHIBIT -- AND WE'LL SKIP A LITTLE BIT
17 -- NUMBER TEN.
- 18 A. THIS IS ANOTHER PICTURE OF THE RIGHT SIDE OF THE
19 FACE AGAIN SHOWING THE BRUISE AROUND THE EYE. AND
20 WITH THIS ONE, YOU CAN SEE A LITTLE BIT FURTHER
21 DOWN MORE BLUISH BRUISING. AND AGAIN THE PATTERN
22 IS NOT REALLY CLEAR BECAUSE IT WAS TAKEN KIND OF
23 AROUND THE CURVE. AND THE FOCUS IS BETTER FOR
24 FURTHER DOWN. BUT IT AGAIN REPRESENTS A LESION

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 THAT IT SHOWED MORE OR LESS LIKE, KIND OF LIKE
2 THAT, AND WITH VERY IRREGULAR PATTERNS OF THE
3 OBJECT HITTING HIM AT AN IRREGULAR SURFACE.

4 Q. AND STATE'S EXHIBIT NUMBER ELEVEN?

5 A. THIS IS A PHOTOGRAPH OF THE CHILD'S RIGHT CHEST AND
6 ABDOMEN KIND OF AT THE BORDERLINE OF WHERE HIS
7 CHEST IS. AND THIS IS THE CURVED LESION. AND
8 THERE ARE ACTUALLY TWO CURVED LESIONS OVERLYING
9 EACH OTHER. AGAIN, YOU CAN SEE THIS VERY IRREGULAR
10 PATTERNING THAT LOOKS LIKE THERE WERE SOME CURVES
11 OR CIRCLES WITHIN THE ACTUAL PATTERN THAT WAS -- OF
12 THE OBJECT THAT HE WAS HIT WITH.

13 Q. AND STATE'S EXHIBIT NUMBER TWELVE?

14 A. THIS IS ANOTHER PICTURE OF THOSE WITH A LITTLE BIT
15 CLEARER DELINEATION. AND AGAIN SHOWING THIS -- AND
16 I'M NOT SURE THAT YOU CAN READ IT FROM WHERE YOU
17 ARE; BUT THE DISTANCE ACROSS THIS WAS APPROXIMATELY
18 THREE INCHES OR THEREABOUTS; SEVEN-AND-A-HALF
19 CENTIMETERS.

20 Q. AND STATE'S EXHIBIT NUMBER NINE?

21 A. THIS IS A PICTURE OF THE BACK JUST AT THE UPPER
22 BORDER OF THE BUTTOCKS WITH TWO, AGAIN OLDER
23 LESIONS, NOT OF THE SAME REDNESS THAT SUGGESTS AN
24 ACUTE OR VERY RECENT INJURY, BUT WITH SOME EVIDENCE

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 WITH AN INCREASED PIGMENT AS PART OF THE HEALING
2 PROCESS.

3 Q. THANK YOU, DOCTOR. YOU MAY SIT DOWN. (AT THIS
4 TIME WITNESS RETURNS TO WITNESS STAND.) DOCTOR,
5 WHAT DIAGNOSIS WAS MADE OF Child AS FAR AS WHAT
6 HIS INJURIES WERE?

7 A. THERE WERE SOME DIAGNOSES RELATED TO HIS ACUTE
8 PRESENTATION. THE FIRST AND MOST SERIOUS ONE WAS
9 THAT HE HAD BLEEDING INSIDE HIS SKULL WHICH IS
10 CALLED A SUBDURAL HEMATOMA. AND A SUBDURAL
11 HEMATOMA IS BLEEDING DIRECTLY UNDER THE SKULL AND
12 BETWEEN THE SKULL AND THE BRAIN. AND IN ADDITION
13 TO THAT, THE BLEEDING HAD CAUSED WHAT'S CALLED A
14 MIDLINE SHIFT SO THAT THE AMOUNT OF BLOOD THAT WAS
15 PRESSING UNDER THE RIGHT SIDE EXTENDING FROM THE
16 TEMPORAL AREA WHICH IS THE SIDE OF YOUR HEAD AROUND
17 TO THE OXPUT (PHONETICALLY SPELLED) WHICH IS THE
18 POSTERIOR PART OF THE HEAD WAS PUSHING THE BRAIN
19 ACROSS THE MID-LINE TOWARD THE OTHER SIDE. AND
20 OBVIOUSLY HE HAD THE DIAGNOSIS OF SEIZURES WHICH HE
21 WAS NO LONGER HAVING SEIZURES WHEN HE GOT THERE;
22 BUT HE HAD HAD THE SEIZURES AT THE SUMMERVILLE
23 MEDICAL CENTER WHICH WERE MEDICALLY CONTROLLED.
24 AND THAT IS CALLED A STATUS EPILEPTICUS. A STATUS
25 EPILEPTICUS IS A FORM OF EPILEPSY WITH SEIZURES

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 WHICH ARE NOT RESOLVING ON THEIR OWN BUT HAVE TO BE
2 MEDICALLY CONTROLLED. IN ADDITION TO THAT, HE HAD
3 THE ACUTE TRAUMA WHICH WE HAVE JUST LOOKED AT, AND
4 THOSE WERE CONSIDERED TO BE INFLICTED TRAUMA BY AN
5 OBJECT SUCH AS THE HEEL OF A SHOE OR A TENNIS SHOE
6 OR RUNNING SHOE. THERE WERE SOME OTHER
7 POSSIBILITIES. BUT THAT WAS WHAT IT MOST
8 RESEMBLED.

9 AND THEN IN ADDITION TO THAT, HE
10 HAD THE TWO CURVED SCARS IN THE POSTERIOR THAT WERE
11 ON HIS BACK RIGHT ABOVE THE BUTTOCKS WHICH WERE
12 CONSIDERED TO BE OF UNDETERMINED CAUSE, BUT THERE
13 WERE TWO OF THOSE. THEN THERE WAS A BRUISING ON --
14 ACUTE BRUISING ON THE LEFT EAR AND A VERY SMALL
15 KNOT ON THE RIGHT EAR. AND THERE WAS AN OLD, WHAT
16 IS CALLED A CONTUSION; THAT IS AN INJURY CAUSED BY
17 BLUNT FORCE THAT WAS HEALING ON THE LEFT EAR. AND
18 THEN THERE WERE ALSO, AS WE NOTED, THE BRUISING
19 AROUND THE RIGHT EYE. IN ADDITION TO THAT, THERE
20 WERE OLDER INJURIES OR OLDER ABNORMALITIES. AND
21 THOSE INCLUDED THE FACT THAT HE WAS BLIND IN HIS
22 RIGHT EYE AND HAD HAD PREVIOUS EYE SURGERY. THAT
23 WAS AVAILABLE FROM OUR PREVIOUS RECORDS. AND ALSO
24 THAT HE HAD HAD TWO PREVIOUS LEG FRACTURES OF THE
25 FEMUR WHICH IS THE UPPER BONE IN THE BODY ALSO

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 AVAILABLE FROM OUR MEDICAL RECORDS. AND THAT HE
2 WAS DEVELOPMENTALLY DELAYED, AND THAT HE WAS
3 UNDER-GROWN, THAT IS THAT HE WAS VERY, VERY SMALL.
4 AND, IN FACT, IN REVIEWING THE MEDICAL RECORDS, HIS
5 WEIGHT GAIN IN THE TWO YEARS PRIOR TO HIS ADMISSION
6 HAD BEEN ONLY ONE POUND. I THINK THAT'S
7 EVERYTHING. I MIGHT HAVE MISSED SOMETHING.

8 Q. DOCTOR, IS IT NORMAL CUSTOMER PROCEDURE WHEN YOU
9 HAVE A CHILD OF THIS SORT TO PRESENT AT THE MEDICAL
10 UNIVERSITY TO REVIEW THOSE OLD MEDICAL RECORDS THAT
11 ARE AVAILABLE AT THE MEDICAL UNIVERSITY?

12 A. YES, IT IS.

13 Q. AND YOU'VE ALREADY TESTIFIED THAT YOU DID REVIEW
14 THOSE?

15 A. YES, I DID.

16 Q. AND, DOCTOR, AS A REVIEW THOSE RECORDS; DID YOU
17 ALSO REVIEW PEDIATRIC RECORDS THAT THE PATIENT WAS
18 SEEN ON 11/01 OF THAT YEAR WITH SOME STOMACH
19 PROBLEMS OR SOMETHING WHERE HE HAD SEEN HIS
20 PEDIATRICIAN SEVERAL DAYS EARLIER?

21 A. YES, I DID REVIEW THOSE. THOSE WERE REQUESTED.
22 AND WE DID REVIEW THEM.

23 Q. WAS THERE ANYTHING IN THOSE RECORDS THAT SUGGESTS
24 THAT THE ILLNESS COULD PREDISPOSE HIM TO SEIZURES

25

IN ANY WAY?

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1. A. NO. HE PRESENTED WITH WHAT APPEARED TO BE AN
2. ORDINARY MILD RESPIRATORY INFECTION OR COLD AND A
3. PROBLEM WITH CONSTIPATION. AND HIS EXAM WAS SAID
4. TO BE BENIGN; THAT IS THERE WAS NO EVIDENCE OF AN
5. NEUROLOGIC PROBLEM OTHER THAN THOSE PREEXISTING
6. ONES WHICH HE HAD HAD OVER LONG-STANDING NOTED IN
7. ANY OF THOSE RECORDS.

8. Q. SO IN ANY OF THOSE RECORDS, THERE'S NO EVIDENCE OF
9. SEIZURE OR SEIZURE DISORDER IN THE PAST?

10. A. NO; THERE WAS NONE IN OUR RECORDS. AND THERE WAS
11. NONE IN HIS PHYSICIAN'S RECORDS.

12. Q. AND, DOCTOR, CAN YOU LIST SOME OF THE CAUSES OF NEW
13. ONSET OF SEIZURES IN CHILDHOOD, OR SOME OF THE
14. COMMON CAUSES OF ONSET OF SEIZURES DURING
15. CHILDHOOD?

16. A. AMONG THE CAUSES WOULD BE -- TRAUMA WOULD BE A
17. LARGE ONE, AND INFECTION. THOSE ARE PROBABLY THE
18. TWO MOST COMMON.

19. Q. AND WERE YOU ABLE TO RULE OUT INFECTION IN THIS
20. PARTICULAR CASE?

21. A. THERE WAS NO EVIDENCE THAT HE HAD AN INFECTION
22. CAUSING HIS SEIZURES.

23. Q. AND WAS THERE EVIDENCE IN THE PEDIATRIC RECORDS
24. FROM SEVERAL DAYS BEFORE THE COLD OR STOMACH

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 A. NO.

2 Q. DOCTOR, IN YOUR EXPERIENCE, CAN YOU EXPLAIN TO US
3 THE POSSIBLE CAUSES OR THE MECHANISM OF THE
4 INJURIES THAT Child [REDACTED] SUFFERED ON NOVEMBER THE
5 THIRD?

6 MR. DAVIS: YOUR HONOR, I'M GOING TO
7 OBJECT. THAT CALLS FOR SPECULATION.

8 THE COURT: I'M GOING TO SUSTAIN THE
9 OBJECTION IN TERMS OF THE FORM OF THE QUESTION.

10 Q. DOCTOR, WHAT ARE THE POSSIBLE CAUSES OR THE
11 MECHANISMS OF INJURY?

12 THE COURT: WHAT ARE THE WHAT?

13 MRS. MURPHY: THE POSSIBLE CAUSES OF THE
14 INJURIES.

15 THE COURT: SUSTAINED.

16 MR. DAVIS: THANK YOU.

17 Q. DOCTOR, COULD ANY OF THOSE INJURIES HAVE BEEN FATAL
18 IN NATURE TO Child [REDACTED]

19 A. YES. THE SUBDURAL HEMATOMA COULD VERY EASILY HAVE
20 BEEN FATAL IF IT HAD BEEN MORE EXTENSIVE THAN IT
21 WAS OR IF IT HAD NOT BEEN TREATED.

22 Q. AND ARE THOSE INJURIES CONSISTENT WITH HAVING
23 FALLEN IN A BATHTUB?

24 A. THE LESIONS ON HIS---

25 MR. DAVIS: I OBJECT TO THE LINE OF

SARA ELIZABETH SCHUH - CONT'D DIRECT/MRS. MURPHY

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1 QUESTION. AGAIN, IT CALLS FOR SPECULATION ON THE
2 PART OF DR. SCHUH. I HAVE THE UTMOST RESPECT FOR
3 DR. SCHUH. BUT I THINK SHE'S BEEN PUT IN A
4 POSITION TO TAKE THAT POSITION; AND SHE CAN NOT.

5 THE COURT: LET ME SEE COUNSEL.

6 (AT THIS TIME BENCH CONFERENCE IS HELD.)

7 THE COURT: THANK YOU.

8 Q. DOCTOR, CAN YOU STATE TO A REASONABLE DEGREE OF
9 MEDICAL CERTAINTY WHETHER OR NOT THE INJURIES THAT
10 YOU SAW WERE CONSISTENT WITH FALLING IN A BATHTUB?

11 A. THE LESIONS WERE NOT. THEY COVERED A NUMBER OF
12 SURFACES. AND THERE WAS NOT IN THEIR PATTERN
13 ANYTHING THAT I WOULD EXPECT TO BE IN A BATHTUB.
14 BUT THE SIGNIFICANT THING IS THAT THEY WERE BOTH ON
15 THE RIGHT AND THE LEFT SURFACES OF THE FACE AND ON
16 THE FRONT AND THE BACK WHICH WOULD PUT THEM ON FOUR
17 DIFFERENT SURFACES AND WOULD NOT -- A SIMPLE FALL
18 WOULD NOT ACCOUNT FOR THOSE.

19 Q. SO TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, CAN
20 YOU STATE WHETHER OR NOT THESE INJURIES ARE THE
21 TYPE THAT COULD HAVE BEEN SELF-INFLICTED BY A CHILD
22 THIS AGE?

23 A. I DON'T THINK THEY COULD HAVE BEEN SELF-INFLICTED
24 EVEN BY A NORMAL CHILD. AND THIS CHILD CERTAINLY

SARA ELIZABETH SCHUH - CROSS/MR. DUKES

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1. NORMAL CHILD OF HIS AGE.

2 Q. DOCTOR, CAN YOU STATE TO A REASONABLE DEGREE OF
3 MEDICAL CERTAINTY THE CAUSE OF THESE INJURIES?

4 A. I BELIEVE THESE INJURIES WERE INFLICTED BY SOMEONE
5 ON THIS CHILD WITH SIGNIFICANT FORCE SUFFICIENT TO
6 CAUSE WHAT'S CALLED PETECHIAL BLEEDING WHICH IS
7 WHAT OUTLINED THE LESIONS, THE CIRCULAR OR
8 SEMICIRCULAR LESIONS, AND SUFFICIENT TO CAUSE
9 BLEEDING INTO THE BRAIN.

10 Q. THANK YOU, DOCTOR. PLEASE ANSWER ANY QUESTIONS
11 DEFENSE COUNSEL MIGHT HAVE.

12 THE COURT: CROSS-EXAMINATION, MR. DUKES.

13 CROSS-EXAMINATION

14 BY MR. MR. DUKES:

15 Q. DR. SCHUH, YOU EXAMINED THIS YOUNG MAN WHEN?

16 A. ON THE FOURTH OF NOVEMBER.

17 Q. SO THAT WAS THE DAY AFTER?

18 A. YES, SIR.

19 Q. AND SOME OF THE THINGS YOU FOUND WERE OLD INJURIES
20 TO THE CHILD?

21 A. YES, SIR.

22 Q. AND THAT HAD NOTHING TO DO WITH HIS PRESENT
23 CONDITION; THE OLD INJURIES?

24 A. THEY WEREN'T DIRECTLY RELATED TO---

25 Q. THE CONDITION HE WAS IN ON THAT DAY?

SARA ELIZABETH SCHUH - CROSS/MR. DUKES

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1 A. TO THE CONDITION AT THE TIME. BUT THEY DID SUGGEST
2 THAT HE MIGHT HAVE BEEN IN A SITUATION WHICH PUT
3 HIM AT RISK.

4 Q. IN FACT---

5 MR. DUKES: IF I MAY APPROACH?

6 THE COURT: YOU MAY.

7 Q. I LOOK AT STATE'S EXHIBIT 7. THAT'S THE EAR?

8 A. YES.

9 Q. AND THAT'S EVIDENTLY AN OLD INJURY?

10 A. YES. IT'S OLDER. IT'S NOT VERY OLD BECAUSE IT'S
11 STILL IN THE PROCESS OF HEALING. BUT IT IS OLDER
12 THAN THE ONES THAT ARE STILL BRIGHT RED.

13 Q. BUT THAT'S A -- IS THAT A SUPERFICIAL INJURY; AND
14 IT WOULD CAUSE NO SERIOUS PROBLEMS, WOULD IT?

15 A. IT'S HARD TO SAY BECAUSE IT'S UNCLEAR WHETHER
16 SUFFICIENT FORCE MIGHT HAVE BEEN PRESENT TO DAMAGE
17 THE TYMPANIC MEMBRANE AT THE TIME THAT IT OCCURRED.

18 Q. AND THEN WHEN YOU LOOK AT STATE'S EXHIBIT EIGHT,
19 IT'S A REDNESS. BUT NO SKIN HAS BEEN BROKEN, OR---

20 A. NO. THE OUTLINE LESIONS ARE CALLED PETECHIAL. AND
21 THEY CAUSE LITTLE BLEEDING SPOTS UNDER THE SKIN.
22 BUT IT HAS NOT BROKEN THE SKIN.

23 Q. THE SKIN WASN'T EVEN BROKEN. DID YOU DO ANY X-RAYS
24 AS FAR AS DETERMINING IF THERE'S ANY BREAKS IN THE
SKULL OR FACIAL BONE?

SARA ELIZABETH SCHUH - CROSS/MR. DUKES

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1 A. WE DID -- YES, WE DID. THERE WERE NO SKULL
2 FRACTURE; BUT THERE WAS BLEEDING WITHIN THE CRANIAL
3 CAVITY AS EVIDENCED BY COMPUTERIZED TOMOGRAPHY
4 SCANS.

5 Q. BUT NO BONES WERE BROKEN?

6 A. NO, SIR.

7 Q. AND I RECKON THAT IS BECAUSE -- I SAW THE PICTURE
8 HAS SOME REDNESS?

9 A. YES.

10 Q. SOME RED MARKS BEHIND HIS EYE?

11 A. RIGHT.

12 Q. THAT'S POSSIBLY HIS EYE BEING A LITTLE DARKENED?

13 A. YES.

14 Q. BUT NOTHING IS BROKEN. THE SKIN IS NOT EVEN BROKEN
15 THERE, IS IT?

16 A. THE SKIN IS NOT BROKEN.

17 Q. ALL RIGHT. I GUESS THE MORE SEVERE MARKING IS ON
18 THE ABDOMEN?

19 A. I'M NOT SURE THAT I WOULD SAY THE MOST SEVERE.
20 IT'S THE ONE WITH THE CLEAREST OUTLINE. THE MOST
21 SEVERE INJURY WAS TO HIS HEAD.

22 Q. BUT NO RIBS OR ANYTHING WERE BROKEN, WERE THEY?

23 A. NO, SIR.

24 Q. AND THIS CHILD -- WOULD IT BE FAIR TO SAY HE WAS A
25 FAIRLY FRAGILE CHILD?

SARA ELIZABETH SCHUH - CROSS/MR. DUKES

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- 1 A. MORE THAN THE AVERAGE CHILD.
- 2 Q. BECAUSE HE WAS PREMATURE BORN, A TWIN I THINK?
- 3 A. YES.
- 4 Q. AND HE WAS VERY SMALL?
- 5 A. HE WAS VERY SMALL. BUT HE WASN'T SO SMALL THAT YOU
- 6 WOULD EXPECT ANYTHING TO HAPPEN SPONTANEOUSLY.
- 7 Q. WELL, HE HAD OTHER MEDICAL PROBLEMS TOO, DIDN'T HE?
- 8 A. YES, HE DID.
- 9 Q. DIDN'T HE HAVE ASTHMA; BREATHING PROBLEMS?
- 10 A. YES, HE DID.
- 11 Q. BRONCHITIS?
- 12 A. HE DID NOT AT THE TIME OF THE ADMISSION TO OUR
- 13 HOSPITAL. BUT HE HAD A HISTORY OF ASTHMA; YES.
- 14 Q. BUT HE HAD BEEN TREATED THAT SAME WEEK FOR A COLD?
- 15 A. FOR A COLD; YES, WITH NO FEVER OR ANYTHING.
- 16 Q. AND HE WAS ON SOME MEDICATION?
- 17 A. YES.
- 18 Q. HE HAD HAD BROKEN BONES IN THE PAST, HADN'T HE?
- 19 A. HE CERTAINLY HAD HAD TWO VERY UNUSUAL, RELATIVELY
- 20 UNUSUAL FRACTURES FOR A CHILD; YES.
- 21 Q. BUT WOULD IT BE FAIR TO SAY THAT HIS BONES WERE
- 22 MORE BRICKLY THAN---
- 23 A. NO, I DON'T BELIEVE SO. THERE WAS NO EVIDENCE ON
- 24 THE X-RAY INITIALLY TAKEN WHEN HE HAD HIS FRACTURE

SARA ELIZABETH SCHUH - CROSS/MR. DUKES

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1 THAT THEY WERE UNUSUALLY WEAK.

2 Q. OKAY. YOU WERE GIVEN A HISTORY OF THE CHILD HAVING
3 FALLEN A COUPLE OF TIMES?

4 A. I WAS GIVEN JUST A HISTORY THAT HE HAD FALLEN IN
5 THE BATHTUB. I'M NOT SURE WHAT YOU MEAN A COUPLE
6 OF TIMES. DO YOU MEAN JUST PRIOR TO HIS ADMISSION
7 AT THIS TIME?

8 Q. YES, MA'AM.

9 A. I WAS GIVEN A VERY LIMITED HISTORY. THE PARENTS
10 NEVER WERE PRESENT AT OUR HOSPITAL TO THE BEST OF
11 MY KNOWLEDGE. AND WE HAD ONLY HISTORY THAT
12 SOMETHING HAPPENED IN THE BATHTUB WHEN THE CHILD
13 WAS BEING BATHED.

14 Q. BUT YOU HAD HAD NO HISTORY THAT THE CHILD HAD
15 FALLEN BEFORE THE BATHTUB?

16 A. I DON'T REMEMBER SEEING THAT. IT'S POSSIBLE THAT
17 IT WAS THERE.

18 Q. WELL, IT'S NOT IMPOSSIBLE THAT THESE -- THAT SOME
19 OF THESE INJURIES COULD HAVE BEEN INFLICTED BY A
20 FALL?

21 A. IT'S NOT IMPOSSIBLE THAT YOU COULD GET BLEEDING
22 FROM A FALL. BUT IT WOULD NOT BE LIKELY FROM A
23 SIMPLE FALL FROM THE HEIGHT OF THIS CHILD.

24 Q. FROM THE HEIGHT OF THIS CHILD BUT ONTO A HARD
25 OBJECT LIKE A BATHTUB?

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 A. STILL NOT LIKELY.

2 Q. BUT POSSIBLE?

3 A. IT'S NOT ABSOLUTELY IMPOSSIBLE. BUT IT NOT LIKELY
4 AT ALL.

5 Q. AND THAT'S AN OPINION?

6 A. THAT'S AN OPINION.

7 Q. OKAY.

8 MR. DUKES: THAT'S ALL THE QUESTIONS I
9 HAVE.

10 MR. DAVIS: JUST A FEW QUESTIONS, YOUR
11 HONOR.

12 THE COURT: YES, SIR.

13 RE-DIRECT EXAMINATION

14 BY MR. DAVIS:

15 Q. DR. SCHUH, HOW LONG HAVE YOU BEEN DOING THIS?

16 A. A LONG TIME.

17 Q. A LONG---

18 A. IN ABUSE AND NEGLECT, I'VE BEEN EVALUATING CHILDREN
19 FOR ABOUT TWENTY YEARS.

20 Q. ABOUT TWENTY YEARS?

21 A. YES, SIR.

22 Q. DOCTOR, I JUST WANT TO TOUCH ON A FEW THINGS.

23 YOU'RE NOT COMING IN HERE TELLING THIS JURY THAT
24 YOU CAN IDENTIFY WHO DID WHAT TO THIS CHILD?

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 Q. OKAY. AND, DOCTOR, DID YOU EXAMINE ANY OF THE
2 OTHER CHILDREN?

3 A. THE OTHER CHILDREN IN THE FAMILY?

4 Q. YES?

5 A. I SAW, BUT DID NOT EXAMINE, THE SECOND TWIN.

6 Q. OKAY.

7 A. BUT I DID NOT SEE HIM AT THE TIME THAT THIS CHILD
8 WAS HOSPITALIZED. I SAW HIM AT THE TIME I EXAMINED
9 Child [REDACTED] FOR HIS FOLLOW-UP EXAMINATION.

10 Q. WELL, HOW WOULD YOU COMPARE THE TWO CASES? GROWTH
11 DEVELOPMENT; SPEECH DEVELOPMENT; IF YOU GOT THAT
12 CLOSE TO THESE TWO CHILDREN?

13 A. I DIDN'T REALLY HAVE TIME TO DO AN EXTENSIVE
14 EVALUATION. REALLY, THE OTHER CHILD WALKED IN AND
15 PLAYED A LITTLE BIT. BUT HE IS SEVERAL INCH TALLER
16 AND SEVERAL POUNDS HEAVIER THAN HIS BROTHER. I
17 DIDN'T WEIGH OR MEASURE THEM. BUT THOSE WERE
18 CLEARLY OBVIOUS---

19 Q. YES. BUT THERE'S NO QUESTION, DOCTOR, THAT THERE'S
20 A DISTINCTION BETWEEN THESE TWO TWINS; ISN'T THAT
21 CORRECT?

22 A. THAT IS CORRECT.

23 Q. OKAY. NOW, DOCTOR, DID YOU CHECK THE EIGHT YEAR
24 OLD GIRL?

25 A. NO, SIR.

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 Q. OKAY. YOU KNOW IN CHILD ABUSE CASES, SOMETIMES I
2 KNOW WE TALK ABOUT THE TARGETED CHILD. YOU AND I
3 HAVE DISCUSSED THAT; ISN'T THAT CORRECT?

4 A. THAT'S TRUE.

5 Q. THAT ONE CHILD CAN BE TARGETED; ISN'T THAT CORRECT?

6 A. YES; THAT'S TRUE.

7 Q. BUT THERE'S NO QUESTION THAT TO GET A GOOD PICTURE
8 FOR THE WHOLE SETTING, YOU SHOULD HAVE AN
9 OPPORTUNITY TO AT LEAST VIEW OR SEE ALL OF THE
10 CHILDREN?

11 A. SOMEONE SHOULD SEE THEM; NOT NECESSARILY ME.

12 Q. NOT NECESSARILY YOU?

13 A. NO; IT'S NOT NECESSARILY ME.

14 Q. OKAY. HOW IMPORTANT IS NURTURING, SAY, IN THE
15 FIRST SIX MONTHS OF A CHILD'S LIFE; FOR
16 MOTHER/CHILD?

17 A. NURTURING IS IMPORTANT FOR ALL CHILDREN AT ALL
18 AGES.

19 Q. AT ALL AGES? YOU'RE AWARE IN THIS CASE THAT MY
20 CLIENT, ADRIAN GADSON'S FIVE MONTH OLD CHILD WAS
21 TAKEN AWAY FROM HER AND REALLY NOT GIVEN AN
22 OPPORTUNITY TO COMPLETE THE NURTURING PROCESS FROM
23 THAT POINT ON?

24 A. HE WASN'T TAKEN AWAY FROM HER PERMANENTLY. AND MY
PRESUMPTION WOULD BE THAT WHEN SHE GOT THE CHILD

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 BACK THAT SHE WOULD DO HER BEST TO MAKE UP FOR THAT
2 NURTURING.

3 Q. TO MAKE UP FOR IT. DO YOU THINK, DOCTOR, THAT IF
4 YOU TAKE A CHILD AWAY FROM A MOTHER FOR OVER
5 EIGHTEEN MONTHS OR TWO YEARS THAT YOU CAN ACTUALLY
6 GIVE A MOTHER THAT BACK?

7 A. YOU CAN NEVER MAKE---

8 MRS. MURPHY: OBJECTION, YOUR HONOR.

9 MR. DAVIS: WHAT'S THE BASIS---

10 MRS. MURPHY: WHAT THE MOTHER HAS GIVEN
11 BACK. I THINK THE PROPER FORM OF THE QUESTION WAS
12 IMPROPER.

13 THE COURT: LET ME HEAR THE QUESTION
14 AGAIN.

15 MR. DAVIS: YES. YOUR HONOR, SHE WAS MY
16 EXPERT. I KNOW DR. SCHUH. I'M SAYING DR. SCHUH,
17 IF YOU TAKE EIGHTEEN MONTHS AWAY, CRITICAL MONTHS
18 -- YOU'VE GOT A FIVE MONTH OLD CHILD. AND THAT
19 FIVE MONTH OLD CHILD IS SEPARATED FROM THE MOTHER;
20 CAN'T PROVIDE THE NORMAL NURTURING---

21 MRS. MURPHY: OBJECTION, YOUR HONOR.
22 THIS HAS NOTHING TO DO WITH THE FIVE YEAR OLD
23 CHILD. THIS WHOLE CASE IS---

24 MR. DAVIS: I MEAN A FIVE MONTH OLD

25 CHILD JUDGE MURPHY'S WHAT I'M SAYING ABOUT ---

SARA ELIZABETH SCHUH -- RE-DIRECT/MR. DAVIS

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1 THE TOTAL FAMILY. SHE'S AN EXPERT. IT TOUCHES ON
2 WHAT WE'RE TALKING ABOUT, JUDGE.

3 THE COURT: LET ME SEE YOU UP HERE.

4 (AT THIS TIME BENCH CONFERENCE IS HELD.)

5 MRS. MURPHY: THANK YOU, YOUR HONOR.

6 Q. DR. SCHUH, YOU WERE AWARE THAT THIS CHILD HAD LOST
7 THE USE OF HIS RIGHT EYE?

8 A. YES, I AM.

9 Q. OKAY.

10 A. I REVIEWED THOSE RECORDS.

11 Q. AND IN REFERENCE TO THOSE PHOTOGRAPHS AGAIN---

12 MR. DAVIS: JUDGE -- DO YOU MIND HELPING
13 ME?

14 Q. DR. SCHUH, DO YOU MIND STEPPING DOWN?

15 (AT THIS TIME WITNESS STEPS FROM WITNESS STAND.)

16 Q. YOU ALLUDED TO THE FACT THAT YOU THINK THAT THIS --
17 IN YOUR OPINION THAT THIS IS A BRUISING?

18 A. YES.

19 Q. THIS IS THE RIGHT EYE. DO YOU AGREE ON THAT?

20 A. YES, WE DO.

21 Q. OKAY. NOW, THE FACT THAT HE HAS NO SITE IN HIS
22 EYE; DOES THAT PLAY IN THE FACT IN REFERENCE TO A
23 BLOOD FLOW IN THIS AREA?

24 A. NOT TO THE EXTENT THAT HE WOULD BRUISE DIFFERENTLY

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 Q. BUT THE COLORATION. YOU KNOW WHEN YOU ILLUDED TO
2 -- WE'RE GOING TO CHANGE PHOTOGRAPHS. WE'RE GOING
3 TO PUT THIS PHOTOGRAPH UP.

4 MR. DUKES: STATE'S ELEVEN?

5 MR. DAVIS: YES; STATE'S ELEVEN. DO YOU
6 NOTICE THE RED INDENTATION THAT YOU TESTIFIED
7 ABOUT?

8 A. RIGHT.

9 Q. I MEAN, WHAT DOES THAT MEAN; BLOOD IS IN THAT AREA?

10 A. YES.

11 Q. OKAY. IT COMES TO THE FOREFRONT?

12 A. IT BLED OUT OF THE BLOOD VESSELS BECAUSE OF THE
13 TRAUMA TO THE BLOOD VESSELS.

14 Q. ALL RIGHT.

15 DEFENDANT'S EXHIBIT NO. 10

16 ADMITTED AS EVIDENCE

17 Q. NOW YOU NOTICE THE RED MARKS; THAT'S BLOOD?

18 A. RIGHT.

19 Q. OKAY. BUT AROUND THE EYE. ARE YOU AWARE THAT HE
20 KEEPS THIS EYE SHUT 100 PERCENT OF THE TIME?

21 A. THAT'S NOT RELATED TO WHETHER HE HAS A LITTLE
22 BRUISING IN THIS AREA. IT'S NOT RELATED TO --
23 CHILDREN WHO HAVE THEIR EYES CLOSED OR HAVE
24 ARTIFICIAL EYES DON'T NORMALLY HAVE BRUISING AROUND
25 THE EYE

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 Q. YOU WOULD SAY THAT IS BRUISING?

2 A. IT LOOKS TO ME TO LIKE BRUISING; YES.

3 Q. COULD IT BE DISCOLORATION FROM THE FACT THAT NO
4 BLOOD IS SUPPLIED TO THAT AREA?

5 A. I DON'T THINK SO.

6 Q. OKAY. YOU CAN HAVE A SEAT. (AT THIS TIME WITNESS
7 RETURNS TO WITNESS STAND.) DR. SCHUH, I'M AWARE OF
8 YOUR PAST EXPERIENCE IN REFERENCE TO ONE CHILD
9 BEING TARGETED IN REFERENCE TO SEXUAL ABUSE. IS IT
10 THE SAME SCENARIO IN REFERENCE TO CHILDREN THAT GET
11 PHYSICALLY ABUSED, TOO?

12 A. IT CAN BE.

13 Q. BUT NORMALLY IT'S NOT?

14 A. TARGETING HAS TO DO WITH FAMILY DYNAMICS. IT ISN'T
15 LIMITED TO PHYSICAL OR SEXUAL OR EMOTIONAL ABUSE.

16 Q. OKAY. TELL US SOME OF THE FAMILY -- BECAUSE THAT'S
17 WHAT WE SEEM TO HAVE HERE, FAMILY DYNAMICS. SHARE
18 WITH US SOME OF THE FAMILY DYNAMICS THAT BRING INTO
19 PLAY WHERE ONE PARTICULAR CHILD THAT'S TARGETED
20 VERSUS THE OTHER CHILDREN.

21 A. THERE ARE ANY NUMBER OF THINGS THAT CAN CAUSE
22 THAT. IT CAN BE BECAUSE THE CHILD REMINDS THE
23 PARENT -- IN THIS CASE IF WE'RE GOING TO TALK --
24 I'M GOING TO SAY PARENT ALTHOUGH IT MAY BE ANOTHER

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 BE THAT THE CHILD REMINDS A PARENT OF SOMEONE WITH
2 WHOM THE PARENT IS ANGRY. IT MAY BE THAT THE CHILD
3 HAS PERSONALITY TRAITS THAT THE PARENT FINDS
4 ANNOYING. IT MAY BE THAT THE PARENT FOR -- IT
5 FINDS THE CHILD DIFFICULT TO MANAGE OR THAT THE
6 CHILD WAS BORN AT A TIME WHEN THE PARENT WAS
7 EXTREMELY UNHAPPY AND IT REMINDS THE PARENT OF
8 UNHAPPINESS, OR MANY, REASONS WHY A PARENT MAY
9 CHOOSE ONE CHILD RATHER THAN THE OTHER. IT MAY BE
10 THAT ONE CHILD IS VERY PASSIVE AND DOES ANYTHING
11 WITHOUT ANY EFFORT ON THE PART OF THE PARENT TO
12 OBTAIN COMPLIANCE WHEREAS ANOTHER CHILD MAY REQUIRE
13 MORE ATTENTION AND MORE EFFORT IN ORDER TO GET THE
14 CHILD TO COMPLY WITH THEM. THERE ARE MANY REASONS.

15 Q. OKAY. NOW, DOCTOR, IN REFERENCE TO THE NOVEMBER
16 THE ELEVENTH PEDIATRIC RECORDS THAT YOU SAW
17 PERTAINING TO THE CHILD---

18 A. NOVEMBER THE---

19 Q. I THINK IT WAS NOVEMBER THE ELEVENTH.

20 A. THE FOURTH; NOVEMBER THE FOURTH.

21 Q. NOVEMBER THE FOURTH; THE ONE WHERE HE HAD THE
22 RESPIRATORY PROBLEM?

23 A. OH, I'M SORRY. NOVEMBER THE FIRST.

24 Q. OH, NOVEMBER THE FIRST. I'M SORRY. WHO IS

25 Child -- IF YOU KNOW -- REGULAR TREATING

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 PEDIATRICIAN?

2 A. AT THE TIME I BELIEVE IT WAS DR. PENZ, BUT I DON'T
3 THINK THAT IN RETROSPECT THAT HE HAD SEEN THIS
4 CHILD A LOT OF TIMES. HE HAD A VERY LIMITED NUMBER
5 OF RECORDS. IN FACT THE ONLY RECORD THAT WE WERE
6 GIVEN WERE THE RECORDS OF NOVEMBER THE FIRST AND
7 SECOND.

8 Q. SO, TO ANSWER MY QUESTION---

9 A. BUT HE WAS LISTED AS THE CHILD'S PRIMARY PHYSICIAN.

10 Q. DR. PENZ?

11 A. YES.

12 Q. OKAY. AND YOU DIDN'T HAVE WEALTHY NOVEMBER THE
13 FIRST RECORDS?

14 A. FIRST AND SECOND.

15 Q. FIRST AND SECOND. ARE YOU FAMILIAR WITH THE
16 BATTERED CHILD SYNDROME?

17 A. YES.

18 Q. DO YOU WANT TO EDUCATE US ABOUT THAT?

19 A. THE BATTERED CHILD SYNDROME WAS ORIGINALLY
20 DESCRIBED BY DR. JOHN CAFFEY. AND IT REFERRED
21 INITIALLY TO CHILDREN WHO HAD HEAD INJURIES AND
22 LONG BONE INJURIES. AND HE AND A PEDIATRICIAN
23 LOOKED AT A NUMBER OF THESE CASES AND CAME TO THE
24 CONCLUSION THAT THESE CHILDREN WERE BEING INJURED

SARA ELIZABETH SCHUH - RE-DIRECT/MR. DAVIS

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1 THE TERM BATTERED BABY OR BATTERED CHILD HAS BEEN
2 EXPANDED TO INCLUDE OTHER FORMS OF INJURIES
3 INFLECTED BY CARE GIVERS ON CHILDREN SO THAT IT NOW
4 COVERS QUITE AN EXTENSIVE LIST OF POSSIBILITIES.

5 Q. VERY BROAD?

6 A. IT'S MUCH BROADER THAN IT WAS AS INITIALLY
7 DESCRIBED; YES.

8 Q. OKAY. IS IT SIMILAR TO THE BATTERED WIFE SYNDROME?

9 A. NOT -- I GUESS IN THE SENSE THAT ONE PERSON IS
10 BEATING UP ON OR INJURING ANOTHER PERSON, IT'S
11 SIMILAR. BUT IN THE SENSE THAT A CHILD DOES NOT
12 HAVE THE SAME LEVEL OF MATURITY OR PHYSICAL SIZE AS
13 MANY WIVES AND IN TERMS OF A LESS EQUAL, I GUESS
14 YOU WOULD SAY -- A LESS EQUAL STATUS BETWEEN THE
15 CHILD AND THE PARENTS, IT DIFFERS.

16 Q. OKAY. WERE YOU PROVIDED ANY INFORMATION THAT THE
17 MOTHER IN THIS CASE WAS PRESENT WHEN ANY OF THESE
18 INJURIES TOOK PLACE?

19 A. I DIDN'T HAVE ANY INFORMATION REGARDING THAT.

20 Q. OKAY. HAVE YOU EVER MET MY CLIENT, ADRIAN GADSON?

21 A. I DON'T BELIEVE SO.

22 Q. YOU'VE TREATED HER SON, BUT YOU'VE NEVER TALKED TO
23 HER?

24 A. SHE WAS NEVER IN THE HOSPITAL WHEN I WAS THERE. I
25 THINK SHE WAS NOT THERE AT THE TIME THAT I SAW HIM

BRET WOODARD - DIRECT/MRS. MURPHY

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1 IN FOLLOW-UP. HE CAME WITH A SOCIAL WORKER. SO
2 I'VE NOT TALKED TO HER.

3 Q. YOU'VE NOT TALKED TO HER?

4 A. NO.

5 Q. AND THE FIRST TIME YOU CAME INTO Child LIFE WAS
6 NOVEMBER THE THIRD, 2001?

7 A. AS BEST I KNOW; YES.

8 Q. THANK YOU, DR. SCHUH.

9 THE COURT: VERY WELL. ANY RE-DIRECT?

10 MR. MURPHY: NO, MA'AM

11 THE COURT: VERY WELL. IS SHE FREE TO
12 LEAVE?

13 MRS. MURPHY: YES, MA'AM.

14 THE COURT: VERY WELL. YOU ARE FREE TO
15 GO.

16 MRS. MURPHY: THANK YOU, YOUR HONOR. THE
17 STATE WOULD CALL DR. BRET WOODARD.

18
19 WHEREUPON,

20 BRET WOODARD, WHO AFTER BEING FIRST
21 DULY SWORN TO TELL THE TRUTH,
22 TESTIFIED AS FOLLOWS:

23 THE COURT: YOUR WITNESS, MRS. MURPHY.

24 MRS. MURPHY: THANK YOU, YOUR HONOR.

BRET WOODARD - DIRECT/MRS. MURPHY

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BY MRS. MURPHY:

- 1
- 2 Q. DR. WOODARD, WOULD YOU TELL THE JURY A LITTLE BIT
- 3 ABOUT YOUR EDUCATIONAL BACKGROUND, PLEASE, SIR?
- 4 A. YES. I RECEIVED A BACCALAUREATE DEGREE FROM THE
- 5 UNIVERSITY OF PITTSBURG. I THEN ATTENDED TULANE
- 6 UNIVERSITY SCHOOL OF MEDICINE AND RECEIVED MY
- 7 MEDICAL DEGREE. I DID AN INTERNSHIP AT THE CHARITY
- 8 HOSPITAL OF NEW ORLEANS IN PEDIATRICS. I THEN DID
- 9 A RESIDENCY IN PATHOLOGY AT THE DUKE UNIVERSITY
- 10 MEDICAL CENTER IN NORTH CAROLINA, AND THEN SERVED
- 11 ON THE FACULTY AT DUKE UNIVERSITY MEDICAL CENTER IN
- 12 SURGICAL AND PEDIATRIC PATHOLOGY. IN 1982 I CAME
- 13 INTO PRIVATE PRACTICE WITH PIEDMONT PATHOLOGY
- 14 ASSOCIATES IN ANDERSON, SOUTH CAROLINA. I THEN
- 15 WENT BACK IN 1994 TO THE NORTH CAROLINA MEDICAL
- 16 EXAMINERS OFFICE WHERE I DID FELLOWSHIP TRAINING IN
- 17 FORENSIC PATHOLOGY. CURRENTLY I'M LICENSED TO
- 18 PRACTICE IN NORTH CAROLINA, SOUTH CAROLINA,
- 19 GEORGIA, PENNSYLVANIA, AND LOUISIANA. I AM BOARD
- 20 CERTIFIED BY THE AMERICAN BOARD OF PATHOLOGY IN
- 21 ANATOMIC PATHOLOGY, AND IN FORENSIC PATHOLOGY.
- 22 Q. AND, DOCTOR, WHAT IS FORENSIC PATHOLOGY?
- 23 A. FORENSIC PATHOLOGY IS A SPECIALTY IN THE AREA OF
- 24 PATHOLOGY THAT DEALS WITH INJURIES TO THE HUMAN
- 25 BODY, THEIR CAUSE, AND THEIR EFFECT UPON THE HUMAN

BRET WOODARD - DIRECT/MRS. MURPHY

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1 BODY.

2 Q. AND, DOCTOR, HAVE YOU EVER BEEN PUBLISHED IN THIS
3 AREA?

4 A. YES, I HAVE.

5 Q. CAN YOU GIVE US A SAMPLING OF YOUR QUALIFICATIONS,
6 PLEASE, SIR?

7 A. I'VE PUBLISHED APPROXIMATELY 40 WORKS IN REFEREE
8 JOURNALS AND PROBABLY AS MANY PRESENTATIONS AT
9 VARIOUS NATIONAL MEETINGS.

10 Q. AND, DOCTOR, HAVE YOU ALSO GIVEN LECTURES IN THE
11 AREA OF FORENSIC PATHOLOGY?

12 A. YES, I HAVE; BOTH -- PRIMARILY IN THE STATE OF
13 SOUTH CAROLINA. I'VE GIVEN LECTURES TO THE
14 INTERNATIONAL CORONER'S ASSOCIATION. I'VE GIVEN
15 LECTURES TO LAW ENFORCEMENT AND GIVEN LECTURES TO
16 GROUPS OF PEDIATRICIANS AND OTHER PHYSICIANS.

17 Q. AND DO YOU HAVE FAMILIARITY WITH ASSESSMENT,
18 TREATMENT, AND/OR DIAGNOSIS OF CHILD ABUSE INJURIES
19 AS WELL?

20 A. YES, I DO.

21 Q. AND CAN YOU GO THROUGH YOUR EXPERIENCE IN THAT AS
22 WELL ALSO?

23 A. CERTAINLY. IN MY TRAINING IN PEDIATRICS PLUS MY
24 TRAINING IN FORENSIC PATHOLOGY, I'VE LEARNED ABOUT
CHILD ABUSE AND HAVE ATTENDED OR PARTICIPATED IN

BRET WOODARD - DIRECT/MRS. MURPHY

399

1 THE STATE CHILD DEATH COMMITTEE HERE IN THE STATE
2 OF SOUTH CAROLINA FOR A NUMBER OF YEARS REVIEWING
3 CHILD DEATHS HERE IN THE STATE OF SOUTH CAROLINA.

4 Q. AND ARE YOU FAMILIAR WITH THE TERM BATTERED CHILD
5 SYNDROME?

6 A. YES, I AM.

7 Q. AND CAN YOU DEFINE WHAT THAT TERM IS?

8 A. SIMPLY THAT WOULD REPRESENT REPETITIVE INFLICTED
9 TRAUMAS ON A CHILD THAT WERE ABUSIVE IN NATURE THAT
10 OCCURRED ON MULTIPLE DIFFERENT OCCASIONS OVER AN
11 EXPANDED PERIOD OF TIME.

12 Q. AND WHAT TYPES OF STUDIES HAVE YOU PARTICIPATED IN
13 REGARDING BATTERED CHILD SYNDROME?

14 A. I HAVE NOT DONE ANY STUDIES ON MY OWN.

15 Q. WHAT EXPERIENCE DO YOU HAVE WITH BATTERED CHILD
16 SYNDROME?

17 A. IN MY WORK AS A FORENSIC PATHOLOGIST, I'VE SEEN
18 CASES OF BATTERED CHILD SYNDROME AND TESTIFIED
19 CONCERNING THESE INJURIES IN SOUTH CAROLINA COURTS.

20 Q. AND IS IT A RECOGNIZED MEDICALLY ACCEPTED
21 DIAGNOSIS, SIR?

22 A. YES, IT IS.

23 Q. DOCTOR, YOU TESTIFIED THAT YOU'VE TESTIFIED BEFORE
24 AS AN EXPERT. HAVE YOU TESTIFIED BEFORE IN THE
25 FIELD OF FORENSIC PATHOLOGY SPECIFICALLY AS TO

BRET WOODARD - VOIR DIRE/MR. DUKES

400

1. RELATES TO BATTERED CHILD SYNDROME?

2 A. YES, I HAVE.

3 Q. HOW MANY TIMES?

4 A. IN THE LAST TWO YEARS, AT LEAST ON SEVEN DIFFERENT
5 OCCASIONS.

6 MRS. MURPHY: YOUR HONOR, AT THIS POINT I
7 WOULD MOVE TO QUALIFY DR. WOODARD AS AN EXPERT IN
8 THE FIELD OF FORENSIC PATHOLOGY AND BATTERED CHILD
9 SYNDROME DIAGNOSTICS.

10 THE COURT: IS THERE ANY VOIR DIRE, MR.
11 DUKES?

12 VOIR DIRE EXAMINATION

13 BY MR. DUKES:

14 Q. YOU SAY YOU'VE TESTIFIED SEVEN TIMES?

15 A. AT LEAST; YES, SIR.

16 Q. YOU'VE NEVER DONE ANY INDEPENDENT STUDY---

17 A. THAT'S CORRECT.

18 Q. --OF BATTERED CHILD SYNDROME?

19 A. THAT IS CORRECT.

20 Q. THAT'S A FAIRLY NEW THEORY, ISN'T IT?

21 A. NO. IT WAS ORIGINALLY DESCRIBED IN 1963.

22 Q. IN 1963?

23 A. YES.

24 Q. HAVE YOU TAKEN ANY COURSES IN IT?

BRET WOODARD - VOIR DIRE/MR. DUKES

401

1 AMERICAN ACADEMY OF FORENSIC SCIENCES THROUGH THE
2 ARMED FORCES INSTITUTE OF PATHOLOGY AND THROUGH THE
3 AMERICAN SOCIETY OF CLINICAL PATHOLOGY.

4 Q. AND HAVE YOU EVER WRITTEN ANY PAPERS?

5 A. YES, I HAVE.

6 Q. WHAT ARE THEY?

7 A. I'M SORRY. I COULDN'T HEAR YOU.

8 Q. WHAT'S THE TITLE OF THEM?

9 A. MULTIPLE SCIENTIFIC PAPERS ON THE FIELD OF
10 PATHOLOGY. I'VE HAD OVER FORTY PAPERS PUBLISHED.

11 Q. I'M TALKING ABOUT IN TERMS OF BATTERED CHILD
12 SYNDROME?

13 A. NO SPECIFIC PAPERS ON BATTERED CHILD SYNDROME.
14 I'VE NOT DONE ANY RESEARCH.

15 Q. YOU'VE NEVER DONE ANY PAPERS. YOU'VE DONE NO
16 RESEARCH ON IT?

17 A. THAT'S CORRECT.

18 Q. YOU CONSIDER YOURSELF AN EXPERT, THOUGH?

19 A. YES, I DO.

20 Q. WHY?

21 A. BECAUSE OF TRAINING AND EXPERIENCE AND ITS
22 RECOGNITION AND THE PATTERNS OF INJURY.

23 Q. AND YOU'VE TESTIFIED SEVEN TIMES ABOUT IT?

24 A. IN THE LAST TWO YEARS; YES.

25 O. ANY BEFORE THAT?

BRET WOODARD - VOIR DIRE/MR. DAVIS

402

1 A. YES; BUT I CAN'T GIVE YOU THE NUMBERS.

2 Q. WHAT'S THE LAST COURT YOU TESTIFIED IN?

3 A. IT WAS IN PICKENS COUNTY, SOUTH CAROLINA. AND IT
4 WAS RELATING TO A CHILD, A NINE MONTH OLD CHILD,
5 THAT RESULTED IN ITS DEATH -- IT WAS ABUSE
6 RESULTING IN ITS DEATH.

7 Q. ALL THESE CASES HAVE BEEN IN CRIMINAL COURT?

8 A. YES, THEY HAVE.

9 Q. AND EACH TIME YOU'VE TESTIFIED FOR THE STATE?

10 A. YES, I HAVE.

11 Q. YOU'VE NEVER TESTIFIED FOR A DEFENDANT?

12 A. NEVER BEEN ASKED TO; NO.

13 Q. BUT YOU'VE BEEN ASKED FOR THE STATE EACH TIME?

14 A. THAT'S CORRECT.

15 Q. THAT'S ALL THE QUESTIONS I HAVE.

16 THE COURT: YES, SIR, MR. DAVIS?

17 MR. DAVIS: I'VE GOT A FEW.

18 VOIR DIRE EXAMINATION

19 BY MR. DAVIS:

20 Q. I'D LIKE TO PUT THINGS IN TERMS THAT YOU UNDERSTAND
21 THEM. ARE YOU FAMILIAR WITH A SHOW THAT COMES ON
22 T.V. THAT'S CALLED QUINCY?

23 A. YES, I AM.

24 Q. THAT'S THE EQUIVALENT OF WHAT WE TALK ABOUT
25 FORENSIC PATHOLOGISTS?

BRET WOODARD - VOIR DIRE/MR. DAVIS

403

1 A. WELL, PERHAPS A LITTLE---

2 Q. THE T.V. HEIGHT?

3 A. YES.

4 Q. THAT FITS YOU; ISN'T THAT CORRECT?

5 A. THAT WOULD BE TRUE; YES, SIR.

6 Q. THAT WOULD BE TRUE. THANK YOU.

7 A. YES, SIR.

8 Q. NOW, I HAVE NO PROBLEM WITH THAT, DOCTOR, THAT
9 ASPECT OF IT. BUT WHAT I DO HAVE PROBLEMS WITH IS
10 YOU WERE HERE. I INTENTIONALLY HAD DR. SCHUH TO
11 TALK ABOUT BATTERED CHILD SYNDROME. YOU WERE HERE.
12 AND YOU HEARD HER TESTIMONY?

13 MRS. MURPHY: TESTIFYING? OR IS THERE A
14 QUESTION?

15 MR. DAVIS: THE DOCTOR CAN UNDERSTAND.

16 THE COURT: NO; YOU ASK THE QUESTION.

17 MR. DAVIS: OKAY.

18 Q. YOU WERE HERE WHEN DR. SCHUH TESTIFIED?

19 A. YES, I WAS.

20 Q. AND SHE ALLUDED TO THE BATTERED CHILD SYNDROME WHAT
21 THE STATE IS TRYING TO GET YOU QUALIFIED AS AN
22 EXPERT; NOW, ISN'T THAT CORRECT?

23 A. YES. SHE TALKED ABOUT THE BATTERED CHILD SYNDROME.

24 Q. AND SHE TOLD YOU THE TWO PEOPLE THAT WERE
25 RESPONSIBLE FOR IT ACTUALLY COMING INTO PLAY; ISN'T

BRET WOODARD - VOIR DIRE/MR. DAVIS

404

1 THAT CORRECT?

2 A. YES. SHE MENTIONED DR. CAFFEY; YES.

3 Q. AND THERE WAS ANOTHER FELLOW. SHE HAD TWO PEOPLE.

4 WHAT WERE THE TWO NAMES?

5 A. I DON'T REMEMBER THE SECOND NAME SHE MENTIONED.

6 Q. OKAY. SHE SAID THERE WERE TWO INDIVIDUALS THAT

7 BROUGHT THE BATTERED CHILD SYNDROME INTO PLAY;

8 ISN'T THAT CORRECT?

9 A. YES, SIR.

10 Q. AND SHE ALSO SAID THAT SHE BELIEVES IN HER OPINION

11 THAT IT HAS BECOME TOO BROAD; ISN'T THAT CORRECT?

12 A. SHE SAID THE DEFINITION IS BROADENING.

13 Q. BROADENING? AND BROADENING TO THE POINT THAT IN

14 THE LAST TWO YEARS YOU'VE BEEN CALLED INTO PLAY BY

15 DIFFERENT PROSECUTORS IN THIS AREA OF BATTERED

16 CHILD SYNDROME?

17 A. NO. I WAS CALLED INTO PLAY BEFORE THE LAST TWO

18 YEARS.

19 Q. OKAY. YOU HAVE NEVER WRITTEN ONE PAPER ON THE

20 BATTERED CHILD SYNDROME?

21 A. THAT'S CORRECT.

22 Q. SO THEREFORE I'M NOT IN A POSITION TO REVIEW

23 ANYTHING THAT WOULD SHARE OR ENLIGHTEN ME AS TO THE

24 SPECIFICS OF WHAT RESEARCH YOU HAVE DONE IN THIS

25 AREA? YOU DON'T HAVE THAT TO PROVIDE TO US?

BRET WOODARD - VOIR DIRE/MR. DAVIS

405

- 1 A. NO.
- 2 Q. WHEN WAS THE LAST TIME YOU'VE BEEN TO A SEMINAR
- 3 INVOLVING THE BATTERED CHILD SYNDROME?
- 4 A. LAST MARCH IN ATLANTA.
- 5 Q. AND WHO GAVE THAT SEMINAR?
- 6 A. IT WAS PUT ON BY THE AMERICAN ASSOCIATION OF
- 7 FORENSIC SCIENCES.
- 8 Q. AND HOW MUCH TIME WAS DEDICATED TO THAT?
- 9 A. THAT WAS A ONE WEEK SEMINAR.
- 10 Q. AND THE WHOLE WEEK WAS NOTHING BUT BATTERED CHILD
- 11 SYNDROME?
- 12 A. NO.
- 13 Q. OKAY. THANK YOU, DOCTOR.
- 14 A. FOURTEEN HOURS FOR BATTERED CHILD SYNDROME.
- 15 Q. FOURTEEN HOURS WAS THE BATTERED CHILD SYNDROME.
- 16 YOU BROUGHT IN THAT LITERATURE WITH YOU TODAY?
- 17 A. NO, I DID NOT.
- 18 Q. YOU DON'T HAVE ANY OF THAT LITERATURE WITH YOU?
- 19 A. NO.
- 20 Q. WHO WAS THE PRESENTER?
- 21 A. IT WAS A COMBINATION OF A PEDIATRIC PATHOLOGIST
- 22 FROM THE UNIVERSITY OF NEW MEXICO AND A PEDIATRIC
- 23 NEUROLOGIST FROM THE AIR FORCE.
- 24 Q. FROM THE AIR FORCE?

BRET WOODARD - VOIR DIRE/MR. DAVIS

406

1 Q. YOU CAN'T PROVIDE US WITH THE NAMES?

2 A. I DON'T REMEMBER THE NAMES.

3 Q. YOU DON'T REMEMBER. ARE YOU PAID TO TESTIFY?

4 A. YES, I AM.

5 Q. HOW MUCH ARE YOU PAID?

6 A. A HUNDRED AND FIFTY DOLLARS AN HOUR.

7 Q. SO WHEN YOU'RE SITTING HERE ALL DAY, YOU MAKE \$150
8 FOR THE TIME YOU TESTIFY?

9 A. AS LONG AS YOU KEEP ME.

10 Q. NO FURTHER QUESTIONS?

11 MR. DAVIS: I STILL OBJECT, YOUR HONOR,
12 ON THE BASIS THAT I DON'T THINK -- WITH ALL DUE
13 RESPECT, I THINK HE'S AN EXPERT SOMEWHAT IN THE
14 AREA OF FORENSIC PATHOLOGY WHICH I WOULD PUT IN
15 LAYMAN TERMS OF QUINCY. BUT WHEN IT COMES TO
16 BATTERED CHILD SYNDROME IN LIEU OF DR. SCHUH'S
17 TESTIMONY, AND IN LIEU OF HIS OWN ADMISSION; HE HAS
18 NOT WRITTEN ANYTHING IN THIS AREA, HASN'T PUBLISHED
19 ANYTHING. I DON'T THINK THAT HIS OPINION SHOULD BE
20 AFFORDED IN THIS CASE. I THINK THAT IT'S VERY,
21 VERY IMPORTANT BECAUSE IT IS VERY, VERY PREJUDICIAL
22 IN THIS MATTER.

23 THE COURT: ALL RIGHT. VERY WELL.

24 MR. DUKES: I ALSO TAKE THE SAME

BRET WOODARD - VOIR DIRE/MR. DAVIS

407

1 THE COURT: OKAY. JUST ONE SECOND.

2 COUNSEL, LET ME JUST ASK YOU TO APPROACH.

3 (AT THIS TIME BENCH CONFERENCE IS HELD.)

4 THE COURT: ALL RIGHT. COUNSEL, THIS IS
5 WHERE I AM. AND IT MAY BE A DISTINCTION WITHOUT
6 PARTICULAR DEFERENCE. I FIND THAT DR. WOODARD
7 CERTAINLY IS QUALIFIED AND IS AN EXPERT IN THE
8 FIELD OF FORENSIC PATHOLOGY. AND WHAT I'M GOING TO
9 WAIT FOR PRIOR TO THE TESTIMONY, ANY TESTIMONY
10 REGARDING THE BATTERED CHILD SYNDROME, IS FOR THE
11 FOUNDATION. AND I'LL JUST -- AT THIS POINT,
12 CLEARLY THERE'S BEEN NO TESTIMONY REGARDING THAT
13 FOUNDATION. BUT I THINK HE CLEARLY IS AN EXPERT IN
14 THE FIELD OF FORENSIC PATHOLOGY. AND I THINK IT'S
15 APPROPRIATE THAT THAT FOUNDATION BE LAID BEFORE ANY
16 TESTIMONY REGARDING THAT PARTICULAR DIAGNOSIS IF
17 ONE IS REQUESTED. VERY WELL. ALL RIGHT.

18 MRS. MURPHY: THANK YOU.

19 Q. DOCTOR, IN PREPARATION FOR THIS CASE, WHAT
20 MATERIALS HAVE YOU REVIEWED?

21 A. I REVIEWED THE MEDICAL RECORDS FROM THE NOVEMBER,
22 2001, INJURY PLUS WITNESS STATEMENTS CONNECTED WITH
23 THAT INJURY. I REVIEWED THE RECORDS FROM THE
24 OCTOBER '98 FRACTURE PLUS RECORDS FROM WITNESS

BRET WOODARD -- VOIR DIRE/MR. DAVIS

408

1 RECORDS FROM HIS LEG FRACTURE WHEN HE WAS ELEVEN
2 MONTHS OLD PLUS RECORDS THAT WENT ALONG WITH THAT.
3 AND I REVIEWED THE OPHTHALMOLOGY RECORDS FROM HIS
4 EYE SURGERY PLUS HIS CURRENT PEDIATRIC OFFICE
5 RECORDS THAT WERE MADE AVAILABLE FROM HIS
6 PRACTICING PEDIATRICIAN.

7 Q. AND, DOCTOR, WHAT RECORDS -- AS FAR AS GOING
8 THROUGH EACH OF THOSE RECORDS; LET'S FIRST START
9 WITH THE PRIOR HOSPITALIZATIONS REGARDING THE FIRST
10 FEMORAL FRACTURE THAT YOU REVIEWED.

11 A. I REVIEWED THE ORTHOPAEDIC NOTES AND A COPY OF THE
12 RADIOGRAPHS THAT WERE MADE AT THAT TIME AND THE
13 STATEMENTS THAT THE MOTHER MADE CONCERNING HOW THIS
14 FRACTURE OCCURRED AT THAT TIME.

15 Q. AND THAT WAS IN 1996?

16 A. THAT'S CORRECT.

17 Q. AND, DOCTOR, YOU HAVE THOSE X-RAYS WITH YOU?

18 A. YES, I DO.

19 Q. AND CAN YOU PULL THE X-RAY FROM 1996 WHICH SHOWS
20 THE FEMORAL FRACTURE, PLEASE SIR?

21 A. (WITNESS REVIEWS DOCUMENT.)

22 MR. DAVIS: YOUR HONOR, MAY I APPROACH
23 THE BENCH?

THE COURT: YOU MAY.

BRET WOODARD - VOIR DIRE/MR. DAVIS

409

1 THE COURT: LADIES AND GENTLEMEN, I'M
2 GOING TO ASK YOU TO STEP TO YOUR JURY ROOM. DO NOT
3 DISCUSS THIS MATTER; AND DO NOT ALLOW ANYONE TO
4 DISCUSS IT WITH YOU. THERE'S A MATTER WHICH I MUST
5 TAKE OUTSIDE OF YOUR PRESENCE.

6 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

7 THE COURT: ALL RIGHT. YES?

8 MR. DAVIS: YOUR HONOR, IF IT PLEASE THE
9 COURT; I OBJECT. I WANT THE RECORD TO REFLECT THAT
10 I MADE A CONTEMPORANEOUS OBJECTION. ALL THIS
11 TESTIMONY -- IT GOES WITHOUT QUESTION, YOUR HONOR.
12 THAT WAS MY CONCERN IN REFERENCE TO A SEVERANCE AT
13 THE BEGINNING OF THIS CASE. I FIND MYSELF IN A
14 POSITION THAT IN DEFENDING MY CLIENT THAT SHE'S
15 BEEN PUT IN A POSITION IN REFERENCE TO THE
16 PREJUDICIAL AFFECT OF THIS TESTIMONY THAT IS ABOUT
17 TO BE ELICITED, THE CRIMINAL ACTS IN A SENSE THAT
18 OCCURRED BACK IN 1996; CRIMINAL ACTS THAT OCCURRED
19 BACK IN 1998; AND THE SPECIFIC CHARGE THAT COMES
20 INTO QUESTION ON NOVEMBER THE THIRD, 2001, FOR
21 WHICH WE'RE HERE WHERE MY CLIENT HAS BEEN INDICTED
22 FOR UNLAWFUL NEGLECT BY LEGAL CUSTODIAN. I DON'T
23 KNOW WHICH SUBSECTION. BUT THAT'S ANOTHER POINT.
24 THE POINT OF THE MATTER; YOUR HONOR; WHEN YOU LOOK

BRET WOODARD - VOIR DIRE/MR. DAVIS

410

1. IT RELATES TO MY CLIENT, ADRIAN GADSON, THE
2. PREJUDICIAL EFFECT OF IT TREMENDOUSLY OVERWEIGHS
3. THE PROBATIVE VALUE OF IT. THE OTHER THING ADRIAN
4. GADSON IS CHARGED WITH IS UNLAWFUL NEGLECT. NOW
5. I'M PUT IN A POSITION OF REFUTING APPARENTLY A
6. CRIME THAT OCCURRED IN 1996, A CRIME THAT OCCURRED
7. IN 1998, AND -- '96 TO '98 AND NOVEMBER THE THIRD,
8. 2001. JUDGE, THE VOLUME OF THE TESTIMONY PUTS ME
9. IN A POSITION, PUTS MY CLIENT IN A DIRE POSITION;
10. AND SHE CANNOT POSSIBLY GET A FAIR TRIAL.

11. THE COURT: LET ME ASK YOU THIS QUESTION,
12. MR. DAVIS, BECAUSE HERE'S -- AS I UNDERSTAND THE
13. STATE'S CASE; AS I UNDERSTAND THE BATTERED CHILD
14. SYNDROME; THE BATTERED CHILD SYNDROME IS ONE IN
15. WHICH AN EXPERT SUCH AS DR. WOODARD, AS I
16. UNDERSTAND IT, CAN LOOK AT THE HISTORY OF DIFFERENT
17. INJURIES, LOOK AT THE EXPLANATIONS GIVEN FOR
18. DIFFERENT INJURIES OF A CHILD, AND CAN OPINE THAT,
19. AND CAN DIAGNOSE THAT, THE VICTIMS INJURIES, SOME
20. FRESH, SOME NOT SO FRESH, SOME OLDER, SOME NEWER,
21. IN FACT THAT THOSE INJURIES HAVE NOT BEEN CAUSED BY
22. ACCIDENT BUT HAVE IN FACT BEEN CAUSED BY
23. CARETAKERS; OKAY? ALL RIGHT. THAT TESTIMONY, AS
24. WE KNOW -- AND, OF COURSE, THE CASE THAT I'M

BRET WOODARD - VOIR DIRE/MR. DAVIS

411

1 390. STATE VS. LOPEZ SAYS THAT IF YOU HAVE ANY
2 QUALIFIED EXPERT, AND YOU DO THE ANALYSIS AND THEY
3 CAN TESTIFY REGARDING THE SYNDROME WHICH IS CALLED
4 THE BATTERED CHILD SYNDROME. I WOULD PRESUME THAT
5 THE STATE WOULD OFFER THAT EVIDENCE AGAINST,
6 CERTAINLY YOUR CLIENT, BECAUSE IT WOULD GO -- I
7 GATHER THERE WOULD BE AN INFERENCE WHICH THE STATE
8 WOULD PROPOUND TO THE JURY THAT THERE WAS KNOWLEDGE
9 ON BEHALF OF YOUR CLIENT THAT THIS CHILD WAS
10 RECEIVING THESE INJURIES AND THEREFORE SHE WAS ON
11 NOTICE THAT THIS CHILD WAS AT UNREASONABLE RISK OF
12 HARM. I MEAN, I GATHER THAT INsofar AS YOUR CLIENT
13 IS CONCERNED THAT THAT WOULD BE THE PURPOSE OF
14 OFFERING THIS TESTIMONY. I MEAN -- MRS. MURPHY?

15 MRS. MURPHY: YOU'RE ABSOLUTELY RIGHT,
16 YOUR HONOR.

17 THE COURT: SO---

18 MR. DAVIS: JUST NOTE IT FOR THE RECORD,
19 YOUR HONOR.

20 THE COURT: VERY WELL.

21 MR. DAVIS: IN FACT, YOU'VE TAKEN THE
22 POSITION THAT HE'S NOT QUALIFIED AS AN EXPERT AS OF
23 YET IN THE FIELD OF THIS NEW DEVELOPMENT.

24 THE COURT: YES. I'M LOOKING AT THE

BRET WOODARD - VOIR DIRE/MR. DAVIS

412

1 I'M DELIGHTED TO TAKE THIS OPPORTUNITY TO PUT MY
2 OPINION, PERHAPS, ON THE RECORD A LITTLE MORE FULLY
3 THAN I DID EARLIER. WHAT CONCERNS ME A LITTLE BIT
4 ABOUT IT IS CLEARLY HE'S QUALIFIED AS A FORENSIC
5 PATHOLOGIST. SOUTH CAROLINA LIKEWISE CLEARLY
6 RECOGNIZES A DIAGNOSIS CALLED THE BATTERED CHILD
7 SYNDROME. COUNSEL IS IN THE PROCESS OF LAYING THE
8 FOUNDATION OR HAVING HIM LAY THE FOUNDATION WHICH
9 WOULD ALLOW HIM TO THEN TESTIFY REGARDING THE
10 BATTERED CHILD SYNDROME. THE WAY THAT I HAVE
11 CHOSEN TO PROCEED IS THAT RATHER THAN QUALIFYING
12 HIM AS AN EXPERT IN THIS SYNDROME, I'VE QUALIFIED
13 HIM AS AN EXPERT IN THE FIELD OF FORENSIC
14 PATHOLOGY. AND, ASSUMING THAT THE FOUNDATION IS
15 LAID, THEN HE IS GOING TO BE QUALIFIED THEN TO
16 TESTIFY AS AN EXPERT IN THE FIELD OF BATTERED CHILD
17 SYNDROME.

18 MR. DAVIS: YOUR HONOR?

19 THE COURT: YES.

20 MR. DAVIS: MAY I INTERJECT THAT THIS BE
21 DONE EN CAMERA BECAUSE ONCE THIS IS OUT TO THE
22 JURY, AND IF HE'S NOT QUALIFIED, HE AIN'T GOING TO
23 DO ME ANY GOOD THEN.

THE COURT: I'M HAPPY TO DO THAT AND

BRET WOODARD - VOIR DIRE/MR. DAVIS.

413

1 WOULD JUST CONTINUE FOR ME, MRS. MURPHY, AND HAVE
2 HIM -- HE HAD GONE THROUGH CERTAINLY A GREAT
3 PORTION OF WHAT HE HAS REVIEWED, BUT IF YOU'D JUST
4 CONTINUE TO LAY YOUR FOUNDATION.

5 (THE FOLLOWING IS TAKEN OUT OF THE PRESENCE OF THE
6 JURY.)

7 Q. DOCTOR, YOU TESTIFIED THAT YOU HAVE REVIEWED THE
8 PRIOR PEDIATRIC RECORDS, THE TWO PRIOR FEMORAL
9 FRACTURES, THE DETACHED RETINA, AS WELL AS D.S.S.
10 RECORDS, FAMILY ASSISTANCE RECORDS, AND THE RECORDS
11 FROM INJURIES SUSTAINED ON NOVEMBER THE THIRD,
12 2001?

13 A. THAT'S CORRECT.

14 Q. AND GOING THROUGH EACH OF THOSE INJURIES, DOCTOR;
15 DID YOU ALSO REVIEW THE EXPLANATIONS GIVEN FOR EACH
16 OF THOSE INJURIES AT THE TIME?

17 A. YES, I DID.

18 Q. AND BASED UPON YOUR REVIEW OF THOSE RECORDS AND
19 YOUR REVIEW OF THE X-RAYS AND DOCUMENTATION, WOULD
20 YOU BE ABLE TO GIVE AN OPINION TO A REASONABLE
21 DEGREE OF MEDICAL CERTAINTY THAT THOSE INJURIES
22 WERE NOT CAUSED BY ACCIDENTAL MEANS?

23 A. YES, I WOULD BE ABLE TO.

24 Q. AND WHAT IS THE BASIS FOR THAT OPINION?

BRET WOODARD - VOIR DIRE/MR. DAVIS

414

1 TO TELL FROM ACCIDENTS. BUT TAKEN AS A GROUP OR
2 INFLECTED INJURIES THAT THE CARE GIVERS EXPLANATION
3 CANNOT EXPLAIN THE FORCE THAT WOULD BE NECESSARY
4 FOR THE INJURY TO OCCUR.

5 Q. AND ARE YOU ABLE TO GO THROUGH EACH OF THOSE
6 INJURIES AND EXPLAIN THE COURSE REQUIRED? LET'S
7 START WITH THE 1996 INJURY.

8 A. THE FRACTURE IN 1996 REPRESENTED A HIGH FRACTURE
9 THROUGH THE UPPER PORTION OF THE FEMUR. THE
10 FRACTURE IS ONE WITH THE TRANSVERSE FRACTURE BREAK
11 WITH IMPACTION OF THE TWO ENDS AGAINST EACH OTHER.
12 THE FRACTURE WOULD REQUIRE A SIGNIFICANT AMOUNT OF
13 FORCE, THE USUAL LOCATION GIVEN THE CAREGIVER'S
14 EXPLANATION OF FALLING ON THE CHILD OVER THE FEMUR
15 WOULD BE TO BEND THE FEMUR OVER ITS LONG AXIS AND
16 PRODUCE A SIMPLE GREEN STICK FRACTURE INSTEAD OF A
17 HIGH END FRACTURE. ALSO THERE WAS A QUESTION BY
18 THE CAREGIVERS AT THE TIME IF THERE WAS A FRACTURE
19 OF THE SURFACE OF THE DISTAL END OF THE FEMUR THAT
20 WAS NEVER RESOLVED BY REPEAT RADIOGRAPHS THAT WERE
21 MADE AVAILABLE TO ME AND WERE NOTED IN THE
22 ORTHOPAEDIC RECORDS.

23 Q. AND, DOCTOR, AS FAR AS THE DETACHED RETINA IN 1997,

BRET WOODARD - VOIR DIRE/MR. DAVIS

415

1 Q. AND CAN YOU GIVE AN OPINION TO A REASONABLE DEGREE
2 OF MEDICAL CERTAINTY WHAT IS THE CAUSATION OF THAT
3 DETACHED RETINA?

4 A. BLUNT TRAUMA TO THE GLOBE OF THE EYE.

5 Q. AND DID THAT HAVE ANYTHING TO DO WITH RETINOPATHY
6 PREMATURITY?

7 A. NO, IT DID NOT.

8 Q. AND, SIR, WAS THERE ANY EXPLANATION AS TO -- OTHER
9 THAN BLUNT FORCE TRAUMA -- THAT WOULD HAVE CAUSED
10 THAT?

11 A. NO EXPLANATION WAS GIVEN.

12 Q. SIR, IN 1998; ONE YEAR LATER THERE'S A SECOND
13 FEMORAL FRACTURE. DID YOU REVIEW THOSE MEDICAL
14 RECORDS?

15 A. YES, I DID.

16 Q. AND DID THOSE MEDICAL RECORDS -- DID YOU ALSO
17 REVIEW THE EXPLANATION GIVEN FOR THAT FEMORAL
18 FRACTURE?

19 A. YES, I DID.

20 Q. AND CAN YOU GIVE, TO A REASONABLE DEGREE OF MEDICAL
21 CERTAINTY, WHETHER OR NOT THAT EXPLANATION IS
22 CONSISTENT WITH THE TRAUMA AND THE INJURY?

23 A. THAT EXPLANATION IS INCONSISTENT WITH THE INJURY.
24 THE INJURY COULD NOT HAVE BEEN PRODUCED BY THAT

BRET WOODARD - VOIR DIRE/MR. DAVIS

416

1 Q. AND CAN YOU EXPLAIN WHY, SIR?

2 A. THIS REPRESENTS A BLITHELY RUNNING FRACTURE WITH AN
3 ELEMENT OF SPIRAL COMPONENT TO IT MEANING TWISTING
4 WHICH REQUIRES TORQUE AND BENDING OF THE EXTREMITY
5 THAT WOULD NOT BE ACHIEVED BY A CHILD OF THAT SIZE
6 EVEN FROM A CRIB FOUR TO FIVE FEET IN THE AIR.

7 Q. AND, SIR, IS THAT INJURY LOCATED IN A DIFFERENT
8 AREA OF THE FEMUR THAN THE PRIOR INJURY?

9 A. YES, IT IS. IT'S LOCATED CLOSER TO THE MID PORTION
10 OF THE SHAFT.

11 Q. AND, DOCTOR, IN REVIEW OF D.S.S. RECORDS, WHAT IS
12 THE PERTINENCE OF YOUR REVIEW OF THE D.S.S.
13 RECORDS?

14 A. THE D.S.S. RECORDS INDICATE TRAINING PROGRAMS
15 SUPPLIED TO THE MOTHER. THEN THE MOTHER'S
16 INABILITY OR REFUSAL TO BRING THE CHILD FOR SPECIAL
17 PROGRAMS THAT WERE SET UP BY D.S.S. FOR THE CHILD
18 TO PARTICIPATE IN BECAUSE OF HIS SMALL SIZE AND
19 DIMINISHED GROWTH.

20 Q. AND DID YOU ALSO REVIEW THE PEDIATRIC RECORDS?

21 A. YES, I DID.

22 Q. AND WHAT WAS YOUR DIAGNOSIS BASED ON THE REVIEW OF
23 THE PEDIATRIC RECORDS?

BRET WOODARD - VOIR DIRE/MR. DAVIS

417

1 THAT THE CHILD SHOWED SIGNIFICANT FAILURE OF
2 GROWTH.

3 Q. AND, DOCTOR, DID YOU ALSO REVIEW THE RECORDS OF THE
4 INJURIES SUSTAINED ON NOVEMBER THE THIRD OF 2001?

5 A. YES, I DID.

6 Q. AND DID ALSO REVIEW THE EXPLANATION GIVEN FOR THE
7 INJURIES ON NOVEMBER THE THIRD, 2001?

8 A. YES, I DID.

9 Q. AND CAN YOU STATE WHETHER OR NOT TO A REASONABLE
10 DEGREE OF MEDICAL CERTAINTY THOSE INJURIES ARE
11 CONSISTENT WITH THE EXPLANATION GIVEN?

12 A. THEY'RE INCONSISTENT.

13 Q. AND CAN YOU EXPLAIN THAT, PLEASE, SIR?

14 A. AS PREVIOUSLY NOTED BY THE PEDIATRICIAN, THERE WAS
15 BRUISING AROUND THE ENTIRE HEAD CIRCUMFERENCE AND
16 INJURIES TO THE RIGHT CHEST AND UPPER ABDOMEN.

17 THERE WERE NO SIGNIFICANT INJURIES TO THE
18 EXTREMITIES. THERE WERE NO INJURIES TO THE ARMS,
19 DISTAL ARMS. THE INJURIES BEING AROUND THE ENTIRE
20 CIRCUMFERENCE OF THE HEAD; EVEN IF THE CHILD HAD
21 FALLEN ON TWO OCCASIONS, OR THREE OCCASIONS, COULD
22 NOT BE ACHIEVED; THEN THE INJURIES THEMSELVES WERE
23 WHAT WE REFERRED TO AS PATTERNED INJURIES IN

24

FORENSIC PATHOLOGY MEANING THAT SUCH A

BRET WOODARD -- VOIR DIRE/MR. DAVIS

418

1 THAT MAN HAS MADE ONTO THE INDIVIDUAL AND ARE NOT A
2 PATTERN SEEN AS A RANDOM THING IN NATURE OR A
3 FLATTENED SURFACE SUCH AS THE TUB.

4 Q. AND, DOCTOR, WAS THAT PATTERN TO A REASONABLE
5 DEGREE OF MEDICAL CERTAINTY CONSISTENT OR
6 INCONSISTENT WITH A SHOE?

7 A. IT'S CONSISTENT WITH A SHOE, PERHAPS AN ATHLETIC
8 TYPE SHOE.

9 Q. AND CAN YOU DESCRIBE THE NATURE OF THE OUTLINE OF
10 THE PATTERN?

11 A. IT REPRESENTS THE ALMOST -- ON THE ABDOMEN ALMOST
12 THE COMPLETE OUTLINE OF AT LEAST A MINIMUM OF TWO
13 SHOE IMPRINTS ONTO THE ABDOMEN CHEST INJURY;
14 PERHAPS MORE.

15 Q. AND WHAT DOES THAT INDICATE TO YOU?

16 A. THAT THE SHOE WAS APPLIED TO THE VICTIM WITH
17 TREMENDOUS FORCE IN ORDER TO STAMP THE PATTERN ONTO
18 THE VICTIM'S SKIN.

19 Q. AND CAN YOU STATE TO A REASONABLE DEGREE OF MEDICAL
20 CERTAINTY WHETHER OR NOT SOMEONE COULD HOLD A SHOE
21 AND CAUSE THAT TRAUMATIC INJURY?

22 A. NO. THE ENTIRE OUTLINE OF THE SHOE WAS REPRODUCED,
23 AT LEAST ON ONE OF ITS SIDES. IN ORDER TO HOLD A

BRET WOODARD - VOIR DIRE/MR. DAVIS

419

1 OR INCONSISTENT TO A REASONABLE DEGREE OF MEDICAL
2 CERTAINTY THAT THAT CHILD HAD TO HAVE BEEN STOMPED
3 ON?

4 A. THAT WOULD BE CONSISTENT WITH STOMPING OR KICKING.

5 Q. AND DOCTOR, GOING TO THE BATTERED CHILD SYNDROME,
6 WHAT ARE THE DIAGNOSTIC CHARACTERISTICS OF BATTERED
7 CHILD SYNDROME?

8 A. MULTIPLE INFLICTED TRAUMAS AT MULTIPLE DIFFERENT
9 TIMES OVER A SUSTAINED PERIOD OF TIME; MONTHS TO
10 YEARS.

11 Q. AND WAS THERE ALSO ANY OTHER TRAUMA INDICATED
12 REGARDING ANY POSSIBLE CIGARETTE BURNS?

13 A. YES; IN 1998 A BURN INJURY WAS OBSERVED THAT WAS
14 FELT TO REPRESENT A CIGARETTE BURN.

15 Q. DOCTOR, BASED ON YOUR EXPERIENCE AND YOUR REVIEW OF
16 ALL THE MEDICAL RECORDS AND EXPLANATION GIVEN; CAN
17 YOU GIVE A DIAGNOSIS TO A REASONABLE DEGREE OF
18 MEDICAL CERTAINTY REGARDING THE COMPILATION OF
19 THESE INJURIES?

20 A. YES, I CAN.

21 Q. AND WHAT IS THAT DIAGNOSIS?

22 A. THAT THE CHILD SUFFERED FROM THE BATTERED CHILD
23 SYNDROME. HE WAS REPETITIVELY INJURED BY

24 CARE-GIVER UNTIL ULTIMATELY HE ENDED UP AT M --

BRET WOODARD - CROSS/MR. DUKES

420

1. Q. THANK YOU, DOCTOR.

2. THE COURT: CROSS-EXAMINATION, MR. DUKES?

3. CROSS EXAMINATION

4. BY MR. DUKES:

5. Q. DOCTOR, YOU HAVEN'T SEEN THIS CHILD?

6. A. NO, I HAVE NOT.

7. Q. BUT YOU'VE BEEN LOOKING AT HIS RECORDS?

8. A. PHOTOGRAPHS, RECORDS, X-RAYS.

9. Q. YOU DIDN'T GO BACK AND REVIEW PHOTOGRAPHS AND
10. RECORDS, THEN. YOU CAN TELL WHAT HAPPENED IN EVERY
11. CASE?

12. A. YES.

13. Q. EVEN THOUGH YOU HAVEN'T BEEN THERE ANY OF THE
14. TIMES?

15. A. THAT'S CORRECT.

16. Q. AND GOING BACK TO THE FIRST INJURY; THAT WAS IN
17. '96?

18. A. THAT'S CORRECT.

19. Q. AND WHAT WAS THAT INJURY?

20. A. THAT WAS A BREAK IN THE LEG, THE FEMUR OF THE MAIN
21. BONE OF THE LEG ON THE RIGHT SIDE.

22. Q. AND THE REASON THAT WAS GIVEN WHY THAT LEG WAS
23. BROKEN WAS WHAT?

BRET WOODARD - CROSS/MR. DUKES

421

1 A. THAT'S CORRECT.

2 Q. AND YOU KNOW THAT'S NOT TRUE?

3 A. YES, I DO.

4 Q. WHAT HAPPENED?

5 A. SOMEONE STRUCK A BLOW TO THE CHILD PROBABLY WITH A
6 CONCOMITENT PULLING OF THE LEG.

7 Q. A PULLING OF THE LEG?

8 A. YES, SIR; THAT RESULTED IN BOTH AN EXTENSION OF THE
9 LEG AND A BLOW TO THE LEG.

10 Q. SOMEBODY PULLING THE LEG AND HITTING IT?

11 A. WELL, THE LEG COULD HAVE BEEN PLANTED OR FIXED WHEN
12 THE LEG WAS STRUCK.

13 Q. AND NO WAY A WOMAN COULD HAVE FELL DOWN WITH THAT
14 CHILD AND BROKE THAT LEG?

15 A. NO WAY. YES; IT'S POSSIBLE BUT EXTREMELY
16 UNLIKELY. TAKEN WITH THE CONSTELLATION OF ALL THE
17 OTHER EVENTS; THE ANSWER IS NO.

18 Q. POSSIBLE BUT EXTREMELY UNLIKELY?

19 A. AS A SINGLE EVENT -- AS A SINGLE EVENT.

20 Q. ALL RIGHT.

21 A. BUT TAKEN WITH THE CONSTELLATION; THE ANSWER IS NO.

22 Q. DID I UNDERSTAND YOU TO SAY IT WAS A SINGLE EVENT;
23 ALL THESE THINGS COULD HAVE HAPPENED?

BRET WOODARD - CROSS/MR. DUKES

422

1 A. NO.

2 Q. I DON'T UNDERSTAND THAT.

3 A. NO. WHAT I SAID WAS THAT FRACTURE AS A SINGLE
4 EVENT; WHILE UNLIKELY IS POSSIBLE THAT IT WAS
5 ACCIDENTAL.

6 Q. WELL, YOU MEAN UNLIKELY AND POSSIBILITIES?

7 A. THAT'S RIGHT.

8 Q. BUT YOU DON'T---

9 A. ON THAT SINGLE EVENT.

10 Q. OKAY. BUT YOU DON'T ACCEPT WHAT THE MOTHER SAYS?

11 A. NO, I DON'T.

12 Q. ALL RIGHT. LET'S GO ON TO THE NEXT ONE.

13 A. ALL RIGHT.

14 Q. IT'S '98. THEY SAY THE CHILD FELL; FELL ON
15 SOMETHING ON THE FLOOR AND BROKE HIS LEG?

16 A. THAT'S CORRECT.

17 Q. AND THAT'S NOT POSSIBLE?

18 A. THAT IS IMPOSSIBLE.

19 Q. THAT IS---

20 A. THAT DOES NOT EXPLAIN THE DEGREE OF INJURY THAT THE
21 CHILD SUFFERED. IN ORDER TO PRODUCE THAT PATTERN
22 OF FRACTURE, THERE HAS TO BE TWISTING WITH MASSIVE
23 FORCE APPLIED TO THE FRACTURE. THAT DEGREE OF

BRET WOODARD - CROSS/MR. DUKES:

423

1 AN AUTOMOBILE ACCIDENT.

2 Q. SO YOU'RE SAYING THAT CHILD HAD TO BE AT LEAST IN
3 AN AUTOMOBILE ACCIDENT?

4 A. NO. I'M SAYING THE FORCE THAT WAS APPLIED TO THAT
5 LEG APPROACHED THE FORCES THAT ARE SEEN IN
6 AUTOMOBILE ACCIDENTS.

7 Q. WELL, HOW COULD THAT HAPPEN?

8 A. SOMEBODY STRUCK THE CHILD WITH AN OBJECT. AN ADULT
9 KICKED THE CHILD. AN ADULT STOMPED ON THE CHILD'S
10 LEG OR KICKED THE CHILD'S LEG COULD ACHIEVE THOSE
11 INJURIES.

12 Q. ARE YOU AWARE WHAT SIZE THIS CHILD IS?

13 A. YES. AT THE TIME OF HIS NOVEMBER INJURY, HE WAS
14 APPROXIMATELY THREE FEET TALL AND ABOUT 28 POUNDS.

15 Q. THAT WAS WHEN?

16 A. NOVEMBER OF '01.

17 Q. OKAY. AND WE'RE GOING BACK TO '96?

18 A. THAT'S RIGHT. HE WAS SMALLER THEN.

19 Q. AND YOU THINK IT'S THAT HARD TO BREAK A LITTLE
20 SMALL CHILD'S LEG?

21 A. YES.

22 Q. HUH?

23 A. YES.

24 Q. BUT YOU HAVEN'T EXAMINED THESE BONES OR ANY

BRET WOODARD - CROSS/MR. DUKES

424

1 A. I EXAMINED HIS X-RAYS.

2 Q. WHAT CAN YOU TELL BY THAT?

3 A. THAT THEY LOOKED NORMALLY MINERALIZED. THEY DIDN'T
4 SHOW ANY PATHOLOGIC ABNORMALITIES THAT ONE WOULD
5 ANTICIPATE WITH METABOLIC DISORDERS OF THE BONE.
6 AND THE PATTERN OF THE FRACTURE IS NOT A PATTERN
7 THAT'S PRODUCED BY A SIMPLE FALL.

8 Q. AND YOU CAN LOOK AT THAT X-RAY AND TELL THAT?

9 A. YES.

10 Q. OKAY. SO HE HAD TO BE HIT BY A BAT OR SOMETHING?

11 A. HE WAS STRUCK WITH GREAT FORCE BY A FOOT OR HAND OR
12 PERHAPS WITH AN OBJECT.

13 Q. A FOOT OR A HAND OR AN OBJECT. OR YOU SAY IT COULD
14 HAVE HAPPENED IN AN AUTOMOBILE WRECK?

15 A. YES. IT COULD HAVE BEEN IN AN AUTOMOBILE WRECK.

16 Q. THAT'S NOBODY STRIKING HIM WITH A FORCE OR A HAND.

17 A. WELL, THERE THE OBJECT THAT STRUCK HIM IS THE CAR
18 WHEN THE CAR STOPS.

19 Q. WELL, YOU UNDERSTAND THAT AS SMALL AS HE IS AND
20 ALL, HE'S STILL AMBULATORY AND GETS AROUND?

21 A. THAT'S CORRECT.

22 Q. AND IS ACTIVE?

23 A. THAT'S CORRECT.

ALL RIGHT. TWO BROKEN FEMURS? THEN THERE WAS

BRET WOODARD - CROSS/MR. DUKES

425

1 A. AND THERE WAS A CIRCULAR BURN DESCRIBED ON HIS
2 BUTTOCKS IN THE PATTERN OF A CIGARETTE BURN.

3 Q. AND HAVE YOU SEEN THAT?

4 A. NO. I'VE ONLY SEEN THE RECORDS RELATED TO IT.

5 Q. AND THAT'S ALL YOU'VE SEEN IS HIS RECORDS?

6 A. THAT'S CORRECT. AND PHOTOGRAPHS.

7 Q. HUH?

8 A. I DID NOT SEE A PHOTOGRAPH OF THAT INJURY.

9 Q. OF THAT?

10 A. NO.

11 Q. IS THERE ANYWHERE THEY REFER TO A SKIN DISEASE HE
12 HAD?

13 A. NO.

14 Q. NOWHERE IN THE RECORDS?

15 A. IT REFERRED TO HIM HAVING A RASH PERIODICALLY.

16 Q. BUT ALSO SKIN DISEASES THAT RESULT IN ROUND MARKS
17 TO IT?

18 A. SOME SKIN DISEASES RESULT IN ROUNDS MARKS, BUT NOT
19 A SINGLE ISOLATED ROUND MARK.

20 Q. NOT A SINGLE ISOLATED?

21 A. NO.

22 Q. RINGWORMS?

23 A. NO; THE RINGWORM DOESN'T PRODUCE AN ULCER.

24 Q. NO ULCER?

BRET WOODARD - CROSS/MR. DUKES

426

1 Q. SO EVIDENTLY YOU SAY IT WAS A BURN; BUT YOU HAVEN'T
2 SEEN IT? YOU JUST SAW REFERENCE TO IT?

3 A. I SAW THE RECORDS INDICATING ITS PRESENCE.

4 Q. AND DID YOU TAKE ANY HISTORY OF THE PARENTS?

5 A. NO; ONLY WHAT THEY GAVE TO THE CAREGIVER, SOCIAL
6 WORKERS, AND POLICE.

7 Q. SO EVERYTHING YOU'VE GOT TO KNOW ABOUT THEM, YOU
8 GOT FROM THE POLICE RECORDS AND THE CAREGIVER'S
9 RECORDS AND ALL?

10 A. AND THE SOCIAL WORKERS; CORRECT.

11 Q. WOULD IT MAKE ANY DIFFERENCE IF YOU WERE TOLD THAT
12 NEITHER ONE OF THE PARENT EVEN SMOKED?

13 A. NO. IT WOULDN'T MAKE ANY DIFFERENCE TO ME; NO.

14 Q. WHAT OTHER INJURIES DID YOU SEE?

15 A. HE HAD A DETACHED RETINA.

16 Q. AND WHAT CAUSES A DETACHED RETINA?

17 A. A BLOW TO THE EYE; DEGENERATIVE DISEASES OF THE EYE;
18 CERTAIN INFECTIONS IN THE EYE.

19 Q. WELL, THIS KID CERTAINLY HAD DEGENERATIVE DISEASES,
20 DIDN'T HE; HE'S A TWIN?

21 A. WELL, BEING A TWIN IS NOT A CONGENITAL DISEASE. MY
22 WIFE'S A TWIN, AND SHE'S NOT CONGENITALLY
23 DETECTIVE.

24 Q. SHE WASN'T BORN THAT EARLY. WAS SHE?

BRET WOODARD - CROSS/MR. DUKES

427

1 Q. IF YOU'RE BORN THAT EARLY, YOU HAVE PROBLEMS, DON'T
2 YOU?

3 A. YES, YOU DO; BUT THAT'S NOT A CONGENITAL DISEASE.

4 Q. OKAY.

5 A. AND A DETACHED RETINA IS NOT AN INJURY OF
6 PREMATURITY.

7 Q. HOW DO YOU KNOW THAT?

8 A. IT'S NOT AN INJURY OF PREMATURITY. IT REQUIRES A
9 COMPRESSION OF A BLOW SUCH AS A CUFFING BLOW TO THE
10 HEAD SUCH AS THE INJURIES THAT WERE OBSERVED ABOUT
11 THE HEAD AND EARS AT THE TIME THAT HE HAD HIS
12 NEUROLOGICAL PROBLEMS AND WENT TO M.U.S.C. A BLOW
13 TO THE HEAD IN THAT CUPPING TYPE MOTION LIKE A
14 PRIZE FIGHTER WHO GETS STRUCK IN THE GLOBE WILL
15 RESULT IN SUDDEN COMPRESSION OF THE GLOBE AND CAUSE
16 INCREASED PRESSURE WHICH TEARS THE RETINA AWAY.
17 THAT COULD BE ACHIEVED DURING THE DELIVERY PROCESS
18 WITH THINGS SUCH AS HIGH FORCEPS IF THE CHILD WAS
19 DELIVERED BY CESARIAN SECTION AND FORCEPS WEREN'T
20 APPLIED. SO WE END UP WITH A CONGENITAL INFECTION
21 AND NO CONGENITAL INFECTION OR INFLAMMATION WAS
22 DESCRIBED IN ANY OF THE OPTHAMOLOGIST'S NOTES AT
23 THE TIME OF THEIR SURGERY OR EXAMINATION OF THE

24 RVE

BRET WOODARD - CROSS/MR. DUKES

428

1 EXCEPT SOMEBODY KNOCKED HIM BESIDE THE HEAD?

2 A. NO; A BLOW TO THE GLOBE OF THE EYE.

3 Q. A BLOW TO THE GLOBE OF THE EYE. AND WHEN WAS THAT
4 DETECTED?

5 A. THAT WAS DEALT WITH IN 1996; THE ADMISSION OF THE
6 FRACTURE.

7 Q. IN 1996?

8 A. THAT'S CORRECT.

9 Q. AND HE WAS HOW OLD AT THAT TIME?

10 A. ELEVEN MONTHS OLD.

11 Q. ELEVEN MONTHS OLD? DID YOU CHECK HOW HE WAS BORN?

12 A. YES, I DID.

13 Q. IT WAS A NATURAL BIRTH?

14 A. NO; HE WAS DELIVERED BY CESARIAN SECTION.

15 Q. WELL, DIDN'T YOU JUST SAY SOMETHING ABOUT THE
16 CESARIAN SECTION?

17 A. NO. WHAT I SAID WAS HIGH FORCEPS.

18 Q. HOW DO YOU KNOW THEY WASN'T USED?

19 A. BECAUSE THE RECORDS INDICATE HE WAS DELIVERED BY
20 CESARIAN SECTION. AND NUMBER TWO, HIGH FORCEPS ARE
21 NO LONGER USED.

22 Q. WELL, THAT WAS BACK IN '96 THAT HE HAD A LICK ON
23 THE HEAD. AND THIS LAST INCIDENT WAS NOVEMBER THE

BRET WOODARD - CROSS/MR. DUKES

429

1 Q. AND YOU SAID THAT THOSE INJURIES COULDN'T HAVE BEEN
2 SUSTAINED FROM THE WAY THE CARETAKER HAD GIVEN
3 THEM?

4 A. THAT'S CORRECT. BABIES DON'T BOUNCE ALONG A
5 SURFACE. IF THEY FALL, THEY FALL LIKE ADULTS DO.
6 AND THEY LAND ON THE SURFACE THEY FALL TO. EVEN IF
7 THEY GET BACK UP AND FALL AGAIN AND STRIKE A SECOND
8 SURFACE, THEY DON'T STRIKE THEMSELVES ALL THE WAY
9 AROUND THE CIRCUMFERENCE OF THEIR HEAD ON ALL
10 BASICALLY FOUR SIDES OF YOUR HEAD.

11 Q. AND IF YOU FALL IN A BATHTUB, YOU CAN'T GET A
12 MULTISIDED INJURY?

13 A. NO. YOU TEND TO GET AN INJURY IN ONE AREA. EVEN
14 IF YOU FALL IN THE CRACK OR CORNER OF THE BATHTUB,
15 YOU GET AN INJURY IN ONE AREA.

16 Q. YOU TEND TO? BUT ALL THINGS THAT TEND TO DON'T
17 ALWAYS HAPPEN, DO THEY?

18 A. THAT'S THE WAY PEOPLE FALL; THEY DON'T BOUNCE.

19 Q. ALL PEOPLE FALL THE SAME WAY?

20 A. PRETTY MUCH SO IF THEY FALL FRONT, BACK, OR SIDE.
21 IT'S DEPENDANT UPON THE PERSON AND WHAT THEY WERE
22 DOING. BUT THEY DON'T FALL AND BOUNCE AND ROLL ONE
23 DIRECTION TO ANOTHER.

24 Q. AND THE TRUTH OF THE MATTER IS ALL PEOPLE ARE

BRET WOODARD - CROSS/MR. DUKES

430

- 1 A. YES; ALL PEOPLE ARE DIFFERENT.
- 2 Q. YOU SAID THE BRUISING ON THE CHEST; DID YOU READ
- 3 HOW THAT CAME ABOUT?
- 4 A. I READ THE EXPLANATION. IT IS INCONSISTENT WITH
- 5 THE BRUISING.
- 6 Q. BUT DIDN'T HE STATE THAT HE USED A SHOE?
- 7 A. YES; HE STATED THAT HE USED A SHOE AND STRUCK THE
- 8 CHILD IN THE CHEST TO RESUSCITATE HIM WITH A SHOE.
- 9 Q. NOW, DOCTOR, LET ME GIVE YOU THIS EXAMPLE: THIS
- 10 MAN AT THE TIME WEIGHED 190 POUNDS. THIS BABY
- 11 WEIGHED 25 POUNDS?
- 12 A. TWENTY-EIGHT.
- 13 Q. TWENTY-EIGHT POUNDS. IF HE WAS ON THE FLOOR AND
- 14 190 POUND MAN PUT HIS WEIGHT ON A 25 POUND CHILD;
- 15 THAT'S ALL IT WOULD LEAVE?
- 16 A. NO. I DON'T THINK IT WOULD---
- 17 Q. IT WOULD SQUASH HIM, WOULDN'T IT?
- 18 A. NO, IT WOULDN'T SQUASH HIM. ACTUALLY I'VE SEEN
- 19 CARS RUN OVER SMALL CHILDREN LIKE THIS AND NOT
- 20 BREAK A RIB AND NOT DO ANYTHING MORE THAN PUT THE
- 21 SIGNATURE OF THE TIRE OF THE CAR ACROSS THE CHILD.
- 22 Q. AND YOU'RE TELLING ME A 190 POUND MAN CAN STAND ON
- 23 A 25 POUND BABY?
- 24 A. YES.

BRET WOODARD - CROSS/MR. DUKES

431

- 1 A. YES.
- 2 Q. LEAVE NO MORE THAN WHAT'S SHOWN ON THAT PICTURE?
- 3 A. YES, ABSOLUTELY. I'M TELLING YOU THAT.
- 4 Q. AND CARS RUN OVER THEM?
- 5 A. YES.
- 6 Q. AND DON'T HURT THEM?
- 7 A. I DIDN'T SAY NEVER HURT THEM. I JUST SAID I'VE
- 8 SEEN IT. IT IS WELL DOCUMENTED.
- 9 Q. DON'T BREAK THEIR RIBS?
- 10 A. THEIR BONES ARE VERY SOFT AND BRITTLE. A FRACTURE
- 11 IN A BABY'S RIB IS EXTREMELY UNCOMMON AND USUALLY
- 12 ONLY OCCURS WHEN A SUSTAINED PRESSURE IS MAINTAINED
- 13 AGAINST THE RIBS SUCH AS A GRIPPAGE PATTERN OR
- 14 WHERE THE RIBS THEMSELVES ARE LEVERED AGAINST THEIR
- 15 ANGLE SO THAT THEIR ENDS BREAK OFF AS THE SPINE
- 16 MOVES BACK AND FORTH WHEN THE CHEST IS SQUEEZED
- 17 VERY HARD.
- 18 Q. HOW LONG DOES THIS LAST?
- 19 A. EXCUSE ME?
- 20 Q. HOW LONG THIS CONDITION LAST?
- 21 A. USUALLY UNTIL THEY GET INTO THEIR OLDER AGE GROUPS
- 22 AND BEGIN TO HEAD TOWARD PUBERTY WHEN THEY GET MORE
- 23 MINERALIZATION OR MORE BRITTLINESS TO THEIR BONES.
- 24 Q. WHEN DOES THAT OCCUR?

BRET WOODARD - CROSS/MR. DUKES

432

1 BOYS PROBABLY ANYWHERE FROM 12 TO 16 AND GIRLS
2 EARLIER.

3 Q. YOU'RE SAYING UP TO TWELVE YEARS OLD YOU CAN'T
4 HARDLY BREAK A KID'S ARM?

5 A. NO, I DIDN'T SAY HE COULDN'T BREAK HIS ARM. I'M
6 SAYING IT'S VERY DIFFICULT TO BREAK THEIR BONES,
7 ESPECIALLY THEIR LARGE BONES LIKE THEIR FEMURS.
8 THE SMALL BONES, THE OUTREACH BONES, SUCH AS YOUR
9 WRIST OR YOUR FINGERS; YES, CHILDREN BREAK THOSE
10 BONES ROUTINELY.

11 Q. AND YOUR RIBS; IT'S IMPOSSIBLE TO BREAK THEM?

12 A. IT'S ALMOST IMPOSSIBLE TO BREAK A CHILD'S RIBS.

13 Q. A CAR CAN RUN RIGHT ACROSS THEM?

14 A. THAT'S CORRECT; AND NOT BREAK THEM.

15 Q. A 190 POUND MAN CAN STOMP ON A KID?

16 A. THAT'S CORRECT.

17 Q. AND NOT BREAK THEM?

18 A. THAT'S CORRECT.

19 Q. THANK YOU.

20 A. YOU'RE WELCOME.

21 MR. DAVIS: JUST A FEW, YOUR HONOR.

22 THE COURT: ALL RIGHT. I AM CONCERNED

23 ABOUT THE TIME, COUNSEL. AND I AM CONCERNED ABOUT

BRET WOODARD - CROSS/MR. DUKES

433

1. RESOLUTION OF THAT. BUT WE'RE GOING TO HAVE TO
2. REQUEST AND INVITE THE DOCTOR TO COME BACK IN THE
3. MORNING.

4. DR. WOODARD: I CAN'T COME IN THE
5. MORNING, MA'AM. I HAVE OTHER COMMITMENTS IN OTHER
6. COUNTIES.

7. THE COURT: THAT'S UNFORTUNATE.

8. MRS. MURPHY: JUDGE, IS THERE ANY WAY WE
9. COULD TRY TO GET THROUGH AND ASK THE JURY IF
10. THEY'RE WILLING TO STAY SO THE DOCTOR CAN TESTIFY
11. TODAY?

12. MR. DAVIS: JUDGE?

13. THE COURT: YES.

14. MR. DAVIS: I THINK IT'S UNFAIR TO PUT
15. THE JURY IN THAT KIND OF POSTURE. THIS TESTIMONY
16. IS SO CRITICAL THAT IT MUST BE HEARD THIS
17. AFTERNOON.

18. THE COURT: TELL ME WHAT YOUR COMMITMENTS
19. ARE IN THE MORNING, DR. WOODARD.

20. DR. WOODARD: WELL, I'M COMMITTED RIGHT
21. NOW. I'M SUPPOSED TO BE IN HENDERSON RIGHT NOW.
22. NOBODY IS COVERING MY PRACTICE RIGHT NOW. SO IF
23. THERE'S AN EMERGENCY OF SOME SORT, IT'S NOT BEING
24. TAKEN CARE OF. AND I HAVE TO BE IN ANDERSON TO

BRET WOODARD - CROSS/MR. DUKES

434

1 WAS AWARE OF THAT.

2 THE COURT: ALL RIGHT. I'M GOING TO
3 BRING THE JURY BACK OUT, AND I'M GOING TO INQUIRE
4 OF THEM; EXPLAIN TO THEM THAT WE DO NEED TO STAY A
5 LITTLE LATER THIS EVENING AND TAKE THIS WITNESS'
6 TESTIMONY IF THEY CAN REMAIN A LITTLE LATER THIS
7 EVENING. AND I'LL ASK THEM TO JUST SUBMIT TO ME
8 ANY PARTICULAR DIFFICULTIES THAT WILL POSE. ALL
9 RIGHT. BRING THE JURY IN.

10 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

11 THE COURT: LADIES AND GENTLEMEN, I AM
12 WELL AWARE THAT WE'RE PAST THE 5:30 HOUR THAT WE
13 CERTAINLY HAD TALKED ABOUT DURING THE JURY
14 QUALIFICATIONS. AND WE FIND OURSELVES IN A
15 CIRCUMSTANCE WHERE WE ACTUALLY NEED TO TAKE THE
16 TESTIMONY OF THIS WITNESS BECAUSE OF OTHER
17 COMMITMENTS. AND I CERTAINLY APOLOGIZE TO YOU FOR
18 THE SCHEDULING GLITCH. WHAT I NEED TO DO IS I NEED
19 FOR YOU TO RETURN IN A MOMENT TO YOUR JURY ROOM.
20 AND I NEED YOU, MR. PRESIDING JUROR, TO TAKE DOWN
21 ANY PARTICULAR PROBLEMS THAT THAT'S GOING TO
22 GENERATE WITH ANY OF THE JURORS SO I MAY ASSESS
23 WHERE WE ARE TEMPORALLY IN TERMS OF THE SCHEDULE.

IF ANYONE NEEDS TO CALL -- WHAT IS IT? E.T. PHONE

BRET WOODARD - RE-DIRECT/MR. DAVIS.

435

1 NOT A PROBLEM. IF ANYONE NEEDS ANY SORT OF
2 TRANSPORTATION IF WE FINISH UP A LITTLE BIT LATER,
3 PLEASE KNOW THAT'S NOT A PROBLEM AT ALL. IF
4 ANYBODY -- YOU KNOW WE HAVE SNACKS BACK THERE FOR
5 YOU. SO ANYONE THAT NEEDS A LITTLE REVVING UP OF A
6 LITTLE BIT OF NOURISHMENT SO WE CAN CONTINUE
7 APPROXIMATELY AN HOUR OR THEREABOUTS. BUT IF YOU
8 COULD JUST STEP DOWN AND TAKE DOWN FOR ME ANY
9 PARTICULAR CONCERNS OTHER THAN JUST MAKING PHONE
10 CALLS. MAKING PHONE CALLS; YOU CAN GO AHEAD AND DO
11 THAT FOR ME. WE'RE GOING TO BE JUST A FEW MORE
12 MINUTES WHILE YOU DO THAT. THANK YOU SO MUCH. BE
13 MINDFUL, THOUGH; OTHER THAN DISCUSSING THAT AND
14 YOUR SCHEDULE THIS EVENING, DO NOT DISCUSS THIS
15 MATTER OR ALLOW ANYONE TO DISCUSS IT WITH YOU.
16 THANK YOU SO MUCH.

17 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

18 THE COURT: ALL RIGHT. YES, SIR?

19 CROSS-EXAMINATION, MR. DAVIS?

20 RE-DIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q. YOUR NAME AGAIN, SIR?

23 A. DR. WOODARD; BRET WOODARD.

24 Q. DR. WOODARD, WHAT EXACTLY IS A BATTERED CHILD?

BRET WOODARD - RE-DIRECT/MR. DAVIS

436

1 NON-ACCIDENTAL INJURIES AT THE HANDS OF CARETAKERS
2 OCCURRING ON MULTIPLE OCCASIONS OVER AN EXTENDED
3 TIME PERIOD; NOT JUST A DAY OR A FEW DAYS, BUT OVER
4 MONTHS OR YEARS.

5 Q. HOW IS THAT DIFFERENT FROM A TARGETED CHILD?

6 A. WELL, A TARGETED CHILD USUALLY IS AN INFERENCE THAT
7 THERE ARE MULTIPLE CHILDREN TO SELECT FROM IN THE
8 FAMILY; AND ONE, FOR WHATEVER REASON, IS PICKED TO
9 BE INJURED. USUALLY THAT CHILD EITHER REPRESENTS A
10 REMEMBRANCE OF SOMETHING THAT UPSETS THE ABUSER OR
11 REPRESENTS SOMEONE OR SOMETHING THAT THE---

12 Q. SIMILAR TO WHAT DR. SCHUH TALKED ABOUT?

13 A. YES; ESSENTIALLY WHAT SHE'S TALKED ABOUT.

14 Q. ARE YOU AWARE THAT THIS CHILD COMES FROM A HOME
15 ENVIRONMENT THAT HAS MULTIPLE CHILDREN?

16 A. THAT'S CORRECT.

17 Q. SO I GUESS THE GIST OF MY QUESTION IS; HOW DO YOU
18 SEPARATE THAT? I MEAN, YOU'VE GOT A TARGETED
19 CHILD, AND THEN YOU'VE GOT A BATTERED SYNDROME
20 CHILD. I MEAN, HERE'S A CHILD THAT'S IN A HOME
21 THAT THERE'S MULTIPLE CHILDREN. WHY WOULDN'T THE
22 CARETAKERS THEN; ALL THE CHILDREN BE CONSIDERED
23 BATTERED CHILDREN?

IN THE SENSE OF PHYSICAL BATTERY WOULD BE ALL I

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1 THERE WAS NO EVIDENCE THAT ANY OF THE OTHER
2 CHILDREN ARE -- A TARGETED CHILD ONLY MEANS THAT
3 ONE IS SELECTED OUT OF A GROUP TO BE BATTERED. IT
4 HAS NOTHING TO DO WITH THE BATTERED CHILD SYNDROME
5 PER SE. THE BATTERED CHILD SYNDROME ONLY RELATES
6 TO THAT CHILD. IT DOESN'T RELATE TO EVERY POSSIBLE
7 CHILD IN THE HOME.

8 Q. BUT IT WOULD MAKE IT TARGETED BECAUSE THAT ONE
9 CHILD IS THE CHILD THAT GETS THE BRUNT OF THE
10 PROBLEMS, THOUGH?

11 A. THAT'S CORRECT.

12 Q. SO IT'S THE SAME AS A BATTERED CHILD BECAUSE WE'RE
13 TALKING ABOUT ONE PARTICULAR CHILD THAT GETS THIS
14 OVER A PERIOD OF TIME -- I MEAN, INJURIES; RIGHT?

15 A. WELL, IF HE JUST HAPPENS TO BE PICKED OUT, THOUGH;
16 HE'S TARGETED. HE'S THE ONE THAT WAS PICKED OUT TO
17 BE BATTERED FOR WHATEVER REASON.

18 Q. AND IT'S NO DIFFERENT THAN A CHILD THAT IS
19 BATTERED, THEN. THAT CHILD IS THE SAME CHILD THAT
20 GETS REPETITIVE INJURY EVERY TIME OR NON-ACCIDENTAL
21 INJURY?

22 A. IT WOULD BE THE SAME IF THERE WAS ONLY ONE CHILD IN
23 THE HOUSE.

24 Q. OKAY. NOW, DID YOU DO OR CONDUCT ANY CALCULUM

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1 TO YOU IN REFERENCE TO THIS?

2 A. THEY WERE CONDUCTED IN THE MEDICAL RECORD.

3 Q. YOU SAW THAT IN THE MEDICAL RECORD?

4 A. YES.

5 Q. SO THERE WAS NO DEFICIENCY OF CALCIUM?

6 A. THE CALCIUM LEVELS WERE NORMAL. THE OTHER
7 LABORATORY TESTS THAT WERE OBTAINED WERE NORMAL.

8 Q. OKAY. HAVE YOU GOT THOSE X-RAYS WITH YOU?

9 A. YES, I DO.

10 Q. COULD I SEE THEM?

11 A. SURE. (AT THIS TIME THE ATTORNEY REVIEWS X-RAYS.)

12 Q. CAN YOU PINPOINT WHERE THESE X-RAYS---

13 A. OKAY. THAT'S THE X-RAY FROM '96. AND THIS IS THE
14 X-RAY FROM '98.

15 Q. THAT'S THE ACTUAL SEPARATION OF THE LEG THERE?

16 A. THAT'S RIGHT. THAT'S THE ACTUAL FRACTURE IN '98.
17 YOU CAN SEE THE DIFFERENCES IN THE GROWTH OF THE
18 CHILD BETWEEN '96 AND '98. SEE THE LITTLE BALLS
19 AREN'T HERE. THE FEMORAL HEADS HAVEN'T OSSOPHIED
20 (PHONETICALLY SPELLED) YET. THAT'S A DEVELOPMENTAL
21 CHANGE THAT WE WOULD EXPECT TO OCCUR. THE BONES
22 ARE GETTING STRONGER AND GROWING. THIS IS THE AREA
23 WHERE THE FRACTURE WOULD HAVE HAD BEEN -- EXCUSE
24 ME YOU'VE GOT IT BACKWARDS. IT'S TO THE RIGHT

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1 IN---

2 Q. IN '98?

3 A. IN '96. THIS IS WHERE IT IS IN '98. HERE'S THE
4 FRACTURE IN '96. YOU CAN SEE HOW THE BONE IS
5 OFFSET. THE HEAD LOOKS LIKE IT DOESN'T MATCH THE
6 BONE. AND THE BONE IS PUSHED INTO THAT UPPER
7 PORTION.

8 Q. THAT'S '96 RIGHT THERE?

9 A. THAT'S '96. AND HERE IS '96.

10 Q. THAT'S '98?

11 A. YES.

12 Q. BUT IT'S ON THE SAME LEG?

13 A. IT'S ON THE SAME LEG IN A DIFFERENT PLACE.

14 Q. BUT THE GENERAL LOCATION, THOUGH?

15 A. YES. THAT WOULD BE THE GENERAL LOCATION OF THE
16 '98.

17 Q. IN YOUR RESEARCH -- OR HAVE YOU DONE ANY RESEARCH
18 -- HOW MANY CHILDREN WOULD YOU SAY IN AMERICA
19 CONNOTES OR WOULD BE CONSIDERED BATTERED CHILD?

20 A. PHYSICALLY OR EMOTIONALLY?

21 Q. THERE'S A DIFFERENCE?

22 A. WELL, I DON'T CLAIM TO BE AN EXPERT IN THE
23 EMOTIONAL BATTERY OF CHILDREN.

24 Q. BUT THAT'S A WHOLE DIFFERENT FIELD?

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1 OF PHYSICAL ABUSE. IN MY AREA OF EXPERTISE, I DEAL
2 WITH PHYSICAL INJURIES OF THE HUMAN BODY.

3 Q. DOCTOR, IS IT FAIR TO SAY YOU'VE GOT A PRETTY EASY
4 JOB. YOU WILL FIND A KID THAT'S BEEN INJURED SIX
5 OR SEVEN TIMES; AND THAT'S A BATTERED CHILD
6 SYNDROME?

7 A. IF THOSE ARE NON-ACCIDENTAL INJURIES; YES.

8 Q. WELL, IF YOU DON'T LIKE THE EXPLANATION THAT'S BEEN
9 PROVIDED BY THE FAMILY; THEN YOU---

10 A. AND THERE'S NO BIOLOGIC EXPLANATION; THEN THE
11 ANSWER TO THAT -- IT'S NOT THAT I DON'T LIKE THE
12 EXPLANATIONS. THE EXPLANATION CAN'T EXPLAIN THE
13 ENERGY THAT'S NECESSARY FOR THE INJURY TO BE
14 PRODUCED.

15 Q. AND THIS IS YOUR LINE OF WORK?

16 A. YES; THAT'S WHAT FORENSIC PATHOLOGY---

17 Q. THAT IS WHEN YOU GET BACK TO ANDERSON IN THE
18 MORNING?

19 A. NO. I DO GENERAL PATHOLOGY AS WELL.

20 Q. YOU'RE THE CORONER IN ANDERSON?

21 A. NO. I DO THE CORONER'S AUTOPSIES; YES.

22 Q. BUT YOU'RE NOT THE CORONER?

23 A. NO; I'M NOT THE ELECTED CORONER.

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1 Q. IS THAT A PART OF PATHOLOGY, DO YOU THINK?

2 A. I IMAGINE HE'S NOT.

3 Q. YOU IMAGINE HE'S NOT?

4 A. YES; USUALLY THEY'RE NOT.

5 Q. BUT THE ANSWER TO MY QUESTION AGAIN. IF YOU FIND A
6 CHILD THAT HAS REPETITIVE INJURIES OVER A PERIOD OF
7 TIME AND YOU CAN'T EXPLAIN IT BIOLOGICALLY; THEN
8 THAT'S A BATTERED CHILD?

9 A. IF YOU CAN'T EXPLAIN IT BIOLOGICALLY AND THE
10 CAREGIVER'S EXPLANATION DOES NOT EXPLAIN THE FORCES
11 NECESSARY TO PRODUCE THE INJURY, THEN THAT IS A
12 BATTERED CHILD.

13 Q. NOW, ON ANSWER TO MY QUESTION, MY EARLIER QUESTION.
14 YOUR RESEARCH -- HOW MANY KIDS FIT THIS
15 CHARACTERISTIC IN THIS GREAT OLD SOUTH CAROLINA?

16 A. I DON'T KNOW THE EXACT NUMBERS.

17 Q. WHY?

18 A. BECAUSE THEY'RE NOT ALL REPORTED.

19 Q. WELL, BASICALLY THE ONES THAT ARE REPORTED?

20 A. WELL, AGAIN, I DON'T KNOW THE NUMBER.

21 Q. BECAUSE YOU HAVEN'T DONE ANY RESEARCH; AND YOU
22 DON'T KNOW HOW MANY BATTERED CHILD SYNDROMES IN
23 SOUTH CAROLINA; ISN'T THAT THE TRUE?

24 A. I DON'T KNOW THE NUMBER IN SOUTH CAROLINA OR IN

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1 Q. THAT'S RIGHT.

2 THE COURT: ALL RIGHT. ANY RE-DIRECT?

3 MR. DUKES: NOTHING

4 THE COURT: ALL RIGHT.

5 MRS. MURPHY: NO RE-DIRECT.

6 THE COURT: ALL RIGHT. LET ME JUST, FOR
7 RECORD. I HAVE NOW HAD AN OPPORTUNITY TO LISTEN TO
8 DR. WOODARD. AND HE CLEARLY HAS THE PROPER
9 FOUNDATION TO BE ABLE TO TESTIFY REGARDING BATTERED
10 CHILD SYNDROME. THAT SYNDROME IN THE CASE OF STATE
11 VS. LOPEZ IS A RECOGNIZED SYNDROME IN SOUTH
12 CAROLINA. AGAIN, MY CONCERN -- AND THE RECORD
13 NEEDS TO REFLECT, OF COURSE, THAT THIS IS AN EN
14 CAMERA HEARING. THERE'S A SUFFICIENT BASIS. HE
15 HAS SUFFICIENT EXPERTISE. AND HE MAY TESTIFY
16 REGARDING THE BATTERED CHILD SYNDROME. AND HE IS
17 AN EXPERT IN THAT FIELD. AND THIS IS A PROPER --
18 HE'S AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY.
19 HE HAS AN EXPERTISE IN THIS PARTICULAR FIELD. HE'S
20 DONE THE WORK. I'M SATISFIED THE FOUNDATION HAS
21 BEEN LAID. AND IT WOULD BE APPROPRIATE, THEN, FOR
22 HIM TO TESTIFY REGARDING THE BATTERED CHILD
23 SYNDROME IN THAT DIAGNOSES, NOTING THE EXCEPTION OF

BOTH MR. DUKES AND MR. DAVIS TO THAT RULING. VERY

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1 JURY? NOW, WE ARE READY WHEN THEY ARE READY.
2 WHILE WE'RE DOING THAT, IF ANYONE NEEDS TO TAKE A
3 BREAK.

4 MR. MOULTRIE: THEY'RE COMING IN. GREAT.
5 ARE THEY READY TO COME IN, OR DO THEY NEED TO MAKE
6 A PHONE CALL?

7 MR. MOULTRIE: ALL PHONE CALLS HAVE BEEN
8 MADE.

9 THE COURT: GREAT. BRING THEM ON.

10 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

11 THE COURT: LADIES AND GENTLEMEN, THANK
12 YOU ALL SO MUCH. I UNDERSTAND THAT YOU'VE NOW HAD
13 AN OPPORTUNITY TO PHONE HOME. AND I APPRECIATE SO
14 MUCH YOUR COOPERATION. THANK YOU SO MUCH. MRS.
15 MURPHY, YOU MAY CONTINUE.

16 MRS. MURPHY: THANK YOU, YOUR HONOR.

17 RE-CROSS EXAMINATION

18 BY MRS. MURPHY:

19 Q. DOCTOR, HAVE YOU REVIEWED THE MEDICAL HISTORY OF
20 Child GADSON, THE VICTIM IN THIS PARTICULAR CASE?

21 A. YES, I HAVE.

22 Q. AND, DOCTOR, WHAT HISTORY AND RECORDS DID YOU
23 REVIEW?

24 A. I REVIEWED THE MEDICAL RECORDS AND HISTORY

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1 FAMILY, D.S.S., LAW ENFORCEMENT RELATED TO THE
2 INJURY THAT HE SUFFERED IN NOVEMBER OF 2001. I
3 REVIEWED THE HISTORY AND SIMILAR RECORDS FROM THE
4 LEG FRACTURE HE HAD IN 1998. I REVIEWED THE
5 HISTORY AND SIMILAR INFORMATION FROM THE LEG
6 FRACTURE HE HAD IN 1996 AND THE HISTORY AND
7 INFORMATION SUPPLIED WITH HIS RETINAL DETACHMENT
8 THAT WAS ALSO TAKEN CARE OF IN 1996. I ALSO
9 REVIEWED HIS BIRTH RECORDS, HIS MOST RECENT RECORDS
10 FROM HIS PEDIATRIC VISITS TO THE PEDIATRIC OFFICE
11 -- AND D.S.S. RECORDS DURING THAT TIME PERIOD.

12 Q. THANK YOU, DOCTOR. AND AS WE GO THROUGH EACH OF
13 THOSE INJURIES, LET'S START WITH THE 1996 LEG
14 FRACTURE INJURIES. DO YOU HAVE THE X-RAY REGARDING
15 THAT INJURY?

16 A. YES, I DO.

17 Q. SIR, COULD YOU PULL IT UP, PLEASE SIR? AND BEFORE
18 WE GET TO THAT, DOCTOR, UPON YOUR REVIEW OF THE
19 1996 LEG INJURY, DID YOU LOOK AT THE EXPLANATION
20 GIVEN FOR THAT INJURY?

21 A. YES, I DID.

22 Q. AND WHAT WAS THAT EXPLANATION?

23 A. THE EXPLANATION WAS THAT THE MOTHER WAS WALKING
24 WITH THE CHILD AND TRIPPED OVER A HARD PLASTIC TOY,

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1. Q. AND BASED UPON YOUR EXPERIENCE, CAN YOU GIVE AN
2 OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY
3 WHETHER OR NOT THAT'S CONSISTENT WITH THE INJURY ON
4 THE X-RAY?

5 A. IT'S AN EXTREMELY DOUBTFUL EXPLANATION FOR THAT
6 INJURY. THERE ARE MANY INCONSISTENCIES. AND TAKEN
7 AS AN ISOLATED EVENT, IT WOULD BE HIGHLY SUSPICIOUS
8 FOR CHILD ABUSE.

9 Q. AND CAN YOU EXPLAIN WHY, SIR?

10 A. THE LOCATION OF THE FRACTURE, AND THE NATURE OF THE
11 FRACTURE, WOULD REQUIRE A GREATER DEAL OF FORCE
12 THAN COULD BE PRODUCED BY SUCH A FALL FROM THE
13 HEIGHT OF THE ADULT. AND THE LOCATION OF THE
14 FRACTURE WOULD NOT BE THE LOCATION IN WHICH WE
15 WOULD TEND TO SEE THAT PARTICULAR MECHANISM PRODUCE
16 A FRACTURE.

17 Q. SIR, THAT IS THE X-RAY THERE?

18 A. YES, IT IS.

19 MRS. MURPHY: YOUR HONOR, AT THIS POINT
20 I'D LIKE TO MOVE THE X-RAY INTO EVIDENCE, STATE'S
21 EXHIBIT NUMBER 13.

22 THE COURT: ALL RIGHT.

23 THE COURT: MR. DUKES, ANY OBJECTION?

24 MR. DUKES: NO OBJECTION

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1 MR. DAVIS: WELL, YOU KNOW, MY OBJECTION
2 RUNS THROUGH THIS WHOLE LINE OF TESTIMONY.

3 THE COURT: I DO UNDERSTAND THAT. I
4 OVERRULE THE OBJECTION.

5 STATE'S EXHIBIT NO. 13

6 ADMITTED AS EVIDENCE

7 Q. DOCTOR, IF YOU COULD STEP DOWN NEXT TO THIS MACHINE
8 HERE, THIS TELEVISION; AND WE'LL TRY TO FOCUS THIS
9 AS BEST AS POSSIBLE SO YOU CAN SHOW THE JURY WHERE
10 THE FRACTURE IS LOCATED AND HOW YOUR FINDINGS WERE
11 OBTAINED. JUST TELL US IF YOU NEED---

12 A. YES; CAN YOU PUSH IT? WELL, THIS REPRESENTS HIS
13 RIGHT LEG COMING OUT. AT THIS STAGE, THIS IS THE
14 PELVIS OF THE CHILD. AT THIS STAGE, THE FEMORAL
15 HEAD OR THE BALL THAT WOULD FIT IN THE BALL SOCKET
16 IS NOT CALCIFIED NOR SHOULD IT BE. IT'S NORMAL
17 THAT IT WOULD LOOK LIKE THAT. HERE WE SEE A
18 DISRUPTION IN THE SURFACE. IF YOU FOLLOW THE EDGE
19 OF THIS BONE DOWN, YOU SEE HOW THE BONE LOOKS LIKE
20 IT SKIPS OVER WHERE THIS END OF THE BONE IS PUSHED
21 INTO THAT UPPER PORTION OF THE BONE. DURING THIS
22 SAME TIME THERE WAS A QUESTION CONCERNING THIS END
23 OF THE BONE. IF THERE WAS A SEPARATION AT THE VERY
END OF THE BONE IT WAS NEVER RESOLVED BECAUSE A

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1 X-RAYS WERE TAKEN WITHOUT THE CAST PRESENT. SO IT
2 COULD NEVER BE RESOLVED THAT THAT WAS FRACTURED
3 ALSO. THIS TYPE OF FRACTURE TO FORCE THAT BONE
4 INTO ITSELF LIKE THAT IS NOT THE MECHANISM BY WHICH
5 A FRACTURE WHERE SOMEONE PRESSES ON THE TWO ENDS OF
6 THE BONE AS THEY FALL TO PUT THEIR WEIGHT ACROSS
7 THE CHILD, AND THE CHILD'S LEG IS SUSPENDED ACROSS
8 THE TOY; AND THEY BEND THE BONE UNTIL THE BONE
9 BREAKS LIKE A WISHBONE. WHEN THAT OCCURS, WE TEND
10 TO SEE A WEDGE OR PLUG OF BONE PUSHED OUT. THE
11 FRACTURES WOULD TEND TO BE IN MORE THE CENTER
12 PORTION OF THE BONE AND WOULD RUN ACROSS THE BONE.

13 Q. THANK YOU, DOCTOR. YOU MAY STEP DOWN FOR A MOMENT.
14 DOCTOR, DID YOU ALSO REVIEW THE FOLLOWING MEDICAL
15 RECORDS REGARDING A DETACHED RETINA IN 1997?

16 A. YES, I DID.

17 Q. AND DID YOU LOOK AT THE HISTORY OF THESE RECORDS?

18 A. YES. THE CHILD WAS PREMATURE. HE WAS DISCOVERED
19 TO HAVE CATARACTS IN BOTH EYES, THE WORSE IN THE
20 RIGHT EYE THAN THE LEFT EYE. AND HE WAS DISCOVERED
21 TO HAVE A DETACHED RETINA. SURGERY WAS APPLIED TO
22 THE CATARACT, AND SURGERY WAS APPLIED TO THE
23 RETINA.

24 Q. AND CAN YOU GIVE AN OPINION TO A REASONABLE DEGREE

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1 PREMATURITY CAUSES DETACHED RETINAS?

2 A. PREMATURITY DOES NOT CAUSE THE DETACHED RETINA.

3 Q. AND, DOCTOR, WAS THERE ALSO EVIDENCE -- WELL, FIRST
4 OF ALL, EXPLAIN; WHAT IS RETINOPATHY OF
5 PREMATURITY?

6 A. RETINOPATHY OF PREMATURITY OCCURS IN SMALL CHILDREN
7 BECAUSE THEIR BLOOD VESSELS HAVEN'T DEVELOPED
8 PROPERLY. AND WHEN THEY'RE EXPOSED TO THE OXYGEN
9 THAT'S NECESSARY TO KEEP THEIR BODIES ALIVE BECAUSE
10 OF THEIR LUNG IMMATURITY, IT CAUSES THESE BLOOD
11 VESSELS TO BE INJURED AND GROW MUCH LIKE PROUD
12 FLESH DOES WHEN WE SKIN OUR KNEES. AND THAT CLOUDS
13 OR INTERFERES WITH THE RETINA -- LIGHT BEING ABLE
14 TO PASS TO THE RETINA.

15 Q. AND WITH RETINOPATHY PREMATURITY; CAN YOU STATE
16 WHETHER OR NOT THAT WAS RULED OUT IN Child
17 CASE?

18 A. YES; IT WAS RULED OUT.

19 Q. AND CAN YOU GIVE AN OPINION TO A REASONABLE DEGREE
20 OF MEDICAL CERTAINTY WHETHER OR NOT THE DETACHED
21 RETINA WAS CAUSED BY ACCIDENTAL MEANS?

22 A. THERE WAS NO ACCIDENT TO EXPLAIN WHY THE RETINA WAS
23 DETACHED. THERE WAS NO BIRTH TRAUMA TO EXPLAIN WHY
24 THE RETINA WAS DETACHED. AND THERE WAS NO

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1 THE RETINA WAS DETACHED.

2 Q. AND WHAT WOULD CAUSE A RETINA DETACHMENT OF THIS
3 SORT?

4 A. A BLOW TO THE GLOBE OF THE EYE.

5 Q. AGAIN; BLUNT FORCE TRAUMA?

6 A. THAT'S CORRECT.

7 Q. AND WOULD THAT BE CONSISTENT WITH ACCIDENTAL INJURY
8 EXPLAINED IN ANY OF THE MEDICAL HISTORY?

9 A. NO, IT WOULD NOT.

10 Q. AND, DOCTOR; YOU ALSO REVIEWED RECORDS FROM ANOTHER
11 FEMORAL FRACTURE IN 1998; CORRECT?

12 A. THAT'S CORRECT.

13 Q. AND DO YOU HAVE THOSE X-RAYS WITH YOU AS WELL?

14 A. YES, I DO.

15 Q. AND, DOCTOR, DID YOU ALSO REVIEW THE EXPLANATION
16 GIVEN FOR THAT PARTICULAR BREAK IN THE CHILD'S LEG?

17 A. YES, I DID.

18 Q. AND CAN YOU GIVE AN OPINION TO A REASONABLE DEGREE
19 OF MEDICAL CERTAINTY WHETHER OR NOT THAT IS
20 CONSISTENT WITH THE EXPLANATION GIVEN?

21 A. IT IS INCONSISTENT WITH THE EXPLANATION GIVEN.

22 Q. AND CAN YOU EXPLAIN TO THE JURY WHY?

23 A. THIS FRACTURE WOULD REPRESENT A FRACTURE THAT WOULD
24 REQUIRE A MASSIVE AMOUNT OF FORCE SIMILAR TO THE

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1 THAT TYPE OF FORCE COULD NOT BE GENERATED BY THE
2 MASK OR PHYSICAL WEIGHT OF THE CHILD FALLING FROM A
3 HEIGHT OF FOUR TO FIVE FEET ONTO JUST THAT LEG.
4 ALSO THE NATURE OF THE FRACTURE ITSELF SHOWS A
5 COMPONENT OF SPIRALLING. THAT SPIRALLING MEANS
6 THERE HAS TO BE SOME DEGREE OF TWISTING WITH
7 FORCE. AND THE CHILD CANNOT GENERATE THAT ENERGY
8 THEMSELVES.

9 Q. DOCTOR, IS THAT THE X-RAY THAT YOU HAVE THERE?

10 A. YES, IT IS.

11 MRS. MURPHY: YOUR HONOR, AT THIS POINT
12 I'D LIKE TO INTRODUCE THAT AS STATE'S EXHIBIT
13 NUMBER 14.

14 THE COURT: ALL RIGHT. ANY OBJECTION?

15 MR. DAVIS: WELL, YOUR HONOR---

16 MR. DUKES: NO, YOUR HONOR.

17 THE COURT: THE SAME OBJECTION BY MR.
18 DAVIS. AND I'LL OVERRULE THE OBJECTION.

19 STATE'S EXHIBIT NO. 14

20 ADMITTED AS EVIDENCE

21 Q. DOCTOR, YOU CAN STEP DOWN AND SHOW THE JURY.

22 MRS. MURPHY: YOUR HONOR, IF I CAN
23 PUBLISH THIS TO THE JURY, YOUR HONOR?

THE COURT: CERTAINLY.

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- 1 THIS IS STILL THE RIGHT LEG OF THE ORIGINAL
2 FRACTURE. HERE YOU CAN SEE THE BALL. THE HEAD OF
3 THE FEMUR IS NOW FORMING. THE ORIGINAL FRACTURE
4 THAT WE SAW BEFORE WOULD HAVE BEEN IN THIS GENERAL
5 AREA. AND HERE WE SEE THIS PARTICULAR FRACTURE.
6 CAN YOU LOWER THE AMOUNT OF LIGHT? HERE YOU SEE
7 THE EDGES OF THE FRACTURE THAT IS SCOOPED OUT.
8 THIS IS WHAT WE REFER TO AS AN OBLIQUE QUALITY.
9 AND WE SEE THAT THE TWO ENDS OF THE BONES ARE AT
10 DIFFERENT HEIGHTS. THIS IS WHAT WE REFER TO AS A
11 SPIRAL OR TWISTING PHENOMENA. ALSO SIGNIFICANT
12 FORCE HAD TO BE APPLIED DURING THIS FRACTURE IN
13 ORDER TO GET THIS DEGREE OF SEPARATION BETWEEN THE
14 TWO BONES TO BE ACHIEVED.
- 15 Q. DOCTOR, YOU MAY SIT DOWN. (AT THIS TIME WITNESS
16 RETURNS TO WITNESS STAND.) DOCTOR, BY SIGNIFICANT
17 FORCE WOULD THAT BE CONSISTENT WITH FALLING OUT OF
18 A PLAYPEN OR A CRIB?
- 19 A. NO. IT WOULD BE INCONSISTENT.
- 20 Q. CAN YOU EXPLAIN TO US WHY?
- 21 A. IT WOULD REQUIRE MUCH MORE SIGNIFICANT FORCE IN
22 ORDER TO PUT THE PRESSURE ON THOSE TWO PIECES OF
23 BONE TO CAUSE THEM TO CHIP THAT WAY, AND AT THAT
24 SAME TIME THERE HAD TO BE SOME ELEMENT OF TORQUE IN

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1 OCCUR, ACCIDENTALLY OCCUR IN PEOPLE LIKE
2 PROFESSIONAL FOOTBALL PLAYERS WHO ARE -- YOU KNOW,
3 THEIR POWER AND STRENGTH AND THEY'RE STRUCK BY
4 ANOTHER INDIVIDUAL; THAT DEGREE OF POWER AND
5 STRENGTH.

6 Q. DOCTOR, A CHILD THIS AGE; ARE THEIR BONES EASIER OR
7 HARDER TO BREAK?

8 A. CHILDREN THIS AGE, BONES ARE MORE RUBBERY. THEY
9 BEND MORE. THEY HAVE -- AS OUR BONES GET OLDER,
10 THEY BECOME HARDER IN ORDER TO SUPPORT OUR BODY
11 MASS AS WE STAND ON OUR BONES. WHEN THE CHILDREN
12 ARE YOUNG, THE BONES ARE VERY RUBBERY AND TEND TO
13 TAKE A LOT OF DEFORMITY BEFORE FRACTURE WILL OCCUR.

14 Q. AND, DOCTOR; DID YOU ALSO REVIEW D.S.S. RECORDS AND
15 FAMILY ASSISTANCE RECORDS AS WELL?

16 A. YES, I DID.

17 Q. AND THE EXPLANATIONS GIVEN IN THOSE, WERE YOU ABLE
18 TO FIND ANY OTHER SOURCES OF INJURY?

19 A. THE 1998, A ROUND CIRCULAR INJURY WAS IDENTIFIED ON
20 THE CHILD'S BACKSIDE THAT WAS A DESCRIPTION SIZE
21 AND CHARACTER OF A CIGARETTE BURN INJURY TO THE
22 CHILD'S SKIN.

23 Q. AND, DOCTOR, CAN YOU EXPLAIN TO THE JURY; WHAT IS A
24 PINCH-OUT BURN?

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1 ROUND CIRCLE THAT GOES THROUGH THE SKIN DOWN INTO
2 THE LOW LAYERS OF THE SKIN OR ALL THE WAY TO THE
3 DERMIS, THE HIDE UNDERNEATH OUR SKIN. AND IT LOOKS
4 LIKE SOMEBODY JUST TOOK THAT LITTLE AREA OUT. SO
5 IT'S A VERY DISCREET, ROUND INJURY.

6 Q. AND COULD THAT TYPE OF BURN BE CAUSED BY SOMEONE
7 JUST SMOKING NEARBY THE CHILD?

8 A. NO.

9 Q. IN YOUR EXPERIENCE, WHAT WOULD CAUSE A BURN LIKE
10 THAT?

11 A. TAKING THE CIGARETTE AND APPLYING IT TO THE SKIN
12 AND HOLDING IT TO THE SKIN FOR A PERIOD OF TIME
13 UNTIL THIS SKIN DIED IN THE SHAPE OF THE CIGARETTE
14 SURFACE.

15 Q. DOCTOR, WERE THERE ANY OTHER INJURIES NOTED THAT
16 YOU REVIEWED?

17 A. THERE WERE INJURIES DOCUMENTED; BRUISING INJURIES
18 TO THE BUTTOCKS THAT WERE OF AN AGE OLDER THAN THE
19 TRAUMA IN NOVEMBER OF 2001. THESE INJURIES WERE IN
20 A PATTERN CONSISTENT WITH THE CHILD BEING BEATEN
21 WITH AN OBJECT SOME TIME PRIOR TO THE HEAD TRAUMA
22 THAT RESULTED IN HIS ADMISSION TO M.U.S.C.

23 Q. AND, DOCTOR, DID YOU ALSO REVIEW THE RECORDS FROM
24 NOVEMBER THE THIRD OF 2001 FROM M U S C ?

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1 Q. AND DID YOU ALSO LOOK AT THE HISTORY AND THE
2 EXPLANATIONS GIVEN FOR THOSE INJURIES?

3 A. YES, I DID.

4 Q. AND TO A REASONABLE DEGREE OF MEDICAL CERTAINTY,
5 CAN YOU GIVE AN OPINION AS TO WHETHER OR NOT THAT'S
6 CONSISTENT WITH ACCIDENTAL MEANS?

7 A. IT'S INCONSISTENT.

8 Q. CAN YOU TELL THE JURY WHY?

9 A. TWO REASONS. THE INJURIES WERE SUSTAINED AROUND
10 THE HEAD. THEY WEREN'T ON ONE SURFACE OR TWO
11 SURFACES OF THE HEAD. IF THE CHILD HAD FALLEN IN
12 THE TUB ONCE OR TWICE AS WAS SUGGESTED, THEN HE
13 WOULD END UP WITH A BRUISE ON ONE SIDE OR TWO
14 SIDES; HE WOULDN'T END UP WITH BRUISES ALL AROUND
15 THE HEAD, OR, IF YOU THINK OF THE HEAD AS A SQUARE
16 ON ALL FOUR SIDES OF THE HEAD. ALSO THE CHILD HAD
17 INJURIES INTO THE RECESSES LIKE THE EYE. THE EYE
18 IS RECESSED. SO WHEN WE FALL AGAINST A FLAT
19 SURFACE, IT IS A PROTECTED AREA BY THE BONEY RIDGES
20 THAT SUPPORT US ABOVE IT UNLESS SOMETHING SMALLER
21 LIKE HUMAN HANDS OR SOMETHING THAT CAN FIT INTO
22 THAT OPENING, STRIKES IN THE OPENING. THE INJURIES
23 ALSO IN THREE SEPARATE INJURIES HAD PATTERNS TO

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 THE HEAD ON THE RIGHT SIDE. AT LEAST TWO OTHERS
2 WERE SEEN ON THE ABDOMEN. THESE REPRESENTED A
3 MANMADE OBJECT AND WERE THE PATTERN CONSISTENT WITH
4 THE SOLE OF A SHOE.

5 Q. AND, DOCTOR, I'M GOING TO ASK YOU TO DRAW ON THIS
6 HEAD TO SHOW THE JURY WHERE THESE INJURIES WERE
7 NOTED, IF YOU COULD, SIR.

8 A. OKAY. IF WE JUST ASSUME THAT THE CHILD'S EARS --
9 THERE'S A LITTLE LINE THROUGH THE CENTER OF THIS
10 STYROFOAM HEAD. WE'LL JUST ASSUME THAT THE CHILD'S
11 EARS RUN ALONG THOSE LINES. THE CHILD HAD A
12 PARTIAL FOOTPRINT INJURY COMING ALONG THE TEMPLE ON
13 THE RIGHT SIDE. THEN HE HAD BRUISING OVER THE EAR,
14 BRUISING AROUND THE EYE, AND BRUISING DOWN ON THE
15 CHEEK ON THE RIGHT SIDE. ON THE LEFT SIDE, HE HAD
16 AN OLD BRUISE, AN OLD INJURY, ON THE EAR. I'LL
17 JUST PUT AN "OLD" RIGHT THERE. THEN HE HAD A NEWER
18 BRUISE ALONG THE CHIN ALONG THE HEAD. HE HAD
19 BRUISING UP ON THE FOREHEAD, AND BRUISING WAS
20 OBSERVED ON THE BACK PORTION OF THE HEAD AS WELL.

21 Q. AND THOSE INJURIES WERE INCONSISTENT WITH THE
22 EXPLANATION GIVEN?

23 A. YES. WHEN SOMEONE FALLS, BE THEY -- HOWEVER THEY
24 LOSE THEIR BALANCE, FOR WHATEVER REASON -- THEY
25 FALL AND USUALLY STRIKE THE BONEY PROMINENCES RIGHT

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 ABOVE THE EYES, THE TIP OF THE NOSE, THE TIP OF THE
2 CHIN. THEY DON'T INTEND TO FALL LATERALIZED, BUT
3 THEY CERTAINLY COULD. BUT WHEN THEY FALL, THEY
4 DON'T BOUNCE FROM LOCATION TO LOCATION WHEN THEY
5 FALL AGAINST A HARD SURFACE. IF THEY GET BACK UP
6 AND FALL AGAIN, THEY CERTAINLY MIGHT FALL ON A
7 DIFFERENT SURFACE THAN THEY FELL THE FIRST TIME.
8 BUT, AGAIN, WHEN THEY FALL THE SECOND TIME, THEY
9 DON'T BEGIN TO BOUNCE AROUND ON THE SURFACE THAT
10 THEY FALL AGAINST.

11 MRS. MURPHY: YOUR HONOR, I'D LIKE TO
12 INTRODUCE THIS FOR DEMONSTRATIVE PURPOSES AS A
13 STATE'S EXHIBIT FIFTEEN.

14 THE COURT: VERY WELL. MR. DUKES?

15 MR. DUKES: I DON'T SEE HOW SHE LOOKS AT
16 IT. IT'S NOT REPRESENTATIVE OF THE CHILD'S DADDY.

17 THE COURT: DEMONSTRATIVE PURPOSE ONLY AS
18 I UNDERSTAND IT.

19 MRS. MURPHY: THAT'S CORRECT, YOUR HONOR.

20 MR. DAVIS: THE REASON I OBJECT, YOUR
21 HONOR, IS WE HAVE RECEIVED PHOTOGRAPHS. NO
22 PHOTOGRAPHS DELINEATED ANY BRUISES TO THE BACK OF
23 THE CHILD'S HEAD AT ALL. AND ALL OF A SUDDEN, THIS
24 IS THE FIRST TIME WE'VE GOT THIS MAN TESTIFYING

ABOUT THE BACK OF THE HEAD. IT'S THE FIRST TIME I

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 DEFER TO THE---

2 THE COURT: VERY WELL. ALL RIGHT. OVER
3 THE OBJECTION OF BOTH DEFENDANTS, NOTING YOUR
4 EXCEPTIONS FOR THE RECORD, I WILL ALLOW
5 THE EXHIBIT TO BE ADMITTED FOR DEMONSTRATIVE
6 PURPOSES ONLY.

7 MRS. MURPHY: THANK YOU, YOUR HONOR.

8 THE COURT: YES. THAT WILL BE
9 DEFENDANT'S EXHIBIT 13?

10 MRS. MURPHY: STATE'S EXHIBIT 15.

11 THE COURT: 15; THANK YOU.

12 STATE'S EXHIBIT NO. 15

13 MARKED FOR IDENTIFICATION

14 Q. DOCTOR, DID YOU ALSO REVIEW THE DOCUMENTATION
15 REGARDING THE INJURIES TO THE CHILD'S CHEST AND
16 ABDOMEN?

17 A. YES, I DID.

18 Q. AND I'LL SHOW YOU A BLOW-UP DIAGRAM OF THE BODY AND
19 ASK IF YOU COULD DRAW FOR THE JURY WHERE THOSE
20 INJURIES -- WERE THOSE DATED ON THE CHART? (AT
21 THIS TIME WITNESS STEPS DOWN FROM WITNESS STAND.)

22 A. THE CHILD HAD FOOTPRINT INJURIES IN THIS GENERAL
23 AREA. (INDICATING.) THE GENERAL AREA WOULD BE
24 PUTTING IN DOTTED LINES HERE, THE APPROXIMATE
25 LOCATION WHERE THE LOWER EDGES OF THE DIB CASE

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 WOULD BE RELATIVE TO THAT. AND CLEARLY IN THE
2 PHOTOGRAPHS, AT LEAST TWO SEPARATE LESIONS OR
3 IMPRINTS OF A SHOE SOLE CAN BE SEEN. ALSO, AS I
4 SAID BEFORE, COMING ACROSS THE CHILD'S FOREHEAD IS
5 THE EDGE OF A SHOE SOLE INJURY ALSO.

6 Q. AND, DOCTOR, WHAT'S THE SIGNIFICANCE OF THE FULL
7 OUTLINE OF THE SHOE IMPRINT?

8 A. THAT INDICATES THAT THE SHOE WAS IN ALL PROBABILITY
9 ON THE FOOT OR WORN BY THE FOOT AT THE TIME. SO
10 EITHER STOMPING OR KICKING OF THE FOOT OCCURRED.
11 IF THE SHOE IS GRASPED BY THE HAND, AS SUGGESTED,
12 THAT THAN WE WOULD ONLY SEE AN OUTLINE OF ONE SIDE
13 OF THE SHOE RATHER THAN THE ENTIRE SOLE OF THE
14 SHOE.

15 Q. AND, DOCTOR, ON THE BACK -- WERE THERE ANY INJURIES
16 NOTED ON THE BACK OF THE CHILD?

17 A. YES. THERE WERE OLD INJURIES NOTED IN THE BUTTOCK
18 AREA OF THE CHILD THAT WERE CURVED INJURIES THAT
19 WERE CONSISTENT WITH HIM HAVING BEEN STRUCK BY AN
20 OBJECT OR PERHAPS A BELT OR A CORD AT SOME TIME
21 PRIOR TO THIS NOVEMBER EXAMINATION AT LEAST A WEEK,
22 PERHAPS LONGER.

23 Q. THANK YOU, SIR.

YES MURPHY. YOUR HONOR AT THIS TIME

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 FOR DEMONSTRATIVE PURPOSES

2 THE COURT: FOR DEMONSTRATIVE PURPOSES
3 ONLY?

4 MRS. MURPHY: YES, MA'AM.

5 THE COURT: VERY WELL. MR. DUKES?

6 MR. DUKES: I HAVE NO OBJECTION.

7 THE COURT: VERY WELL. MR. DAVIS?

8 MR. DAVIS: YOUR HONOR, I TAKE THE
9 POSITION YOU'VE GOT THE PHOTOGRAPHS.

10 THE COURT: THANK YOU VERY MUCH. I WILL
11 OVERRULE THE OBJECTION OF MR. DAVIS NOTING HIS
12 EXCEPTION FOR THE RECORD. I WILL ADMIT STATE'S
13 EXHIBIT 16 IN EVIDENCE FOR DEMONSTRATIVE PURPOSES.
14 THANK YOU.

15 MRS. MURPHY: THANK YOU, MA'AM.

16 MRS. MURPHY: THANK YOU.

17 STATE'S EXHIBIT NO. 16

18 MARKED FOR IDENTIFICATION

19 Q. ASIDE FROM -- WERE THOSE PATTERN LOOP INJURIES ARE
20 ANY OF THE INJURIES IN YOUR EXPERIENCE APPROPRIATE
21 FOR DISCIPLINE LEVELS FOR A CHILD THIS AGE?

22 A. NO. TO STRIKE A CHILD, ESPECIALLY AT THIS YOUNG
23 AGE, SEVERELY ENOUGH TO LEAVE THAT KIND OF INJURY
24 IS NOT IN THE REALM OF DISCIPLINARY

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 MOTHER BEING OFFERED EDUCATION ON PROPER CHILDCARE?

2 A. YES, I DID.

3 Q. AND WHAT WAS THE SUBSTANCE OF THAT?

4 A. THE SOCIAL SERVICE HAD A COURSE ON CHILD REARING
5 THAT THEY OFFERED THE MOTHER; AND SHE ATTENDED.

6 Q. AND DID YOU ALSO REVIEW PEDIATRIC RECORDS?

7 A. YES, I DID.

8 Q. AND WHAT WERE THE EXTENT OF THOSE?

9 A. THEY WERE VERY -- FROM A LOCAL PEDIATRICIAN, THE
10 RECORDS WERE VERY LIMITED, JUST A FEW VISITS.

11 Q. DOCTOR, THE CONSTELLATION OF INJURIES IN YOUR
12 EXPERIENCE; IS IT CONSISTENT -- CAN YOU GIVE A
13 DIAGNOSIS REGARDING THE CONSTELLATION OF INJURIES?

14 LET ME BACK UP A LITTLE BIT. DOCTOR, WHAT IS
15 BATTERED CHILD SYNDROME?

16 A. BATTERED CHILD SYNDROME IS INFLICTED TRAUMA ON A
17 CHILD THAT OCCURS AT MULTIPLE DIFFERENT TIMES OVER
18 A SUSTAINED TIME PERIOD; MONTHS OR YEARS.

19 Q. AND THE CONSTELLATION OF INJURIES THAT YOU HAVE
20 REVIEWED IN THIS CASE; CAN YOU GIVE A DIAGNOSIS AS
21 TO WHETHER OR NOT IT FITS A BATTERED CHILD
22 SYNDROME?

23 MR. DAVIS: I OBJECT, YOUR HONOR. THAT

24 CALLS FOR A CONCLUSION THE WAY THAT QUESTION WAS

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 THE COURT: AS TO THE FORM OF THE
2 QUESTION?

3 MR. DAVIS: THAT'S CORRECT.

4 THE COURT: SUSTAINED.

5 Q. WHAT DIAGNOSIS, IF ANY, DID YOU MAKE, DOCTOR?

6 A. THAT THE CHILD SUFFERED FROM BATTERED---

7 MR. DAVIS: I OBJECT AGAIN; SAME
8 QUESTION.

9 THE COURT: SUSTAINED AS TO THE FORM OF
10 THE QUESTION.

11 Q. DOCTOR, TO A REASONABLE DEGREE OF MEDICAL
12 CERTAINTY, WHAT DIAGNOSIS WERE YOU ABLE TO MAKE
13 UPON YOUR REVIEW OF THE COMPILATION OF INJURIES?

14 A. THAT THE CHILD SUFFERED FROM BATTERED CHILD
15 SYNDROME.

16 Q. AND CAN YOU EXPLAIN WHAT IS THE DIAGNOSTIC CRITERIA
17 FOR BATTERED CHILD SYNDROME?

18 A. FINDING INJURIES THAT ARE NOT ACCIDENTAL OR
19 BIOLOGIC IN NATURE THAT OCCURRED TO THE CHILD NOT
20 THROUGH ACCIDENTAL MEANS ON MULTIPLE OCCASIONS OVER
21 A SUSTAINED TIME PERIOD OF MONTHS OR YEARS.

22 Q. DOCTOR, ARE YOU ALSO FAMILIAR WITH RESEARCH
23 INVOLVING MULTIPLE CHILDREN IN A HOME WHERE ONLY

24

ONE CHILD IS HARDED TO SUSTAINED

BRET WOODARD - RE-CROSS/MRS. MURPHY

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1 Q. AND CAN YOU EXPLAIN WHAT THAT---

2 MR. DAVIS: YOUR HONOR, I OBJECT TO THE
3 LINE OF QUESTION. MAY I APPROACH; AND I'LL TELL
4 YOU WHY?

5 THE COURT: SURE.

6 (AT THIS TIME BENCH CONFERENCE IS HELD.)

7 Q. DOCTOR, IN YOUR EXPERIENCE AS A FORENSIC
8 PATHOLOGIST, ARE YOU FAMILIAR WITH THE RESEARCH OF
9 TARGETED CHILDREN IN CHILD ABUSE CASES?

10 A. YES, I AM.

11 Q. HOW IS THAT?

12 A. THROUGH READING, COURSE WORK, AND PERSONAL
13 EXPERIENCE.

14 Q. AND CAN YOU DELINEATE THAT PERSONAL EXPERIENCE FOR
15 US, PLEASE SIR?

16 A. YES. I'VE HAD OTHER FAMILY SITUATIONS IN WHICH ONE
17 CHILD WAS SELECTED FOR FAMILY REASONS AND WAS
18 SUBJECTED TO BEING BATTERED WHILE THE OTHER
19 CHILDREN SEEM TO BE IMMUNE TO THAT TYPE OF INJURY.

20 Q. IS THAT COMMON IN CHILD ABUSE CASES AS FAR AS YOU
21 SEE IN FORENSIC PATHOLOGY?

22 MR. DAVIS: YOUR HONOR, I'M GOING TO
23 OBJECT. THAT CALLS FOR A CONCLUSION; IS IT

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 THE COURT: SUSTAINED.

2 Q. HOW OFTEN IN YOUR EXPERIENCE DOES THIS HAPPEN IN
3 YOUR EXPERIENCE AS A FORENSIC PATHOLOGIST? .

4 A. ONE OUT OF FIVE TIMES.

5 Q. WHAT EXACTLY IS MEANT BY THE TARGETED CHILD?

6 MR. DAVIS: YOUR HONOR, THAT'S BEEN ASKED
7 AND ANSWERED. WITH ALL DUE RESPECT, HE ASKED THE
8 DEFINITION OF TARGETED. HE SAID WHAT A TARGETED
9 CHILD; THAT CHILD IS PICKED ON---

10 THE COURT: OVERRULED. I THINK SHE ASKED
11 WAS HE FAMILIAR WITH IT.

12 Q. WHAT IS THE DEFINITION, DOCTOR?

13 A. IT IS A CHILD AMONG A GROUP THAT IS PICKED OUT FOR
14 WHATEVER REASON BY AN ABUSER AND THEN SUFFERS THE
15 ABUSE FROM THAT ABUSER WHILE OTHER CHILDREN LIVING
16 IN THE HOME ENVIRONMENT SEEM TO ESCAPE THAT ABUSE.

17 Q. THANK YOU, DOCTOR. PLEASE ANSWER ANY QUESTIONS
18 DEFENSE COUNSEL MAY HAVE.

19 THE COURT: ALL RIGHT.

20 CROSS-EXAMINATION, MR. DUKES?

21 RE-DIRECT EXAMINATION

22 BY MR. DUKES:

23 Q. DOCTOR, YOU HAVEN'T EVER SEEN THIS CHILD, HAVE YOU?

24 A. NO, I HAVE NOT.

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 NEVER TALKED TO THE FATHER?

2 A. THAT'S CORRECT.

3 Q. IN FACT, THE ONLY THING YOU'VE DONE IS YOU'VE
4 RECEIVED RECORDS, AND YOU'VE SAT DOWN SOMEWHERE IN
5 A ROOM, AND YOU'VE GONE OVER THINGS AND DRAWN YOUR
6 CONCLUSIONS?

7 A. NO; RECORDS, PHOTOGRAPHS, AND X-RAYS.

8 Q. YOU'VE HAD NO CONTACT WITH NOBODY PERSONALLY?

9 A. THAT'S CORRECT.

10 Q. AND YOU'VE GONE BACK -- TO START WITH, YOU'VE HAD
11 THE BIRTH RECORDS?

12 A. THAT'S CORRECT.

13 Q. AND THE BIRTH RECORDS WASN'T NORMAL, WERE THEY?

14 A. NO.

15 Q. HOW OLD WAS THE BABY WHEN -- HOW MUCH PREMATURE
16 WERE THESE TWO TWINS?

17 A. TWINS ARE USUALLY BORN 36 TO 38 WEEKS IDEALLY.
18 THESE CHILDREN WERE BORN AT 28 WEEKS.

19 Q. SO THEY VERY MUCH PREMATURE?

20 A. THAT'S CORRECT.

21 Q. AND THEY WERE TAKEN BY CESARIAN?

22 A. THAT'S CORRECT.

23 Q. AND THE FIRST TIME THIS LITTLE BOY HAD TO GO BACK
24 IN HE HAD A DETACHED RETINA?

BRET WOODARD - RE-DIRECT/MR. DUKES

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1. Q. THE FIRST TIME?
2. A. WELL---
3. Q. IN 1996?
4. A. IN 1997.
5. Q. 1996?
6. A. IN 1996 HE HAD THE FRACTURED LEG. IN 1997, THEY
7. FIXED THE RETINA.
8. Q. ARE YOU SURE ABOUT THAT?
9. A. (NO RESPONSE.)
10. Q. THE RETINA; THAT'S THE ONE I'M INTERESTED IN.
11. A. YES; IN 1997, HE HAD THE RETINA WORKED ON.
12. Q. IN 1997?
13. A. RIGHT.
14. Q. IN 1996 HE HAD A---
15. A. HE HAD THE FIRST FRACTURE OF HIS RIGHT LEG.
16. Q. THAT'S THE FIRST TIME ANYTHING OUT OF THE ORDINARY
17. HAPPENED TO HIM?
18. A. THAT'S CORRECT; OTHER THAN HE WAS BORN PREMATURE.
19. Q. OTHER THAN BEING BORN PREMATURE, AND HE SUFFERED A
20. LOT OF COMPLICATIONS AS A RESULT OF THAT, DIDN'T
21. HE?
22. A. ABSOLUTELY.
23. Q. BECAUSE AT THE PRESENT TIME HE'S -- HOW BIG IS HE?
24. A. HE'S EXTREMELY SMALL. I DON'T KNOW HOW BIG HE IS.

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 2001, INCIDENT.

2 Q. HOW BIG WAS HE?

3 A. THREE FOOT -- 36 INCHES TALL AND 28 POUNDS.

4 Q. SO 28 POUNDS; AND HE WAS FIVE YEARS OLD AT THAT
5 TIME?

6 A. THAT'S CORRECT.

7 Q. SO IN '97---

8 A. IN '97 HE HAD THE RETINA OPERATED ON.

9 Q. OKAY; '96; HE HAD A BROKEN FEMUR?

10 A. THAT'S CORRECT.

11 Q. AND AT THAT TIME, YOU SAID THE MOTHER WAS CARRYING
12 HIM, TRIPPED, AND FELL; FELL ON HIM?

13 A. THAT'S CORRECT.

14 Q. AND YOU SAY THAT'S NOT TRUE?

15 A. I'M SAYING BASED ON THE PATTERN OF THE FRACTURE AND
16 THE EXPLANATION THE MOTHER GAVE, THAT EXPLANATION
17 IS NOT TRUE.

18 Q. SO YOU SAT DOWN AND TAKE A WRITTEN EXPLANATION,
19 SOME RECORDS FROM SOMEWHERE. YOU DIDN'T TALK WITH
20 THE MOTHER?

21 A. NO, I DID NOT.

22 Q. BUT YOU SAT DOWN AND LOOKED AT SOME STATEMENT THAT
23 SHE MADE SOMEWHERE?

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 A. THAT'S CORRECT.

2 Q. YOU WEREN'T THERE. YOU'RE NOT FAMILIAR WITH THE
3 SCENE. YOU DON'T KNOW WHAT TYPE OF FLOOR IT WAS OR
4 ANYTHING?

5 A. NO, I DON'T.

6 Q. AND YOU JUST DON'T BELIEVE THAT'S THE WAY IT
7 HAPPENED? YOU KNOW THAT'S NOT THE WAY IT HAPPENED?

8 A. THAT'S CORRECT. THAT'S NOT THE TRUE STORY OF HOW
9 THAT INJURY OCCURRED; THAT'S CORRECT.

10 Q. THAT'S YOUR OPINION?

11 A. THAT'S MY OPINION.

12 Q. OKAY. AND THEN AT THE END THERE WAS ANOTHER --
13 THEY HAD THE DETACHED RETINA; THAT WAS NEXT?

14 A. THAT'S CORRECT.

15 Q. THAT WAS THE NEXT YEAR?

16 A. IT WAS OPERATED ON THE NEXT YEAR. IT WAS NOTED IN
17 1996.

18 Q. OKAY. AND YOU SAY THAT HAD TO BE BLUNT FORCE
19 TRAUMA?

20 A. THERE IS NO -- SHE OFFERED NO EXPLANATION FOR
21 THAT. THE DOCTORS EVALUATED THE CHILD FOR THE
22 EXPLANATIONS OF INFLAMMATORY CONGENITAL DISEASE OF
23 THAT EYE AND FOUND NONE. THE BIRTHING HISTORY DOES
24 NOT OFFER A HISTORY OF TRAUMA FROM --

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 SITUATIONS. THIS CHILD WAS DELIVERED BY CESAREAN
2 SECTION. THE CHILD HAD TO SUSTAIN A BLOW OR INJURY
3 TO THE RETINA WHICH RESULTED IN THE CHILD'S
4 DETACHED RETINA.

5 Q. THERE'S NEVER BEEN ANY EVIDENCE OF TRAUMA TO HIS
6 HEAD OR ANYTHING? NOTHING LIKE THAT WAS---

7 A. NO ONE EVER TOOK HIM TO THE DOCTOR FOR IT; THAT'S
8 CORRECT.

9 Q. AND THERE IS NO SCARRING FROM BACK THEN OR ANYTHING
10 THAT WOULD INDICATE A LICK TO THE HEAD?

11 A. WELL, ALL LICKS TO THE HEAD DON'T LEAVE SCARS.
12 SOMETIMES THEY'LL BRUISE, AND THEN THE BRUISE GOES
13 AWAY.

14 Q. SO THERE'S NOTHING TO INDICATE HE HAD A BLUNT FORCE
15 TRAUMA BACK THEN?

16 A. THE DETACHED RETINA IS THERE TO INDICATE IT.

17 Q. THE DETACHED RETINA IS THERE; BUT NO VISIBLE SIGN
18 OUTSIDE?

19 A. NO; NOT AT THE TIME HE WAS SEEN IN 1996; THAT'S
20 CORRECT.

21 Q. BUT YOU'RE POSITIVE HE HAD A BLUNT FORCE TRAUMA TO
22 THE HEAD?

23 A. YES.

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 Q. AND YOU READ THE EXPLANATIONS; AND YOU SAW THE
2 X-RAYS; AND ETC. THE TRUE STORY WASN'T TOLD THAT
3 TIME EITHER?

4 A. THAT'S CORRECT.

5 Q. THERE'S NO WAY THAT SOMEBODY COULD HAVE FALLEN OUT
6 OF A CRIB OR SOMETHING AND FALLEN DOWN AND FALL ON
7 AN OBJECT ON THE FLOOR AND BREAK A LEG?

8 A. NOT THE WAY THAT LEG WAS BROKEN TO THE EXTENT IT
9 WAS BROKEN. THERE'S NOT ENOUGH SUFFICIENT ENERGY
10 GENERATED BY A FALL FROM EVEN A HEIGHT OF FIVE FEET
11 TO PRODUCE THAT TYPE OF FRACTURE.

12 Q. AND YOU'RE SAYING BOTH OF THESE TYPE OF FRACTURES
13 HAD TO BE DONE FROM SOMETHING LIKE A CAR WRECK?

14 A. THE TYPE OF ENERGY THAT IS ACHIEVED IN A CAR
15 ACCIDENT; YES.

16 Q. A CAR ACCIDENT; OR FOOTBALL; PLAYING FOOTBALL?

17 A. THAT TYPE OF ENERGY THAT TWO LARGE FOOTBALL PLAYERS
18 ADMINISTER TO EACH OTHER.

19 Q. LIKE SOMEBODY HITTING SOMEBODY WITH A BASEBALL BAT
20 OR SOMETHING?

21 A. SOME SORT OF OBJECT. A SEVERE KICK WHILE THE FOOT
22 IS PLANTED OR WEDGED COULD DO IT.

23 Q. A HECK OF A FORCE?

24 A. A HECK OF A FORCE

BRET WOODARD - RE-DIRECT/MR. DUKES

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- 1 A. NOT -- LIKE YOU JUST DID YOUR HAND. OR PERHAPS AS
2 HARD AS SOMEBODY MIGHT BE ABLE TO STRIKE SOMEONE;
3 AN ADULT STRIKE A CHILD, IT WOULD BE POSSIBLE; YES.
4 Q. IT COULD BE POSSIBLE THAT YOU COULD HIT SOMEBODY
5 WITH YOUR FIST AND DO IT?
6 A. CONSIDERING A DIFFERENTIAL BETWEEN AN ADULT AND A
7 CHILD; YES.
8 Q. BUT NO WAY IT HAPPENED THE WAY THE CARETAKERS TOLD
9 YOU?
10 A. THAT'S CORRECT.
11 Q. AND THEN THERE WAS A CIRCULAR BRUISE; A CIRCULAR
12 BURN. HAVE YOU EVER HEARD OF PEOPLE BEING ALLERGIC
13 TO INSECT BITES?
14 A. YES.
15 Q. CAN THAT LEAVE A CIRCULAR BITE?
16 A. NO; IT USUALLY PRODUCES A FLAT AREA OF CELLULITIS
17 WE CALL IMPETIGO. IT DOESN'T PRODUCE A SHELF
18 CUTOUT ON AN INJURY OR A PUNCHED OUT INJURY THE WAY
19 A CIGARETTE BURN INJURY DOES.
20 Q. WHAT INFORMATION DO YOU HAVE ABOUT THIS BURN?
21 A. IT'S A DESCRIPTION IN D.S.S. RECORDS.
22 Q. A DESCRIPTION IN D.S.S. RECORDS?
23 A. THAT'S RIGHT.

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 Q. THAT'S A DESCRIPTION BY SOME LAYMAN IN THE D.S.S.
2 RECORDS?

3 A. SHE GOT IT FROM THE CARING DOCTORS.

4 Q. HOW DO YOU KNOW THAT?

5 A. SHE STATES IT.

6 Q. SHE STATES SHE GOT IT FROM SOMEBODY?

7 A. YES.

8 Q. BUT SHE'S THE ONE THAT PUT IT DOWN?

9 A. THAT'S CORRECT.

10 Q. YOU DIDN'T GO BACK TO THE CARING DOCTOR TO FIND OUT
11 IT, DO YOU?

12 A. I DID NOT FIND IT DOCUMENTED IN A SPECIFIC DOCTORS
13 RECORD. ONLY REFERRED TO IT, WAS PRESENT, BUT NO
14 SPECIFIC DOCUMENTATION OF IT.

15 Q. SO YOU HAVEN'T SEEN THAT, OR YOU HAVEN'T EVEN SEEN
16 A PICTURE OF THAT?

17 A. NO, I HAVE NOT.

18 Q. YOU'VE TAKEN SOMEBODY ELSE'S WRITTEN DESCRIPTION; A
19 WRITTEN DESCRIPTION OF SOME FORMER INJURY. AND
20 YOU'RE BASING YOUR OPINION ON THAT?

21 A. NO. I'M BASING MY OPINION ON THE CONSTELLATION;
22 ALL THE CHANGES OR INJURIES THIS CHILD HAD; NOT ANY
23 SPECIFIC ISOLATED INJURY. BUT ALL OF THE INJURIES
24 TAKEN TOGETHER I HAVE THE BENEFIT OF OPENING THE

66 -

BRET WOODARD - RE-DIRECT/MR. DUKES

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1 PAGE. WHEN I GET A CHANCE TO LOOK AT A CASE LIKE
2 THIS; RATHER THAN THE DOCTORS WHO GET TO OPEN JUST
3 A FEW PAGES AND READ THOSE.

4 Q. SO YOU DON'T READ THE WHOLE BOOK? YOU'RE SAYING
5 SOME CHAPTERS?

6 A. I START AT THE BACK, THOUGH.

7 Q. YOU START AT THE BACK WHEN YOU READ A BOOK?

8 A. THAT'S CORRECT.

9 Q. I UNDERSTAND THAT. SO YOU STARTED READING UP HERE
10 NOT LONG AGO; AND YOU READ BACK TO THE---

11 A. TO THE BEGINNING.

12 Q. TO THE BEGINNING. BUT THAT LITTLE ROUND -- YOU SAY
13 A LOT OF THESE THINGS INDIVIDUALLY COULD HAVE
14 HAPPENED; BUT COLLECTIVELY IT COULDN'T HAVE?

15 A. TAKEN COLLECTIVELY, THEY -- NONE OF THE
16 EXPLANATIONS COULD HAVE. THE ONLY POSSIBLE
17 EXPLANATION THAT MIGHT BE TRUE IS THAT SHE TRIPPED
18 AND FELL WITH THE CHILD; HOWEVER, THAT IS
19 EXTREMELY SUSPICIOUS TO ME AND IS HIGHLY SUSPICIOUS
20 FOR CHILD ABUSE JUST BASED ON THE PHYSICAL
21 FINDINGS. HOWEVER, TAKEN WITH THE SECOND FRACTURE;
22 TAKEN WITH THE HEAD TRAUMA; TAKEN WITH THE OTHER
23 INJURIES OF THE RETINAL TRAUMA; THE EXPLANATION
24 DOESN'T MATCH.

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1 DON'T CUT IT?

2 A. WELL, SOMETIMES CHAPTERS MISLEAD YOU UNTIL YOU READ
3 THE ENTIRE BOOK.

4 Q. BUT THE ENTIRE BOOK ALWAYS LEADS YOU DOWN THE RIGHT
5 ROAD?

6 A. THE ENTIRE BOOK IS DESIGNED TO LEAD YOU TO A
7 CONCLUSION.

8 Q. LET'S GO TO THIS LAST INJURY, THE ONE THAT -- YOU
9 READ THE EXPLANATION THAT THE CARETAKERS GAVE?

10 A. THAT HE FELL IN THE BATHTUB.

11 Q. WELL, DIDN'T HE FALL BEFORE IT GOT TO THE BATHTUB,
12 TOO?

13 A. YES.

14 Q. THERE WAS A COUPLE OF MORE FALLS, WASN'T IT?

15 A. YES.

16 Q. AND THIS CHILD HAD BEEN ILL THAT WEEK; DID YOU KNOW
17 THAT?

18 A. YES. HE HAD BEEN -- TWO DAYS EARLIER, HE HAD BEEN
19 TO A PEDIATRICIAN FOR A COLD AND CONSTIPATION.

20 Q. AND HE WAS TAKING SOME SORT OF MEDICATION FOR THAT?

21 A. THAT'S CORRECT.

22 Q. AND THE CARETAKER SAID THAT HE USED A SHOE ON THE
23 CHEST BECAUSE HE WASN'T BREATHING?

24 A. THAT'S CORRECT.

25 Q. AND YOU'RE SAYING HE DIDN'T USE IT THE WAY HE SAID