

VOLUME TWO 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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BRET WOODARD - RE-DIRECT/MR. DUKES

474

1 HE USED IT. YOU'RE SAYING HE STOOD ON HIS CHEST?

2 A. NO; I'M SAYING HE KICKED OR STOMPED THE CHEST.

3 Q. HE KICKED OR STOMPED ON THE CHEST?

4 A. YES.

5 Q. AND THIS CHILD WEIGHED HOW MUCH AT THE TIME?

6 A. TWENTY-EIGHT POUNDS.

7 Q. WAS LIKE 36 INCHES?

8 A. WELL, ABOUT THREE FEET; CORRECT.

9 Q. AND THIS 190 POUND MAN STOOD ON HIS CHEST?

10 A. OR STOMPED OR KICKED HIS CHEST; YES.

11 Q. DID HE SUFFER ANY INJURIES AS A RESULT OF THAT?

12 A. YES, HE DID. HE SUFFERED THE INJURIES TO THE SKIN

13 SURFACE THAT WERE VISIBLE FROM THE OUTSIDE.

14 Q. SO HE SUFFERED INJURIES TO THE SKIN SURFACE?

15 A. THAT'S CORRECT.

16 Q. BUT NO INTERNAL INJURIES?

17 A. NONE WERE DETECTED IN HIS MEDICAL EVALUATION.

18 Q. AND THOSE LITTLE SKIN SURFACE INJURIES; THEY'LL

19 CLEAR UP IN A DAY OF TWO, WOULDN'T THEY?

20 A. EVENTUALLY THEY WILL; YES, SIR.

21 Q. SO HE SUFFERED NO PERMANENT INJURIES FROM 190 POUND

22 MAN STANDING ON HIM OR KICKING HIM?

23 A. THAT'S CORRECT.

24 Q. BUT IT DIDN'T HURT HIM?

-- A. YES. ON HIS CHEST. THAT'S CORRECT.

BRET WOODARD - RE-DIRECT/MR. DUKES

475

1 Q. NO BROKEN BONES?

2 A. NO.

3 Q. NO RIBS?

4 A. NO RIBS.

5 Q. NOTHING OUT OF PLACE?

6 A. THAT'S CORRECT.

7 Q. I THINK YOU TOLD ME THAT A CAR CAN RUN OVER
8 THOSE---

9 A. IN YOUNGER CHILDREN LIKE THAT, THE BONES ARE VERY
10 PLIABLE, AND IT'S NOT UNCOMMON THAT A CAR WILL RUN
11 OVER THEM AND NOT BREAK ANY RIBS.

12 Q. AND ALL THESE INJURIES THAT'S DOCUMENTED,
13 PHOTOGRAPHED AND ALL AROUND THE HEAD; THEY'RE ALL
14 SUPERFICIAL, AREN'T THEY?

15 A. YES, THEY ARE.

16 Q. THERE'S NO CUTS THERE OR NOTHING?

17 A. NO.

18 Q. BUT IN TWO OR THREE DAYS, ALL EVIDENCE OF THIS
19 WHOLE THING WOULD HAVE BEEN GONE AWAY. AS SOON AS
20 A LITTLE SCAB OR A LITTLE SCARRING; THERE WERE NO
21 CUTS, NO BLEEDING?

22 A. JUST INSIDE AROUND THE BRAIN.

23 Q. BUT IT DIDN'T HAPPEN THE WAY THE CARETAKER SAID?

24 A. THAT'S CORRECT.

25 Q. AND YOU'RE SURE OF THAT?

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 A. YES, I AM.

2 Q. BUT YOU WERE NEVER THERE ON ANY OF THESE TIMES?

3 A. NO, I WASN'T.

4 Q. BUT YOU CAN TAKE THOSE RECORDS, GO THROUGH THEM,
5 AND COME UP WITH THESE CONCLUSIONS?

6 A. THAT'S CORRECT.

7 Q. THAT THERE'S BEEN A BATTERED CHILD; BUT YOU NEVER
8 TALKED TO THIS BATTERED CHILD?

9 A. NO, I HAVE NOT.

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

11 THE COURT: MR. DAVIS?

12 RE-CROSS EXAMINATION

13 BY MR. DAVIS:

14 Q. JUST SO I'LL UNDERSTAND WHAT YOU DO FOR A LIVING;
15 TELL ME WHAT YOU DO FOR A LIVING.

16 A. I'M A PATHOLOGIST, A FORENSIC PATHOLOGIST. I
17 EXAMINE INDIVIDUALS FOR SIGNS OF TRAUMA, INJURY,
18 AND TRY AND EVALUATE HOW THAT INJURY OCCURRED. AND
19 I TRY AND EVALUATE THE SIGNIFICANCE OF THAT INJURY.

20 Q. YOU AND I TALKED ABOUT QUINCY INITIALLY IN THIS
21 CASE. AND YOU AGREE THAT FORENSIC PATHOLOGISTS
22 LIKE QUINCY, THE T.V. SHOW?

23 A. QUINCY WAS A FORENSIC PATHOLOGIST; THAT'S CORRECT.

24 Q. THAT'S RIGHT. AND MOST OF THE CASES, HE CAME ALONG
25 AFTER DEATH WAS INFLICTED ON SOMEONE?

BRET WOODARD - RE-CROSS/MR. DAVIS

477

1 A. THAT'S CORRECT.

2 Q. OKAY. NOW, YOU'RE A CORONER HERE IN DORCHESTER
3 COUNTY?

4 A. NO, I'M NOT.

5 Q. YOU'RE NOT A CORONER?

6 A. NO.

7 Q. A GOOD CORONER SHOULD BE A PATHOLOGIST?

8 A. NO; NOT NECESSARILY.

9 Q. NOT NECESSARILY?

10 A. NO.

11 Q. YOU KNOW YOU SAY YOU CHECKED SOME RECORDS. AND I
12 JUST WANT TO -- 1996. YOU GOT AN INCIDENT -- I'M
13 GOING TO PUT A CHECK THERE. THEN WE'VE GOT 1997.
14 THEN WE'VE GOT 1998. AND THEN WE'VE GOT 2001;
15 NOVEMBER. NOW, DOCTOR, I'VE JUST GOT A QUESTION
16 FOR YOU -- A FEW QUESTIONS -- BUT HOW MANY INJURIES
17 DOES IT TAKE TO A PARTICULAR CHILD FOR IT TO BE
18 CLASSIFIED AS A BATTERED CHILD SYNDROME?

19 A. IN MY OPINION, MORE THAN THREE.

20 Q. OKAY. SO FOR YOUR OPINION, YOUR PAID OPINION, MORE
21 THAN THREE. YOU KNOW, YOU SAID SOMETHING OF
22 INTEREST. I WAS LISTENING VERY CLOSELY TO YOU.
23 YOU SAID THAT IF YOU WOULD TAKE AND GIVE MS. GADSON
24 THE BENEFIT OF THE DOUBT OF WHAT HAPPENED IN 1996
25 WHEN SHE SLIPPED AND HER CHILD'S LEG WAS FRACTURED

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 YOU WOULD GIVE HER THE BENEFIT OF THE DOUBT ON
2 THAT. WOULD YOU AGREE WITH ME?

3 A. I'M WAITING FOR THE QUESTION.

4 Q. CAN WE AGREE THAT YOU WOULD GIVE HER THE BENEFIT OF
5 THE DOUBT IN REFERENCE TO A FRACTURE THAT OCCURRED
6 IN 1996?

7 A. YES. I CERTAINLY WOULD REFER TO D.S.S. FOR
8 INVESTIGATION. BUT I WOULDN'T MAKE A DEFINITIVE
9 DIAGNOSIS OF CHILD ABUSE ON THAT ALONE.

10 Q. OKAY. AND SO YOU'RE SATISFIED THAT D.S.S. DIDN'T
11 -- YOU KNOW, THEY FOUND THE CASE UNFOUNDED; THAT
12 IF THEY WERE INVOLVED. YOU DON'T KNOW WHETHER
13 D.S.S. WAS INVOLVED OR NOT?

14 A. THERE WERE D.S.S. RECORDS; SO, YES.

15 Q. MY QUESTION IS: IN YOUR RECORDS, WAS D.S.S.
16 INVOLVED IN 1996?

17 A. I DON'T KNOW WHAT THEY DID IN 1996.

18 Q. NO; THAT'S NOT MY QUESTION, DR. WOODARD. YOU SAID
19 -- YOU TESTIFIED THAT YOU CHECK ALL OF THE
20 RECORDS. I ASKED YOU A VERY SPECIFIC QUESTION.
21 CHECK YOUR RECORDS THAT YOU REVIEWED. IN 1996 WAS
22 THERE ANY INVOLVEMENT FROM D.S.S.?

23 A. THE MEDICAL RECORDS AT M.U.S.C. STATED THAT THEY
24 WERE GOING TO CONSULT SOCIAL SERVICES.

25 Q. THAT'S ANOTHER WAY OF SAYING -- DID YOU FIND ANY

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 RECORDS FROM D.S.S.?

2 A. NO; I SAID I DIDN'T HAVE ANY RECORDS. BUT IT
3 STATED THAT THEY WERE GOING TO CONSULT---

4 Q. NO D.S.S. INVOLVEMENT. AND YOU WERE IN HERE WHEN
5 DR. SCHUH TESTIFIED; ISN'T THAT CORRECT?

6 A. YES, I WAS.

7 Q. AND SHE TOLD YOU THAT SHE'S BEEN DOING THIS FOR
8 SOME 25 YEARS OR MORE. YOU HEARD HER TESTIMONY?

9 A. I HEARD HER TESTIMONY.

10 Q. AND, YOU KNOW, YOU EVEN HEARD FROM DOCTOR -- THE
11 FELLOW FROM NEW JERSEY. YOU WERE IN HERE WHEN HE
12 TESTIFIED, THE EMERGENCY ROOM DOCTOR?

13 A. YES, I WAS.

14 Q. AND THEY'VE GOT CERTAIN PROTOCOL THAT THEY LOOK FOR
15 WHEN CERTAIN CHILDREN GET INJURED?

16 A. THAT'S CORRECT.

17 Q. AND BASED ON THAT, THEN D.S.S. SHOULD GET INVOLVED?

18 A. THAT'S CORRECT.

19 Q. AND YOU DON'T HAVE ANY REASON TO EXPECT THAT THESE
20 DOCTORS ARE NOT DOING WHAT THEY'RE SUPPOSED TO DO
21 BECAUSE THEY CAN BE LIABLE IF THEY DON'T; ISN'T
22 THAT CORRECT?

23 A. I HAVE NO REASON TO SUSPECT THEY'RE NOT DOING WHAT
24 THEY'RE SUPPOSED TO.

25 Q. ALL RIGHT. THANK YOU FOR THAT. NOW, IN 1997 --

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 HOW OLD WAS THE CHILD IN 1996?

2 A. ELEVEN MONTHS.

3 Q. THAT'S RIGHT; ELEVEN MONTHS OLD. AND THEN IN 1997,
4 THE CHILD WAS 22 MONTHS OF AGE; ISN'T THAT CORRECT?

5 A. APPROXIMATELY; YES.

6 Q. OKAY. AND, DOCTOR, YOU'RE NOT TELLING THIS JURY --
7 BECAUSE DR. SAUNDERS IS GOING TO TESTIFY LATER --
8 THAT ONE OF THE THEORETICAL REASONS THAT A PERSON'S
9 RETINA CAN DETACH IS BECAUSE OF AN INFECTION; ISN'T
10 THAT CORRECT?

11 A. THAT'S CORRECT.

12 Q. ALL RIGHT. AND IF AN INFECTION OCCURS, THEN THERE
13 WOULD NOT BE AN EXPLANATION DIFFERENT FROM WHAT
14 THESE HISTORIES YOU TOOK FROM REVIEWING THE MEDICAL
15 RECORDS?

16 A. THE FAMILY WOULD OFFER NO EXPLANATION.

17 Q. THANK YOU. DOCTOR, ISN'T IT A FACT THAT I HOPE YOU
18 REVIEWED THIS RECORD. IN FACT YOU SAY YOU REVIEWED
19 ALL THE RECORDS. I WANT THIS MARKED RIGHT NOW JUST
20 FOR IDENTIFICATION PURPOSES, PLEASE.

21 MRS. MURPHY: MAY I SEE WHAT HE'S
22 REFERRING TO? (AT THIS TIME COUNSEL REVIEWS
23 DOCUMENT.)

24 DEFENDANT'S EXHIBIT NO. 2

25 MARKED FOR IDENTIFICATION

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 Q. AND YOU CAN TELL THE JURY THAT---

2 THE COURT: HOLD ON ONE SECOND.

3 Q. YOU'VE REVIEWED ALL THE RECORDS?

4 A. THAT'S CORRECT.

5 Q. THE 1997 RECORDS?

6 A. THAT'S CORRECT.

7 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS
8 DEFENDANT'S EXHIBIT NUMBER TWO AND ASK YOU DID YOU
9 REVIEW THAT RECORD?

10 A. YES. THIS IS THE OPERATIVE REPORT PREPARED BY THE
11 OPHTHOMOLOGIST DISCUSSING A SURGICAL PROCEDURE THAT
12 THEY DID.

13 Q. AND THERE'S NO QUESTION IN THAT SURGICAL PROCEDURE
14 THAT THAT CHILD HAD CATARACTS IN BOTH EYES?

15 A. THAT'S CORRECT.

16 Q. AND THERE'S NO QUESTION IF YOU REVIEW THAT THING
17 CLOSELY, IT SAYS THAT THE CHILD HAD PROGRESSIVE
18 WEAKNESS IN THE RIGHT EYE, OR LOSS OF SITE IN THE
19 RIGHT EYE?

20 A. (NO RESPONSE.)

21 Q. READ IT CLOSELY, DOCTOR. (WITNESS READS DOCUMENT.)
22 OKAY.

23 A. I DON'T SEE WHERE IT SAYS IT WAS PROGRESSIVE.

24 Q. LET'S SEE IF ME AND YOU CAN DO IT TOGETHER. RIGHT
25 HERE IT SAYS "UPON EXAMINATION---

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 A. OKAY. DO YOU WANT ME TO READ IT?

2 Q. YES.

3 A. UPON EXAMINATION, THERE WAS A QUESTION OF A
4 TWO-PLUS PUPILLARY DEFECT OF THE RIGHT EYE. THE
5 CHILD WAS VERY UNCOOPERATIVE AND CRYING DURING THE
6 EXAM. HOWEVER, THERE WAS DEFINITELY A STRONG
7 PREFERENCE FOR THE LEFT EYE.

8 Q. OKAY. THAT'S GOOD ENOUGH, DOCTOR. A STRONG
9 PREFERENCE TO THE LEFT EYE TO SUGGEST THAT THE
10 CHILD COULD NOT, OR REFUSED TO LOOK OUT OF THE
11 RIGHT EYE?

12 A. YES.

13 Q. OKAY. NOW, WAS THERE ANY D.S.S. INVOLVEMENT AT
14 THIS POINT IN 1997?

15 A. NOT TO MY KNOWLEDGE.

16 Q. DID THE DOCTOR REFER ANYBODY TO D.S.S.?

17 A. NO.

18 Q. AS A MATTER OF FACT, ON HIS REPORT HE SAID HE WAS
19 GOING TO DISCUSS WITH THE FAMILY THE IDEALOGIES
20 WITH THE FAMILY AS SOON AS POSSIBLE; ISN'T THAT
21 RIGHT?

22 A. THAT'S RIGHT.

23 Q. IDEOLOGY MEANING?

24 A. THE CAUSES.

25 Q. AND NO D.S.S. INVOLVEMENT?

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 A. THAT'S CORRECT.

2 Q. NO D.S.S. INVOLVEMENT?

3 A. NO.

4 Q. '96 AND '97; BUT IN BOTH INSTANCES, THE PROTOCOL
5 SHOULD WORK, BECAUSE IN BOTH INSTANCES THE CHILD
6 HAS TAKEN TO MEDICAL CARE PROVIDERS; ISN'T THAT
7 CORRECT?

8 A. YES, SIR; THE CHILD IS.

9 Q. NOW, DID YOU CHECK ANY RECORDS FROM CHILD CARE
10 PROVIDERS? YOU KNOW, DAY CARE; CHILD CARE
11 PROVIDERS? BECAUSE MY CLIENT WORKS, SIR. DID YOU
12 CHECK ANY CHILD CARE PROVIDERS?

13 A. NO.

14 Q. ANY DAY CARE CENTERS?

15 A. I DON'T HAVE ANY DAY CARE RECORDS.

16 Q. WELL, THE SOLICITOR DIDN'T GIVE YOU NO DAY CARE
17 CENTER RECORDS?

18 A. THAT'S CORRECT.

19 Q. DID YOU CHECK WITH GRANDMOTHERS WHO WOULD HAVE BEEN
20 -- FOR LACK OF A BETTER TERM -- DAY CARE WORKERS?

21 A. (NO RESPONSE.)

22 Q. DID YOU GET ANY HISTORY FROM THEM?

23 A. NO, I DID NOT.

24 Q. ANY HISTORY THAT RELATED THAT THIS CHILD MIGHT HAVE
25 HAD A DIAPER RASH OR ANYTHING THAT COULD LOOK AND

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 SIMULATE A BURN MARK? DID YOU CHECK WITH ANY
2 GRANDMOTHER?

3 A. THERE WAS HISTORY FROM THE PEDIATRICIAN OF THE
4 CHILD HAVING A RASH.

5 Q. OKAY.

6 A. BUT THE RASH WOULDN'T SIMULATE A PUNCHED OUT BURN
7 MARK.

8 Q. THAT'S YOUR PAID OPINION AGAIN; ISN'T THAT CORRECT,
9 DOCTOR?

10 A. NO; IT'S MY PROFESSIONAL---

11 MRS. MURPHY: OBJECTION, YOUR HONOR, TO
12 HIS CHARACTERIZATION OF HIS OPINION.

13 THE COURT: I'LL SUSTAIN THAT.

14 MR. DAVIS: IT'S A PAID OPINION.

15 MRS. MURPHY: I OBJECT, YOUR HONOR.

16 THE COURT: MR. DAVIS.

17 MR. DAVIS: ALL RIGHT, YOUR HONOR; I'LL
18 MOVE ON.

19 Q. CHILD CARE PROVIDERS, GRANDMOTHER; ANY POLICE
20 REPORTS BETWEEN THESE TWO INCIDENTS?

21 A. NO.

22 Q. NO POLICE REPORTS?

23 A. NO.

24 Q. ANY NOSEY NEIGHBOR'S REPORTS OR CONCERNED
25 NEIGHBOR'S REPORT SAYING THE CHILD WAS BEING

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 TREATED DIFFERENT THAN THE OTHER CHILD?

2 A. NO NOSEY NEIGHBOR REPORTS.

3 Q. NO NOSEY NEIGHBOR? NO CONCERNED NEIGHBOR'S REPORT?

4 A. THERE WERE NO REPORTS BY NEIGHBORS.

5 Q. NONE. AND YOU TESTIFIED THAT YOU'VE DONE THIS
6 SEVEN TIMES; ISN'T THAT CORRECT?

7 A. IN THE LAST TWO YEARS; YES, SIR.

8 Q. IN THAT SEVEN TIMES, HAVE YOU EVER FOUND A CHILD
9 NOT TO BE BATTERED?

10 A. UNFORTUNATELY NOT.

11 Q. UNFORTUNATELY NOT? DO YOU HAVE CHILDREN YOURSELF,
12 SIR?

13 A. YES, I DO.

14 Q. HOW MANY DO YOU HAVE?

15 A. FOUR.

16 Q. WHAT ARE THEIR AGES?

17 A. TWENTY-EIGHT TO NINETEEN.

18 Q. OKAY. DO YOU THINK THAT IS HIGHLY SUSPECTFUL, A
19 CHILD HAVING AN UNEXPLAINABLE ACCIDENT ONCE A YEAR?

20 A. I THINK THAT'S VERY SUSPECT.

21 Q. VERY SUSPECT. AND THAT SUPPORTS YOUR OPINION HERE
22 TODAY; ISN'T THAT CORRECT?

23 A. I'M SORRY; SAY THAT AGAIN.

24 Q. THAT SUPPORTS YOUR POSITION HERE TODAY?

25 A. NO; IT ONLY MAKES ME WANT TO EVALUATE THE

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 EVIDENCE. ONCE I EVALUATE THE EVIDENCE AND LOOK AT
2 THE MEDICAL NATURE OF THE INJURIES AND LOOK AT THEM
3 IN A COMPOSITE TOGETHER; YES, THEN I REALIZE THAT
4 THE CHILD SUFFERED PHYSICAL ABUSE.

5 Q. OKAY. 1998. LET'S GO TO 1998.

6 A. ALL RIGHT.

7 Q. THAT'S THE FEMUR TO THE SAME LEG; IS THAT CORRECT?

8 A. THAT'S CORRECT.

9 Q. WHERE THEY DISPUTE HOW IT HAPPENED; YOU SAID IT
10 COULD BE TWO FOOTBALL PLAYERS; THAT'S THE ONLY WAY
11 YOU WOULD CHARACTERIZE IT; IS THAT CORRECT?

12 A. THAT KIND OF FORCE; THAT'S CORRECT.

13 Q. OKAY. IN 1998, IN THE RECORDS THAT YOU REFLECT;
14 WAS MY CLIENT PRESENT WHEN IT TOOK PLACE?

15 A. NO; THE MALE WAS PRESENT, BUT YOUR CLIENT WAS NOT
16 PRESENT.

17 Q. OKAY. NOVEMBER THE THIRD, 2001; WAS MY CLIENT
18 PRESENT?

19 A. NO. THE MALE CARE-GIVER WAS PRESENT.

20 Q. DOCTOR, I'VE GOT ONE FINAL QUESTION FOR YOU. IN
21 REFERENCE TO THIS BATTERED CHILD SYNDROME; THEY'VE
22 GOT TO BE PERPETRATORS; RIGHT?

23 A. I'M SORRY; SAY THAT AGAIN.

24 Q. THEY'VE GOT TO BE SOMEBODY THAT PERPETRATES. I
25 CALL THEM PERPETRATORS.

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 A. ALL RIGHT.

2 Q. AND IS ADRIAN GADSON THE PERPETRATOR IN YOUR
3 OPINION?

4 A. THE -- I DON'T KNOW WHO THE PERPETRATOR IS. I KNOW
5 THAT THE CHILD WAS ABUSED.

6 Q. YOU DON'T KNOW WHO DID WHAT?

7 A. THAT'S CORRECT.

8 Q. IF SOMETHING WAS DONE?

9 A. I KNOW SOMETHING WAS DONE.. I JUST DON'T KNOW WHO
10 DID IT.

11 Q. DOCTOR, IN YOUR AREA, CAN EVERYTHING BE EXPLAINED
12 SCIENTIFICALLY OR MEDICALLY?

13 A. ALMOST EVERYTHING; YES.

14 Q. YOU WOULD TAKE THAT POSITION THAT EVERYTHING CAN BE
15 EXPLAINED?

16 A. ALMOST EVERYTHING.

17 THE COURT: ANYTHING FURTHER?

18 MR. DAVIS: I BEG YOUR INDULGENCE.

19 THE COURT: OKAY.

20 Q. ONE LAST THING I WANT TO TOUCH ON. THE P.E.T.,
21 PARENT EFFECTIVE TRAINING CLASSES?

22 A. ALL RIGHT.

23 Q. DID YOUR RECORD REFLECT WHETHER MY CLIENT WENT TO
24 THAT OR NOT?

25 A. YES; THERE WAS A COPY OF A CERTIFICATE OF

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 COMPLETION.

2 Q. SAY THAT AGAIN.

3 A. THERE WAS A COPY OF A CERTIFICATE OF COMPLETION.

4 Q. DO YOU HAVE IT IN YOUR RECORDS?

5 A. YES.

6 Q. LET ME SEE THAT.

7 A. JUST GIVE ME A SECOND. (MR. DAVIS REVIEWS RECORD.)

8 I'M HAVING TROUBLE DIGGING IT OUT. I APOLOGIZE. I

9 HAVE OF COPY. DO YOU WANT IT REMOVED?

10 Q. YES, SIR. (WITNESS CONTINUES TO REVIEW PAPERWORK.)

11 A. I'M HAVING TROUBLE DIGGING IT OUT OF HERE. I

12 APOLOGIZE.

13 MRS. MURPHY: YOUR HONOR, I HAVE A COPY
14 OF IT.

15 A. I HAVE IT HERE NOW.

16 Q. THANK YOU.

17 A. DO YOU WANT IT FOR A MOMENT?

18 Q. OH, YES, SIR. I'LL HAVE IT MARKED FOR
19 IDENTIFICATION PURPOSES, PLEASE.

20 THE COURT: THAT WILL BE DEFENDANT'S
21 EXHIBIT NUMBER FOUR.

22 MR. DAVIS: I MOVE THAT INTO EVIDENCE,
23 YOUR HONOR.

24 THE COURT: ANY OBJECTION?

25 MR. DUKES: NO, YOUR HONOR.

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 THE COURT: DEFENDANT'S EXHIBIT NUMBER
2 FOUR INTO EVIDENCE WITHOUT OBJECTION.

3 DEFENDANT'S EXHIBIT NO. 4
4 ADMITTED AS EVIDENCE

5 THE COURT: I SHOULD HAVE ASKED OF YOU,
6 MR. DUKES. I'M SORRY. ANY OBJECTION?

7 MR. DUKES: NO, MA'AM.

8 THE COURT: OKAY. VERY WELL.

9 Q. SHE DID COMPLETE THAT CLASS, DID SHE NOT?

10 A. THAT'S RIGHT; AND RECEIVED A CERTIFICATE.

11 Q. AND YOU WERE HERE WHEN DR. SCHUH TESTIFIED YOU
12 SAID?

13 A. YES.

14 Q. AND YOU HEARD HER OPINION ABOUT BATTERED CHILD
15 SYNDROME?

16 A. YES, I DID.

17 Q. AND WHAT IS THE DIFFERENCE BETWEEN A BATTERED CHILD
18 AND A TARGETED CHILD?

19 A. A BATTERED CHILD IS A CHILD WHO RECEIVES INJURIES
20 OVER A SUSTAINED TIME PERIOD; MULTIPLE DIFFERENT
21 EVENTS. A TARGETED CHILD IS ONE OF MANY CHILDREN
22 THAT IS SELECTED TO BE BATTERED. WHY THEY'RE
23 TARGETED CAN HAVE VARIABLE REASONS THAT ARE OF
24 SIGNIFICANCE TO THE CAREGIVER OR THE INDIVIDUAL WHO
25 TARGETS THEM: NOT NECESSARILY SOMETHING INTONE

BRET WOODARD - RE-DIRECT/MRS. MURPHY

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1 ABOUT THE CHILD AS YOU LOOK AT THEM AMONG ALL
2 CHILDREN.

3 Q. YOU'RE NOT HERE TESTIFYING -- WITH YOUR OPINION IS
4 NOT THAT THIS CHILD WAS A TARGETED CHILD?

5 A. THAT IT WAS NOT.

6 Q. YES?

7 A. NO, IT WAS.

8 Q. BUT IT WAS A TARGETED CHILD ALSO?

9 A. YES.

10 Q. AND A BATTERED CHILD?

11 A. YES.

12 Q. AND YOU HEARD DR. SCHUH'S TESTIMONY?

13 A. YES.

14 Q. ALL RIGHT. THANK YOU.

15 THE COURT: ANY RE-DIRECT?

16 MRS. MURPHY: JUST A COUPLE OF FOLLOW-UP
17 QUESTIONS.

18 RE-DIRECT EXAMINATION

19 BY MRS. MURPHY:

20 Q. DOCTOR, DO YOUR RECORDS INDICATE THAT MS. GADSON
21 WAS ORDERED TO PARTICIPATE IN THIS PROGRAM FOR
22 D.S.S.?

23 A. YES, THEY DO.

24 Q. AND DO YOUR RECORDS ALSO INDICATE WHETHER OR NOT
25 SHE WAS TERMINATED FROM ANOTHER PROGRAM SHE FAILED

BRET WOODARD - RE-DIRECT/MRS. MURPHY

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1 TO PARTICIPATE IN?

2 A. THERE WAS AN EDUCATIONAL HEADSTART PROGRAM SHE WAS
3 TERMINATED IN.

4 Q. AND DO YOU RECALL THE SUBSTANCE OF THAT PROGRAM?

5 A. NOT SPECIFICALLY.

6 Q. WAS IT SOMETHING THAT WAS ORDERED BY D.S.S. TO HELP
7 HER WITH HER---

8 A. I DON'T KNOW THAT IT WAS ORDERED---

9 MR. DAVIS: YOUR HONOR, I'M GOING TO
10 OBJECT TO A LEADING QUESTION ABOUT THE
11 CHARACTERIZATION OF PUTTING WORDS IN HIS MOUTH.

12 THE COURT: YOU'RE OBJECTING TO LEADING?

13 MR. DAVIS: YES, MA'AM.

14 THE COURT: VERY WELL. I'LL SUSTAIN THE
15 OBJECTION; LEADING. PLEASE DON'T LEAD.

16 Q. DOCTOR, WHAT RECORDS DO YOU HAVE AS TO WHAT
17 PROGRAMS SHE MAY HAVE ATTENDED AND WAS DISCHARGED
18 FROM?

19 A. SHE ATTENDED THE EFFECTIVE CHILD PROGRAM. SHE
20 ATTENDED A PSYCHOLOGIC EVALUATION PROGRAM FOR
21 STRESS REDUCTION. AND THEN THEY HAD AN EARLY
22 PROGRAM THEY CALLED EARLY INTERVENTION PROGRAM
23 WHICH OFFERED SPEECH THERAPY, OCCUPATIONAL THERAPY,
24 PHYSICAL THERAPY. BASICALLY THAT PROGRAM WAS

BRET WOODARD - RE-CROSS/MR. DAVIS

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1 Q. AND DOES IT INDICATE WHY IT WAS CANCELLED?

2 A. ACCORDING TO THE LETTER BY MR.---

3 MR. DAVIS: I'M GOING TO OBJECT. THAT'S
4 HEARSAY, YOUR HONOR.

5 THE COURT: SUSTAINED.

6 Q. IS THERE ANY INDICATION IN THE RECORD WHETHER OR
7 NOT SHE WAS COMPLIANT?

8 MR. DAVIS: THAT'S THE SAME IN AND ABOUT
9 WAY, YOUR HONOR. COMPLIANT; I THINK IT'S TOO BROAD
10 FIRST OF ALL.

11 THE COURT: SUSTAINED.

12 Q. WOULD YOU STATE WHETHER NOT YOU HAVE ANY
13 CERTIFICATES OF COMPLETION FROM THOSE PROGRAMS?

14 A. NO, I DON'T.

15 Q. THANK YOU, SIR. NO FURTHER QUESTIONS.

16 RE-CROSS EXAMINATION

17 BY MR. DAVIS:

18 Q. YOU KNOW WHETHER ANY CERTIFICATE IS GIVEN IN THOSE
19 PROGRAMS?

20 A. NO, I DO NOT.

21 Q. NOW, THAT PSYCHOLOGICAL EVALUATION; I'M CONCERNED
22 ABOUT THAT. DO YOU MIND PULLING THAT OUT FOR ME,
23 PLEASE? (WITNESS REVIEWS DOCUMENT.)

24 THE COURT: I GATHER WERE THERE ANY
25 QUESTIONS ON RE-CROSS FROM YOU, MR. DUKES?

BRET WOODARD - RE-CROSS/MR. DAVIS

493

1 MR. DUKES: NONE, YOUR HONOR.

2 THE COURT: VERY WELL.

3 MRS. MURPHY: YOUR HONOR, I HAVE ONE.

4 CONTINUED RE-DIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q. DOCTOR, YOU REVIEWED THIS, DID YOU NOT?

7 A. YES; I LOOKED AT IT.

8 Q. AND WOULD IT BE FAIR TO SAY THAT THIS WAS DONE BACK
9 IN 1999?

10 A. I DON'T REMEMBER THE EXACT DATE WITHOUT THE
11 DOCUMENT.

12 MR. DAVIS: I'D LIKE TO HAVE THIS MARKED,
13 TOO.

14 THE COURT: ALL RIGHT. COUNSEL, DO YOU
15 KNOW WHAT DOCUMENT IS BEING REFERRED TO?

16 MR. DAVIS: I'M GOING TO SHOW IT TO HIM.

17 THE COURT: OKAY. IT'S MARKED FOR
18 IDENTIFICATION PURPOSES AT THIS POINT.

19 DEFENDANT'S EXHIBIT NO. 5

20 MARKED FOR IDENTIFICATION

21 MR. DAVIS: IT'S THREE PAGES, YOUR HONOR.

22 THE COURT: DEFENDANT'S EXHIBIT FIVE FOR
23 IDENTIFICATION PURPOSES.

24 MRS. MURPHY: NO OBJECTION.

25 THE COURT: VERY WELL.

BRET WOODARD - RE-CROSS/MR. DAVIS

494

1 MR. DAVIS: I'M GOING TO MOVE TO HAVE
2 THIS INTRODUCED INTO EVIDENCE, YOUR HONOR.

3 THE COURT: YOU ARE?

4 MR. DAVIS: YES, MA'AM.

5 THE COURT: ALL RIGHT. DEFENSE EXHIBIT
6 FIVE INTO EVIDENCE WITHOUT OBJECTION.

7 DEFENDANT'S EXHIBIT NO. 5

8 ADMITTED AS EVIDENCE

9 Q. I WANT YOU TO PUBLISH JUST THE MIDDLE PART WHERE
10 IT'S TALKING ABOUT MS. GADSON'S RESPONSE. ARE YOU
11 FAMILIAR WITH THOSE KINDS OF TESTS THAT THEY GIVE?
12 ARE YOU FAMILIAR WITH THEM?

13 A. NO. I KNOW ABOUT THEM, BUT I'M NO EXPERT ON THEM.

14 Q. NO EXPERT? JUST PUBLISH THE MIDDLE PART.

15 A. MRS. GADSON'S RESPONSE ON THE P.S.I. ALSO SUGGESTS
16 THAT SHE IS EXPERIENCING SIGNIFICANT STRESS IN A
17 PARENT CHILD RELATIONSHIP IN SEVERAL AREAS OF
18 FUNCTION, TOTAL STRESS IN THE CHILD DOMAIN FELL;
19 AND THE SIGNIFICANT RANGE WHICH SUGGESTS THAT MS.
20 GADSON IS EXPERIENCING SIGNIFICANT STRESS IN HER
21 PARTNERING RELATIONSHIP WITH Child IN
22 PARTICULAR, DATA SUGGESTS THAT Child IS
23 EXHIBITING SIGNIFICANT DIFFICULTY WITH
24 DISTRACTIBILITY AND HYPERACTIVE BEHAVIOR.
25 STOP RIGHT THERE. THAT'S THE SAME CHILD THAT WE'RE

BRET WOODARD - RE-CROSS/MR. DAVIS

495

1 HERE ON TODAY; ISN'T THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. THAT'S ENOUGH. NO MORE FURTHER.

4 THE COURT: ALL RIGHT. VERY WELL.

5 COUNSEL, IS THIS WITNESS FREE TO LEAVE?

6 MRS. MURPHY: YES, MA'AM.

7 THE COURT: VERY WELL. YOU'RE FREE TO
8 GO. ALL RIGHT, LADIES AND GENTLEMEN, THAT WILL
9 CONCLUDE THE WORK WHICH WE WILL DO TODAY. AND YOU,
10 OF COURSE, ARE GOING TO BE GOING HOME. AND, AGAIN,
11 THERE'S GOING TO BE SOMEONE WHO'S GOING TO BE
12 CURIOUS ABOUT WHAT YOU'VE BEEN UP TO. EXCEPT
13 TONIGHT THE INTEREST, CURIOSITY, WILL BE
14 HEIGHTENED. REMEMBER NOT TO DISCUSS THIS MATTER OR
15 ALLOW ANYONE TO DISCUSS IT WITH YOU. BUT REMEMBER
16 TO PUT IT ON THE JUDGE. I WILL TELL YOU THAT WHEN
17 YOU HAVE DISCHARGED FROM YOUR SERVICE ON THIS JURY
18 BY ME; AND I PROMISE THEY'LL BE NO DOUBT IN YOUR
19 MIND WHEN THAT TIME HAS COME. WHEN THAT TIME HAS
20 COME, THEN YOU WILL BE AT LIBERTY TO TALK ABOUT
21 THIS CASE IF YOU WANT TO TALK ABOUT IT. HOWEVER,
22 UNTIL THEN, OR UNTIL YOU'RE INSTRUCTED TO
23 DELIBERATE; AGAIN, I PROMISE YOU THERE WILL BE NO
24 QUESTION IN YOUR MIND WHEN THAT TIME HAS COME. YOU
25 MUST NOT DISCUSS THIS MATTER. YOU MUST NOT ALLOW

MOTIONS

496

1 ANYONE TO DISCUSS IT WITH YOU. HAVE A VERY
2 PLEASANT EVENING. AND I WOULD ASK OF YOU WHETHER
3 OR NOT YOU FEEL AS THOUGH YOU COULD BEGIN THIS
4 MATTER AT NINE O'CLOCK IN THE MORNING? WOULD THAT
5 BE A HUGE IMPOSITION ON ANYONE? (NO RESPONSE.) VERY
6 WELL. I'LL SEE YOU AT NINE O'CLOCK IN THE MORNING.
7 THANK YOU SO MUCH.

8 (AT THIS TIME JURY RETIRES FOR THE EVENING.)

9 THE COURT: ALL RIGHT. ANYTHING FURTHER
10 BEFORE WE BREAK FOR THIS EVENING?

11 MRS. MURPHY: NOT FROM THE STATE, YOUR
12 HONOR.

13 THE COURT: THANK YOU SO MUCH. WOULD
14 THERE BE ANY SPECIFIC CHARGES WHICH WOULD BE
15 REQUESTED?

16 MRS. MURPHY: YOUR HONOR, AS FAR AS THE
17 STATE IS CONCERNED, WE WOULD REQUEST A CHARGE ON
18 THE INFERENCE ARISING FROM BATTERED CHILD SYNDROME.
19 AND I THINK THAT WOULD BE LANGUAGE FROM THE LOPEZ
20 CASE.

21 THE COURT: ALL RIGHT.

22 MRS. MURPHY: JUST SO THAT THE JURY CAN
23 UNDERSTAND WHAT INFERENCE THAT IS THEY'RE ALLOWED
24 TO ADDUCE FROM THE TESTIMONY, YOUR HONOR.

25 THE COURT: OKAY. VERY WELL. COULD YOU

MOTIONS

497

1 PASS UP A COPY OF THE CHARGE TO OPPOSING COUNSEL?

2 MRS. MURPHY: YOUR HONOR, I'M LOOKING FOR
3 IT RIGHT NOW. I'LL HAVE IT FOR YOU IN THE MORNING
4 IF THAT'S OKAY.

5 MR. DAVIS: JUDGE, I'M GOING TO GO TO THE
6 LIBRARY AND BRING YOU SOME CHARGES IN THE MORNING.

7 THE COURT: DON'T WORRY ABOUT RECREATING
8 THE WILL; BUT IF THERE IS ANYTHING SPECIFIC OR
9 UNUSUAL. BUT, GOODNESS, DO NOT RECREATE THE WILL.
10 THAT WOULD BE A WASTE OF YOUR TIME.

11 MR. DAVIS: NINE O'CLOCK IN THE MORNING?

12 THE COURT: YES. YOU NEED TO BE HERE A
13 LITTLE BIT EARLIER IN CASE Y'ALL HAVE A PROBLEM;
14 MAYBE FIVE 'TIL NINE. THANK YOU. Y'ALL HAVE A
15 GOOD EVENING.

16

17

18

19

20

21

22

23

24

(WHEREUPON AT 7:05 COURT IS ADJOURNED FOR THE DAY.)

25

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)	<u>VOLUME III OF III</u>
)	
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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1 THURSDAY, OCTOBER 24, 2002

2
3 THE COURT: EVERYBODY IS HERE. LET'S
4 HAVE THE JURY, PLEASE.

5 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

6 THE COURT: ALL RIGHT. LADIES AND
7 GENTLEMEN, I HOPE YOU ALL HAD A PLEASANT EVENING
8 LAST EVENING. AND AT THIS TIME WE WILL CONTINUE
9 WITH THE STATE'S CASE. MRS. MURPHY, WILL YOU
10 PLEASE CALL YOUR NEXT WITNESS?

11 THE COURT: THANK YOU, YOUR HONOR. AT
12 THIS TIME THE STATE WOULD MOVE TO INTRODUCE A
13 CERTIFIED TRUE COPY OF A FAMILY COURT ORDER FROM
14 DORCHESTER FAMILY COURT, YOUR HONOR. AND IT HAS TO
15 BE A CERTIFIED STATE COPY. THE STATE WOULD MOVE TO
16 INTRODUCE IT AS STATE'S EXHIBIT NUMBER 17.

17 THE COURT: ANY OBJECTION?

18 MR. DUKES: I HAVE NO OBJECTION.

19 MR. DAVIS: YOUR HONOR, I TAKE THE
20 POSITION THAT I OBJECT. IT'S JUST HEARSAY, AND I
21 DON'T KNOW IF A PROPER FOUNDATION HAS BEEN LAID FOR
22 IT.

23 MRS. MURPHY: YOUR HONOR, THE STATE WOULD
24 MOVE THAT IT'S UNDER THE HEARSAY EXCEPTION OF
25 PUBLIC RECORD AND HAS BEEN CERTIFIED AS A TRUE COPY

JANE PENCE - DIRECT/MRS. MURPHY

499

1 BY DORCHESTER CLERK OF COURT, YOUR HONOR; THE
2 EXCEPTION TO THE HEARSAY RULE.

3 THE COURT: COUNSEL, I AM GOING TO
4 CONSIDER THE OBJECTION. AND, MRS. MURPHY, CAN WE
5 GO FORWARD WHILE I LISTEN WITH ONE EAR AND THINK?

6 MRS. MURPHY: ABSOLUTELY, JUDGE.

7 THE COURT: VERY WELL. THANK YOU.

8 MRS. MURPHY: WE WOULD CALL MRS. JANE
9 PENCE TO THE STAND.

10

11

WHEREUPON,

12

JANE ELLEN PENCE, WHO AFTER BEING FIRST

13

DULY SWORN TO TELL THE TRUTH,

14

TESTIFIED AS FOLLOWS:

15

THE COURT: YOUR WITNESS.

16

MRS. MURPHY: THANK YOU, YOUR HONOR.

17

DIRECT EXAMINATION

18

BY MRS. MURPHY:

19

Q. MRS. PENCE, WHERE ARE YOU EMPLOYED, MA'AM?

20

A. I'M EMPLOYED WITH MY HUSBAND, DR. JOHN W. PENCE.

21

Q. AND WHERE IS THAT EMPLOYMENT?

22

A. IT'S AT 1815 OLD TROLLEY ROAD; THE OAKBROOK AREA OF
23 SUMMERVILLE.

24

Q. IS HE A PEDIATRICIAN?

YES, MA'AM.

JANE PENCE - DIRECT/MRS. MURPHY

500

1 Q. AND WHAT IS YOUR POSITION THERE IN THE OFFICE?

2 A. I'M THE OFFICE MANAGER.

3 Q. AS OFFICE MANAGER, YOU'RE ALSO THE CUSTODIAN OF THE
4 MEDICAL RECORDS IN THAT OFFICE?

5 A. YES, MA'AM.

6 Q. AND CAN YOU TELL THE JURY A LITTLE BIT ABOUT WHAT
7 YOU DO WITH THOSE MEDICAL RECORDS AND HOW YOU'RE IN
8 CHARGE OF THEM?

9 A. WE -- IN OUR COMPUTER SYSTEM, WE HAVE THE NUMBERS
10 AND THE NAMES OF ALL OF OUR PATIENTS. THEY ARE
11 THEN -- WE'RE ABLE TO RETRIEVE THE RECORDS AS
12 NEEDED. BASICALLY THAT'S IT.

13 Q. AND YOU KEEP THEM IN THE REGULAR CONDUCT OF
14 BUSINESS ACTIVITY AND COMMON COURSE AND PRACTICE?
15 YOU'RE IN CHARGE OF THOSE?

16 A. CORRECT.

17 MR. DAVIS: YOUR HONOR, I OBJECT TO A
18 LEADING QUESTION.

19 THE COURT: BE CAREFUL NOT TO LEAD.

20 Q. WOULD YOU STATE WHETHER OR NOT YOU'RE IN CHARGE OF
21 THOSE RECORDS?

22 A. YES, MA'AM, I AM IN CHARGE OF THOSE RECORDS.

23 Q. AND WOULD YOU STATE WHETHER OR NOT THAT'S A REGULAR
24 CONDUCT OF BUSINESS ACTIVITIES?

25 A. YES, MA'AM, IT IS.

JANE PENCE - DIRECT/MRS. MURPHY

501

1 Q. AND WOULD YOU PLEASE STATE WHETHER OR NOT Child
2 GADSON AND HIS SIBLINGS WERE PATIENTS OF DR. PENCE?

3 A. YES, MA'AM, THEY WERE.

4 Q. AND DO YOU HAVE THOSE RECORDS OF Child GADSON
5 WITH YOU?

6 A. YES, I DO.

7 Q. MAY I SEE THOSE, PLEASE?

8 A. YES. (WITNESS REVIEWS DOCUMENT.)

9 MRS. MURPHY: YOUR HONOR, MAY I APPROACH
10 THE WITNESS, YOUR HONOR?

11 THE COURT: YOU MAY.

12 Q. MRS. PENCE, I'M GOING TO TURN TO YOUR FILE BUT ASK
13 YOU IF YOU CAN IDENTIFY WHAT THIS PAGE IS?

14 A. THAT IS PART OF THE PATIENT'S CHART.

15 Q. IS THAT THE EXTENT OF PEDIATRIC VISITS IN THE
16 CHART?

17 A. YES, MA'AM.

18 MRS. MURPHY: YOUR HONOR, AT THIS POINT
19 I'D MOVE TO INTRODUCE THIS AS STATE'S EXHIBIT
20 NUMBER 17.

21 THE COURT: ALL RIGHT. IS THERE AN
22 OBJECTION FROM MR. DUKES?

23 MR. DUKES: NO OBJECTION.

24 MR. DAVIS: I OBJECT, YOUR HONOR, BECAUSE

JANE PENCE - DIRECT/MRS. MURPHY

502

1 BECAUSE IT HAS MEDICAL DIAGNOSES ON THERE;
2 CONCLUSIONS.

3 THE COURT: ALL RIGHT. LET ME SEE YOU.

4 (AT THIS TIME BENCH CONFERENCE IS HELD.)

5 THE COURT: LADIES AND GENTLEMEN, PLEASE
6 RETIRE TO YOUR JURY ROOM. PLEASE DO NOT DISCUSS
7 THIS MATTER. DO NOT ALLOW ANYONE TO DISCUSS IT
8 WITH YOU.

9 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

10 THE COURT: ALL RIGHT. THE OBJECTION
11 THAT HAS BEEN MADE ON BEHALF OF MS. GADSON IS THAT
12 THERE IS CONTAINED WITHIN THIS RECORD A MEDICAL
13 OPINION. AND MY CONCERN IS THAT I CAN'T READ IT, A
14 LOT OF IT, SO I CAN'T TELL IF THIS IS A MEDICAL
15 OPINION OR NOT. ON THE FIRST PAGE, THERE IS SOME
16 -- JUST APPARENTLY SOME ROUTINE INFORMATION WHICH
17 IS RECORDED; BLOOD PRESSURE, TEMPERATURE, AND THE
18 LIKE. AND THEN I CAN READ WHERE IT SAYS
19 THREE-AND-A-HALF YEAR OLD -- OR THREE-AND-A-HALF Y.
20 I GUESS THAT MEANS YEAR OLD BOY PRESENT FOR
21 CHECKUP; DOING WELL. AND THEN IT SAYS "SPEECH
22 COMING ALONG H-E-N-T -- YOU KNOW, I'M HAVING
23 TROUBLE. WHY DON'T I JUST -- CAN YOU READ THE
24 HANDWRITING ON HERE, MRS. PENCE?

MOTIONS

503

1 EARS, NOSE, THROAT, AND EVERYTHING OKAY. AND THEN
2 DEVELOPMENTAL DELAYS. THE LAST IS SHOTS AND THE
3 TIME TEST WAS DONE. BLIND, RIGHT EYE. AND IT
4 LOOKS LIKE ALL THAT'S ON THERE.

5 THE COURT: ALL RIGHT. THEN IT'S OKAY.
6 ON THE LEFTHAND SIDE OF THAT PIECE OF THAT PIECE OF
7 PAPER.

8 MRS. PENCE: YES.

9 THE COURT: ALL RIGHT. GO TO THE BACK
10 SIDE OF THAT PAPER FOR ME. AND CAN YOU READ THAT
11 HANDWRITING?

12 MRS. PENCE: NO; THAT WAS DR. SMOKERS
13 HANDWRITING. AND I HONESTLY -- OTHER THAN THE FACT
14 THAT SHE HAS SOME CONSTIPATION AND RASH, AND SHE
15 PUT HIM ON SOME FLEET ENEMAS FOR THE CONSTIPATION.
16 AND THAT'S ABOUT ALL I CAN INTERPRET FROM HER.

17 THE COURT: ALL RIGHT. WERE YOU
18 INTERESTED IN THE BACK PIECE OF PAPER OR JUST THE
19 FRONT PIECE OF PAPER?

20 MRS. MURPHY: YOUR HONOR, I WOULD CONCEDE
21 TO REDACT THE PORTIONS THAT MAY CONTAIN ANY MEDICAL
22 DIAGNOSIS ON THERE. I DON'T THINK THAT
23 CONSTIPATION, YOU KNOW, WAITING FOR LAB REPORTS,
24 YOU KNOW, BEING WORRIED ABOUT CONSTIPATION WOULD
25 FALL UNDER THAT. AND THE PART THAT YOU CAN'T READ,

MOTIONS

504

1 I DON'T MIND REDACTING. I'M MORE INTERESTED IN THE
2 DATES THAT HE DID GO TO THE HOSPITAL WHICH IS
3 CORROBORATED BY THE PREVIOUS MEDICAL TESTIMONY THAT
4 HE DID GO FOR CONSTIPATION AND PROBLEMS WITH HIS
5 BOWEL, IF THAT WOULD HELP.

6 THE COURT: ALL RIGHT. IN OTHER WORDS,
7 AM I UNDERSTANDING THAT WHAT IS SOUGHT THEN TO BE
8 ADMITTED IS JUST THE FRONT SIDE OF THE SHEET?

9 MRS. DAVIS: YOUR HONOR, I WOULD LIKE TO
10 ADMITS BOTH SIDES.

11 THE COURT: OKAY.

12 MRS. MURPHY: I THINK WE COULD REDACT
13 MOST OF THE BACK SIDE AND JUST LEAVE THE TOP
14 PORTION AND JUST LEAVE THE TOP PORTION WITH THE
15 DATE AND THE WEIGHT AND TEMPERATURE THAT WAS NORMAL
16 AS WAS PREVIOUSLY TESTIFIED TO. "PATIENT HERE FOR
17 CONSTIPATION; LAB RESULTS ARE IN CHART. OVER THE
18 COUNTER, 0; MEDICATION 0, ALLERGY 0." AND THE REST
19 I CAN'T READ EITHER. AND I CERTAINLY DON'T MIND
20 REDACTING THAT PORTION.

21 THE COURT: ALL RIGHT. VERY WELL. ALL
22 RIGHT. FIRST OF ALL, WHAT ABOUT THAT, MR. DAVIS,
23 THAT -- AND YOU'RE GOING TO NEED TO LOOK AT THIS,
24 I'M SURE, WITH ME. WE'RE GOING TO HAVE TO SHARE

MOTIONS

505

1 DATES, THE WEIGHT, TEMPERATURE, ETC. THAT THE
2 BOTTOM PARTS WOULD BE REDACTED. WHAT ABOUT THAT?

3 MR. DAVIS: DID SHE SAY YOU'RE GOING TO
4 GET THE RECORDS? THAT WOULD NOT BE THE COMPLETE
5 RECORDS. I'M GOING TO BE ABLE TO CROSS-EXAMINE HER
6 ABOUT THAT.

7 THE COURT: CROSS-EXAMINE HER ABOUT THAT.
8 WHAT IS THAT?

9 MR. DAVIS: THAT IS THE REDACT PORTION
10 THAT SHE KNOWS WHAT I MEAN; THAT SHE KNOWS TO THE
11 EXTENT. COULD DATES BE THERE; A LOT OF QUESTIONS
12 COULD COME UP ON WHAT TO REDACT. I MEAN, IF WE
13 REDACT THAT, I'M NOT GOING TO BE LIMITED BECAUSE WE
14 DON'T KNOW WHAT IT IS. AND, SO, WHAT YOU REDACT IS
15 NOT GOING TO BE THERE. AND, SO, I'M GOING TO BE
16 ABLE TO CROSS-EXAMINE HOPEFULLY.

17 MRS. MURPHY: JUDGE, IF HE'S WANTING THE
18 JURY NOT TO HEAR IT TO BEGIN WITH, I'M TRYING TO
19 MAKE AN---

20 THE COURT: I UNDERSTAND. WELL, HERE'S
21 WHERE I AM. HERE'S ONE THAT IS ADMISSIBLE.
22 STATEMENTS WHICH ARE MADE FOR THE PURPOSE OF
23 MEDICAL DIAGNOSES ARE ADMISSIBLE HEARSAY. I'M
24 GOING TO ALLOW THAT TO GO TO THE JURY. SO, I
25 SUPPOSE I SHOULD TURN IT TO YOU AND SAY "WHAT IN

MOTIONS

506

1 THAT DOCUMENT DO YOU FIND OBJECTIONABLE?" HOW
2 ABOUT THAT?

3 MR. DAVIS: WELL, I'VE DONE MADE MY---

4 THE COURT: YOU TELL ME YOU OBJECT TO IT
5 BECAUSE IT IS HEARSAY. ALL RIGHT. I'M TELLING YOU
6 THAT OTHER THAN ANY OPINIONS THAT MIGHT BE IN THE
7 DOCUMENT; I FIND TO BE ADMISSIBLE HEARSAY. SO IF
8 YOU WOULD POINT TO ME WHAT YOU FIND---

9 MR. DAVIS: I FIND THAT OBJECTIONABLE
10 BECAUSE YOU CAN'T READ IT.

11 THE COURT: SO YOU DON'T KNOW WHETHER
12 THEY'RE OPINIONS AND THEY ARE NOT?

13 MR. DAVIS: AND LIKEWISE THE COURT DON'T
14 KNOW WHETHER THEY'RE OPINIONS OR NOT. AND THIS
15 YOUNG LADY CAN'T EVEN READ IF THEY'RE OPINIONS OR
16 NOT BECAUSE SHE DIDN'T MAKE IT.

17 THE COURT: RIGHT. SO WHAT YOU'RE
18 TELLING ME IS THAT YOU SIMPLY OBJECT TO THE WHOLE
19 DOCUMENT ON THE BASIS THAT IT IS HEARSAY?

20 MR. DAVIS: NO. THAT IT CONTAINS A
21 DIAGNOSIS THAT WE CANNOT MAKE A DETERMINATION WHAT
22 IT IS.

23 THE COURT: WELL, YOU HAVE TO TELL ME
24 WHAT PORTION OF IT YOU OBJECT TO, MR. DAVIS. I GET
25 TO KNOW SPECIFICALLY WHAT PORTION.

MOTIONS

507

1 MR. DAVIS: I DON'T KNOW WHAT O.T.C.
2 STANDS FOR.

3 THE COURT: OVER THE COUNTER. SHE JUST
4 MENTIONED THAT:

5 MR. DAVIS: YOU MADE THAT NOTATION?

6 MRS. PENCE: OVER THE COUNTER. I MADE
7 SEVERAL NOTATIONS.

8 MR. DAVIS: OH! SO YOU WROTE THESE?

9 MRS. PENCE: NO; I DID NOT WRITE THESE.

10 MR. DAVIS: OKAY. SO YOU DID NOT MAKE
11 THIS?

12 MRS. PENCE: NO.

13 MR. DAVIS: OKAY. I OBJECT TO THE
14 COMPLETE BACK PAGE, YOUR HONOR.

15 THE COURT: TO THE COMPLETE BACK PAGE?

16 MR. DAVIS: YES, MA'AM.

17 THE COURT: ALL RIGHT. VERY WELL. AND I
18 WILL OVERRULE THE OBJECTION INSOFAR AS THE TOP
19 PORTION THAT HAS THE DATE AND HAS THE PRELIMINARY
20 INFORMATION. THOSE ARE OBVIOUSLY STATEMENTS. IT
21 IS HEARSAY; BUT IT'S STATEMENTS WHICH WOULD BE MADE
22 FOR THE PURPOSES OF MEDICAL DIAGNOSIS. SO THE TOP
23 PART WOULD BE ADMISSIBLE. WITH REGARDS TO THE
24 BOTTOM PART WOULD BE ADMISSIBLE AND REDACTED ON THE
25 BASIS OF THE CONCEPTION ON

MOTIONS

508

1 VERY WELL. LET'S HAVE IT MARKED AS STATE'S EXHIBIT
2 -- I GUESS WHAT, 17?

3 MRS. MURPHY: YES, MA'AM.

4 THE COURT: WELL---

5 MR. DAVIS: YOUR HONOR, TO SAVE SOME TIME
6 WITH THE JURY; I'LL JUST ASK DEFENSE COUNSEL IF HE
7 CAN OBJECT TO THIS NEXT---

8 THE COURT: SURE.

9 MRS. MURPHY: JUDGE, I'VE GOT AN EXTRA
10 COPY HERE. I'LL JUST GO AHEAD AND REDACT THAT
11 PORTION AND STAPLE IT TOGETHER FOR THE JURY AND USE
12 THE ORIGINAL AS EVIDENCE.

13 THE COURT: SURE.

14 MR. DAVIS: I HAVE NO OBJECTION TO THIS,
15 YOUR HONOR.

16 THE COURT: ALL RIGHT. VERY WELL. SHOW
17 IT TO MR. DUKES ALSO. NO OBJECTION, MR. DUKES?

18 MR. DUKES: NO OBJECTION.

19 THE COURT: LET'S GO AHEAD AND MARK THAT
20 WHILE THE JURY IS OUT.

21 STATES EXHIBIT NO. 17

22 ADMITTED AS EVIDENCE

23 THE COURT: ALL RIGHT. WE'RE READY?

24 MRS. MURPHY: YES, MA'AM.

THE COURT: ANY OTHER DOCUMENTS?

JANE PENCE - CONT'D DIRECT/MRS. MURPHY

509

1 MRS. MURPHY: NOT WITH THIS ONE.

2 THE COURT: VERY WELL. ALL RIGHT.

3 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

4 THE COURT: VERY WELL. MRS. MURPHY, YOU
5 MAY CONTINUE.

6 MRS. MURPHY: THANK YOU, YOUR HONOR. MAY
7 I APPROACH THE WITNESS?

8 THE COURT: YOU MAY.

9 CONTINUED DIRECT EXAMINATION

10 BY MRS. MURPHY:

11 Q. MRS. PENCE, I'M GOING TO SHOW YOU WHAT'S PREVIOUSLY
12 MARKED AS DEFENDANT'S EXHIBIT NUMBER 18 AND ASK YOU
13 IF YOU RECOGNIZE THIS DOCUMENT.

14 A. YES. THIS IS A SECOND CHANCE LETTER; AND IT JUST
15 MEANS THAT THE PARENT RECEIVED A LETTER FOR NO
16 SHOW. AND AFTER TALKING WITH ME, WE DECIDED TO
17 GIVE HER A SECOND CHANCE.

18 Q. AND DID YOU GIVE HER A SECOND CHANCE?

19 A. YES, MA'AM.

20 Q. AND WOULD YOU STATE WHETHER OR NOT; HOW THAT WAS
21 FOLLOWED UP UPON?

22 A. IT WAS SIGNED BY ADRIAN GADSON.

23 Q. WERE THERE ANY OTHER COMMUNICATIONS THAT YOU HAD?

24 DID YOU PERSONALLY SEND THE DEFENDANT, MS. GADSON,
25 ANY FURTHER LETTERS AFTER THE SECOND CHANCE LETTER?

JANE PENCE - CROSS/MR. DUKES

510

1 A. NO, MA'AM.

2 Q. CAN YOU STATE WHETHER OR NOT SHE WAS TERMINATED AS
3 A PATIENT FROM THE PRACTICE?

4 A. NO, MA'AM.

5 Q. YOU DON'T KNOW THAT?

6 A. SHE WAS NOT.

7 Q. OKAY; THANK YOU.

8 MRS. MURPHY: NO FURTHER QUESTIONS OF
9 THIS WITNESS, YOUR HONOR.

10 THE COURT: ALL RIGHT. MR. DUKES,
11 CROSS-EXAMINATION?

12 CROSS-EXAMINATION

13 BY MR. DUKES:

14 Q. MRS. PENCE, ARE YOU A DOCTOR?

15 A. NO, SIR.

16 Q. YOUR HUSBAND IS A DOCTOR?

17 A. YES, SIR.

18 Q. AND YOU WORK IN THE OFFICE?

19 A. YES, SIR.

20 Q. YOU'RE IN CHARGE OF THE BOOKS AND THE RECORDS?

21 A. YES.

22 Q. BUT YOU SENT THIS NO SHOW LETTER?

23 A. YES, SIR.

24 Q. BUT MS. GADSON WAS REINSTATED; AND THEY WERE STILL
25 PATIENTS OF YOUR CLINIC?

JANE PENCE - CROSS/MR. DUKES

511

- 1 A. CORRECT.
- 2 Q. THIS IS A MEDICAL RECORD? (INDICATING.)
- 3 A. CORRECT.
- 4 Q. PERTAINING TO THE MINOR CHILD?
- 5 A. YES, IT IS.
- 6 Q. WHAT WAS THE LAST DATE THAT THE CHILD WAS SEEN?
- 7 A. NOVEMBER THE FIRST OF 2001.
- 8 Q. NOVEMBER THE FIRST OF 2001?
- 9 A. CORRECT.
- 10 Q. HE WAS IN YOUR OFFICE?
- 11 A. YES.
- 12 Q. DID YOU SEE THE CHILD THAT DAY?
- 13 A. I DID NOT.
- 14 Q. YOU DID NOT?
- 15 A. NO.
- 16 Q. DID A DOCTOR SEE THE CHILD THAT DAY?
- 17 A. YES.
- 18 Q. AND WHO WAS THAT DOCTOR?
- 19 A. DR. PENCE.
- 20 Q. DR. PENCE SAW HIM?
- 21 A. YES.
- 22 Q. WHERE IS DR. PENCE TODAY?
- 23 A. HE'S AT THE OFFICE PRACTICING.
- 24 Q. HE'S WORKING TODAY?

JANE PENCE - RE-DIRECT/MR. DAVIS

512

1 Q. HE'S NOT AVAILABLE FOR CROSS-EXAMINATION?

2 A. NO, SIR.

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

4 MR. DAVIS: JUST A FEW.

5 THE COURT: YES, SIR, MR. DAVIS.

6 RE-DIRECT EXAMINATION

7 BY MR. DAVIS:

8 Q. MRS. PENCE, ARE YOU A MEDICAL ASSISTANT?

9 A. NO, SIR; I'M JUST THE OFFICE.

10 Q. SO YOU DON'T GO BACK THERE WITH THE PATIENTS; YOU
11 DON'T KNOW WHAT DR. PENCE DOES WITH THE PATIENTS?

12 A. OCCASIONALLY I DO GO BACK WITH THE PATIENTS.

13 OCCASIONALLY I DO TRIAGE.

14 Q. OCCASIONALLY?

15 A. YES, SIR.

16 Q. DO YOU RECALL ANY TRIAGE IN REFERENCE TO THE GADSON
17 CHILDREN?

18 A. LOOKING AT THE CHART, THAT IS NOT MY WRITING ON IT,
19 SO I DID NOT TRIAGE THE CHILD.

20 Q. DO YOU KNOW MS. GADSON?

21 A. I RECOGNIZE HER.

22 Q. TODAY?

23 A. YES, SIR.

24 Q. IS SHE THE ONLY PERSON IN YOUR PRACTICE THAT EVER

JANE PENCE - RE-DIRECT/MR. DAVIS

513

- 1 A. NO, SIR.
- 2 Q. THAT'S A COMMON PRACTICE, ISN'T IT?
- 3 A. IT IS.
- 4 Q. VERY MUCH SO?
- 5 A. YES.
- 6 Q. VERY MUCH SO IN OUR HECTIC SOCIETY AS A STATE;
- 7 ISN'T THAT CORRECT?
- 8 A. CORRECT.
- 9 Q. NOW, YOU DON'T HAVE ANY INFORMATION OTHERWISE THAT
- 10 THESE CHILDREN WERE ALSO FOLLOWED BY THE
- 11 SUMMERVILLE HEALTH CLINIC; ISN'T THAT CORRECT?
- 12 A. CORRECT.
- 13 Q. OKAY. NOW, MRS. PENCE, THIS IS A MEDICARE PATIENT;
- 14 IS IT NOT?
- 15 A. MEDICAID.
- 16 Q. MEDICAID?
- 17 A. CORRECT.
- 18 Q. THEY DON'T PAY A LOT OF MONEY, DO THEY?
- 19 A. NO, SIR.
- 20 Q. VERY, VERY MINIMUM; ISN'T THAT THE FACT?
- 21 A. THEY DON'T PAY ANYTHING FOR THEIR MEDICAL CARE.
- 22 Q. NOTHING?
- 23 A. NO, SIR.
- 24 Q. NO FURTHER QUESTIONS.

THE COURT: VERY WELL. ANY RE-DIRECT?

JANE PENCE - RE-DIRECT/MR. DAVIS

514

1 MRS. MURPHY: NOTHING FURTHER FROM THIS
2 WITNESS.

3 THE COURT: MRS. PENCE IS FREE TO
4 LEAVE?

5 MRS. MURPHY: YES, MA'AM.

6 THE COURT: ALL RIGHT. YOU ARE FREE TO
7 GO.

8 MR. DAVIS: YOUR HONOR, JUST ONE
9 FOLLOW-UP QUESTION.

10 THE COURT: ALL RIGHT.

11 Q. THOSE RECORDS THAT YOU BROUGHT; THE
12 SOLICITOR HAD ALREADY HAD THEM; ISN'T THAT
13 CORRECT?

14 A. CORRECT.

15 Q. THANK YOU.

16 THE COURT: YES, MA'AM? YOU'RE FREE TO
17 GO.

18 THE COURT: ALL RIGHT. CALL YOUR NEXT
19 WITNESS.

20 MRS. MURPHY: YOUR HONOR, THE STATE'S
21 NEXT WITNESS IS DR. RICHARD SAUNDERS. AND WE HAVE
22 HIS TESTIMONY VIA VIDEO TAPE.

23 THE COURT: THAT'S OKAY. ALL RIGHT. LET
24 ME JUST EXPLAIN TO THE JURY. LADIES AND GENTLEMEN,
25 WHAT MRS. MURPHY HAS JUST TOLD ME IS THAT THE NEXT

MOTIONS

515

1 WITNESS IS GOING TO BE PRESENTED BY VIDEOTAPE. AND
2 I THINK I ALLUDED WHEN I WAS GIVING YOU THE
3 PRELIMINARY REMARKS THAT THE WITNESSES' TESTIMONY
4 WOULD COME FROM THE WITNESS STAND, OR IT MAY COME
5 FROM A VIDEO. AND THAT'S WHAT I WAS REFERRING TO.
6 OUR RULES DO PROVIDE FOR THE TAKING OF TESTIMONY,
7 AND IT OFTEN TIMES WILL HAPPEN WITH A DOCTOR OR AN
8 EXPERT OR SOMEONE THAT FOR SCHEDULING PURPOSES AS
9 MUCH AS ANYTHING THAT THE TESTIMONY IS TAKEN AWAY
10 FROM THE COURTHOUSE, THE COURTROOM, PRIOR TO TRIAL.
11 CLEARLY SOMEONE WAS PRESENT ON BEHALF OF THE STATE;
12 PROBABLY MRS. MURPHY. CLEARLY I GATHER BOTH MR.
13 DUKES AND MR. DAVIS WERE PRESENT. THE WITNESS IS
14 PLACED UNDER OATH IN THE EXAMINATION AS MUCH AS YOU
15 HAVE SEEN FROM THE WITNESSES FROM THE WITNESS
16 STAND. A COURT REPORTER VERY MUCH LIKE MRS.
17 ADDISON IS PRESENT. AND A VIDEOGRAPHER IS
18 PRESENT. THE TESTIMONY IS SWORN, TAKEN DOWN, AND
19 THEN PUT ON THE VIDEOTAPE FOR YOU. AND YOU ARE
20 ABOUT TO SEE THAT TESTIMONY, THE DIRECT AS WELL AS
21 THE CROSS-EXAMINATION. YOU ARE ABOUT TO SEE THAT
22 BY VIDEOTAPE. VERY WELL.

23 (AT THIS TIME THE VIDEOTAPE DEPOSITION OF DR. SAUNDERS
24 IS PLAYED FOR THE JURY.)
25 - - - - -

MOTIONS

516

1 THE COURT: LADIES AND GENTLEMEN, AT THIS
2 TIME WE ARE GOING TO TAKE OUR MORNING BREAK. I'M
3 GOING TO ASK YOU TO STEP TO YOUR JURY ROOM
4 REMEMBERING NOT TO DISCUSS THIS MATTER OR ALLOW
5 ANYONE TO DISCUSS IT WITH YOU. AND, YES, MA'AM,
6 MRS. SALISBURY; THOSE THAT NEED TO SMOKE, WANT TO
7 SMOKE, MAY SMOKE.

8 MRS. SALISBURY: OKAY. THANK YOU.

9 (AT THIS TIME JURY IS EXCUSED FROM THE COURT HOUSE.)

10 THE COURT: ALL RIGHT. ANYTHING BEFORE
11 WE TAKE OUR MORNING BREAK?

12 MRS. MURPHY: JUST ONE QUICK THING, JUST
13 FOR PROCEDURAL PURPOSES. THE STATE MOVED ON THE
14 VIDEOTAPE TO QUALIFY VIDEOTAPE TO QUALIFY THE
15 DOCTOR AS AN EXPERT. AND IN TALKING TO BOTH
16 DEFENSE COUNSEL, THEY SAID GO AHEAD AND PLAY THE
17 TAPE; THAT THEY HAVE NO OBJECTION. I JUST WANTED
18 TO FORMALIZE THAT FOR THE RECORD.

19 THE COURT: OKAY. VERY WELL. IS THAT
20 CORRECT, COUNSEL?

21 MR. DAVIS: THAT IS RIGHT.

22 THE COURT: THAT WOULD BE CORRECT?

23 MR. DAVIS: YES, MA'AM.

24 THE COURT: THANK YOU SO MUCH. I GATHER
25 WHAT YOU ARE TELLING ME IS THAT DR. SAUNDERS WAS

MOTIONS

517

1 QUALIFIED AS AN EXPERT BY STIPULATION?

2 MR. DAVIS: THAT'S CORRECT; HE WAS.

3 THE COURT: VERY WELL. THANK YOU SO
4 MUCH. WE'LL TAKE OUR BREAK.

5 (BRIEF RECESS.)

6 MR. DAVIS: HAVE YOU MADE A DECISION YET,
7 YOUR HONOR, ON THAT ISSUE PERTAINING TO THAT---

8 THE COURT: I HAVE BEEN STUDYING IT AT
9 GREAT LENGTH.

10

11 THE COURT: ALL RIGHT. I DO WANT TO HAVE
12 A MOMENT OF DISCUSSION ABOUT THE ORDER, ABOUT THE
13 D.S.S. ORDER BECAUSE WHEN YOU ALL APPROACHED, I
14 ASKED YOU TO TELL ME WHAT FACT THAT IS OF
15 CONSEQUENCE TO THIS LITIGATION; DOES THIS ORDER
16 MAKE MORE PROBABLE OR LESS PROBABLE. AND MRS.
17 MURPHY, OF COURSE YOU OFFERED IT. SO AS I RECALL,
18 YOU SAID ONE OF THE REASONS THAT IT WAS BEING
19 OFFERED WAS BECAUSE OF THE STATEMENT THAT WAS
20 ENTERED INTO EVIDENCE ON BEHALF OF THE STATE. AND
21 I GATHER THAT'S SOME KIND OF IMPEACHMENT. AND
22 THAT'S MY WORD, NOT YOUR WORD. BUT I NEED TO HEAR
23 FROM YOU A LITTLE MORE FULLY ABOUT THAT BECAUSE
24 OBVIOUSLY SHE DIDN'T TESTIFY FOR THE STATE. THE
25 STATE PUT IN A STATEMENT. AND THE OTHER

MOTIONS

518

1 I RECALL WAS THAT -- AND IT WAS COUCHED IN TERMS OF
2 CORROBORATION. BUT AS I UNDERSTAND IT, THE FAMILY
3 COURT ORDER WOULD HAVE BEEN OFFERED, OR WAS
4 OFFERED, AGAIN ON THE BASIS THAT IT SHOWS A LACK OF
5 ACCIDENT REGARDING THE INJURY IN 1998. ANY OTHER
6 GROUNDS?

7 MRS. MURPHY: NO, MA'AM; I THINK YOU'VE
8 COVERED ALL THREE OF THEM.

9 MR. DAVIS: ALL THREE?

10 MRS. MURPHY: YEAH; ALL THREE?

11 MRS. MURPHY: YES.

12 THE COURT: OKAY. WELL, LET ME ASK YOU
13 THIS QUESTION: THERE ARE A NUMBER OF
14 CONSIDERATIONS THAT CERTAINLY COME TO MY MIND.
15 ONE, OF COURSE, IS THAT SHE WASN'T A WITNESS FOR
16 THE STATE. SHE HAS NOT TESTIFIED. SO THE QUESTION
17 IS IS IT APPROPRIATE IMPEACHMENT TO USE THE ORDER
18 TO IMPEACH A STATEMENT THAT WAS PLACED INTO
19 EVIDENCE BY THE STATE. THIS IS NOT REPLY. THIS IS
20 THE STATE'S CASE IN CHIEF. SO THAT'S THE FIRST
21 THING THAT I HAVE SOME CONCERNS ABOUT. AND I KNOW
22 THIS IS ALL MINE; BUT I ACTUALLY HAVE SOME CONCERNS
23 ABOUT THE THEORY OF JUDICIAL ESTOPPEL, WHETHER OR
24 NOT IT IS APPROPRIATE FOR SOMEONE TO TAKE A
POSITION AND HAVE THE COURT RULE ON THAT, RELIANCE

MOTIONS

519

1 AND THE FAMILY COURT ISSUE AN ORDER CLEARLY BASED
2 UPON THAT REPRESENTATION AND THEN TAKE A DIFFERENT
3 POSITION IN A DIFFERENT COURT IN A RELATED CASE.
4 THAT ONE CONCERNS ME. I DON'T KNOW THAT -- RELATED
5 IN TERMS OF -- WELL, I GATHER IT BECOMES RELATED
6 BECAUSE OF THE STATEMENT OF MS. GADSON.

7 MRS. MURPHY: CERTAINLY I THINK IT TIES
8 IN. I THINK THE STATE'S PURPOSE MORE SO THAN
9 IMPEACHMENT AT THIS POINT SHOWS A LACK OF ACCIDENT
10 CONSISTENT WITH PREVIOUS CHILD ABUSE WHICH IS THE
11 CRUX OF THIS CASE. IT'S ABOUT CHILD ABUSE. AND
12 SHE HAS BEEN FOUND DETERMINED TO -- SHE ACTUALLY
13 CONSENTED. AND AT THE HEARING THERE IS A FINDING
14 OF PHYSICAL CHILD ABUSE ON HER BEHALF.

15 THE COURT: YES, SIR, MR. DUKES? YOU'RE
16 STANDING UP.

17 MR. DUKES: NO, MA'AM; I'M GETTING
18 WATER.

19 THE COURT: OH, YOU'RE GETTING WATER.

20 MR. DAVIS: YOUR HONOR, JUST SUPPOSE IT
21 WAS A CRIMINAL RECORD. WOULD SHE BE ABLE TO
22 IMPEACH MY CLIENT WITH A CRIMINAL RECORD NOW IF MY
23 CLIENT HAS TO TAKE THE WITNESS STAND? SAY THAT
24 STATEMENT WAS ALLOWED IN? YOU KNOW, COULD SHE AT

MOTIONS

520

1 HAS BEEN CONVICTED OF CHILD ABUSE OR SOMETHING IN
2 THIS COURTROOM AT THIS POINT? BECAUSE I THINK THAT
3 MY CLIENT SHOULD NOT TESTIFY.

4 THE COURT: I'M CONCERNED ABOUT THAT,
5 TOO, MR. DAVIS.

6 MR. DAVIS: THE STATE CREATED THIS CASE
7 IN CHIEF; NOT US. THEY CREATED THIS DILEMMA. THE
8 STATE COULD EASILY -- JUDGE; IT'S THE PREJUDICIAL
9 EFFECT IN RELATIONSHIP TO PROBATIVE VALUE -- IT'S
10 HEARSAY EVEN THOUGH IT'S A COURT ORDER BY THE
11 FAMILY COURT.

12 THE COURT: THAT WORRIES ME NOT IN THE
13 LEAST BECAUSE IT'S A SELF-AUTHENTICATING DOCUMENT.
14 SO -- AND IT REALLY IS TWO-FOLD. NUMBER ONE, YOU
15 KNOW, IS IT -- IS IT ADMISSIBLE? THE HEARSAY
16 PORTION OF IT DOESN'T WORRY ME. IT GOES BEYOND
17 THAT.

18 MR. DAVIS: JUDGE, MY CLIENT IS NOT
19 CHARGED WITH CHILD ABUSE, THE STATUTE THAT CAUSES
20 MY CLIENT TO BE IS SECTION 27-50 WHATEVER. AND,
21 JUDGE, IF IT PERTAINS TO HIM SOMEWHAT, IT WOULD
22 HAVE BEEN DIFFERENT. BUT HE IS NOT EVEN A PARTY TO
23 THIS FAMILY COURT MATTER. NOW, IF IT WAS
24 SOMETHING THAT SAID THAT HE IN FACT WAS FOUND

MOTIONS

521

1 REGISTER FOR CHILD ABUSE, OKAY? AND THEN SHE HAD
2 KNOWLEDGE OF IT, OKAY, KNOWING THAT THIS OCCURRED
3 IN FAMILY COURT IS STILL DISPOSITIVE CAUSED THESE
4 CHILDREN -- BUT YOU DON'T HAVE THAT. HE WAS NOT
5 EVEN A PARTY TO THE ACTION.

6 THE COURT: LET ME SAY THIS: AT THIS
7 TIME IN THE STATE'S CASE IN CHIEF, I'M GOING TO
8 SUSTAIN THE OBJECTION AT THIS TIME. AT THIS TIME,
9 I'M GOING TO SUSTAIN THE OBJECTION. I HAVE
10 CONCERNS ABOUT THIS BEING USED AS IMPEACHMENT. I
11 HAVE SOME CONCERNS ABOUT THIS BEING USED -- I HAVE
12 LESS CONCERN. I HAVE SUBSTANTIAL CONCERN, THOUGH,
13 ABOUT THIS ORDER BEING USED AS CORROBORATION ON THE
14 CHILD BATTERY SYNDROME. AND THE REASON THAN I DO
15 IT IS BASED UPON A CASE CALLED STATE VS. PIERCE.
16 THE STATE VS. PIERCE CASE THERE WAS -- IN THAT CASE
17 THE STATE SOUGHT TO USE AN EPISODE OF ROUGH
18 HANDLING OF A CHILD TO SHOW LACK OF ACCIDENT. AND
19 THERE WAS SOME CONCERN ON THE BASIS OF THE LACK OF
20 SIMILARITY. AND THERE'S A CASE THAT GETS CITED IN
21 THERE CALLED ESTELL VS. MCQUIRE. AND ESTELL VS.
22 MCQUIRE STANDS FOR THE PROPOSITION THAT THIS
23 PROBABLY WOULD BE ADMISSIBLE. HOWEVER, THE ESTELL
24 VS. MCQUIRE CASE GETS CITED IN THE DISSENT BY THE
25 CHIEF JUSTICE

MOTIONS

522

1 RELATIONSHIP BETWEEN THE BATTERED CHILD SYNDROME
2 AND THE LOPEZ CASE THAT SAYS THAT THAT TESTIMONY
3 COMES IN VIA AN EXPERT. THE PIERCE CASE CONCERNS
4 ME. THE REFERENCE TO THE ESTELL CASE WHICH CLEARLY
5 WAS OUT THERE AT THE TIME OF THE PEARCE CASE. I
6 HAVE SOME CONCERN. AND LET ME JUST SAY THAT I
7 THINK THAT AT THIS POINT, I'M GOING TO SUSTAIN THE
8 OBJECTION AT THIS TIME. VERY WELL.

9 MRS. MURPHY: THANK YOU, YOUR HONOR. MAY
10 I GET THAT BACK, AND CERTAINLY RESERVE THE RIGHT TO
11 USE IT---

12 THE COURT: YES.

13 MR. DAVIS: I MIGHT INTRODUCE IT TO HER
14 IN CASE THE CHIEF---

15 THE COURT: ALL RIGHT. LET'S HAVE OUR
16 JURY.

17 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

18 THE COURT: ALL RIGHT, LADIES AND
19 GENTLEMEN. AT THIS TIME WE WILL CONTINUE WITH THE
20 STATE'S CASE. MRS. MURPHY?

21 MRS. MURPHY: YOUR HONOR, THE STATE WOULD
22 MOVE THE VIDEOTAPE INTO EVIDENCE FROM THE
23 DEPOSITION. THE

24 THE COURT: ANY OBJECTION?

MR. DAVIS: NONE ON BEHALF OF MY CLIENT,

MOTIONS

523

1 MS. GADSON.

2 MR. DUKES: I HAVE NONE, YOUR HONOR.

3 THE COURT: VERY WELL.

4 MRS. MURPHY: THE STATE RESTS, YOUR
5 HONOR.

6 THE COURT: VERY WELL. ALL RIGHT.

7 LADIES AND GENTLEMEN, LET ME TELL YOU WHERE WE ARE
8 IN THE PROCESS. WHERE WE ARE IN THE PROCESS IS
9 THAT YOU HAVE JUST HEARD THE WITNESSES AND RECEIVED
10 THE EXHIBITS FROM THE STATE IN THE STATE'S CASE IN
11 CHIEF. THAT SIGNIFIES TO ME THAT THERE ARE MATTERS
12 WHICH I MUST TAKE UP OUTSIDE YOUR PRESENCE. SO I
13 NEED TO ASK YOU TO PLEASE STEP TO YOUR JURY ROOM.
14 DO NOT DISCUSS THIS MATTER, AND DO NOT ALLOW ANYONE
15 TO DISCUSS IT WITH YOU. WE WILL NOT BE LONG, I DO
16 NOT BELIEVE. THANK YOU, LADIES AND GENTLEMEN.
17 STEP TO YOUR JURY ROOM.

18 (AT THIS TIME JURY RETURNS TO JURY ROOM.)

19 MRS. MURPHY: JUDGE, I APOLOGIZE. I
20 SHOULD HAVE TOLD YOU THAT BEFORE YOU SENT THEM OUT.

21 THE COURT: THANK YOU. ALL RIGHT. ARE
22 THERE ANY MOTIONS?

23 MR. DUKES: YES. I WOULD MAKE A MOTION
24 FOR A DIRECTED VERDICT ON BEHALF OF MY CLIENT.
25 THERE'S BEEN ALLEGED THAT THERE WERE A NUMBER OF

MOTIONS

524

1 INCIDENTS THAT SHOULD BE ATTRIBUTED TO HIM. I THINK
2 THAT IT PREJUDICES THE CASE. I KNOW I HAVE TO VIEW
3 THIS MOTION IN LIGHT MOST FAVORABLE TO THE STATE.
4 BUT MY UNDERSTANDING OF THE TESTIMONY THAT THERE
5 WAS NO DOUBT THAT THERE WAS SOME QUESTION THAT HE
6 WAS TAKEN TO THE HOSPITAL. THAT FROM THE TESTIMONY
7 FROM THE 911 CALL, HE SAID THERE WERE SEIZURES
8 GOING ON. HE ADMITS THAT HE PUT SHOE MARKS ON A
9 YOUNG MAN'S CHEST TO TRY TO REVIVE HIM. THE EXPERT
10 TESTIMONY YESTERDAY, HE SAID THAT THOSE SHOE MARKS
11 WERE NOTHING. I MEAN, CARS CAN DRIVE ACROSS
12 PEOPLE'S CHESTS -- A BABY'S CHEST -- AND THERE WAS
13 NO DAMAGE DONE TO IT; WAS NO DAMAGE DONE TO HIM.
14 HE SAID THERE WERE SUPERFICIAL MARKS TO THE HEAD.
15 NO SEVERE TRAUMA THAT WOULD HAVE HAD CAUSED
16 ANYTHING LIKE THIS TO OCCUR. AND EVIDENTLY IT WAS
17 OCCURRING BEFORE HE MADE AN ACTUAL ATTEMPT TO
18 REVIVE HIM. BUT I'M NOT SAYING HE DID. I DON'T
19 THINK HE DID A GOOD JOB IN TRYING TO REVIVE THE
20 CHILD. BUT HE IMMEDIATELY CALLED E.M.S. AND GOT
21 THE MEDICAL PERSONNEL THERE. AND HE WAS TAKEN TO
22 THE HOSPITAL; AND THANK GOD HE WAS REVIVED. HE
23 COULD NOT HAVE BEEN REVIVED WITHOUT THE EFFORT OF
24 MR. GADSON. AND TO SAY THAT HE COULD BE CONVICTED
25 OF ASSAULT AND BATTERY WITH INTENT TO KILL; I DON'T

MOTIONS

525

1 THINK THERE'S ANY EVIDENCE OF ATTEMPT TO KILL
2 BECAUSE HE WAS ATTEMPTING TO SAVE HIM IN HIS OWN
3 WAY. AND I WOULD MOVE THAT THAT COUNT AT LEAST BE
4 DISMISSED; ASSAULT AND BATTERY WITH INTENT TO KILL.
5 THE OTHER ACCOUNT GIVES ME A LITTLE MORE
6 DIFFICULTY. BUT I REALLY BELIEVE THAT WHAT HE DID
7 HE DID WITH THE INTENTIONS OF TRYING TO HELP HIM.
8 AND I DON'T THINK HE IN ANY WAY IN HIS MIND DID ANY
9 CHILD ABUSE UPON HIS CHILD. AND I WOULD ASK THE
10 COURT TO DISMISS BOTH CHARGES AGAINST MY CLIENT.

11 THE COURT: THANK YOU SO MUCH, MR. DUKES.
12 TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO
13 STATE AS I AM CHARGED TO DO; AND, OF COURSE, I
14 DON'T WEIGH THE EVIDENCE. I JUST DETERMINE WHETHER
15 OR NOT THERE IS EVIDENCE ON EACH AND EVERY ELEMENT
16 OF BOTH CHARGES FROM WHICH THE JURY COULD
17 REASONABLY CONVICT. AND I FIND THAT THERE IS
18 EVIDENCE THAT IS FOUND ON EACH AND EVERY ELEMENT OF
19 BOTH CHARGES INVOLVING YOUR CLIENT -- AND, OF
20 COURSE, MR. BURDEN -- AND THEREFORE WOULD
21 RESPECTFULLY OVERRULE YOUR MOTION AND NOTE YOUR
22 EXCEPTION FOR THE RECORD. MR. DAVIS?

23 MR. DAVIS: JUDGE, AT THIS TIME I WOULD
24 MOVE FOR A DIRECTED VERDICT; AND SPECIFICALLY I

MOTIONS

526

1 THE ISSUE OF THE DEFECTIVE INDICTMENT WHICH I THINK
2 FAILED TO PUT MY CLIENT ON NOTICE AS THE
3 SUFFICIENCY OF THE CHARGES AGAINST HIM. THERE IS
4 NO -- YOU HAVE TO READ THAT INDICTMENT. IT DOES
5 NOT -- IN REFERENCE TO NOVEMBER 3RD, 2001, FOR
6 WHICH WE ARE HERE AND CONCERNED WITH WITH REFERENCE
7 TO MY CLIENT BEING CHARGED WITH UNLAWFUL NEGLECT BY
8 LEGAL CUSTODIAN. IT PUTS MY CHAIN ON NOTICE IN
9 REFERENCE TO THE CHARGES THAT THE SOLICITOR HAS
10 ACTUALLY BEEN ABLE TO PUT IN FRONT OF THIS JURY. I
11 THINK THAT HAS CAUSED A TREMENDOUS HARDSHIP IN
12 REFERENCE TO MY CLIENT. IN THAT REGARD, I RENEW
13 THAT MOTION. YOUR HONOR, ALSO IN REFERENCE TO THE
14 ONLY STATEMENT IN THIS CASE; REALLY THE ONLY
15 EVIDENCE IN THIS CASE THAT CONNECTS MY CLIENT TO
16 THIS INDICTMENT AND TO THIS CHARGE IS ONE THAT TOOK
17 PLACE WHAT I WOULD ARGUE WAS IN A CUSTODIAL
18 SITUATION. MY CLIENT WAS IN CUSTODY. SHE WAS NOT
19 ADVISED OF HER MIRANDA WARNINGS. SHE GAVE A
20 STATEMENT UNDER UNDUE DURESS. HER CHILD WAS BEING
21 MEDUCARED TO M.U.S.C. HOSPITAL; INSTEAD SHE WAS
22 BEING TRANSPORTED BY AN OVERZEALOUS DETECTIVE TO
23 SUMMERVILLE LAW ENFORCEMENT CENTER WHEREIN SHE
24 REMAINED THREE FOR APPROXIMATELY SOME
THREE AND A HALF BEFORE SHE ACTUALLY GAVE A

MOTIONS

527

1 STATEMENT UNDER DURESS WHICH RELATES BACK TO AN
2 INCIDENT THAT OCCURRED IN 1998 WHICH IS THE ONLY
3 BASIS WHY MY CLIENT WAS INDICTED, AS I UNDERSTAND,
4 BEFORE THIS COURT AT THIS TIME. YOUR HONOR, I
5 READILY ADMIT THAT AT THIS POINT THIS COURT MAKES
6 IT'S DETERMINATION IN THE LIGHT MOST FAVORABLE TO
7 THE STATE. BUT I TAKE THE POSITION THAT THESE
8 ISSUES WERE ISSUES OF LAW, NOT ISSUES OF FACT; AND
9 ISSUES OF LAW THAT THIS COURT COULD READILY HAVE
10 RULED IN MANNER THAT MY CLIENT WOULD NOT ACTUALLY
11 STILL BE CONFRONTED WITH GOING FORWARD WITH THE
12 TRIAL AT THIS PARTICULAR TIME, YOUR HONOR. FOR
13 THOSE REASONS AND ALL THE REASONS I'VE ALLUDED TO
14 EARLIER IN REFERENCE TO THE INDICTMENT; THE
15 STATEMENT THAT WAS TAKEN IN VIOLATION OF HER
16 MIRANDA WARNINGS BECAUSE NONE WERE GIVEN; THE
17 CUSTODIAL ASPECTS OF IT; WE BELIEVE THAT THE
18 CHARGES SHOULD BE DISMISSED BY THE COURT AT THIS
19 TIME.

20 THE COURT: THANK YOU, MR. DAVIS. AND
21 LIKEWISE, AS I'VE INDICATED TO YOU EARLIER, I DID
22 FIND THAT THE STATE HAD SHOWN BY A PREPONDERANCE OF
23 THE EVIDENCE THAT THE STATEMENT THAT WAS GIVEN WAS
24 TAKEN IN A NON-CUSTODIAL SITUATION AND WAS GIVEN
25

MOTIONS

528

1 WHETHER OR NOT THE STATE CAN PROVE THAT BEYOND A
2 REASONABLE DOUBT. WITH REGARDS TO THE INDICTMENT;
3 LIKEWISE, I THINK THAT THE INDICTMENT FITS THE
4 MANDATES OF THE LAW IN TERMS OF NOTIFYING THE
5 DEFENDANT OF THE CHARGE FOR WHICH SHE MUST DEFEND
6 HERSELF AND NOTIFY THE COURT OF THE PUNISHMENT TO
7 BE IMPOSED IN THE EVENT OF A CONVICTION. AND,
8 AGAIN, IT'S NOT WHETHER OR NOT THE INDICTMENT
9 SHOULD OR COULD BE -- OR I SHOULD SAY COULD BE --
10 MORE DEFINITE AND MORE CERTAIN; BUT WHETHER OR NOT
11 IT IS SUFFICIENT TO APPRIIZE. AND AS I INDICATED
12 EARLIER, I FOUND THAT IT WAS. WITH REGARDS TO
13 THERE BEING EVIDENCE; TAKING THE EVIDENCE, OF
14 COURSE, IN THE LIGHT MOST FAVORABLE TO THE STATE, I
15 DO FIND THAT THERE EXISTS EVIDENCE ON EACH AND
16 EVERY ELEMENT WHICH WOULD ALLOW THIS JURY
17 REASONABLY TO CONVEY AND WOULD RESPECTFULLY DENY
18 YOUR MOTION, AND NOTE YOUR EXCEPTION FOR THE
19 RECORD. VERY WELL. MR. DUKES, ARE YOU READY TO
20 PROCEED?

21 MR. DUKES: YOUR HONOR, I WOULD LIKE TO
22 HAVE A FEW MINUTES.

23 THE COURT: ALL RIGHT, SIR.

24 MR. DUKES: I KNOW THIS SOUNDS STRANGE.

MOTIONS

529

1 THE COURT: I UNDERSTAND. WOULD IT BE OF
2 ASSISTANCE FOR US TO TAKE OUR LUNCH HOUR NOW?

3 MR. DUKES: YES; IT CERTAINLY WOULD.

4 THE COURT: OKAY. VERY WELL. WE'LL DO
5 THAT. ANY OBJECTION TO TAKING -- I WAS GOING TO
6 BREAK A LITTLE BIT---

7 MRS. MURPHY: NO, MA'AM.

8 MR. DAVIS: NO OBJECTION.

9 THE COURT: VERY WELL. WE'LL DO THAT,
10 THEN. I'M GOING TO HAVE THEM COME ON BACK ABOUT
11 1:15, I THINK; COME BACK AND START A LITTLE
12 EARLIER.

13 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

14 THE COURT: ALL RIGHT. LADIES AND
15 GENTLEMEN, IN A MOMENT YOU ALL ARE GOING TO FEEL AS
16 THOUGH HAVING COURT WITH JUDGE GOODSTEIN IS LIKE
17 HAVING CALISTHENICS; UP AND DOWN, AND UP AND DOWN,
18 AND UP AND DOWN. WE ARE AT THIS JUNCTURE OF OUR
19 TRIAL. AND AFTER CONFERRING OUTSIDE, OF COURSE,
20 YOUR PRESENCE, WE BELIEVE, AND I CERTAINLY BELIEVE,
21 THAT IT'S A GOOD TIME FOR US ACTUALLY TO GO AHEAD
22 AND TAKE OUR LUNCH BREAK RATHER THAN START AND
23 STOP. AND IT JUST MAKES A LOT OF SENSE TO GO AHEAD
24 AND DO THAT. I AM GOING TO ASK IF YOU THINK YOU
25 CAN TAKE A LITTLE BIT LESS TIME FOR YOUR LUNCH

MOTIONS

530

1 TODAY SO THAT WE COULD START BACK ABOUT 1:15 AND
2 CONTINUE WITH THIS. I'M SEEING VERY WONDERFULLY
3 COOPERATIVE NODS OF THE HEAD. SO WE'RE GOING TO DO
4 THAT. AND I'M GOING TO ASK YOU TO GO ON TO LUNCH,
5 AND THEN WE'RE GOING TO START BACK AT 1:15. WHAT
6 IS THAT SHOW ON T.V. WHERE THE LAWYER SAYS "DO NOT
7 DISCUSS THIS MATTER, AND DO NOT ALLOW ANYONE TO
8 DISCUSS IT WITH YOU; AND HAVE A GREAT LUNCH.
9 THANKS SO MUCH.

10 (LUNCH RECESS.)

11 (THE FOLLOWING TAKES PLACE OUT OF THE PRESENCE OF THE
12 JURY.)

13 THE COURT: ANYTHING FROM THE STATE?

14 MRS. MURPHY: NOTHING FROM THE STATE,
15 YOUR HONOR.

16 MR. DAVIS: NOTHING ON BEHALF OF MY
17 CLIENT, YOUR HONOR.

18 THE COURT: GREAT.

19 MR. DUKES: I HAVE GONE OVER MY CLIENT'S
20 RECORD.

21 THE COURT: YES, SIR.

22 MR. DUKES: AND HERE IS A CHARGE NOVEMBER
23 5, 1992.

24 THE COURT: A CHARGE? NOT A CONVICTION?

25 MR. DUKES: WELL, IT ENDED UP BEING A

MOTIONS

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1 CONVICTION.

2 THE COURT: ALL RIGHT.

3 MR. DUKES: HE ENDED UP ON MARCH THE 22ND
4 OF 1994; HE PLED GUILTY TO CRACK COCAINE,
5 POSSESSION WITH INTENT FIRST OFFENSE, AND ALSO
6 MANUFACTURER, POSSESSION, SCHEDULE ONE OR TWO WITH
7 INTENT TO DISTRIBUTE FIRST. HE RECEIVED FIVE YEARS
8 SUSPENDED UPON EIGHTEEN MONTHS PROBATION ON THE
9 FIRST TWO YEARS, SUSPENDED UPON EIGHTEEN MONTHS
10 PROBATION ON THE SECOND. THEN HE HAD ANOTHER
11 CHARGE OF FAILURE TO RETURN A VIDEOTAPE WHICH, OF
12 COURSE, IS MAGISTRATE'S COURT, NOW THAT I THINK OF
13 IT.

14 THE COURT: NO, IT ISN'T.

15 MR. DUKES: AND HE HAD A D.U.S. IN '96.
16 AND I DON'T THINK THAT WOULD BE -- BUT HE DID HAVE
17 THIS DRUG CHARGE. AND IT ORIGINATED OUT OF AN
18 ARREST ON NOVEMBER THE FOURTH -- NOVEMBER THE FIFTH
19 OF 1992. WE WOULD ASK THAT THAT NOT BE ALLOWED TO
20 IMPEACH HIM WITH.

21 THE COURT: ALL RIGHT. I DON'T KNOW THAT
22 -- DOES THE STATE INTEND TO USE THAT CONVICTION
23 FOR IMPEACHMENT PURPOSES?

24 MRS. MURPHY: YES, MA'AM, WE DO.

25 THE COURT: ALL RIGHT.

MOTIONS

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1 MRS. MURPHY: THE STATE'S POSITION WOULD
2 BE THAT A DRUG CHARGE OF THIS NATURE IS NOT CLOSELY
3 RELATED TO THE CRIME, SO THE PREJUDICIAL VALUE --
4 AND I CAN'T CITE THE CASE RIGHT OFF THE TOP OF MY
5 HEAD.

6 THE COURT: I WAS JUST THINKING ABOUT IT
7 AS WELL. YES; I KNOW WHAT YOU'RE TALKING ABOUT.
8 ALL RIGHT. THERE IS NOW A SEVERAL STEP PROCESS
9 THAT SHOULD BE USED FOR THE ANALYSES THAT YOU'RE
10 ASKING ME TO DO. AND I WAS LOOKING AT THAT
11 TONIGHT. LET ME STEP -- WE'LL TAKE A VERY SHORT
12 BREAK.

13 (AT THIS TIME THE JUDGE STEPS OUT OF COURTROOM.)

14 THE COURT: ALL RIGHT. THE CASE THAT I
15 WANTED TO PUT MY HANDS ON IS A CASE CALLED STATE
16 VS. GOLDSON, 561 S.E.2D 663. DID I TELL YOU THAT
17 RIGHT? NO; NO; I'M SORRY. STATE VS. ROLLINS, 560
18 S.E.2D 450. AND IT SAYS THAT PURSUANT TO RULE 609
19 THAT IN DETERMINING WHETHER TO ADMIT EVIDENCE OF
20 PRIOR CONVICTIONS, THE FOLLOWING FACTORS SHOULD BE
21 CONSIDERED. NUMBER ONE, THE IMPEACHMENT VALUE OF
22 THE PRIOR CRIME. NUMBER TWO, THE POINT IN TIME OF
23 THE CONVICTION, AND THE WITNESSES' SUBSEQUENT
24 HISTORY; NUMBER THREE, THE SIMILARITY BETWEEN THE
25 PAST CRIME AND THE CHARGE CRIME. NUMBER FOUR, THE

MOTIONS

533

1 IMPORTANCE OF THE DEFENDANT'S TESTIMONY; NUMBER
2 FIVE, THE CENTRALITY OF THE CREDIBILITY ISSUE. ALL
3 RIGHT. CLEARLY IT'S NOT A SIMILAR CONVICTION.
4 WHAT CONCERNS ME, I GUESS AS MUCH AS ANYTHING; WHAT
5 CONCERNS ME IS THE DATE, THE AGE OF THE CONVICTION
6 AND HIS SUBSEQUENT HISTORY BECAUSE I GATHER THAT
7 THE SUBSEQUENT HISTORY IS MINIMAL UP UNTIL THIS
8 POINT. I THINK THAT HIS TESTIMONY CERTAINLY WOULD
9 BE IMPORTANT AND HIS CREDIBILITY WOULD CERTAINLY BE
10 IMPORTANT IN THESE ISSUES. IT TALKS ABOUT THE
11 IMPEACHMENT VALUE OF THE PRIOR CRIME. AND, OF
12 COURSE, THE PURPOSE OF THIS KIND OF IMPEACHMENT
13 GOES TO WHETHER OR NOT THE JURY CAN BELIEVE
14 TESTIMONY OF THE DEFENDANT. AND CERTAINLY DRUG USE
15 AND TRUTHFULNESS ARE CERTAINLY NOT CLOSELY
16 RELATED.

17 I THINK ON BALANCE AND WEIGHING
18 THEM, CONSIDERING THE AGE OF THE CONVICTION,
19 CONSIDERING THE HISTORY OF MR. BURDEN FROM THE TIME
20 OF THAT CONVICTION TO THE PRESENT DATE, AND
21 OBVIOUSLY THE CONCERN THAT I GATHER THAT'S RAISED
22 OVER THE CONCERN FOR THE PREJUDICIAL VALUE OF IT,
23 I'M GOING TO EXCLUDE THAT CONVICTION AND NOT ALLOW
24 THE STATE TO CROSS-EXAMINE HIM ON THAT CONVICTION.

MR. DAVIS. THANK YOU VERY MUCH.

MOTIONS

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1 THE COURT: YES.

2 MRS. MURPHY: YOUR HONOR, IN THE
3 ALTERNATIVE RATHER THAN STATING WHAT THE CONVICTION
4 IS FOR, MAY WE ASK HIM HAS HE BEEN CONVICTED OF A
5 CRIME? AND I BELIEVE THAT'S STATE VS. GREEN.

6 THE COURT: IT IS. IT'S TALKED ABOUT;
7 BUT NO. STATE VS. ROLLINS DID I SAY? 560 S.E.2D
8 450. IT IS A 2002 COURT OF APPEALS DECISION.

9 MR. DAVIS: 560 S.E.2D---

10 THE COURT: 450.

11 MRS. MURPHY: 450.

12 THE COURT: AND IT ALSO STATES THERE
13 STATE VS. COLF, C-O-L-F, 525 S.E.2D 246, WHICH IS A
14 2000 CASE. AND THE CASE THAT -- THE VEARBRIGHT
15 MRS. MURPHY WAS REFERRING TO IS STATE VS. GREENE,
16 527 S.E.2D 98. ALL RIGHT. NOW, LET'S HAVE OUR
17 JURY.

18 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

19 THE COURT: LADIES AND GENTLEMEN, I
20 CERTAINLY HOPE THAT YOU HAD A PLEASANT LUNCH. AND
21 MR. DUKES?

22 MR. DUKES: THANK YOU, YOUR HONOR. THE
23 DEFENSE WOULD CALL WILLIAM DEAN BURDEN.

24 THE COURT: ALL RIGHT, MR. BURDEN.

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 WHEREUPON,

2 WILLIAM DEAN BURDEN, WHO AFTER BEING

3 FIRST DULY SWORN TO TELL THE TRUTH,

4 TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. DUKES:

7 Q. MR. BURDEN, I DIRECT YOUR ATTENTION TO -- AND WE
8 WANT YOU TO BE LOUD ENOUGH TO BE HEARD BY EVERYBODY
9 IN THE JURY BOX.

10 A. YES, SIR.

11 Q. SO IF YOU'LL SPEAK CLEARLY AND PLAINLY INTO THE
12 MICROPHONE THERE; THAT WILL BE A GREAT BENEFIT.

13 A. YES, SIR.

14 Q. HOW OLD ARE YOU, MR. BURDEN?

15 A. I'M 31 YEARS OLD.

16 Q. AND WHERE WERE YOU BORN?

17 A. I WAS BORN IN CHARLESTON, SOUTH CAROLINA.

18 Q. THAT WAS IN A HOSPITAL?

19 A. YES, SIR.

20 Q. AND WHERE DID YOU GO TO LIVE?

21 A. MY LIFETIME LIVING IN MONCK'S CORNER.

22 Q. SO YOU WENT BACK TO MONCK'S CORNER TO LIVE?

23 A. YES, SIR.

24 Q. AND WHO ARE YOUR PARENTS?

25 A. MY FATHER IS SAs BURDEN

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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- 1 BURDEN. SHE'S DECEASED.
- 2 Q. AND YOUR FATHER, I THINK, WAS HERE YESTERDAY?
- 3 A. YES, SIR.
- 4 Q. AND HE'S A LIFELONG RESIDENT OF BERKELEY COUNTY?
- 5 A. YES, HE IS.
- 6 Q. WHAT KIND OF BUSINESS IS HE IN?
- 7 A. HE'S A CARPENTER; A CONTRACTOR.
- 8 Q. HAS BEEN SO FOR ALL HIS LIFE?
- 9 A. YES, SIR.
- 10 Q. WERE YOU THE FIRST BORN CHILD?
- 11 A. NO, SIR. ACTUALLY I WAS HIS LAST SON.
- 12 Q. HOW MANY CHILDREN DID HE AND YOUR MOTHER HAVE?
- 13 A. HE AND MY MOTHER HAD THREE CHILDREN. I WAS THE
- 14 YOUNGEST.
- 15 Q. OKAY. AND YOUR MOTHER DIED?
- 16 A. YES, SIR.
- 17 Q. WHEN?
- 18 A. WHEN I WAS EIGHT YEARS OLD.
- 19 Q. AND HAS YOUR FATHER RE-MARRIED?
- 20 A. YES, SIR, HE DID.
- 21 Q. DID HE HAVE CHILDREN BY HIS NEWEST WIFE?
- 22 A. YES, HE DID.
- 23 Q. HOW MANY DID HE HAVE BY HER?
- 24 A. HE HAD ONE. AND SHE ALSO BROUGHT A CHILD INTO THE
MARRIAGE.

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 Q. OKAY. HOW MANY OF YOU WAS LIVING TOGETHER AFTER
2 THEY HAD THE CHILDREN?

3 A. UNTIL MY SISTER WENT INTO THE MILITARY AND MY
4 BROTHER WENT OFF TO COLLEGE, IT WAS THE JUST THE
5 THREE OF US. BUT PRIOR TO THAT, IT WAS FIVE OF US.

6 Q. HOW FAR DID YOU GO IN SCHOOL?

7 A. I WENT TO THE NINTH GRADE.

8 Q. AND WHAT SCHOOL WAS THAT?

9 A. BERKELEY HIGH SCHOOL.

10 Q. AND WHY DID YOU LEAVE SCHOOL?

11 A. I WAS ACTUALLY LIVING ALONE THEN. AND I JUST HAD
12 VARIOUS PROBLEMS AT SCHOOL.

13 Q. AND WHY DID YOU START LIVING ALONE?

14 A. I WAS HAVING COMPLICATIONS AT HOME WITH MY
15 STEPMOTHER.

16 Q. AND WHY WAS THAT?

17 A. WE BASICALLY DIDN'T GET ALONG BECAUSE AT THE TIME
18 SHE MARRIED BY FATHER, SHE WAS ONE OF MY MOTHER'S
19 BEST FRIENDS, AND WE JUST REALLY DIDN'T SEE EYE TO
20 EYE.

21 Q. AND YOU AND YOUR MOTHER WERE VERY CLOSE?

22 A. YES, SIR, WE WERE.

23 Q. SO WHEN YOU QUIT SCHOOL, YOU MOVED OUT ON YOUR OWN?

24 A. YES, SIR.

25 Q. AND WHAT KIND OF WORK DID YOU DO?

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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- 1 A. I WAS DOING CARPENTRY ALSO.
- 2 Q. AND WHO WERE YOU WORKING WITH?
- 3 A. WITH MY FATHER.
- 4 Q. WHEN DID YOU START WORKING WITH HIM?
- 5 A. EVER SINCE I COULD LIFT A HAMMER.
- 6 Q. YOU WOULD GO AND HELP HIM?
- 7 A. YES, SIR.
- 8 Q. AND HE EVENTUALLY STARTED PAYING YOU?
- 9 A. YES, SIR, HE DID.
- 10 Q. DID YOU GET MARRIED?
- 11 A. YES, SIR, I DID.
- 12 Q. AND WHO DID YOU MARRY?
- 13 A. I MARRIED ROSA LOUISE CAROL.
- 14 Q. AND WHEN WAS THAT?
- 15 A. IN 1989.
- 16 Q. AND WHERE DID Y'ALL LIVE?
- 17 A. WE LIVED IN MONCK'S CORNER IN AN APARTMENT THAT I
- 18 HAD WHEN I PREVIOUSLY GOT OUT OF SCHOOL.
- 19 Q. YOU LIVED IN YOUR APARTMENT?
- 20 A. YES, SIR.
- 21 Q. AND DID Y'ALL HAVE CHILDREN?
- 22 A. YES, SIR, WE DID.
- 23 Q. HOW MANY CHILDREN DID YOU HAVE?
- 24 A. WE HAD FIVE CHILDREN.
- WHAT ARE THEIR NAMES AND AGES?

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 A. MY OLDEST IS JOBARIA RASHAWN BURDEN, AND HE'S
2 TWELVE. SHANTEA BURDEN; AND SHE'S ELEVEN. RADASIA
3 NICOLE BURDEN, AND SHE'S TEN; DWAYNE EVAN BURDEN;
4 HE'S NINE; AND I HAD A SON, COLEO, AND HE'S EIGHT;
5 COLEO BURDEN.

6 Q. AND WHERE ARE THESE CHILDREN NOW?

7 A. THE OLDEST TWO LIVE WITH MY FATHER. AND THE THREE;
8 THEY LIVE WITH HER IN MONCK'S CORNER, THE YOUNGER
9 THREE.

10 Q. SO YOUR FATHER HAS CUSTODY OF THE TWO OLDEST?

11 A. YES, SIR; THEY LIVE WITH MY FATHER.

12 Q. AND SHE HAS THREE IN COLUMBIA?

13 A. ACTUALLY SHE JUST MOVED BACK TO MONCK'S CORNER FROM
14 COLUMBIA.

15 Q. HAS THERE BEEN ANY DISCUSSION ABOUT HER TURNING
16 CUSTODY OVER TO---

17 A. YES, SIR, ACTUALLY LAST YEAR, I WAS SUPPOSED TO BE
18 GETTING CUSTODY OF THE CHILDREN.

19 Q. UNTIL THIS CAME UP?

20 A. YES, SIR.

21 Q. ARE YOU UNDER AN ORDER TO PAY CHILD SUPPORT?

22 A. YES, SIR, I AM.

23 Q. HAVE YOU MET IT MOST OF YOUR LIFE?

24 A. MOST OF MY LIFE; YES.

25 Q. HAVE YOU EVER GOT BEHIND?

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 A. YES, SIR, I HAVE.

2 Q. DO YOU SEE YOUR CHILDREN?

3 A. YES, SIR, I DO.

4 Q. WHEN'S THE LAST TIME YOU SAW THESE FIVE CHILDREN?

5 A. WELL, ACTUALLY, MY OLDEST TWO; THEY'VE BEEN
6 VISITING ME FOR THE LAST YEAR. AND THE YOUNGER
7 THREE I'VE SEEN ABOUT MAYBE ABOUT 16 MONTHS AGO.

8 Q. AND THE OLDEST TWO HAVE VISITED WHILE YOU'RE IN
9 JAIL?

10 A. YES, SIR.

11 Q. OKAY. WHAT KIND OF RELATIONSHIP DO YOU HAVE WITH
12 THEM?

13 A. A VERY GOOD RELATIONSHIP.

14 Q. OKAY. DID THE REASON COME UP FOR SOME REASON YOU
15 AND ROSA SEPARATED?

16 A. YES, SIR, WE DID. MS. CAROL HAD A MENTAL HISTORY
17 PRIOR TO ME BEING WITH HER. AND IT WAS JUST A LOT
18 OF DIFFICULTIES BETWEEN THE TWO OF US FROM THAT.

19 Q. SO Y'ALL DECIDED TO SEPARATE?

20 A. YES, SIR.

21 Q. AND YOU STAYED WHERE?

22 A. I STAYED IN MONCK'S CORNER. AND SHE IN TURN LIVED
23 IN COLUMBIA.

24 Q. SHE WENT TO COLUMBIA?

25 A. YES.

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES.

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- 1 Q. Y'ALL STILL KEPT IN CONTACT WITH EACH OTHER?
- 2 A. YES.
- 3 Q. AND VISITED THE CHILDREN?
- 4 A. PERIODICALLY; YES, SIR.
- 5 Q. OKAY. AND THEN DID YOU MEET ANOTHER YOUNG LADY?
- 6 A. YES, I DID.
- 7 Q. AND WHO WAS THAT?
- 8 A. THAT WAS MS. GADSON.
- 9 Q. WHEN DID YOU MEET MS. GADSON?
- 10 A. I MET MS. GADSON IN 1993; DECEMBER OF '93.
- 11 Q. IN 1993?
- 12 A. YES.
- 13 Q. AND DID Y'ALL BECOME ROMANTICALLY INVOLVED?
- 14 A. YES, WE DID.
- 15 Q. AND THAT STARTED IN 1993?
- 16 A. NO; IN 1994.
- 17 Q. IN 1994?
- 18 A. YES.
- 19 Q. IN 1994 Y'ALL STARTED SEEING EACH OTHER?
- 20 A. YES.
- 21 Q. DID Y'ALL EVENTUALLY COME TO LIVE TOGETHER?
- 22 A. YES, WE DID.
- 23 Q. AND WHERE DID YOU FIRST LIVE TOGETHER?
- 24 A. WE FIRST LIVED TOGETHER IN A HOUSE IN WESSON IN
- 25 MONCKS CORNER WHICH WAS RIGHT NEXT TO THE

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 HOME.

2 Q. AND HOW LONG DID Y'ALL LIVE THERE?

3 A. WE LIVED THERE FOR ABOUT A YEAR-AND-A-HALF.

4 Q. AND THIS WAS WHEN, 1995?

5 A. YES; BETWEEN '94 AND '95.

6 Q. OKAY. YOU'VE BEEN WORKING WITH YOUR FATHER. DID
7 YOU EVER LEAVE YOUR FATHER'S EMPLOYMENT?

8 A. YES, I DID.

9 Q. AND WHERE DID YOU GO?

10 A. I WENT TO MIDDLETON PLUMBING IN SUMMERVILLE OFF OF
11 BACONS BRIDGE ROAD. . . .

12 Q. WHEN WAS THAT?

13 A. THAT WAS FROM '92 UP UNTIL ABOUT '94.

14 Q. WHEN YOU LEFT MIDDLETON PLUMBING, WHERE DID YOU GO?

15 A. I WENT BACK TO MY FATHER.

16 Q. AND DID YOU KEEP ON WORKING WITH HIM?

17 A. YES, I DID.

18 Q. DID YOU EVER LEAVE HIM AGAIN?

19 A. YES. WHEN ME AND MS. GADSON BRIEFLY MOVED TO
20 MARYLAND, TO GREENBELT, MARYLAND, AND I WORKED WITH
21 MY BROTHER FOR ABOUT A YEAR.

22 Q. SO Y'ALL LIVED IN MARYLAND FOR A YEAR?

23 A. YES.

24 Q. AND WHEN WAS THAT?

--- IN '96 -- EXCUSE ME.

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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- 1 Q. IN 19---
- 2 A. NO; EXCUSE ME. IT WAS THE LATTER PART OF '94 OR
- 3 '95, THE EARLY PART OF '95.
- 4 Q. '94 OR '95. WHAT TYPE OF WORK DID YOU DO IN
- 5 MARYLAND?
- 6 A. THE SAME; CARPENTRY.
- 7 Q. DID Y'ALL HAVE ANY CHILDREN WHEN YOU LIVED UP
- 8 THERE?
- 9 A. YES, WE DID.
- 10 Q. WHO ALL DID YOU HAVE?
- 11 A. WE HAD OUR OLDEST DAUGHTER, TKEYAH SHONTEA GADSON.
- 12 Q. TOSHEA?
- 13 A. TKEYAH; T-K-E-Y-A-H.
- 14 Q. T-K-E-Y-A-H? AND SHE LIVED IN MARYLAND WITH YOU?
- 15 A. YES.
- 16 Q. AND YOU STAYED UP THERE FOR ABOUT A YEAR?
- 17 A. YES, SIR.
- 18 Q. AND DID CARPENTER WORK?
- 19 A. YES, SIR.
- 20 Q. AND DID YOU COME BACK TO SOUTH CAROLINA?
- 21 A. YES, WE DID.
- 22 Q. WHY DID YOU DO THAT?
- 23 A. BECAUSE ADRIAN WAS -- WE FOUND OUT ONCE WE MOVED
- 24 THAT SHE WAS PREGNANT WITH TWINS. AND WE THOUGHT
-

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 HOMESICK.

2 Q. AND WHEN YOU MOVED BACK TO MARYLAND, WHERE DID YOU
3 GO?

4 A. WE MOVED BACK INTO THE HOUSE THAT WE HAD NEAR MY
5 FATHER.

6 Q. IN MONCK'S CORNER?

7 A. YES.

8 Q. OKAY. DID YOU GO TO WORK THEN?

9 A. YES, SIR. ACTUALLY I WAS WORKING WITH MY FATHER.

10 Q. YOU WENT BACK TO WORK WITH YOUR FATHER?

11 A. YES.

12 Q. HAVE YOU WORKED WITH HIM EVER SINCE?

13 A. YES, SIR, I HAVE.

14 Q. OKAY. YOU WENT OUT ON A PLUMBING JOB ONE TIME; AND
15 YOU WENT TO MARYLAND ONE TIME?

16 A. YES.

17 Q. OTHER THAN THAT, YOU'VE WORKED WITH YOUR FATHER?

18 A. YES.

19 Q. WHAT DO YOU CONSIDER YOURSELF? I MEAN, WHAT TRADE
20 DO YOU THINK YOU'RE PROFICIENT IN?

21 A. I'M PROFICIENT IN CARPENTRY, PLUMBING, ELECTRIC,
22 AND PRETTY MUCH ANYTHING DEALING WITH THE BUILDING
23 AND CONSTRUCTION OF HOMES.

24 Q. YOU CAN BUILD A HOUSE?

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 Q. ALL RIGHT, SIR. YOU SAY YOU CAME BACK FROM
2 MARYLAND; ADRIAN WAS PREGNANT WITH TWINS?

3 A. YES, SIR.

4 Q. TELL US ABOUT THOSE TWINS; HOW THAT CAME ABOUT.

5 A. WELL, AT THE TIME WE KNEW THAT SHE WAS PREGNANT.
6 BUT WE HAD NO KNOWLEDGE THAT SHE WAS HAVING TWINS
7 UNTIL SHE ACTUALLY DELIVERED. AND THAT'S WHEN WE
8 WERE INFORMED THAT SHE WAS CARRYING TWINS BECAUSE
9 EACH TIME THAT SHE HAD WENT TO PRENATAL, THEY
10 DIDN'T DETECT TWO BABIES.

11 Q. SO THEY DIDN'T KNOW THERE WAS TWO BABIES?

12 A. NO, SIR.

13 Q. AND DID SHE HAVE A NORMAL PREGNANCY?

14 A. NO, SIR. SHE HAD A CESARIAN SECTION.

15 Q. AND AT WHAT MONTH IN THE TERM?

16 A. SHE WENT IN HER SIX MONTH TERM.

17 Q. AFTER ABOUT SIX MONTHS, SHE HAD A CESARIAN SECTION?

18 A. YES, SIR.

19 Q. AND YOU WERE THERE WHEN THAT HAPPENED?

20 A. YES, SIR, I WAS.

21 Q. AND HOW DID THE BABIES APPEAR TO YOU AFTER THEY
22 WERE BORN?

23 A. THEY WERE EXTREMELY SMALL; EXTREMELY.

24 Q. AND DID YOU LET THEM COME HOME?

25 A. NO, SIR. THEY STAYED IN NEONATAL INTENSIVE CARE AT

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1 M.U.S.C. FOR ABOUT TWO-AND-A-HALF MONTHS OR THREE
2 MONTHS.

3 Q. BEFORE THEY CAME HOME?

4 A. YES, SIR.

5 Q. AND WHEN THEY CAME HOME, HOW WERE THEY?

6 A. WHEN THEY CAME HOME, THEY BOTH WERE ON OXYGEN AND
7 APNEA HEART MONITORS.

8 Q. AND HOW LONG DID THEY HAVE TO DO THAT?

9 A. ABOUT SEVEN TO EIGHT MONTHS.

10 Q. AND DID THEY HAVE PROBLEMS?

11 A. YES. BECAUSE WHEN THEY WERE BORN, THEIR LUNGS WERE
12 UNDERDEVELOPED AND THEY HAD VARIOUS DIFFICULTIES
13 FROM THE EXTREMITIES AND BEING BIRTHED.

14 Q. AND DID THEY REQUIRE EXTRA CARE?

15 A. YES, SIR, THEY DID.

16 Q. AND WHO ALL DID THAT?

17 A. ADRIAN, HER MOTHER, AND MYSELF.

18 Q. SO YOU HELPED TAKE CARE OF THEM?

19 A. YES.

20 Q. AND WHAT KIND OF PROGRESS DID THEY MAKE?

21 A. WELL, FROM TAKING THE KIDS BACK AND FORTH TO THE
22 HIGH RISK CLINIC, WE FOUND OUT THAT Child AND
23 TYSHEEM BOTH WERE DELAYED, AND IT WAS LATER TO BE
24 FOUND OUT THAT TYSHEEN WAS AUTISTIC.

25 Q. TYSHEEN?

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1 A. YES, SIR.

2 Q. OKAY. AND WHAT ABOUT THE OTHER?

3 A. OH, Child HE HAD PROBLEMS ALSO.

4 Q. Child

5 A.

6 Q. AND THAT'S THE CHILD THAT WE'RE CONCERNED ABOUT
7 HERE TODAY?

8 A. YES, SIR.

9 Q. AND WHAT WAS HIS PROBLEM?

10 A. WELL, THEY BOTH WERE DETERMINED TO BE
11 UNDER-DEVELOPED AS FAR AS THEIR MOTOR SKILLS,
12 SPEECH, AND COMPREHENSION.

13 Q. AND DID THEY REQUIRE EXTRA CARE?

14 A. YES, SIR, THEY DID.

15 Q. I GUESS BY NOW YOU'RE PRETTY WELL FAMILIAR WITH
16 RAISING KIDS?

17 A. OH, YES, SIR, I AM.

18 Q. AND WERE THEY ABLE TO USE THE BATHROOM ON THEIR
19 OWN?

20 A. NO, SIR. THEY ACTUALLY WORE TRAINING PANTS;
21 PULLUPS.

22 Q. AND THEN YOU WOULD HAVE TO DO WHAT?

23 A. I WOULD HAVE TO CHANGE THEM BECAUSE THEY WEREN'T
24 CAPABLE OF USING THE RESTROOM ON THEIR OWN.

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1 A. YES, SIR, THEY GREW. BUT BECAUSE, I GUESS, FROM
2 BEING DELAYED, THEY NEVER GREW TO NORMAL SIZE.

3 Q. THEY WERE SMALL FOR THEIR SIZE?

4 A. YES, SIR.

5 Q. WERE THEY ACTIVE?

6 A. YES, SIR, THEY WERE ACTIVE.

7 Q. DID THEY LIKE TO GET AROUND?

8 A. YES, SIR.

9 Q. WERE THEY CRAWLING?

10 A. YES, SIR.

11 Q. WOULD THEY CLIMB?

12 A. YES, SIR.

13 Q. WOULD THEY RUN IF THEY GOT A CHANCE?

14 A. YES, SIR.

15 Q. WOULD THEY PLAY?

16 A. YES, SIR.

17 Q. WOULD THEY FIGHT?

18 A. YES, SIR.

19 Q. HOW DID YOU FEEL ABOUT THEM?

20 A. I LOVED THEM BECAUSE THEY'RE MY CHILDREN. AND I
21 DIDN'T FEEL NEGATIVE ABOUT THEM AT ALL.

22 Q. DID YOU LOVE THEM AS MUCH AS YOUR OTHER CHILDREN?

23 A. ACTUALLY, YES, I DID. AND I PUT MORE EFFORT
24 BECAUSE THEY NEEDED MORE CARE.

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1 ONE EYE?

2 A. YES.

3 Q. ARE YOU FAMILIAR WITH THAT?

4 A. YES, I AM FAMILIAR WITH THAT.

5 Q. WHEN DID YOU FIRST LEARN THAT HE WAS BLIND IN ONE
6 EYE?

7 A. WE FIRST LEARNED THAT HE WAS BLIND IN ONE EYE AFTER
8 TAKING HIM TO M.U.S.C. THAT'S WHEN THEY DETERMINED
9 THAT HE HAD CATARACTS AND A DETACHED CORNEA. AND
10 LATER ON, THAT'S WHEN THEY SCHEDULED FOR HIM TO
11 HAVE SURGERY. AND THAT'S WHEN WE WERE TOLD THAT HE
12 WAS BLIND IN HIS RIGHT EYE.

13 Q. DID YOU EVER HIT HIM BESIDE THE HEAD?

14 A. NO, SIR.

15 Q. DID YOU EVER KNOW OF HIM TO HAVE A LICK BESIDE HIS
16 HEAD?

17 A. NO, SIR.

18 Q. OR SUFFER ANY HEAD TRAUMA?

19 A. NO, SIR.

20 Q. BECAUSE OF A DETACHED RETINA?

21 A. NO, SIR.

22 Q. OKAY. THERE'S BEEN SOME TESTIMONY THAT A CIGARETTE
23 BURN WAS FOUND ON HIS REAR. DO YOU SMOKE?

24 A. NO, SIR; NEVER HAVE.

25 Q. DOES ADRIAN SMOKE?

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1 A. NO, SIR; SHE NEVER HAS.

2 Q. DID YOU EVER KNOW HIM TO HAVE ANY PROBLEMS WITH
3 SKIN?

4 A. YES, SIR. BOTH OF THE TWINS ARE ALLERGIC TO
5 MOSQUITO BITES. AND ANY TIME THEY GOT BIT BY
6 MOSQUITOS OR INSECTS, IT WOULD ACTUALLY TURN INTO A
7 SORE.

8 Q. HOW ABOUT FIRE ARTS?

9 A. PRETTY MUCH THE SAME THING. THEY HAVE VERY
10 SENSITIVE SKIN. I'M NOT SURE WHAT THEY CALL IT,
11 BUT THEY HAVE VERY SENSITIVE SKIN.

12 Q. HAVE YOU EVER KNOWN THEM TO BE BURNED?

13 A. NO, SIR; I'VE NEVER KNOWN THEM TO BE BURNT.

14 Q. YOU HAVE KNOWN THEM TO BE BITTEN BY INSECTS?

15 A. YES, SIR; NUMEROUS TIMES.

16 Q. DID THEY HAVE ACCIDENTS?

17 A. YES, SIR, THEY DID HAVE ACCIDENTS.

18 Q. WELL, TELL ME SOME OF THE ACCIDENTS THEY WOULD
19 HAVE.

20 A. AS I SAID, FROM THE FACT THAT THEY WERE
21 DEVELOPMENTALLY DELAYED, THEY COULDN'T WALK LIKE
22 NORMAL CHILDREN. SO THEY COULD POSSIBLY WALK ON A
23 FLAT SURFACE A FEW STEPS AND FALL.

24 Q. WOULD THEY NOT ONLY WALK; WOULD THEY TRY TO RUN?

25 A. OH, YES. SIR. THEY WOULD TRY TO RUN. THEY WOULD

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- 1 TRY TO DO EVERYTHING THAT NORMAL KIDS WOULD DO.
- 2 Q. WHAT WOULD HAPPEN IF SOMEBODY DIDN'T CATCH THEM?
- 3 A. THEY WOULD FALL.
- 4 Q. DID THEY EVER DO THAT TO THE STEPS?
- 5 A. YES, SIR, THEY'VE DONE THAT BEFORE.
- 6 Q. DID SOMEBODY HAVE TO PRETTY MUCH WATCH THEM ALL THE
- 7 TIME?
- 8 A. YOU HAD TO; YES, SIR.
- 9 Q. WHAT ABOUT CLIMBING?
- 10 A. YES, SIR. Child WAS VERY ACTIVE.
- 11 Q. MORE ACTIVE THAN THE OTHER ONE?
- 12 A. YES, SIR, HE'S A LOT MORE ACTIVE, BECAUSE AS I SAID
- 13 BEFORE, TYSHEEN IS AUTISTIC. SO HE'S NOT CAPABLE
- 14 OF DOING MOST OF THE THINGS THAT Child IS.
- 15 Q. AND Child IS SMALLER?
- 16 A. YES, HE IS.
- 17 Q. I THINK ON ONE OCCASION Child HAD HIS LEG BROKE?
- 18 A. YES, HE DID.
- 19 Q. WERE YOU PRESENT WHEN THAT HAPPENED?
- 20 A. WHICH OCCASION ARE YOU SPEAKING ABOUT, MR. DUKES?
- 21 Q. WHEN YOUR WIFE FELL WITH HIM.
- 22 A. YES, SIR. ACTUALLY I CAME HOME THAT DAY, AND MY
- 23 FAMILY, MY FATHER, MY STEPMOTHER AND MY SISTER WERE
- 24 THERE. AND THAT'S WHEN THEY TRANSPORTED HIM TO THE
- 25 HOSPITAL.

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1 Q. AND ON ANOTHER OCCASION IN 1989, ANOTHER LEG WAS
2 BROKE AGAIN -- MAYBE ANOTHER LEG WAS BROKE?

3 A. YES.

4 Q. AND HE HAD ANOTHER BROKEN LEG?

5 A. YES, HE DID.

6 Q. AND YOU WERE PRESENT WHEN THAT HAPPENED?

7 A. YES, I WAS.

8 Q. PLEASE TELL US WHAT HAPPENED.

9 A. AS I SAID, IN 1998 I WAS HOME WITH THE CHILDREN,
10 AND Child -- AS I SAID, HE LIKES TO CRAWL; CLIMB.
11 THEY WERE IN THEIR ROOM WATCHING A VIDEO. I WAS
12 PREPARING FOOD. I CAME BACK INTO THE ROOM AND
13 Child HAD CRAWLED ON TOP OF THE TOY BOX AND UP TO
14 THE SECOND SHELF, THE BOOK SHELF WHERE WE KEPT A
15 BOOK AND VIDEOS AND STUFFED ANIMALS. AND IN TURN
16 IT WAS A BUBBLE MACHINE ON THE FLOOR. AND Child
17 WHEN I CAME IN, AS I SAID, WAS ON THE SECOND
18 SHELF. AND WHEN I OPENED THE DOOR, HE JUST
19 INADVERTENTLY LET GO AND FELL. AND THAT'S WHEN HE
20 LANDED ON TOP OF THE BUBBLE MACHINE.

21 Q. AND WHAT TYPE OF BUBBLE MACHINE WAS IT?

22 A. IT WAS A FISHER PRICE BUBBLE MACHINE, BUBBLE
23 BLOWER. IT LOOKS SORT OF LIKE A WEEDEATER OF
24 SORTS. IT HAS A LONG END ON IT ABOUT MAYBE A FOOT
25 LONG. AND IT HAS A BIG ROUND SURFACE TO THE

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1 BOTTOM.

2 Q. WHAT KIND OF MATERIAL IS IT MADE OUT OF?

3 A. HARD MOLDED PLASTIC.

4 Q. YOU SAID HE HAD CLIMBED UP THE BOOK CASE?

5 A. YES, SIR.

6 Q. HOW HIGH WAS HE OFF THE FLOOR?

7 A. AT LEAST FIVE, FIVE-AND-A-HALF FEET.

8 Q. AND HE FELL FROM UP THERE?

9 A. YES, SIR.

10 Q. ONTO THAT?

11 A. YES, SIR.

12 Q. DID HE CRY?

13 A. OH, YES, HE DID.

14 Q. AND WHERE DID HIS LEG HIT? DID YOU SAY?

15 A. YES, SIR. HIS THIGH HIT RIGHT DIRECTLY ON TOP OF
16 THE BUBBLE GUM MACHINE.

17 Q. WHAT DID YOU DO THEN?

18 A. I PICKED HIM UP. AND THAT'S WHEN I NOTICED THAT
19 HIS LEG WAS AT A FUNNY ANGLE. AND THAT'S WHEN I IN
20 TURN CALLED ADRIAN AND HAD HIM TRANSPORTED TO THE
21 DOCTOR.

22 Q. IMMEDIATELY?

23 A. YES.

24 Q. OKAY. AND THEN THIS TIME; THAT WAS '89 -- '99?

25 A. ...

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- 1 Q. '98. ADRIAN WAS WORKING?
- 2 A. YES, SHE WAS.
- 3 Q. AND WERE YOU WORKING?
- 4 A. NO, SIR.
- 5 Q. WHAT WERE YOU DOING AT THAT TIME?
- 6 A. I WAS TAKING CARE OF THE CHILDREN.
- 7 Q. TELL ME WHAT A GENERAL DAY WOULD BE LIKE WHEN YOU
- 8 TOOK CARE OF THE CHILDREN.
- 9 A. A GENERAL DAY; AS SOON AS THE KIDS WOULD GET UP, I
- 10 WOULD GET THEM UP, FEED THEM, WASH THEM, GET THEM
- 11 READY FOR SCHOOL OR WHAT HAVE YOU. BUT AT THIS
- 12 TIME THEY WEREN'T ATTENDING SCHOOL; SO I JUST
- 13 BASICALLY GOT THEM UP, FED THEM, WOULD ALLOW THEM
- 14 TO GO OUTSIDE AND PLAY, BRING THEM BACK IN, FEED
- 15 THEM LUNCH, COOK DINNER. AND WHEN ADRIAN CAME
- 16 HOME, WE'D ALL EAT DINNER, PUT THE KIDS UP FOR BED.
- 17 Q. WHO COOKED DINNER?
- 18 A. I COOKED DINNER MOST OF THE TIME BECAUSE ADRIAN
- 19 WORKS.
- 20 Q. ARE YOU A GOOD COOK?
- 21 A. YES, I AM.
- 22 Q. DID Y'ALL ATTEND CHURCH?
- 23 A. YES, WE DID ATTEND CHURCH.
- 24 Q. WHAT CHURCH DID YOU GO TO?

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1 AND I WOULD ATTEND WITH THEM. BUT I'M A MEMBER OF
2 WESLEY UNITED METHODIST.

3 Q. HOW OFTEN DID YOU ATTEND?

4 A. WE ATTENDED OFTEN.

5 Q. DID Y'ALL HAVE THINGS FOR THE CHILDREN?

6 A. OH, YES, SIR; WE HAD A LOT OF THINGS FOR OUR
7 CHILDREN.

8 Q. YOU AND ADRIAN AND THE CHILDREN DID THINGS
9 TOGETHER?

10 A. YES, WE DID. WE'D GO TO MOVIES. WE WENT TO THE
11 ZOO. EVERY SUMMER WE'D TAKE THEM TO MYRTLE BEACH.

12 Q. OKAY. NOW I CALL YOUR ATTENTION TO THE WEEK OF, I
13 GUESS, THE FIRST WEEK OF NOVEMBER OF LAST YEAR.

14 A. UH-HUH.

15 Q. TELL US WHAT WAS GOING ON IN YOUR HOUSEHOLD THEN?

16 A. IT WAS JUST A TYPICAL DAY. IT WAS SATURDAY. I HAD
17 JUST WENT TO THE MALL THAT PREVIOUS FRIDAY AND
18 BOUGHT ALL THE KIDS AND ADRIAN CLOTHES AND SNEAKERS
19 AND THINGS LIKE THAT. AND IT WAS SATURDAY ABOUT
20 FIVE O'CLOCK THAT AFTERNOON. ADRIAN'S MOM HAD CAME
21 BY. AND THAT'S WHEN THEY WERE GOING SHOPPING
22 BECAUSE ADRIAN NEEDED TO GET A DRESS FOR CHURCH THE
23 FOLLOWING SUNDAY. SO ADRIAN AND HER MOM LEFT. AND
24 I WAS THERE WITH THE FOUR MONTH OLD BABY, THE
25 TWINS, TAKEA, AND LITTLE DEAN. I WAS COOKING

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1 DINNER FOR TAKEA AND LITTLE DEAN. AND I FED THOSE
2 TWO. I GAVE THE BABY HER BOTTLE. AND THAT'S WHEN
3 I WENT IN THE ROOM TO WAKE UP TY AND FOR
4 DINNER.

5 Q. BACK UP A LITTLE BIT. YOU WENT IN THE ROOM TO WAKE
6 THEM UP. AND WHAT TIME WAS THIS?

7 A. THIS WAS ABOUT 5:30.

8 Q. OKAY. IS THIS USUAL OR UNUSUAL?

9 A. WELL, NO, THAT'S USUAL BECAUSE WE NORMALLY GIVE
10 AND TY NAPS BECAUSE, LIKE I SAID, THEY'RE ACTIVE.

11 Q. AND THEY GENERALLY TAKE A NAP EVERY DAY?

12 A. YES, EVERY DAY.

13 Q. OKAY. ALL RIGHT. AND YOU WERE GOING TO FEED THEM?

14 A. YES, SIR. I WAS ABOUT TO FEED THEM.

15 Q. ANYTHING ELSE?

16 A. OH, YES. WELL, AFTER I FED THEM, I WAS GOING TO
17 BATHE THEM.

18 Q. AND TELL ME WHAT HAPPENED WHEN YOU WENT IN THE
19 ROOM.

20 A. WHEN I WENT IN THE ROOM, I CALLED TO TYSHEEM AND

21 Child "TY, , GET UP; IT'S TIME TO EAT."

22 TYSHEEM JUST JUMPED RIGHT UP. Child DIDN'T

23 RESPOND. I CALLED TO HIM AGAIN, Child AND HE
24 DIDN'T RESPOND.

25 Q. IS THAT USUAL OR UNUSUAL?

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- 1 A. THAT'S UNUSUAL.
- 2 Q. WHICH ONE JUMPS UP FIRST?
- 3 A. TYSHEEM.
- 4 Q. HE'S THE MOST ACTIVE?
- 5 A. NO, SIR.
- 6 Q. WHO'S THE MOST ACTIVE?
- 7 A. Child [REDACTED]
- 8 Q. OKAY. BUT TYE GENERALLY WAKES UP FIRST?
- 9 A. YES.
- 10 Q. AND WAS A LITTLE HARD TO WAKE UP?
- 11 A. YES. HE WAS HARD TO WAKE UP; YES.
- 12 Q. HAD YOU TAKEN HIM TO THE DOCTOR THAT WEEK?
- 13 A. YES, HE WAS TO THE DOCTOR THAT WEEK.
- 14 Q. AND WHAT WAS HE TO THE DOCTOR FOR?
- 15 A. HE WAS TO THE DOCTOR BECAUSE EARLIER THAT WEEK, HE
- 16 HAD A COLD AS WELL AS A FEVER.
- 17 Q. WAS ANY MEDICINE PRESCRIBED FOR HIM?
- 18 A. YES, HE DID GET MEDICATION.
- 19 Q. OKAY. AND HAD HE BEEN TAKING HIS MEDICATION?
- 20 A. YES, HE WAS.
- 21 Q. TELL ME HOW HE APPEARED WHEN HE DID WAKE UP?
- 22 A. WHEN HE WOKE UP, HE APPEARED GROGGY. AND HE HAD A
- 23 BUNCH OF MUCUS ON THE BOTTOM OF HIS NOSE.
- 24 Q. ALL RIGHT. WHAT DID YOU DO?
- 25 A. LIKE I SAID. BECAUSE HE HAD A COLD EARLIER THAT

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1 DAY, HE HAD JUST TOOK COLD MEDICINE AND ADVIL. SO
2 WHEN HE WOKE UP, I JUST CLEANED HIS NOSE, AND I
3 STOOD HIM UP. WHEN I STOOD HIM UP, HE FELL ON THE
4 FLOOR. THEN I STOOD HIM BACK UP AGAIN. HE FELL
5 BACK ON THE FLOOR. SO I IN TURN LAID HIM UPON THE
6 BED. AND THAT'S WHEN I CHANGED HIM.

7 Q. AND WHEN YOU CHANGED HIM, YOU CHANGED HIS PANTS?

8 A. HIS PULL-UPS; YES.

9 Q. HE NEVER HAD LEARNED TO USE THE BATHROOM?

10 A. NO.

11 Q. SO HE HAD NO PROBLEM STANDING ON HIS OWN?

12 A. NO.

13 Q. NOW WHAT DID YOU THINK THIS DAY?

14 A. WELL, I THOUGHT HE WAS WEAK BECAUSE OF THE FACT
15 THAT HE WAS SICK.

16 Q. WITH THE COLD?

17 A. YES.

18 Q. OKAY. SO HE HAD PROBLEMS STANDING?

19 A. YES.

20 Q. AND HE FELL TWICE?

21 A. YES.

22 Q. AND YOU PUT HIM ON THE BED?

23 A. I PUT HIM ON THE BED. THAT'S WHEN I CHANGED HIS
24 PULL-UPS.

WHAT DID YOU DO THEN?

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- 1 A. AFTER I CHANGED HIS PULL-UPS; LIKE I SAID, HE WAS
2 ON THE BED. AND HE JUST -- FROM THE TIME I WALKED
3 IN THE ROOM, HE WASN'T ACTING LIKE HIMSELF. AND
4 THAT'S WHEN HIS EYES JUST ROLLED BACK IN HIS HEAD;
5 AND HE STARTED CONTORTING AND TWITCHING.
- 6 Q. WHAT DID YOU THINK THEN?
- 7 A. AT FIRST I DIDN'T KNOW WHAT TO THINK, BUT THEN HE
8 STARTED GRITTING HIS TEETH. AND THAT'S WHEN I
9 ASSUMED HE WAS HAVING A SEIZURE.
- 10 Q. WHAT DID YOU DO THEN?
- 11 A. I CLEARED HIS TONGUE. I STUCK MY FINGER IN HIS
12 MOUTH AND HELD HIS TONGUE TO MAKE SURE HE WOULDN'T
13 BITE HIS TONGUE OFF.
- 14 Q. WHAT DID YOU DO THEN?
- 15 A. EXCUSE ME?
- 16 Q. DID HE BITE YOU BACK?
- 17 A. YES, SIR. HE BIT DOWN EXTREMELY HARD.
- 18 Q. BUT YOU WERE ABLE TO TELL THAT HE HADN'T SWALLOWED
19 HIS TONGUE?
- 20 A. YES.
- 21 Q. SO WHAT HAPPENED NEXT?
- 22 A. HE WAS ACTING LIKE HE COULDN'T BREATHE. HE WAS
23 ACTING LIKE HE WAS HAVING DIFFICULTY BREATHING.
24 AND THAT'S WHEN I LOOKED INSIDE OF HIS MOUTH TO
MAKE SURE HE HADN'T SWALLOWED ANYTHING. AND ONCE I

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1 SAW THAT HIS WIND WASN'T OBSTRUCTED, HE JUST DIDN'T
2 SEEM RIGHT. AND THAT'S WHEN I LOOKED AT HIM, AND I
3 TRIED TO DO C.P.R.

4 Q. HOW DID YOU TRY TO DO THAT?

5 A. WE HAVE A CARD ON THE REFRIGERATOR WHERE THEY GIVE
6 YOU STEP BY STEP HOW TO DO C.P.R., AND I JUST READ
7 THE CARD OFF AND TRIED IT.

8 Q. YOU WENT AND GOT THE CARD?

9 A. YES.

10 Q. THAT'S MOUTH TO MOUTH?

11 A. YES.

12 Q. DID YOU GET ANY RESPONSE FROM THAT?

13 A. NO.

14 Q. HAS HE HAD BREATHING PROBLEMS IN THE PAST?

15 A. YES; WHEN HE WAS BORN AND EARLY ON WHEN HE WAS
16 YOUNG; YES.

17 Q. DID HE HAVE ASTHMA?

18 A. HE HAD BRONCHITIS; YES.

19 Q. BRONCHITIS. WAS THAT WHAT HE WAS SUFFERING FROM
20 THAT WEEK?

21 A. I DON'T KNOW.

22 Q. BUT HE HAD BEEN TO THE DOCTOR FOR SOME SORT OF
23 COLD?

24 A. YES.

25 Q. OKAY. YOU DID THE MOUTH TO MOUTH?

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1 A. YES.

2 Q. DID IT DO ANY GOOD?

3 A. NO.

4 Q. WHAT HAPPENED?

5 A. THAT'S WHEN I PICKED HIM UP IN MY ARMS; AND I
6 RUSHED OUT OF THE ROOM AND PUT HIM INTO THE BATHTUB
7 AND STARTED SPLASHING COLD WATER ON THEM.

8 Q. DID THAT DO ANY GOOD?

9 A. NO.

10 Q. DID ANYTHING HAPPEN ON THE WAY TO THE BATHROOM?

11 A. AS I WAS RUNNING -- AS I SAID, I HAD HIM IN MY
12 ARMS. AND I WAS RUNNING TO THE BATHROOM. AND
13 INSIDE THE HOUSE, THE DOOR OPENS UP INTO THE
14 HALLWAY. AND LIKE I SAID, HE BUTTED HIS HEAD, AND
15 WHEN I WENT IN THE BATHROOM, YOU KNOW, HE DIDN'T
16 SEEM LIKE ANYTHING OTHER THAN THE SEIZURE.

17 Q. WHAT STATE WAS HE IN AT THAT TIME?

18 A. HE WAS STILL CONTORTING. AND LIKE I SAID, I WAS
19 STILL UNDER THE IMPRESSION THAT HE COULDN'T
20 BREATHE.

21 Q. WAS HE RIDGED?

22 A. YES; HE WAS RIDGED.

23 Q. AND WAS HE JERKING OUT OF CONTROL?

24 A. YES; HE WAS CONTORTING HIS ARMS WHICH WAS TWISTED
25 AND HIS LEGS; AND HE WAS MAKING A REAL SCARY SOUND.

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1 Q. TELL ME ABOUT THE BATHTUB NOW. HOW DID THAT
2 HAPPEN?

3 A. AS HE WENT INTO THE BATHTUB, I HELD HIM UP WITH ONE
4 HAND, AND I TURNED ON THE WATER. AND LIKE I SAID,
5 HE JUST DROPPED DOWN. AND WHEN HE DROPPED DOWN, I
6 JUST LEFT HIM ON HIS BACK; AND I RAN THE COLD WATER
7 OVER HIM.

8 Q. DID HE FALL INTO THE TUB?

9 A. WHEN I WAS HOLDING HIM UP, YES, SIR. HE FELL; BUT
10 I STILL HAD MY HAND ON HIM.

11 Q. HOW LONG DID YOU LEAVE HIM IN THE TUB?

12 A. HE STAYED IN THE TUB FOR ABOUT -- NOT EVEN A
13 MINUTE; NOT EVEN A MINUTE-AND-A-HALF.

14 MRS. MURPHY: YOUR HONOR, I'M GOING TO
15 OBJECT TO PEOPLE IN THE COURTROOM EMOTION.

16 THE COURT: YES, SIR, MR. DAVIS. IS YOUR
17 CLIENT NOT ABLE TO CONTROL HERSELF? DO WE NEED TO
18 TAKE A BREAK?

19 MR. DAVIS: THAT'S NOT MY CLIENT, YOUR
20 HONOR.

21 THE COURT: I APOLOGIZE TO YOU, MR.
22 DAVIS. I THOUGHT THAT WAS YOUR CLIENT. ALL RIGHT,
23 MR. DUKES. YOU MAY PROCEED.

24 Q. SO YOU TOOK HIM OUT OF THE TUB?

25 A. YES.

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1 Q. AND WHERE DID YOU GO THEN?

2 A. THAT'S WHEN I RAN INTO THE FRONT ROOM WITH HIM; AND
3 I LAID HIM ON THE COUCH, AND I CALLED 911.

4 Q. OKAY. AND WHAT DID YOU TELL THEM?

5 A. I TOLD THEM THAT MY SON WAS HAVING A SEIZURE, AND I
6 NEEDED AN AMBULANCE.

7 Q. HAVE YOU EVER BEEN AROUND A SEIZURE BEFORE?

8 A. NO, SIR.

9 Q. DID ANY OF YOUR OTHER CHILDREN EVER HAVE THEM?

10 A. NO, SIR.

11 Q. HAD THIS CHILD EVER HAD ONE?

12 A. NO, SIR.

13 Q. DID YOU DO ANYTHING ELSE?

14 A. THAT'S WHEN THE GUY INFORMED ME TO LAY HIM ON TO
15 FLOOR. AND I LAID HIM ON THE FLOOR. AND AT THE
16 TIME Child [REDACTED] RESPOND. AND THE OTHER
17 KIDS WERE COMING IN THE FRONT ROOM; SO I SENT THEM
18 BACK IN THE BACK ROOM.

19 Q. YOU HAD FOUR OTHER KIDS THERE WITH YOU?

20 A. YES, SIR.

21 Q. AND WHAT DID YOU DO?

22 A. AND Child [REDACTED] -- I CALLED OUT TO Child [REDACTED] BUT HE
23 WOULDN'T RESPOND. I SAID, " ". HE WOULDN'T
24 RESPOND. AND I TOOK OFF MY HOUSE SHOE, AND I HIT
25 HIM ON HIS CHEST. I SAID, " AND UP

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1 WOULDN'T RESPOND."

2 Q. WHY DID YOU DO THAT?

3 A. THAT'S WHEN I WAS ON THE PHONE TALKING TO THE GUY
4 FROM E.M.S.

5 Q. DID YOU HAVE AN IDEA THAT WOULD HELP?

6 A. NO, SIR. I JUST DIDN'T KNOW WHAT TO DO.

7 Q. AND WHAT DID THE MAN AT E.M.S. TELL YOU?

8 A. HE WAS JUST TALKING TO ME, AND HE ASKED ME DID I DO
9 C.P.R.; AND I TOLD HIM I TRIED. AND HE SAID NOT
10 TO; AND HE WAS JUST TALKING WITH ME. AND THAT'S
11 WHEN HE SAID THAT AN AMBULANCE WOULD BE EN ROUTE.

12 Q. AND DID THE AMBULANCE COME?

13 A. YES, SIR, IT DID.

14 Q. HOW LONG WAS IT BEFORE THE AMBULANCE GOT THERE?

15 A. ABOUT FIVE OR SIX MINUTES BEFORE THEY CAME.

16 Q. AND ABOUT THAT TIME, RIGHT BEFORE THAT, HAD ADRIAN
17 CALLED YOU?

18 A. YES, SIR. SHE HAD CALLED. AND HER AND HER MOTHER
19 WERE TOGETHER. THAT'S WHEN SHE CALLED ME. AND SHE
20 SAID THAT THEY WOULD BE HOME IN A FEW MINUTES. AND
21 I TOLD HER; I SAID, "ADRIAN, YOU HAVE TO COME HOME
22 NOW; SOMETHING IS WRONG WITH Child " "

23 Q. HAD YOU ALREADY CALLED 911?

24 A. YES, SIR; I HAD ALREADY CALLED 911.

25 Q. HOW LONG DID ALL THIS TAKE PLACE? DO YOU HAVE ANY

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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- 1 IDEA?
- 2 A. ABOUT TEN MINUTES.
- 3 Q. THE AMBULANCE CAME?
- 4 A. YES.
- 5 Q. THEN ADRIAN AND HER MOTHER WENT WITH Child
- 6 A. ACTUALLY THEY CAME BEFORE THE AMBULANCE CAME.
- 7 Q. THEY GOT THERE BEFORE?
- 8 A. YES.
- 9 Q. AND I THINK ADRIAN STAYED WITH YOU, AND THE MOTHER
- 10 WENT DOWN TO THE END OF THE ROAD TO MAKE THAT THEY
- 11 KNEW WHERE IT WAS COMING?
- 12 A. YES, SIR.
- 13 Q. AND SO WHO ALL CAME?
- 14 A. THE AMBULANCE AND THE FIRE DEPARTMENT.
- 15 Q. AND THEY IMMEDIATELY TOOK Child
- 16 A. YES, SIR. THE GUY CAME, AND HE LOOKED AT HIM. HE
- 17 TRIED TO GET HIM TO RESPOND. AND THAT'S WHEN HE
- 18 LIFTED HIM UP AND TOOK HIM.
- 19 Q. AND ADRIAN WAS THERE THEN; SO SHE WENT WITH -- WHAT
- 20 DID YOU DO?
- 21 A. I STAYED THERE WITH THE OTHER FOUR CHILDREN.
- 22 Q. OKAY. AND EVENTUALLY DID SOME OTHER LAW COME
- 23 THERE?
- 24 A. YES, SIR.
- 25 Q. WHO WAS THAT?

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- 1 A. DETECTIVE BOTTEN AND ABOUT TWO OTHER CARS.
- 2 Q. DID THEY COME IN?
- 3 A. NO, NOT INITIALLY.
- 4 Q. HOW LONG WAS IT BEFORE SOMEBODY CAME IN AND TALKED
- 5 TO YOU?
- 6 A. ABOUT AN HOUR-AND-A-HALF TO TWO HOURS.
- 7 Q. AND WHO WAS THAT?
- 8 A. THAT WAS DEPUTY BOTTEN.
- 9 Q. AND WHAT DID HE ASK YOU?
- 10 A. HE ASKED ME COULD I GIVE HIM A STATEMENT OF WHAT .
- 11 HAPPENED.
- 12 Q. DID YOU?
- 13 A. YES, SIR.
- 14 Q. AND YOU PUT IT IN YOU OWN WRITING?
- 15 A. YES, I DID.
- 16 Q. AND YOU GAVE IT TO HIM?
- 17 A. YES.
- 18 Q. WHAT HAPPENED NEXT?
- 19 A. DEPUTY BOTTEN STAYED UNTIL ABOUT 12:00 TO 12:30;
- 20 AND THAT'S WHEN HE TOLD ME THAT THE CHILDREN WOULD
- 21 HAVE TO BE GOING INTO PROTECTIVE CUSTODY. THEN I
- 22 HELPED ADRIAN'S MOM AND HER AUNT. AND WE STARTED
- 23 GETTING THE KIDS STUFF TOGETHER.
- 24 Q. AND DO YOU REMEMBER ANYTHING AFTER THAT?
- 25 A. YES, SIR. THAT'S WHEN -- I DON'T REMEMBER WHICH

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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1 DEPUTY. BUT HE TOLD ME THEY WANTED ME TO COME TO
2 DEMMING WAY TO GIVE A STATEMENT.

3 Q. DID YOU GO OUT THERE?

4 A. I TOLD THEM THAT I WOULD NOT GO TO DEMMING WAY
5 UNTIL ADRIAN CAME HOME.

6 Q. AND WHERE WAS ADRIAN?

7 A. I HAD FOUND OUT THAT SHE WAS AT THE POLICE
8 DEPARTMENT.

9 Q. WHERE?

10 A. IN DEMMING WAY.

11 Q. SO SHE WAS AT THE PLACE THEY WANTED TO TAKE YOU TO?

12 A. YES.

13 Q. AND DID SHE COME HOME?

14 A. YES, SIR; SHE CAME HOME.

15 Q. AND THEN DID YOU GO?

16 A. YES.

17 Q. AND TELL ME WHAT HAPPENED WHEN YOU GOT THERE.

18 A. WHEN I GOT THERE, I MET DETECTIVE JOYNER AND
19 DETECTIVE MARSHALL. AND THAT'S WHEN HE TOOK ME
20 UPSTAIRS, AND HE ASKED ME TO GIVE A STATEMENT.

21 Q. HE WHO?

22 A. DETECTIVE MARSHALL.

23 Q. OKAY. WHAT DID HE ASK YOU?

24 A. TO GIVE A STATEMENT.

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1 A. I TOLD HIM THAT I HAD ALREADY GAVE A STATEMENT TO
2 DEPUTY BOTTEN. AND THAT IF HE NEEDED ANY
3 INFORMATION, HE COULD GET IT FROM THE STATEMENT I
4 HAD PREVIOUSLY GIVEN TO DEPUTY BOTTEN.

5 Q. WHAT DID HE SAY?

6 A. I DON'T RECALL EXACTLY WHAT HE SAID. BUT I KNOW HE
7 STARTED READING ME MY MIRANDA RIGHTS.

8 Q. OKAY. HE READ YOU YOUR MIRANDA RIGHTS?

9 A. YES.

10 Q. AND WHAT HAPPENED WHEN HE FINISHED WITH THOSE?

11 A. HE GOT TO THE PART WHERE HE ASKED ME IF I WANTED
12 COUNSEL WHILE HE QUESTIONED ME, AND I TOLD HIM THAT
13 YES, I PLEAD THE FIFTH, AND I WOULD PREFER TO HAVE
14 A COUNSEL WHILE HE QUESTIONS ME.

15 Q. ANY REACTION TO THAT?

16 A. YES, IT WAS. WHEN I SAID THAT, DETECTIVE MARSHALL,
17 HE SEEMED LIKE HE GOT UPSET.

18 Q. HOW DO YOU MEAN?

19 A. HE JUST GAVE ME A FEELING LIKE HE WASN'T SATISFIED
20 WITH THE STATEMENT THAT I MADE.

21 Q. DID HE TELL YOU ANYTHING?

22 A. NO. HE TOLD DETECTIVE JOYNER AFTER THAT -- TO GET
23 MY---

24 MRS. MURPHY: OBJECTION, YOUR HONOR. THAT

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1 SOMEONE ELSE SAID FROM A DIFFERENT INDIVIDUAL.

2 THE COURT: DO YOU WISH TO BE HEARD
3 REGARDING HEARSAY?

4 MR. DUKES: NO, MA'AM.

5 THE COURT: THANK YOU. SUSTAINED.

6 Q. DETECTIVE JOYNER TOOK YOU BACK HOME?

7 A. NO, SIR; DEPUTY BOTTEN.

8 Q. DEPUTY BOTTEN TOOK YOU BACK HOME?

9 A. YES.

10 Q. AND THAT WAS SATURDAY NIGHT? OR THAT WAS SUNDAY
11 MORNING?

12 A. SUNDAY MORNING.

13 Q. WHAT TIME DID YOU GET BACK HOME?

14 A. CLOSE TO TWO O'CLOCK.

15 Q. DID YOU HEAR HOW YOUR SON WAS DOING DURING THIS
16 PERIOD OF TIME?

17 A. NO, SIR, I DIDN'T.

18 Q. WERE YOU CONCERNED?

19 A. YES, I WAS.

20 Q. SUNDAY NIGHT, WHEN DID YOU NEXT ENCOUNTER ANYBODY
21 FROM LAW ENFORCEMENT?

22 A. I NEXT ENCOUNTERED DETECTIVE MARSHALL ON TUESDAY
23 WHICH WAS NOVEMBER THE 6TH AT ABOUT TWO O'CLOCK.

24 Q. AND THAT WAS AT THE---

25 A. AT THE R.P.C. PLACEMENT WARDEN

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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- 1 Q. AT THE FAMILY COURT?
- 2 A. YES, SIR.
- 3 Q. AND YOU WENT BEFORE A JUDGE?
- 4 A. YES, SIR, WE DID.
- 5 Q. WHAT JUDGE DID YOU WENT BEFORE?
- 6 A. JUDGE WILLIAM WILEY, JR.
- 7 Q. AND HE READ YOU YOUR MIRANDA RIGHTS?
- 8 A. YES, HE DID.
- 9 Q. AND YOU WERE LED OUT OF THE COURTROOM?
- 10 A. YES, I WAS.
- 11 Q. BY WHO?
- 12 A. ACTUALLY I WENT OUT WITH ADRIAN AND HER FAMILY.
- 13 Q. AND THEN DID SOMEBODY PLACE YOU UNDER ARREST?
- 14 A. YES. THAT'S WHEN I WAS MET IN THE HALLWAY BY
- 15 DETECTIVE MARSHALL AND BY FOUR OTHER OFFICERS.
- 16 Q. AND WHAT HAPPENED THEN?
- 17 A. THAT'S WHEN HE TOLD ME HE HAD A WARRANT FOR MY
- 18 ARREST AND THAT I NEEDED TO GO WITH HIM.
- 19 Q. AND DID YOU?
- 20 A. YES, I DID.
- 21 Q. AND YOU WERE FINGERPRINTED?
- 22 A. YES, SIR, I WAS.
- 23 Q. AND PROCESSED?
- 24 A. YES, SIR.
- 25 Q. DID HE READ YOU YOUR MIRANDA RIGHTS AGAIN?

WILLIAM DEAN BURDEN - DIRECT/MR. DUKES

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

2 Q. DID HE ASK IF YOU WANTED TO MAKE A STATEMENT?

3 A. NO, HE DIDN'T.

4 Q. DID YOU MAKE A STATEMENT?

5 A. NO, I DIDN'T.

6 Q. ARE YOU SURE?

7 A. I'M POSITIVE.

8 Q. AND YOU WERE ARRESTED?

9 A. YES.

10 Q. PLACED ON BOND?

11 A. YES.

12 Q. AND YOU'VE RESIDED IN THE DORCHESTER COUNTY
13 JAILHOUSE SINCE THEN?

14 A. YES, I HAVE.

15 Q. DO YOU LOVE YOUR CHILDREN?

16 A. YES, I DO.

17 Q. HOW DO YOU FEEL TOWARDS THE TWINS?

18 A. I LOVE THEM BECAUSE THEY'RE MY CHILDREN. THEY'RE
19 MY CHILDREN.

20 Q. HAVE YOU EVER DONE ANYTHING TO TRY TO HURT THAT
21 LITTLE BOY?

22 A. NO, I HAVEN'T.

23 Q. HAVE YOU EVER DELIBERATELY HIT HIM?

24 A. NO, I HAVEN'T.

25 Q. HAVE YOU DELIBERATELY STOMPED ON HIM?

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 A. NO, SIR.

2 Q. HOW DO YOU FEEL ABOUT HIM TODAY?

3 A. I LOVE HIM. HE'S MY SON.

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

5 THE COURT: VERY WELL.

6 CROSS-EXAMINATION?

7 MR. DAVIS: THANK YOU, YOUR HONOR.

8 CROSS-EXAMINATION

9 BY MRS. MURPHY:

10 Q. MR. BURDEN, DO YOU RECALL CALLING 911?

11 A. YES, I DO.

12 Q. AND YOUR NAME IS WILLIAM DEAN BURDEN, IS THAT
13 CORRECT?

14 A. YES, IT IS.

15 Q. AND YOUR NAME IS WILLIAM DEAN BURDEN; IS THAT
16 CORRECT?

17 A. YES, IT IS.

18 Q. WELL, WHY DID YOU TELL THE DISPATCHER THAT YOUR
19 NAME WAS ALFRED JACKSON OR ALFRED GADSON?

20 A. I TOLD THEM ESPECIALLY THAT MY NAME WAS ALFRED
21 GADSON BECAUSE I WAS HOME WITH MY CHILDREN, AND I
22 HAD A WARRANT FOR FAMILY COURT, FAILURE TO APPEAR.
23 AND I WAS THE ONLY ONE HOME. AND I DIDN'T WANT TO
24 BE ARRESTED WHILE I WAS THERE ALONE WITH MY
25 CHILDREN. AND ADRIAN'S BROTHER HAD JUST LEFT. AND

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 I WAS EXPECTING HIM BACK.

2 Q. SO YOUR FIRST THOUGHT WHEN YOUR CHILD WAS DYING ON
3 THE FLOOR IS TO GIVE A FAKE NAME TO PROTECT
4 YOURSELF BECAUSE THEY HAD A WARRANT FOR YOUR
5 ARREST?

6 A. NO, MA'AM. AND ACTUALLY---

7 Q. THAT WAS PRETTY MUCH -- LET'S SEE HERE. "I NEED AN
8 AMBULANCE." "OKAY, SIR, WHAT'S YOUR NAME?" "MY
9 NAME IS ALFRED JACKSON OR ALFRED GADSON." THAT'S
10 THE FIRST STATEMENT. THAT'S THE FIRST THING THAT
11 COMES TO YOUR MIND IS PROTECTING YOURSELF; IS THAT
12 NOT TRUE?

13 A. NO; IT'S PROTECTING MY CHILDREN BECAUSE, AS I JUST
14 TOLD YOU, I WAS HOME ALONE WITH MY CHILDREN.

15 Q. WELL, THEN, WHY NOT KEEP A REAL NAME? YOU'RE
16 LOOKING OUT FOR YOURSELF BY GIVING A FAKE NAME, ARE
17 YOU NOT?

18 A. NO, MA'AM, THAT'S YOUR OPINION. NO.

19 Q. ALL RIGHT, SIR. NOW, LET'S KEEP GOING THROUGH
20 THESE DIFFERENT STATEMENTS THAT YOU GAVE AS TO WHAT
21 HAPPENED. WHICH ONE OF THESE IS TRUE; THE ONE THAT
22 YOU WROTE OUT FOR DEPUTY BOTTEN OR THE ONE THAT YOU
23 TOLD THE DISPATCHER, OR THE ONE THAT YOU'RE GIVING
24 HERE TODAY? YOU CAN PICK ONE.

25 MR. DUKES: YOUR HONOR, I OBJECT TO THE

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 FORM OF THAT QUESTION. SHE'S GOT TO ESTABLISH
2 THE---

3 THE COURT: ALL RIGHT.

4 MR. DUKES: SHE CAN POINT OUT THE
5 INCONSISTENCIES; BUT SHE'S ALREADY MAKING THAT
6 FINDING, AND I DON'T THINK SHE CAN DO THAT.

7 THE COURT: ALL RIGHT. LAY A PROPER
8 FOUNDATION, MRS. MURPHY.

9 Q. MR. BURDEN, ON THE 911 TAPE, YOU TOLD THE PERSON
10 "HE'S BREATHING, HE DOESN'T SEEM TO BE
11 OBSTRUCTED." AND THEY ASKED YOU DID HE HIT HIS
12 HEAD. "NO, SIR; I PUT HIM IN THE BATHTUB. I WAS
13 TRYING TO STAND HIM UP." YOU JUST TESTIFIED A
14 SECOND AGO HERE TODAY THAT YOU HAD HIM DOWN AND
15 THEN HE FELL BACKWARDS. WHICH ONE OF THOSE
16 VERSIONS IS TRUE?

17 A. WHAT'S YOUR QUESTION?

18 Q. WHEN DID HE HIT HIS HEAD?

19 A. AS I SAID, WHEN I STOOD HIM UP, HE FELL DOWN. AND
20 AS HE WAS IN THE TUB, HE WAS FLAILING.

21 Q. WELL, RIGHT HERE THEY ASKED YOU IF HE HIT HIS HEAD,
22 AND YOU SAID NO. THEN YOU SAID "WHEN I PUT HIM IN
23 THE BATHTUB AND I WAS TRYING TO STAND UP BECAUSE HE
24 WAS CONSCIOUS AT THE TIME." SO WHEN WAS HE
25 CONSCIOUS AND WHEN WAS HE UNCONSCIOUS?

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 MR. DUKES: JUDGE, IF SHE'S GOING TO
2 QUESTION HIM FROM SOME WRITTEN STATEMENT, SHE NEEDS
3 TO GIVE HIM A COPY OF IT AND LET HIM FOLLOW ALONG.
4 SHE'S JUST READING A STATEMENT---

5 THE COURT: ALL RIGHT. THAT'S FINE, MR.
6 DUKES. IN OTHER WORDS, ON BEHALF OF YOUR CLIENT,
7 YOU'RE REQUESTING THAT HE BE GIVEN A COPY?

8 MR. DUKES: I REQUEST THAT HE BE GIVEN
9 ONE AND THAT IT BE READ VERBATIM.

10 Q. VERY WELL. ALL RIGHT. LOOK AT VERY BOTTOM, AND
11 THE VERY LAST QUESTION IS "DID HE HIT HIS HEAD
12 BEFORE THE SEIZURE."

13 A. OKAY.

14 Q. WHAT'S YOUR ANSWER?

15 A. MY ANSWER IS "NO, SIR. WHEN I PUT HIM IN THE
16 BATHTUB AND I WAS TRYING TO STAND HIM UP BECAUSE HE
17 WAS CONSCIOUS AT THE TIME."

18 Q. ALL RIGHT. LET'S STOP RIGHT THERE. YOU JUST
19 TESTIFIED ON DIRECT EXAMINATION THAT YOU LAID HIM
20 IN THE BATHTUB, AND HE FELL IN THE BATHTUB, AND HE
21 FELL IN THE BATHTUB. YOU DIDN'T SAY YOU STOOD HIM
22 UP. SO WHICH ONE WAS IT?

23 A. I STOOD HIM UP.

24 Q. YOU STOOD HIM UP. SO YOUR TESTIMONY IS DIFFERENT

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 THAT YOU JUST GAVE UNDER OATH IS NOT?

2 MR. DUKES: YOUR HONOR, I OBJECT. I

3 DON'T THINK THAT -- SHE MISCHARACTERIZED THE
4 TESTIMONY THAT HE GAVE ON DIRECT EXAMINATION.

5 THE COURT: OVERRULED.

6 CROSS-EXAMINATION. YOU MAY PROCEED.

7 Q. WHICH ONE IT, MR. BURDEN? THE ONE ON THE 911 TAPE?

8 A. MA'AM, WHEN THIS 911 TAPE WAS GOING ON, AND AS I
9 WAS SPEAKING WITH THE DISPATCHER, AS I TOLD YOU, I
10 WAS IN A PROCEDURE OF TRYING TO CARE FOR MY SON.

11 Q. SO DID YOU STAND HIM UP, OR WAS HE LAYING DOWN?
12 WHICH ONE?

13 A. I ALREADY TOLD YOU THAT I STOOD HIM UP.

14 Q. YOU STOOD HIM UP. SO THE 911 TAPE IS CORRECT?

15 A. IF IT SAID I STOOD HIM UP; YES.

16 Q. ALL RIGHT. NOW, IN YOUR WRITTEN STATEMENT -- AND
17 I'LL HAND YOU A COPY OF YOUR WRITTEN STATEMENT.

18 AND I'M GOING TO ASK YOU REVIEW WRITTEN STATEMENTS
19 AND ASK WHERE IN HERE DID YOU SAY THAT HE HIT HIS
20 HEAD ON THE DOOR ON THE WAY TO THE BATHROOM?

21 A. (WITNESS REVIEWS DOCUMENT.) IT DOESN'T SAY.

22 Q. SO TODAY IS THE FIRST TIME YOU'VE MENTIONED IT.
23 ISN'T THAT CORRECT?

24 A. TODAY IS THE FIRST TIME I WAS EVER ASKED THAT.

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 DISPATCHER ASKED YOU IF HE HIT HIS HEAD; CORRECT?

2 A. CORRECT.

3 Q. DID YOU TELL THE 911 DISPATCHER THAT HE HIT HIS
4 HEAD ON THE DOOR?

5 A. NO, I DIDN'T.

6 Q. ALL RIGHT. DON'T YOU THINK THAT WOULD HAVE BEEN
7 IMPORTANT IF HE GOT A HEAD INJURY?

8 A. YES.

9 Q. AND WHEN ASKED WHAT HAPPENED BY DEPUTY BOTTEN, TO
10 ASK THE STATEMENT OF WHAT HAPPENED; DON'T YOU THINK
11 IT WOULD HAVE BEEN IMPORTANT IF HE HAD A HEAD
12 INJURY THAT YOU WOULD SAY HE HIT HIS HEAD ON THE
13 DOOR?

14 A. YES.

15 Q. BUT YOU JUST COME UP WITH THAT HERE TODAY?

16 A. NO.

17 Q. WELL, IT'S THE FIRST TIME IT'S COME OUT; ISN'T THAT
18 TRUE?

19 A. YES.

20 Q. NOW, SIR, YOU JUST TESTIFIED THAT DURING THE 911
21 CALL WHEN YOU WERE ON THE PHONE WITH THE
22 DISPATCHER, YOU WERE SCREAMING "SHY, SHY." DID YOU
23 HEAR THAT ON THE 911 TAPE?

24 A. NO.

25 Q. DID THAT EVEN HAPPEN?

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 A. YES.

2 Q. IT DID?

3 A. YES.

4 Q. WOULD YOU LIKE FOR ME TO PLAY IT FOR YOU? YOU TELL
5 ME AT WHICH PORTION YOU HEAR THAT.

6 MRS. MURPHY: YOUR HONOR, MAY I PLAY
7 STATE'S EXHIBIT NUMBER ONE?

8 THE COURT: YOU MAY.

9 MRS. MURPHY: YOU TELL ME WHERE YOU START
10 SCREAMING ON THIS TAPE, SIR.

11 (AT THIS TIME TAPE IS PLAYED FOR THE DEFENDANT.)

12 Q. I DIDN'T HEAR IT, DID YOU?

13 A. NO, MA'AM.

14 Q. NOW YOU TESTIFIED A LITTLE BIT EARLIER, TOO, THE
15 FACT THAT YOU WERE SCREAMING "SHY, SHY;" THAT YOU
16 HAD A CARD, AND IT INSTRUCTED YOU HOW TO DO C.P.R.
17 WHY DIDN'T YOU TELL THE 911 DISPATCHER THAT YOU HAD
18 TRIED TO PERFORM C.P.R.?

19 A. IF I'M NOT MISTAKEN, I DID MENTION THAT.

20 Q. WOULD YOU LOOK AT YOUR TRANSCRIPT, AND YOU TELL ME
21 WHERE. (THE DEFENDANT REVIEWS DOCUMENT.)

22 A. IT'S NOT ON THE TRANSCRIPT.

23 Q. I'M SURPRISED. ALL RIGHT, SIR. NOW, THAT'S NOT ON
24 THE TRANSCRIPT, BUT IT'S IN YOUR TESTIMONY. CAN
25 YOU TELL ME IN YOUR STATEMENT WHERE IT SAYS THAT

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 YOU TRIED TO DO C.P.R.? (WITNESS REVIEWS
2 DOCUMENT.)

3 A. IT'S NOT IN MY STATEMENT.

4 Q. SO JUST HERE TODAY, THIS IS THE FIRST TIME THAT YOU
5 TRIED TO DO C.P.R.?

6 A. NO, MA'AM. AS I SAID, I DID TRY TO DO C.P.R. ON
7 THE DAY THIS HAPPENED.

8 Q. BUT WHEN YOUR SON'S LIFE IS A LIFE OR DEATH
9 SITUATION; HE'S GETTING READY TO DIE; DON'T YOU
10 THINK IT'S IMPORTANT GO GIVE AN ACCURATE STATEMENT
11 AT THE TIME?

12 A. AT THE TIME OF THE SITUATION; AS I SAID, I WAS
13 THERE WITH MY FIVE CHILDREN INCLUDING Child AND
14 IT WAS A SITUATION WHERE IT WAS PRETTY MUCH
15 MAYHEM. AND IF I'M TELLING YOU ANYTHING TODAY, IT
16 HAPPENED. IT WAS JUST A PANIC SITUATION.

17 Q. YOU'VE JUST HAD TIME TO THINK ABOUT YOUR STORY,
18 ISN'T THAT CORRECT?

19 A. NO, MA'AM, THAT'S NOT CORRECT.

20 Q. NOW, YOU TELL ME WHAT PART OF C.P.R. CALLS FOR YOU
21 TO STOP OR KICK A CHILD. YOU TELL ME WHAT PART OF
22 C.P.R. THAT CALLS FOR?

23 A. I DON'T KNOW.

24 Q. YOU DON'T KNOW?

25 A. THERE'S NO PART OF C.P.R. THAT CALLS FOR A STOMP OR

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 A KICK.

2 Q. ABSOLUTELY. AND, SIR, YOU TELL ME WHICH PART OF
3 C.P.R. CALLS FOR YOU TO STOMP ON YOUR CHILD'S
4 CHEST?

5 A. I DIDN'T STOMP ON MY CHILD'S CHEST.

6 Q. YOU TELL US, THEN, HOW YOU CAN CONTRADICT THE
7 MEDICAL TESTIMONY THAT SHOWS THE FULL OUTLINE OF
8 YOUR SHOE PRINT---

9 MR. DUKES: YOUR HONOR, I'M GOING TO
10 OBJECT TO PITTING ONE WITNESS AGAINST THE OTHER.

11 THE COURT: SUSTAINED.

12 Q. YOU TELL US HOW YOU GOT THIS SHOE PRINT ON YOUR
13 SON'S CHEST.

14 A. AS I JUST TOLD YOU EARLIER, I HIT HIM TWICE -- SHY;
15 SHY.

16 Q. LIKE WE HEARD ON THE 911 TAPE; CORRECT?

17 A. THAT MAY HAVE HAPPENED PRIOR TO ME CALLING 911, BUT
18 IT HAPPENED.

19 Q. AND HOW DID YOU GET THE COMPLETE OUTLINE OF THE
20 SHOE IF YOU'RE HOLDING THE END OF THE SHOE?

21 A. AS I SAID, I WAS HOLDING THE END OF MY HOUSE SHOE;
22 AND I HIT HIM ON HIS CHEST TWICE.

23 Q. SO A PORTION OF THIS WOULD BE MISSING IF YOU WERE
24 ACTUALLY HOLDING THE HOUSE SHOE, WOULD IT NOT?

25 A. I DON'T KNOW.

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1 Q. YOU DON'T KNOW? NOW YOU'RE SAYING HE FELL IN THE
2 BATHTUB. HERE'S A PICTURE OF YOUR BATHTUB. TELL
3 ME WHAT IN THIS PICTURE CAUSES HIM TO HAVE SHOE
4 PRINTS ON HIS HEAD OR ON HIS CHEST OR ON THE BACK
5 OF HIS HEAD OR ON THE SIDE OF HIS EAR.

6 A. NOTHING.

7 Q. NOTHING! ON EITHER ONE OF THOSE PHOTOGRAPHS?

8 A. YES.

9 Q. YOU JUST TESTIFIED THAT YOU WERE VERY CONCERNED FOR
10 YOUR SON; DID YOU NOT?

11 A. YES, I DID.

12 Q. AND WHEN YOU LEFT THE LAW ENFORCEMENT COMPLEX, YOU
13 DIDN'T GO TO M.U.S.C., DID YOU?

14 A. ACTUALLY I DIDN'T HAVE A WAY TO M.U.S.C. ONCE I
15 LEFT THE LAW ENFORCEMENT CENTER.

16 Q. DID YOU ASK THE DEPUTIES IF THEY'D GIVE YOU A
17 RIDE?

18 A. NO. THEY DIDN'T OFFER, AND I DIDN'T ASK.

19 Q. YOU DIDN'T ASK?

20 A. NO.

21 Q. IF YOU WERE THAT CONCERNED WITH YOUR SON'S HEALTH,
22 WOULDN'T YOU HAVE ASKED IF YOU REALLY WANTED TO GO
23 SEE HIM?

24 A. WELL, AS I SAID EARLIER, WHEN I LEFT THE L.E.C.

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1 SHE WAS HOME WHEN I CAME BACK. IT WAS UNKNOWN TO
2 ME THAT HER AND HER MOTHER HAD ALREADY LEFT TO GO
3 TO M.U.S.C.

4 Q. YOU COULDN'T CALL?

5 A. I CALLED. ACTUALLY SHE CALLED ME AND TOLD ME THEY
6 WERE ON THEIR WAY BACK.

7 Q. SO, AS A MATTER OF FACT, SIR, EVERY TIME THAT YOUR
8 CHILD HAD A SERIOUS INJURY, YOU NEVER WENT TO THE
9 HOSPITAL, DID YOU?

10 A. NO. I STAYED HOME WITH THE CHILDREN.

11 Q. RIGHT. WHEN HE BROKE HIS LEG IN 1996, YOU DIDN'T
12 GO TO THE HOSPITAL, DID YOU?

13 A. NO. I WAS HOME WITH THE CHILDREN.

14 Q. AND IN 1998, TODAY YOU TESTIFY THAT YOU WALKED IN
15 AND HE HAD CLIMBED UP ON THE SECOND SHELF OF A TOY
16 BOX AND FALLEN ON A TOY?

17 A. NO, MA'AM, I DIDN'T SAY THAT.

18 Q. YOU JUST TESTIFIED TO THAT TODAY?

19 A. NO, MA'AM. I SAID HE CLIMBED ON TOP OF THE TOY BOX
20 ONTO THE SECOND SHELF OF THE BOOK SHELF.

21 Q. OKAY. SO THERE WAS NO CRIB INVOLVED?

22 A. HE CLIMBED OUT OF THE CRIB.

23 Q. ONTO A TOY FROM A TOY BOX TO A SECOND SHELF?

24 A. YES.

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 BEEN IMPORTANT BACK IN 1998?

2 A. YES.

3 Q. THAT WAS NEVER GIVEN, WAS IT?

4 A. NO.

5 Q. WHY NOT?

6 A. I WAS NEVER ASKED.

7 Q. YOU WERE NEVER ASKED? YOU NEVER WENT TO THE
8 HOSPITAL?

9 A. NO, MA'AM.

10 Q. AND YOU WERE NEVER ASKED, AND YOU NEVER THOUGHT IT
11 WAS IMPORTANT?

12 A. NO, MA'AM.

13 Q. YOU BASICALLY HAD YOUR WIFE TAKE HIM TO THE
14 HOSPITAL AND TELL THE DOCTORS THAT HE FELL OUT OF
15 JUST THE CRIB?

16 A. LIKE I SAID, I CAN'T SAY WHAT ADRIAN SAID. I
17 WASN'T THERE.

18 Q. YOU WEREN'T THERE?

19 A. NO.

20 Q. NOW, YOUR SON IS BLINDED IN THE RIGHT EYE BY BLUNT
21 FORCE TRAUMA. AND YOU TELLING ME -- CAN YOU TELL
22 ME IF YOU EVER NOTICED?

23 MR. DUKES: YOUR HONOR, I OBJECT TO
24 THAT. HE SAYS HIS SON IS BLIND IN THAT EYE BY

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 THIS MORNING, THAT'S SPECULATING. AND SHE'S MAKING
2 IT SOUND AS A TRUE STATEMENT. THAT'S A QUESTION
3 FOR THE JURY.

4 THE COURT: ALL RIGHT. LET ME HEAR THE
5 WHOLE QUESTION, MRS. MURPHY.

6 Q. YOUR SON IS BLINDED. AND THERE HAS BEEN TESTIMONY
7 THAT IT'S BY BLUNT FORCE TRAUMA. DID YOU EVER
8 NOTICE ANY SWELLING, ANY TRAUMA, TO THE SIDE OF HIS
9 HEAD?

10 A. I NEVER NOTICED IT.

11 THE COURT: I'LL ALLOW THAT. THAT
12 QUESTION IS FINE.

13 A. NOR DID THE DOCTORS BECAUSE THERE WASN'T ANY BLUNT
14 FORCE TRAUMA.

15 Q. YOU NEVER NOTICED ANY TRAUMA?

16 A. NO, MA'AM.

17 Q. SO SOMETHING HAPPENED TO YOUR SON THAT WAS
18 TRAUMATIC; BUT YOU NEVER NOTICED ANYTHING ON THE
19 OUTSIDE OF HIS HEAD?

20 A. MA'AM, AS I SAID, MY SON NEVER HAD BLUNT FORCE
21 TRAUMA TO THE EYE. AND THE DOCTORS WHO SPECIALIZE
22 IN THAT FIELD NEVER NOTICED BLUNT FORCE TRAUMA TO
23 THE EYE EITHER.

24 Q. AND, SIR, CAN YOU TELL ME -- YOU'RE MR. MOM,

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 1998. WERE YOU WORKING AT THAT TIME?

2 A. YES, I WAS.

3 Q. WELL, FROM WHAT TIME TO WHAT TIME DID YOU WORK?

4 A. I WORKED WITH MY FATHER WHENEVER HE NEEDED ME.

5 Q. WHENEVER HE NEEDED YOU. YOU WERE JUST TESTIFYING
6 THAT BASICALLY YOU WOULD STAY AT HOME WHILE MS.
7 GADSON WAS WORKING; CORRECT?

8 A. YES.

9 Q. AND YOU TELL ME SINCE YOU'RE SO CLOSE TO YOUR
10 CHILDREN AND YOU LOVE YOUR CHILDREN; WHAT CAUSED
11 THIS SCAR ON HIS EAR?

12 A. (NO RESPONSE.)

13 Q. WOULD YOU LIKE TO SEE A PICTURE OF IT?

14 A. YES; PLEASE. (WITNESS EXAMINES PHOTOGRAPH.)

15 Q. STATE'S EXHIBIT SEVEN. CAN YOU TELL ME WHAT
16 SCARRED YOUR SON'S EAR LIKE THAT?

17 A. THE CRIB.

18 Q. THE CRIB SCARRED HIS EAR?

19 A. YES.

20 Q. IT TORE THE EAR AND SCARRED IT LIKE THAT?

21 A. YES. IT WAS SCREWED UP BECAUSE WE DIDN'T HAVE THE
22 ORIGINAL SCREWS IN THE CRIB. AND SYHEEM---

23 THE COURT: MR. BURDEN, I THINK YOU NEED
24 TO COME A LITTLE CLOSER TO THE MICROPHONE. AND
25 KEEP YOUR VOICE UP

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 GOT TO HAVE DIFFICULTY HEARING YOU.

2 MR. BURDEN: YES, MA'AM.

3 A. AS I SAID, WE HAD SCREWS BECAUSE WE DIDN'T HAVE THE
4 ORIGINAL SCREWS TO THE CRIB, AND Child CUT HIS
5 EAR ON THAT SCREW.

6 Q. THE WOODEN SCREWS TO THE CRIB?

7 A. NOT WOODEN SCREWS; METAL SCREWS.

8 Q. METAL SCREWS TO THE CRIB?

9 A. (NO RESPONSE.)

10 Q. IT WAS ACTUALLY A FOLD-OUT PLAYPEN, WASN'T IT?

11 A. NO, MA'AM, IT WAS A CRIB.

12 Q. IT WAS A CRIB?

13 A. YES.

14 Q. AND DID YOU EVER TAKE HIM TO THE DOCTOR FOR THIS?

15 A. NO, MA'AM, WE TREATED IT AT HOME.

16 Q. YOU TREATED IT AT HOME?

17 A. YES.

18 Q. AND TELL ME HOW HE GOT THE LOOP PATTERN INJURIES ON
19 HIS BACK, THE SCARS ON HIS?

20 A. WHICH SCARS ON HIS BACK?

21 Q. LET ME SHOW YOU A PICTURE. STATE'S EXHIBIT NUMBER
22 NINE. TELL ME HOW HE GOT THESE SCARS ON HIS BACK.

23 (WITNESS REVIEWS DOCUMENT.)

24 A. I DON'T KNOW.

YOU'RE CLOSE TO YOUR SON AND LOVE YOUR SON, BUT YOU

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 DON'T KNOW HOW HE GETS SCARRED; RIGHT?

2 MR. DUKES: THAT'S NOT A QUESTION.

3 Q. IS THAT CORRECT, SIR?

4 A. I DON'T KNOW.

5 Q. YOU DON'T KNOW?

6 A. NO.

7 Q. SIR, ISN'T IT TRUE THAT IT'S ACTUALLY Child NOT
8 TYSHEEM, THAT IS AUTISTIC?

9 A. NO, MA'AM, IT'S I DIDN'T SAY WAS
10 AUTISTIC.

11 Q. OF YOUR TEN CHILDREN, SEVEN OF THEM HAVE YOUR LAST
12 NAME, BUT Child DOES NOT, DOES HE?

13 A. OR TYE OR TAQUIL FOR THAT MATTER.

14 Q. WHY IS THAT?

15 A. BECAUSE THAT WAS EARLY ON WHEN ME AND MS. GADSON
16 HAD FIRST STARTED IN OUR RELATIONSHIP. AND I THINK
17 FOR HER PURPOSE AND PRIVILEGES, SHE NAMED THE
18 CHILDREN AFTER HER LAST NAME.

19 Q. HOW DID YOU FEEL ABOUT THAT?

20 A. I DIDN'T FEEL ANY WAY ABOUT IT, PERIOD. THEY'RE
21 STILL MY CHILDREN.

22 Q. YOU DIDN'T CARE?

23 A. IT DIDN'T MATTER.

24 Q. NOW, YOU ALSO TESTIFIED THAT Child WAS VERY

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 A. YES.

2 Q. BUT THEN SHORTLY THEREAFTER, YOU TESTIFIED THAT
3 BECAUSE HE COULDN'T WALK LIKE NORMAL CHILDREN, HE
4 FELL A LOT?

5 A. YES; HE DID FALL A LOT. BUT THAT DIDN'T MEAN HE
6 WOULDN'T TRY TO WALK.

7 Q. WOULD YOU SAY HE'S ACCIDENT PRONE?

8 A. BOTH OF THEM ARE ACCIDENT PRONE, AS I TOLD YOU
9 EARLIER, BECAUSE THEY ARE NOT FULLY DEVELOPED MOTOR
10 SKILL WISE.

11 Q. SPEAKING OF FULLY DEVELOPED; Y'ALL WERE OFFERED
12 CLASSES TO HELP YOU WITH THEIR DEVELOPMENTAL
13 DELAYS, WERE YOU NOT?

14 A. YES, WE WERE.

15 Q. DID YOU EVER GO?

16 A. ACTUALLY THEY CAME TO THE HOUSE. AND ON NUMEROUS
17 OCCASIONS, I WORKED WITH THE LADIES WHO CAME -- THE
18 THERAPISTS; THE PHYSICAL THERAPISTS; YES.

19 Q. ISN'T IT TRUE, SIR, THAT Y'ALL WERE TERMINATED FROM
20 THOSE PROGRAMS FOR NON-COMPLIANCE?

21 A. I DON'T KNOW THAT MATTER AS FAR AS BEING
22 TERMINATED. BUT I KNOW AS FAR AS EVERY TIME THAT
23 THEY CAME AND ADRIAN WASN'T HOME OR IT WAS
24 APPOINTMENTS THAT SHE COULDN'T MAKE THAT I IN TURN

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

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1 MR. DUKES: YOUR HONOR, I OBJECT TO
2 CROSS-EXAMINATION ON THIS.

3 THE COURT: ALL RIGHT. COME FORWARD,
4 PLEASE.

5 (AT THIS TIME BENCH CONFERENCE IS HELD.)

6 MRS. MURPHY: MAY I APPROACH THE WITNESS,
7 YOUR HONOR?

8 THE COURT: YOU MAY.

9 Q. SIR, ARE YOU FAMILIAR WITH THE ST. FRANCIS XAVIER
10 HOME HEALTH CARE?

11 A. YES.

12 Q. IS THAT PART OF THE TREATMENT THAT WAS OFFERED TO
13 YOU?

14 A. (WITNESS EXAMINES DOCUMENT.) YES.

15 Q. DOES THAT REFRESH YOUR RECOLLECTION AS TO WHETHER
16 OR NOT YOU WERE NON-COMPLIANT AND TERMINATED FROM
17 THAT PROGRAM?

18 A. AS I TOLD YOU EARLIER, AS FAR AS THE PAPERWORK AND
19 WHAT NEEDED TO BE SIGNED; AS YOU CAN SEE HERE, IT
20 WAS ALWAYS SIGNED BY ADRIAN. I NEVER REALLY, AS
21 FAR AS HANDLED THIS TYPE OF STUFF. BUT WHEN IT
22 CAME, I WOULD WORK WITH HIM; YES.

23 Q. BUT YOU NEVER PERSONALLY WOULD GO THERE?

24 A. WELL, ACTUALLY, I NEVER HAD TO BECAUSE AS I TOLD
25 YOU, THEY CAME TO THE HOUSE.

WILLIAM DEAN BURDEN - CROSS/MRS. MURPHY

590

1 Q. THEY CAME TO THE HOUSE? AND SHE WOULD SIGN FOR
2 STUFF?

3 A. YES.

4 Q. SO BASICALLY WOULD YOUR TESTIMONY THEN BE THAT YOU
5 WEREN'T INVOLVED IN THE PAPERWORK OF IT?

6 A. THAT'S WHAT I JUST SAID; YES, MA'AM.

7 Q. ALL RIGHT. SO ONE LAST QUESTION REGARDING NOVEMBER
8 THE THIRD. YOU TESTIFIED EARLIER THAT HE WOKE UP
9 GROGGY WITH MUCUS ON THE BOTTOM OF HIS NOSE. YOU
10 STOOD HIM UP TWICE, AND HE FELL ON THE FLOOR, AND
11 THEN CHANGED HIS PULLUPS. WAS HE CONSCIOUS AT THE
12 TIME?

13 A. AS I TOLD YOU, HE FELL TWICE, NOT ONCE. BUT HE WAS
14 CONSCIOUS, YES, BUT HE WASN'T HIMSELF.

15 Q. AND YOU NEVER TOLD THE E.M.S. PERSONNEL THAT HE WAS
16 GROGGY AND HAD MUCUS ON THE BOTTOM OF HIS NOSE, DID
17 YOU?

18 A. NO, MA'AM. AS I TOLD YOU EARLIER, A LOT OF THE
19 THINGS THAT I TESTIFIED TO, I DIDN'T TELL TO THE
20 DISPATCHER BECAUSE IT WAS A PANIC SITUATION. I WAS
21 IN THE MIDDLE OF SOMETHING THAT JUST WAS BEYOND MY
22 CONTROL.

23 Q. ALL RIGHT. SO YOU WERE IN THE MIDDLE OF A PANIC
24 SITUATION. BUT YOU HAD THE WHEREWITHAL TO GIVE A
25 FAKE NAME BUT NOT THE CORRECT STATUS OF YOUR CHILD,

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

591

1 CORRECT?

2 A. I GAVE THE CORRECT STATUS TO MY KNOWLEDGE.

3 Q. NO FURTHER QUESTIONS.

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

5 RE-DIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q. SON, I JUST WANT TO HAND YOU THIS DISPATCH REPORT
8 AND ASK YOU -- I'VE GOT A LITTLE STAR THERE. I
9 WANT YOU TO READ THAT. READ THAT ALOUD FOR ME.

10 A. OKAY. IF HE STARTS JERKING AGAIN, DON'T TRY TO DO
11 ANY C.P.R. WHILE HE'S JERKING."

12 Q. SO YOU WERE INSTRUCTED NOT TO DO ANY MORE C.P.R.?

13 A. YES.

14 Q. OKAY. WOULD IT BE YOUR TESTIMONY THAT THAT TAPE
15 REALLY GOT SOME INTERRUPTIONS IN IT APPARENTLY?

16 A. IT HAS.

17 Q. NOW, SON, WAS IT A CALM SITUATION LIKE WE'RE TRYING
18 TO RELATE HERE?

19 A. NO, SIR, IT WASN'T AT ALL LIKE THIS. IT WAS VERY
20 PANICKED. AS I SAID, I HAD A FOUR MONTH OLD BABY
21 PRIOR TO ALL THIS WHO WAS CRYING. I HAD TYSHEEM.
22 I HAD LITTLE DEAN, AND I HAD TAKIA, AND ALL OF THEM
23 WERE CONCERNED ABOUT

24 Q. LOOKING BACK NOW, DOES IT COME TO YOU BETTER NOW?

25 A. YES. LOOKING BACK NOW.

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

592

1 Q. NOW THEY SAID IT WAS ONLY ONE BED IN THAT HOUSE?

2 A. THAT'S NOT TRUE.

3 Q. TELL THE JURY.

4 A. IT WAS TWO BEDS. WE HAD JUST PURCHASED TWO TWIN
5 SIZE BEDS FROM ADRIAN'S MOM'S CO-WORKER. AND WE
6 HAD THEM IN THE ROOM. AND WE HAD A TWIN SIZE BED
7 IN OUR ROOM. WE ALSO HAD A TODDLER BED AND THE
8 CRIB.

9 Q. NOW, THEY DIDN'T BRING ANY PHOTOGRAPHS IN HERE; BUT
10 WAS THAT HOUSE IN DISARRAY, DIRTY, FILTHY? YOU
11 TELL US.

12 A. NO, SIR. THE HOUSE WAS FULLY STOCKED WITH FOOD AND
13 EVERYTHING THAT THE CHILDREN NEEDED AS FAR AND
14 PAMPERING AND ESSENTIALS. AND I HAD JUST CLEANED
15 THE HOUSE PRIOR TO ALL THIS HAPPENING.

16 Q. HAVING INFORMATION THAT SINCE THE CHILDREN WERE
17 PLACED IN FOSTER CARE, THAT THEY HAD TO GIVE THEM
18 LIFE CONTROL OR ANY KIND OF PARTICULAR THING FOR
19 THE CHILDREN'S HAIR OR ANYTHING LIKE THAT?

20 A. NO, SIR, BECAUSE OUR CHILDREN WERE WELL CARRIED
21 FOR.

22 Q. DO YOU DRINK ALCOHOL?

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

24 Q. I'M GOING TO ASK YOU AGAIN. DO YOU DRINK ALCOHOL?

25 A. NO, SIR. I'VE DRUNK A BEER BEFORE. BUT I DON'T

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

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1 DRINK CONSTANTLY; NO, SIR.

2 Q. YOU DON'T DRINK?

3 A. NO, SIR.

4 Q. SO YOU WEREN'T DRINKING ON NOVEMBER THE THIRD,
5 2001?

6 A. NO, SIR.

7 Q. YOU ADMIT THAT -- TELL US A LITTLE BIT ABOUT
8 ADRIAN. BECAUSE THE JURY CAN UNDERSTAND IT; BUT
9 SHE'S STILL IN A STATE OF SHOCK. TELL US ABOUT
10 THAT.

11 A. ADRIAN IS A GREAT MOTHER. AND SHE'S A REAL GOOD
12 PERSON. IT HURTS THAT SHE WAS EVEN DRUG INTO THIS
13 SITUATION BECAUSE SHE DOESN'T DESERVE IT. AND I DO
14 LOVE HER.

15 Q. HAS ADRIAN EVER DONE ANYTHING TO HARM OR INJURE HER
16 CHILDREN?

17 A. SHE'S NEVER DONE ANYTHING TO HARM OR INJURE HER
18 CHILDREN.

19 Q. YOU KNOW, SHE'S LOOKED A LITTLE STOIC THIS WEEK.
20 DO YOU KNOW WHETHER SHE HAS BEEN HAVING TO WORK
21 THIS WHOLE WEEK WHILE WE'RE GOING THROUGH THIS
22 TRIAL?

23 A. YES, SHE HAS.

24 Q. AT NIGHT; ISN'T THAT THE TRUTH?

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

594

1 CARE FOR OUR CHILDREN.

2 Q. SHE HAS THE LUXURY OF HAVING A NINE TO FIVE JOB?

3 A. NO, SIR.

4 Q. NOW, THIS JURY IS VERY CONCERNED ABOUT ONE THING, I
5 THINK.

6 MRS. MURPHY: OBJECTION, YOUR HONOR.

7 HE'S GOING INTO THE JURY'S PROVINCE AS TO HIS
8 SPECULATION ON---

9 MR. DAVIS: THE JURY IS CONCERNED -- I
10 CAN REPHRASE THE QUESTION.

11 THE COURT: PLEASE RESTATE YOUR QUESTION.

12 THANK YOU, MR. DAVIS.

13 Q. I'M CONCERNED ABOUT---

14 MR. DAVIS: OBJECTION, YOUR HONOR.

15 THE COURT: JUST ASK A QUESTION. THANK
16 YOU, MR. DAVIS.

17 Q. WAS ADRIAN MISPLACED IN LEAVING OR ENTRUSTING THOSE
18 CHILDREN WITH YOU?

19 MRS. MURPHY: OBJECTION, YOUR HONOR.

20 THAT CALLS FOR -- IT GOES RIGHT INTO THE JURY'S
21 PROVINCE.

22 MR. DAVIS: IT GOES TO HIS STATE OF MIND,
23 YOUR HONOR; HIS STATE OF MIND. HE CAN ANSWER THIS
24 QUESTION.

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

595

1 Q. HAD ADRIAN LEFT THOSE CHILDREN WITH YOU ON MANY
2 OTHER OCCASIONS?

3 A. YES, SHE HAS.

4 Q. YOU KNOW, THINGS HAVE CHANGED. WERE YOU A VERY
5 ACTIVE IN THE REARING OF YOUR CHILDREN?

6 A. YES.

7 Q. VERY ACTIVE IN THE REARING OF YOUR CHILDREN?

8 A. YES, I WAS.

9 Q. AND YOU KNOW SOMETIMES WITH CARPENTER WORK, WHEN IT
10 RAINS, YOU CAN'T WORK?

11 A. EXACTLY.

12 Q. THAT HAPPENS SOMETIMES IN YOUR TYPE WORK?

13 A. YES, SIR, IT DOES.

14 Q. SO YOU CAN'T WORK?

15 A. I IN TURN -- I STAY HOME WITH THE CHILDREN.

16 Q. I WANT TO ASK YOU SOMETHING. WHO IS THIS LADY
17 RIGHT HERE? (INDICATING.)

18 A. THAT'S ADRIAN'S GREAT GRANDMOTHER.

19 Q. HAS SHE PLAYED ANY PART IN THE REARING OF THESE
20 CHILDREN?

21 A. YES, SHE HAS.

22 Q. TELL THE TRUTH.

23 A. YES, SHE HAS. SHE'S BEEN WITH US AS WELL AS
24 ADRIAN'S MOTHER HELPING US TAKE CARE OF OUR

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

596

1 Q. NOW, YOU HAVE EIGHT -- HOW MANY CHILDREN DO YOU
2 HAVE?

3 A. I HAVE TEN CHILDREN.

4 Q. YOU PAY CHILD SUPPORT?

5 A. YES, SIR.

6 Q. YOU KNOW, THE SOLICITOR TOOK A PAGE OR SOMETHING
7 AND ACTUALLY STOMPED IT. CONTINUE DOWN HERE. I
8 DON'T WANT YOU SO MUCH TO VISUALIZE THIS AS A
9 HEAD. I WANT YOU TO VISUALIZE THAT AS YOUR SON.
10 WOULD YOU STOMP YOUR SON?

11 A. NO; I WOULDN'T.

12 Q. SIR?

13 A. I WOULDN'T.

14 (AT THIS TIME WITNESS RETURNS TO WITNESS STAND.)

15 Q. FIVE CHILDREN YOU HAVE WITH YOUR FIRST WIFE. HAVE
16 YOU EVER HAD ANY D.S.S. INVOLVEMENT WITH ANY OF
17 THOSE CHILDREN?

18 A. NO, SIR.

19 Q. EVER BEEN INVESTIGATED BY D.S.S. FOR ANY OF THOSE
20 CHILDREN?

21 A. NO, SIR.

22 Q. EVERY BEEN INVESTIGATED BY D.S.S. WITH OF THOSE
23 CHILDREN?

24 A. NO, SIR.

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

597

1 ABUSE?

2 A. NO, SIR.

3 Q. AS A MATTER OF FACT IN 1998 IN THIS CASE, THEY
4 DIDN'T EVEN HAVE YOU AT THE HEARING?

5 A. NO, SIR.

6 Q. DETECTIVE MARSHALL KNEW THAT YOU HAD ALREADY GIVEN
7 A STATEMENT; ISN'T THAT CORRECT?

8 A. YES, HE DID.

9 Q. YET HE STILL REQUIRED YOU TO COME TO THE
10 SUMMERVILLE POLICE DEPARTMENT?

11 A. YES.

12 Q. YOU ALREADY HAD A STATEMENTS FROM ADRIAN THEN;
13 ISN'T THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. WHEN YOU MET ADRIAN, HOW OLD WAS SHE?

16 A. ADRIAN WAS 17, ABOUT TO BE EIGHTEEN.

17 Q. WOULD IT BE A FAIR AND ACCURATE STATEMENT TO SAY
18 YOU'RE THE ONLY MAN THAT ADRIAN HAD KNOWN ALL THESE
19 YEARS?

20 A. YES, SIR, IT IS.

21 Q. SEE, SOMETHING IS WRONG. Y'ALL HAVE A FIVE MONTH
22 OLD CHILD AT THE TIME?

23 A. EXCUSE ME?

24 Q. Y'ALL ALSO HAD A FIVE MONTH OLD CHILD AT THE TIME?

25 A. YES, SIR. SHE HAD JUST TURNED FIVE MONTHS.

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

598

1 Q. YOU HEARD TESTIMONY HERE FROM PEOPLE YOU'VE NEVER
2 MET IN YOUR LIFE, DR. SAUDERS, DR. WOOD, SAYING
3 THAT YOU BATTERED YOUR CHILD. TELL US ABOUT THAT?

4 A. WELL, IT BOTHERS ME THAT THEY WOULD JUST DRAW US
5 LIKE THAT BECAUSE THEY DON'T EVEN KNOW US. AND THE
6 MAJORITY OF THEM HAVE NEVER EVEN SEEN OUR CHILDREN.
7 SO I DON'T BELIEVE THAT'S A FAIR AND JUST
8 ASSESSMENT OF US OR OUR SITUATIONS.

9 Q. BUT YOU TARGETED YOUR CHILDREN; TARGETED THIS BOY.
10 WHY WOULD YOU TARGET THIS CHILD? YOU HEARD DR.
11 SCHUH. YOU HEARD DR. WOODARD SAY YOU TARGETED THIS
12 BOY.

13 MRS. MURPHY: YOUR HONOR, I'M GOING TO
14 OBJECT TO THIS PHOTOGRAPH AFTER THE RELEVANCE HAS
15 BEEN---

16 MR. DAVIS: I'M ASKING HIM CAN HE CAN HE
17 IDENTIFY IT.

18 Q. CAN YOU IDENTIFY THAT PHOTOGRAPH?

19 A. YES, SIR.

20 Q. TELL ME WHO THOSE ARE.

21 A. THOSE ARE MY CHILDREN.

22 Q. THOSE ARE WHO?

23 A. MY CHILDREN.

24 Q. THOSE ARE WHO?

25 A. MY CHILDREN.

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DAVIS

599

1 MRS. MURPHY: I OBJECT TO IT BEING
2 PUBLISHED TO THE JURY, YOUR HONOR.

3 MR. DAVIS: ON WHAT BASIS?

4 MRS. MURPHY: ON RELEVANCE.

5 MR. DAVIS: IS THAT CHILD---

6 THE COURT: MR. DAVIS? COME FORWARD,
7 BOTH OF YOU, ALL OF YOU.

8 THE COURT: ALL RIGHT. SUSTAINED.

9 MR. DAVIS: CAN I HAVE THIS MARKED FOR
10 IDENTIFICATION FOR THE RECORD, YOUR HONOR?

11 THE COURT: INDEED YOU MAY.

12 DEFENDANT'S EXHIBIT NO. 3

13 MARKED FOR IDENTIFICATION

14 Q. AND THIS HAS BEEN MARKED FOR IDENTIFICATION PURPOSE
15 AS NUMBER THREE. CAN YOU IDENTIFY THAT?

16 A. YES, SIR.

17 Q. WHAT IS IT?

18 A. IT'S MY CHILDREN AT LITTLE DEAN'S FOURTH BIRTHDAY
19 PARTY.

20 Q. AT WHOSE FOURTH BIRTHDAY PARTY?

21 A. LITTLE DEAN'S.

22 Q. LITTLE DEAN'S; HIS FOURTH BIRTHDAY PARTY. DO ALL
23 THE CHILDREN TO APPEAR TO BE HAPPY AND SMILING?

24 A. YES, SIR.

WILLIAM DEAN BURDEN - RE-DIRECT/MR. DUKES

600

1 INTRODUCED INTO EVIDENCE LIKEWISE.

2 THE COURT: ALL RIGHT. ON THE SAME BASIS
3 AS EARLIER. I FIRST ASK IS THERE ANY OBJECTION ON
4 BEHALF OF THE STATE?

5 MRS. MURPHY: SAME OBJECTION, YOUR HONOR.

6 PLAINTIFF'S EXHIBIT NO. 4

7 ADMITTED AS EVIDENCE

8 Q. NOW, YOU TOLD DETECTIVE MARSHALL AT ONE O'CLOCK OR
9 1:30 AT THE SUMMERVILLE LAW ENFORCEMENT CENTER THAT
10 YOU WOULD PLEAD THE FIFTH AMENDMENT. WHAT DO YOU
11 MEAN BY THE FIFTH AMENDMENT?

12 A. I WAS REFUSING TO SPEAK TO THEM WITHOUT AN
13 ATTORNEY.

14 Q. NOW, THE FOLLOWING TUESDAY SHOWS UP, AND ALL OF A
15 SUDDEN DETECTIVE MARSHALL SAID YOU GAVE AN
16 UTTERANCE OF YOU PANICKING. DID YOU?

17 A. NO, SIR.

18 Q. NO FURTHER QUESTIONS.

19 THE COURT: ALL RIGHT. RE-DIRECT, MR.
20 DUKES.

21 RECROSS-EXAMINATION

22 BY MR. DUKES:

23 Q. DID YOU PUT ANYTHING IN THE STATEMENT YOU WROTE
24 THAT NIGHT OR ANYTHING THAT YOU TOLD 911 THAT
25 WASN'T THE TRUTH EXCEPT FOR YOUR NAME INITIALLY?

WILLIAM DEAN BURDEN - RE-CROSS/MR. DUKES

601

1 A. NO, SIR, OTHER THAN MY NAME; THAT WAS IT.
2 EVERYTHING ELSE WAS TRUE.

3 Q. WHEN THEY CAME TO THE HOUSE, WHAT NAME DID YOU GIVE
4 THEM?

5 A. WILLIAM BURDEN.

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

7 THE COURT: VERY WELL. ANY RE-CROSS?

8 MRS. MURPHY: YES, MA'AM.

9 RE-DIRECT EXAMINATION

10 BY MRS. MURPHY:

11 Q. SIR, YOU JUST TESTIFIED UNDER OATH THAT YOU WERE
12 NEVER INVESTIGATED BY D.S.S., AND THERE'S NO---

13 MR. DUKES: YOUR HONOR, THAT'S NOT
14 PROPER.

15 MR. DAVIS: NOT ONLY THAT, YOUR HONOR; I
16 ASKED SPECIFICALLY IF IT WAS INVESTIGATED BY D.S.S.
17 RELEVANT TO HIS FIRST FIVE CHILDREN WITH HIS FIRST
18 WIFE. THAT WAS MY QUESTION. I NEVER SAID ANYTHING
19 ABOUT THESE CHILDREN.

20 THE COURT: LADIES AND GENTLEMEN, LET ME
21 ASK YOU TO STEP OUTSIDE TO YOUR JURY ROOM. THERE'S
22 A MATTER THAT I NEED TO TAKE UP OUTSIDE OF YOUR
23 PRESENCE. DO NOT DISCUSS THIS MATTER, AND DO NOT
24 ALLOW ANYONE TO DISCUSS IT WITH YOU. IT'S A GOOD
25 TIME FOR US TO TAKE YOUR AFTERNOON BREAK. VERY

MOTIONS

602

1 WELL.

2 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

3 (BRIEF RECESS.)

4 THE COURT: ALL RIGHT. TELL ME WHAT THE
5 NATURE OF THE OBJECTION IS.

6 MR. DUKES: MY OBJECTION IS THIS: I
7 ASKED HIM ON RE-CROSS. I ASKED HIM ABOUT THE
8 STATEMENT HE MADE IN WRITING. AND I ASKED HIM
9 ABOUT THE STATEMENT HE MADE TO 911 AND DID HE SAY
10 ANYTHING IN THAT STATEMENT THAT WASN'T TRUE EXCEPT
11 HE GAVE THE WRONG NAME AT FIRST. THAT'S ALL I
12 ASKED HIM. SHE'S GOING INTO SOMETHING ABOUT D.S.S.
13 SHE'S LIMITED TO WHAT I'VE ASKED UNLESS I BRING OUT
14 SOMETHING NEW. AND I WASN'T BRINGING OUT NOTHING
15 NEW.

16 THE COURT: YES, MA'AM, MRS. MURPHY.

17 MRS. MURPHY: YOUR HONOR, THE DEFENDANT
18 WAS ON CROSS-EXAMINATION BY DEFENSE COUNSEL WHEN HE
19 SPECIFICALLY ASKED HIM ABOUT 1998. THOSE KIDS; AND
20 WERE YOU EVER INVESTIGATED? NO, SIR; THOSE KIDS
21 WERE NEVER IN D.S.S. CUSTODY, CARE, FOR ABUSE. I
22 THINK THE DOOR HAS BEEN WIDE OPEN, YOUR HONOR.

23 MR. DAVIS: THAT'S CROSS-EXAMINATION.

24 MRS. DUKES: THAT'S CROSS-EXAMINATION.

25 MRS. MURPHY: HE ASKED SPECIFICALLY ABOUT

MOTIONS

603

1 1998.

2 MR. DUKES: IT'S LIMITED TO DIRECT AND
3 RE-DIRECT.

4 THE COURT: IN OTHER WORDS, YOU'RE
5 THINKING THAT YOU CAN ASK A PORTION TO THE QUESTION
6 WHICH ARE HELPFUL TO THIS PARTICULAR DEFENDANT.
7 AND CO-DEFENDANT'S COUNSEL ASKED OF THE REMAINING
8 QUESTIONS WHICH ARE HELPFUL TO THE CO-DEFENDANT.
9 AND THAT, THEREFORE, WILL LIMIT THE STATE ON
10 RE-CROSS INTO GOING INTO THOSE NEW AREAS THAT AROSE
11 ON CALLING IT CROSS-EXAMINATION, BUT CLEARLY
12 FRIENDLY CROSS-EXAMINATION. MR. DUKES?

13 MR. DUKES: WELL, I HAVE NO CONTROL OF---

14 THE COURT: I UNDERSTAND. I'M GOING TO
15 ALLOW IT. I THINK IT'S DISCRETIONARY. YES, SIR
16 MR. DAVIS; BE HAPPY TO HEAR FROM YOU.

17 MR. DAVIS: BUT, JUDGE, I WOULD LIKE FOR
18 IT TO BE PLAYED BACK. I SPECIFICALLY WIDE---

19 THE COURT: OH, I THOUGHT I WAS LISTENING
20 VERY CAREFULLY TO THAT AS WELL. AND I THOUGHT YOU
21 OPENED THE DOOR. BUT ABSOLUTELY; I'M HAPPY TO ASK
22 FOR THAT. AND IT'S THE CROSS-EXAMINATION OF MR.
23 DAVIS BECAUSE I THOUGHT HE ASKED REGARDING -- LET
24 ME ASK BOTH. LET ME ASK IT IN TERMS OF
25 GENERALITIES

MOTIONS

604

1 CHILDREN EVER BEEN INVESTIGATED OR NEEDED
2 PROTECTION FROM D.S.S. IT WAS A VERY GENERAL
3 QUESTION BECAUSE I AT THAT MOMENT THOUGHT THE DOOR
4 HAD BEEN OPEN MYSELF.

5 THE COURT: LET ME TELL YOU WHAT I'M
6 CONCERNED ABOUT; AND LET ME JUST SHARE THAT WITH
7 YOU. WHAT I AM CONCERNED ABOUT IS THAT I HAVE AN
8 OBLIGATION NOT TO ALLOW THE JURY TO BE MISLED. THE
9 STATEMENT THAT WAS MADE AT THE HEARING IN THIS
10 MATTER IN 1998, THE ONLY HEARING THAT I AM AWARE OF
11 IS THE D.S.S. MATTER. I THINK THAT'S WHAT YOU WERE
12 REFERRING TO. AND WHAT YOU SAY IS THEY DIDN'T EVEN
13 HAVE YOU AT THE HEARING. WHAT WORRIES ME ABOUT
14 THAT -- AND IT REALLY IS TWO-FOLD BECAUSE OBVIOUSLY
15 YOU DON'T REPRESENT THIS GENTLEMAN. MR. DUKES
16 DOES. BUT IT WAS A FRIENDLY CROSS-EXAMINATION. IT
17 WAS A FRIENDLY CROSS-EXAMINATION. SO I'M AWARE OF
18 THAT. AND I'M ALSO AWARE THAT THEY DIDN'T EVEN
19 HAVE YOU AT THAT HEARING. AND WHAT THAT IMPARTS TO
20 THIS JURY IS THAT HE HAD NO INVOLVEMENT WITH THIS
21 MATTER. HE'S A NAMED PARTY. AND I HAVE SOME
22 CONCERN ABOUT THE JURY BEING MISLED ABOUT THIS
23 MAN'S INVOLVEMENT WITH THE D.S.S. MATTER. AND THE
24 QUESTION IS: IS THAT SUFFICIENT TO OPEN THE DOOR SO
THAT AT THIS POINT THAT THAT CAN BE

MOTIONS

605

1 CLARIFIED FOR THE JURY. AND THAT'S MY CONCERN AT
2 THIS POINT. I MEAN, IT'S ONE THING TO HAVE IT --
3 AND I THINK -- LET ME ALSO ADD -- AND I SHOULD ADD
4 THIS FOR THE RECORD; THE QUESTION IS WHAT IS THIS
5 SITUATION. THIS -- IT'S MORE -- I AM CONCERNED
6 THAT IN A SENSE THIS IS NOT SIMPLY IMPEACHMENT.
7 THIS IS THE D.S.S. CASE INVOLVING THIS CHILD AND
8 THESE PARENTS. SO IT HAS A CLOSER NEXUS TO THIS
9 CASE, THIS CASE, THAN A GARDEN VARIETY D.S.S.
10 CASE. MY CONCERN AT THIS POINT IS THE
11 CROSS-EXAMINATION OF MR. DAVIS.

12 MR. DAVIS: NOTHING PREVENTED THEM FROM
13 BRINGING D.S.S. IN THIS CASE. THEY BROUGHT DOCTORS
14 ALL THE WAY FROM ANDERSON. THEY COULD HAVE BROUGHT
15 D.S.S. HERE AND ATTESTED WHETHER THEY WAS INVOLVED
16 WITH THIS FAMILY. THEY DIDN'T DO IT. INSTEAD THEY
17 SHARED TO BRING A LITTLE SKIMPY DOCUMENT IN HERE
18 WHERE THIS YOUNG MAN WAS NOT EVEN PRESENT. AND HE
19 WAS NOT PRESENT. THE DOCUMENT TELLS YOU THAT ON HE
20 FACE OF IT.

21 THE COURT: THAT IS NOT MY CONCERN. MY
22 CONCERN IS THAT IT'S BEEN COMMUNICATED TO THIS JURY.
23 IN SUCH A WAY THAT HE HAD NO INVOLVEMENT IN THE
24 1998 MATTER WHICH WAS A D.S.S. CASE INVOLVING THIS
25 CHILD. AND THAT'S THE PIECE OF IT THAT I AM

MOTIONS

606

1 CONCERNED ABOUT. I'M GOING TO THINK ABOUT THAT.
2 I'M NOT QUITE SURE WHAT I'M GOING TO DO. BUT I'M
3 CONCERNED ABOUT IT.

4 MR. DAVIS: YOUR HONOR, IF I HAVE TIME TO
5 ASK HER QUESTIONS. BUT SHE'S STILL GOING TO DO IT
6 BASED ON MY CROSS-EXAMINATION.

7 MR. DUKES: YOU'RE STILL GOING TO DO IT?

8 MR. DAVIS: YES. THAT'S THE REASON WE'RE
9 HERE.

10 THE COURT: THAT'S CORRECT. I MEAN, IF
11 IT'S CERTAINLY RAISED---

12 MR. DAVIS: EVEN THOUGH YOU AND I; THAT
13 CERTAINLY PUT US IN THE SAME BED. BUT, REALLY, WE
14 SHOULD BE IN SEPARATE BEDS. BUT THAT'S WHERE WE'RE
15 AT.

16 THE COURT: WELL, THAT'S WHERE WE ARE.
17 WHAT I'VE SAID IS THAT I'M CONCERNED ABOUT IT
18 BECAUSE IT CLEARLY WAS A FRIENDLY
19 CROSS-EXAMINATION. AND I HAVEN'T MADE UP MY MIND
20 ONE WAY OR THE OTHER. BUT YOUR POINT IS, MR.
21 DUKES, WHAT IF ANY INVOLVEMENT DID YOUR RE-DIRECT
22 HAVE IN THIS CIRCUMSTANCE, AND THE QUESTION IS
23 NONE.

24 MR. DUKES: I MEAN, IF I -- IS IT OKAY
25 NOT TO ASK ANY QUESTIONS?

MOTIONS

607

1 THE COURT: I DON'T KNOW.

2 MR. DUKES: SHE IS---

3 THE COURT: I DON'T KNOW. THEN YOU'RE
4 ASKING FOR AN ADVISORY OPINION. I'M NOT GOING TO
5 GIVE IT TO YOU.

6 MR. DAVIS: AND, JUDGE, HE KNOWS THAT
7 HE'S A LITTLE AWKWARD; I REALLY COULD PUT HIS
8 CLIENT IN JEOPARDY ALL DAY LONG IN A SENSE IF I
9 FOLLOW YOUR ANALOGY BECAUSE, YOU KNOW, IF HE TOW
10 THE LINE; AND I ASK ABOUT A CRIME, YOUR HONOR; WHAT
11 WOULD YOU HAVE DONE THEN?

12 THE COURT: WELL, I HOPE HE WOULD OBJECT.
13 I HOPE HE WOULD PROTECT HIS CLIENT. YOU KNOW, MY
14 CONCERN IS THAT, YOU KNOW, HE'S ACQUIESCING IN THE
15 CROSS-EXAMINATION.

16 MR. DUKES: WELL, YOU KNOW, IF YOU LOOK
17 AT IT. I MEAN, THIS COULD HELP ME MORE THAN IT
18 COULD HURT ME BECAUSE THERE IS A NAMED PARTY, BUT
19 THERE IS NO FINDING AGAINST HIM.

20 THE COURT: SO YOU DON'T OBJECT?

21 MR. DUKES: I'M NOT SAYING---

22 THE COURT: YOU SAY OPEN THE DOOR? IN
23 OTHER WORDS---

24 MR. DUKES: NO, I HAVEN'T SAID OPEN THE
25

MOTIONS

608

1 TO IT.

2 THE COURT: TO THE ORDER BEING -- ALL
3 RIGHT.

4 MRS. MURPHY: JUDGE, I WOULD LIKE TO ADD
5 ONE THING.

6 THE COURT: WELL, STOP A SECOND; STOP A
7 SECOND. WHAT YOU'RE TELLING ME IS THAT YOU DO NOT
8 OBJECT TO THE D.S.S. ORDER NOW COMING INTO EVIDENCE.
9 ON RE-CROSS?

10 MR. DUKES: IT DOESN'T HURT ME.

11 THE COURT: ALL RIGHT. SO THERE'S NO
12 OBJECTION ON BEHALF OF THIS DEFENDANT. LET ME HEAR
13 FROM YOU. THAT IS A VERY DIFFERENT CIRCUMSTANCE.
14 I DID NOT UNDERSTAND THAT. I APOLOGIZE. I
15 UNDERSTOOD THAT MR. DUKES DID INTERPOSE AN
16 OBJECTION.

17 MR. DUKES: WELL, YOU KNOW, I'D RATHER
18 FOR IT NOT TO BE IN AT ALL.

19 THE COURT: WELL, YOU KNOW, MR. DUKES?
20 MR. DAVIS WOULD LIKE TO MAKE A FRIENDLY OBJECTION
21 ON YOUR PART.

22 MR. DUKES: I MEAN, YOU KNOW, IT DOESN'T
23 HURT MY MAN AS MUCH AS IT HURTS HER IS WHAT I'M
24 TRYING TO SAY.

MOTIONS

609

1 QUESTION IS DO YOU OR DON'T YOU OBJECT?

2 MR. DUKES: I OBJECT.

3 MR. DAVIS: THANK YOU.

4 MRS. MURPHY: I THINK BY MR. DAVIS
5 CLEARLY SPECIFICALLY TALKING ABOUT THESE FIVE
6 CHILDREN, CONCENTRATING ON THESE FIVE CHILDREN, IT
7 CLEARLY OPENS THE DOOR FOR ME FOR ME TO ASK ABOUT
8 THE OTHER FIVE CHILDREN.

9 MR. DAVIS: BUT WE AREN'T TALKING ABOUT
10 THE OTHER FIVE CHILDREN. IF YOU'VE GOT INFORMATION
11 ON THE OTHER FIVE CHILDREN, YOU DO IT IN REPLY.

12 THE COURT: OKAY. LET ME THINK ABOUT IT.
13 I UNDERSTAND, MRS. MURPHY. ALL RIGHT. THE FIRST
14 THING THAT'S GOING TO OCCUR, JUST SO YOU ALL KNOW,
15 IS I'M GOING TO ASK FOR ANY RECROSS FROM MR. DAVIS.
16 AND THAT'S PROBABLY PART OF PROCEDURALLY WHEN WE
17 WENT THROUGH THE LAST TIME, AND IT'S CERTAINLY MY
18 RESPONSIBILITY. AND YOU SHOULD HAVE GONE, MR.
19 DAVIS, BEFORE MRS. MURPHY. AND I THINK THAT
20 CERTAINLY CAUSED SOME OF THE CONCERN, SOME OF THE
21 DIFFICULTY PERHAPS. SO I'M GOING TO CALL, JUST SO
22 YOU KNOW, THAT DOESN'T SURPRISE YOU; I'M GOING TO
23 ASK FOR ANY RE-CROSS THAT YOU MIGHT HAVE. AND THEN
24 I'M GOING TO GET TO MRS. MURPHY. NOW, THIS IS WHAT
25 I'M GOING TO DO. IN THAT THE QUESTION WAS ASKED

MOTIONS

610

1 WHETHER OR NOT THEY EVEN WANTED HIM AT THE D.S.S.
2 HEARING IN THIS MATTER. I AM GOING TO ALLOW YOU TO
3 ASK THE DEFENDANT WHETHER OR NOT HE WAS A PARTY TO
4 THE D.S.S. MATTER THAT MR. DAVIS WAS REFERRING TO.
5 AND THAT WILL BE THE EXTENT OF THE INQUIRY. IN
6 OTHER WORDS, THE ORDER DOESN'T COME IN AT THIS
7 TIME.

8 MR. DAVIS: THAT'S FINE, YOUR HONOR.

9 THE COURT: I'M SO GLAD YOU THINK SO, MR.
10 DAVIS.

11 MRS. MURPHY: AND THEN SUBSEQUENT TO
12 THAT, AM I ALLOWED TO THAT, AM I ALLOWED TO ASK DID
13 HE OPEN THE DOOR ASKING ABOUT THOSE FIVE CHILDREN
14 FOR ME TO ASK ABOUT THESE OTHER FIVE CHILDREN?

15 THE COURT: I WILL ALLOW YOU, MRS.
16 MURPHY, TO CLARIFY THE CHILDREN THAT WERE TALKED
17 ABOUT. BUT I THINK THAT IS SUFFICIENT. VERY WELL.
18 DO YOU UNDERSTAND WHAT I'M SAYING? THAT THE FIVE
19 CHILDREN -- YOU CAN SAY THE FIVE CHILDREN YOU WERE
20 TALKING ABOUT REGARDING MR. DAVIS WERE NOT THE FIVE
21 CHILDREN IN THE HOUSEHOLD WHERE YOU LIVE, OR
22 SOMETHING TO THAT EFFECT TO ESTABLISH THERE'S A
23 DIFFERENCE.

24 MR. DAVIS: AND THAT SHOULD BE IT.

25 THE COURT: VERY WELL.

MOTIONS

611

1 (BRIEF RECESS.)

2 THE COURT: ALL RIGHT. LET'S HAVE THE
3 JURY.

4 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

5 THE COURT: ALL RIGHT. THANK YOU, LADIES
6 AND GENTLEMEN. AT THIS TIME WE WILL CONTINUE WITH
7 THE RE-CROSS EXAMINATION, I SHOULD SAY, OF MR.
8 BURDEN AND MR. DAVIS. IS THERE ANY RE-CROSS?

9 MR. BURDEN: I DON'T HAVE ANY. THANK
10 YOU, JUDGE.

11 THE COURT: VERY WELL. ALL RIGHT, MRS.
12 MURPHY; RE-CROSS?

13

14

CONT'D RE-DIRECT EXAMINATION

15

BY MRS. MURPHY:

16

Q. MR. BURDEN, ON RE-CROSS EXAMINATION FROM DEFENSE
17 COUNSEL, DAVIS, HERE; YOU WERE ASKED IF YOU WERE A
18 PARTY TO A D.S.S. HEARING IN 1998. WERE YOU A
19 PARTY?

20

A. NOT TO MY KNOWLEDGE.

21

Q. AND WHEN YOU WERE ASKED BY DEFENSE COUNSEL
22 REGARDING YOUR FIVE CHILDREN FROM A PREVIOUS
23 MARRIAGE NEVER BEING IN D.S.S. CUSTODY; IS THAT
24 CORRECT?

25

A. YES.

FLORA MAE JENKINS - DIRECT/MR. DAVIS

612

1 Q. AND THOSE ARE THE FIVE CHILDREN THAT YOU'RE
2 REFERRING TO?

3 A. YES.

4 Q. NO FURTHER QUESTIONS.

5 THE COURT: ALL RIGHT, VERY WELL. YOU
6 MAY COME DOWN.

7 THE COURT: MR. DUKES, CALL YOUR NEXT
8 WITNESS, PLEASE.

9 MR. DUKES: YOUR HONOR, WE REST.

10 THE COURT: COUNSEL, LET ME SEE YOU.

11 (AT THIS TIME BENCH CONFERENCE IS HELD.)

12 THE COURT: MR. DUKES IS GOING TO RESERVE
13 MOTIONS. WE'RE GOING TO RESERVE MOTIONS AT THIS
14 POINT. MR. DAVIS?

15 MR. DAVIS: I CALL MS. FLORA MAY JENKINS
16 TO THE STAND.

17 - - - - -

18 WHEREUPON,

19 FLORA MAE JENKINS, WHO AFTER BEING FIRST
20 DULY SWORN TO TELL THE TRUTH,
21 TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. DAVIS:

24 Q. MRS. JENKINS, WHAT IS YOUR RELATIONSHIP TO GASTON?

25 A. I'M ADRIAN'S GRANDMOTHER.

FLORA MAE JENKINS - DIRECT/MR. DAVIS

613

1 Q. GRANDMOTHER? ADRIAN'S FATHER WAS YOUR---

2 A. MY SON.

3 Q. IS YOUR SON STILL LIVING?

4 A. NO. HE PASSED AWAY; TOMORROW WILL BE THREE YEARS.

5 Q. HE PASSED AWAY?

6 A. YES.

7 Q. HOW OLD WAS HE WHEN HE PASSED AWAY?

8 A. FORTY-SIX.

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

10 A. I'M THE MOTHER OF TEN.

11 Q. TEN? HOW MANY HAVE PASSED AWAY?

12 A. TWO.

13 Q. AND YOU SAID ADRIAN'S FATHER PASSED AWAY ABOUT
14 THREE YEARS AGO?

15 A. YES.

16 Q. DID HE HAVE ANY PARTICULAR PROBLEMS, MEDICAL
17 PROBLEMS?

18 A. HE HAD AN ANEURYSM.

19 Q. THAT'S WHAT HE DIED FROM?

20 A. WELL, HE HAD MORE PROBLEMS. HE HAD A BLOOD CLOT IN
21 HIS LEGS. HE HAD SURGERY ON THAT. THEY TOOK THE
22 VEIN OUT AND REPLACED IT WITH AN ARTIFICIAL VEIN.
23 BUT THAT WENT BAD. AND THEY TOOK IT OUT, AND THEY
24 LET IT HEAL NATURALLY. AND HE WAS JUST HAVING

25 SOME PROBLEMS. BUT HE WAS -----

FLORA MAE JENKINS - DIRECT/MR. DAVIS

614

1 WENT TO WORK THAT DAY. AND THAT EVENING AFTER HE
2 KNOCKED OFF, HE FELL WITH AN ANEURISM.

3 Q. DID HE GET TO SEE ANY OF HIS GRANDCHILDREN WHO ARE
4 THE QUESTION OF THIS LAWSUIT HERE OR THIS---

5 MRS. MURPHY: I'M GOING TO OBJECT TO THE
6 RELEVANCE OF THAT TESTIMONY.

7 THE COURT: YES, SIR, MR. DAVIS.

8 Q. DID HE KNOW Child [REDACTED]

9 A. YES.

10 Q. THAT WAS Child [REDACTED] GRANDFATHER; ISN'T THAT CORRECT?

11 A. YES.

12 Q. HAD YOU EVER HAD TO CARE FOR ANY OF MRS. GADSON'S
13 CHILDREN, YOUR GRANDCHILDREN?

14 A. YES, I DID. I HAD -- I HAVE PROBLEMS WITH THAT
15 BOY'S NAME. WHEN HE HAD HIS LEG BROKE THE SECOND
16 TIME, D.S.S. WAS GOING TO PUT THEM IN A HOME. I
17 TAKE THEM OVER, AND I HAD THEM IN MY CARE.

18 Q. YOU HAD THEM IN YOUR CARE?

19 A. YES.

20 Q. HAVE YOU VISITED ADRIAN GADSON'S HOME AT ANY TIME
21 IN THE PAST?

22 A. YES, I DID.

23 Q. HOW WOULD YOU DESCRIBE HER AS A MOTHER?

24 A. WELL, SHE IS A WONDERFUL MOTHER. SHE'S A LOVING,
CAREING PERSON. SHE'D TAKE CARE OF HER KIDS. SHE

FLORA MAE JENKINS - DIRECT/MR. DAVIS

615

1 WORKS EVERY DAY.

2 Q. DO YOU HAVE ANY CONSIDERATION THAT YOUR
3 GRANDCHILDREN WOULD BE IN ANY GRAVE HARM WHILE
4 THEY'RE IN HER CARE OR CUSTODY?

5 A. NO; NOT AT ALL.

6 Q. HOW MANY GRANDCHILDREN DO YOU HAVE?

7 A. I HAVE EIGHTEEN GRANDCHILDREN.

8 Q. EIGHTEEN GRANDCHILDREN?

9 A. YES.

10 Q. ANY GREAT GRAND?

11 A. FOURTEEN GREAT GRAND.

12 Q. BECAUSE YOU HAD TEN CHILDREN; ISN'T THAT CORRECT?

13 A. RIGHT.

14 Q. YOU WERE AWARE -- YOU HAVE BEEN THROUGH MOST OF THE
15 TRIAL THIS WEEK, HAVE YOU NOT?

16 A. YES, I DID.

17 Q. OKAY. AND YOU WEREN'T THERE ON NOVEMBER THE THIRD,
18 2001?

19 A. AT ADRIAN'S HOUSE?

20 Q. YES?

21 A. NO, I WASN'T.

22 Q. DID YOU VISIT THE HOSPITAL AT ANY TIME ON NOVEMBER
23 THE THIRD, 2001, IN REFERENCE TO YOUR GRANDCHILDREN
24 OR YOUR GRANDCHILD?

FLORA MAE JENKINS - DIRECT/MR. DAVIS

616

1 THAT NIGHT. BUT I WAS UNABLE: I WASN'T FEELING
2 WELL. I CALLED MY TWO DAUGHTERS, AND THEY WENT IN
3 MY PLACE. AND THEY CALLED ME BACK AND INFORMED ME.

4 Q. OKAY. SO THEY WENT TO M.U.S.C. HOSPITAL AT YOUR
5 DIRECTION?

6 A. RIGHT.

7 Q. OKAY. HAVE YOU BEEN PUT IN A POSITION TO ACTUALLY
8 VISIT WITH YOUR GRANDCHILDREN SINCE NOVEMBER THE
9 THIRD, 2001?

10 A. OH, YES.

11 Q. SO YOU SEE THEM REGULARLY?

12 A. YES.

13 Q. Child WHO IS THE FOCAL POINT OF EVERYTHING HERE
14 TODAY; HOW IS HE DOING?

15 A. HE'S DOING FINE.

16 Q. NOW, DO YOU HAVE ANY TWINS IN YOUR FAMILY?

17 A. I HAD TWIN SISTERS.

18 Q. YOU HAD TWIN SISTERS YOURSELF?

19 A. YES.

20 Q. YOU'VE HEARD SOME TESTIMONY THIS WEEK ABOUT ONE OF
21 THESE CHILDREN, SPECIFICALLY Child HAVING
22 CIGARETTE BURNS ON HIM. CAN YOU SHED SOME LIGHT ON
23 THAT FOR THE JURY?

24 A. YES. WHEN HE WAS IN MY CARE, HE WAS IN A CAST FROM

FLORA MAE JENKINS - DIRECT/MR. DAVIS

617

1 OPENING AT THE BOTTOM WHERE WE COULD PUT PAMPERS ON
2 HIM. AND INSIDE THAT CAST GOT WET, AND HE
3 ACCUMULATED -- I CALL IT A RASH. AND THE TWO LOAFS
4 -- I CALL THEM LOAFS -- GOT REAL SORE. AND I HAD
5 TO WORK ON IT. AND WHEN IT HEALED, IT LEAVES A
6 LITTLE ROUND SPOT ON BOTH OF HIS HIPS BACK THERE,
7 AND IT TAKE A GOOD WHILE BEFORE IT HEALED UP. AND
8 WHEN IT HEALED UP, IT WOULD LEAVE A LITTLE DIMPLE
9 IN THERE.

10 Q. AND THIS IS THE THING THAT IN YOUR OPINION THE
11 DOCTORS ARE DESCRIBING AS A CIGARETTE BURN?

12 MRS. MURPHY: OBJECTION, YOUR HONOR.

13 SHE'S NOT QUALIFIED TO GIVE A MEDICAL OPINION AS TO
14 WHAT CAUSED THE SCARRING.

15 THE COURT: SUSTAINED.

16 Q. YOU HAVE HOW MANY GRANDCHILDREN?

17 A. I HAVE EIGHTEEN GRANDCHILDREN.

18 Q. HOW MANY PAMPERS DO YOU THINK YOU'VE CHANGED IN
19 YOUR LIFETIME?

20 A. OH, MY LORD, I CAN'T CALL IT.

21 Q. NOW MANY TIMES HAVE YOU SEEN DIAPER RASH IN YOUR
22 LIFETIME?

23 A. I HAD CHILDREN OF MY OWN. AND THEY HAD DIAPER
24 RASH. THE SAME THING HAPPENED TO THEM.

25 Q. DO EITHER ONE OF THESE PEOPLE SMOKE?

FLORA MAE JENKINS - DIRECT/MR. DAVIS

618

1 A. NO.

2 Q. WERE YOU AWARE THAT THE TWO TWINS WERE BORN
3 PREMATURE?

4 A. YES, I DID.

5 Q. CAN YOU ACTUALLY NOTICE A DIFFERENCE IN THE WEIGHT
6 SIZE BETWEEN THE TWO CHILDREN?

7 A. YES. ONE OF THEM IS TALLER THAN THE OTHER.

8 Q. HOW WOULD YOU DESCRIBE THE ACTIVITY? WE'VE HEARD A
9 LOT ABOUT THEIR MOTOR SKILLS AND STUFF?

10 A. OH, THEY'RE VERY HYPER. JUST LIKE THIS ROOM HERE
11 NOW. IF THEY WERE HERE NOW, I IMAGINE YOU WOULD
12 HAVE TO CALL E.M.S. BECAUSE THEY RUNS AND THEY
13 FALLS. THEY WOULD FALL INTO THINGS AND GET BRUISE
14 UP AND KNOTS AND STUFF BEES ON THEIR HEAD. IF YOU
15 WOULD GO NOW AND CHECK THEM, YOU'D PROBABLY FIND
16 KNOTS ON THEIR HEAD NOW WHERE THEY RUN AND FALL
17 INTO THINGS.

18 Q. THAT'S JUST THE WAY THEY ARE? NOW, MA'AM, YOU
19 CAME INTO THIS COURT, AND YOU RAISE YOUR RIGHT HAND
20 TO TELL THE TRUTH AND NOTHING BUT THE TRUTH?

21 A. THE TRUTH.

22 Q. WOULD YOU COME INTO THIS COURT AND FABRICATE ANY
23 TESTIMONY FOR THE BENEFIT OF YOUR GRAND---

24 MRS. MURPHY: OBJECTION, YOUR HONOR.

25 HE'S BOLSTERING THE WITNESS.

FLORA MAE JENKINS - DIRECT/MR. DAVIS

619

1 MR. DAVIS: I'M NOT BOLSTERING. I'M JUST
2 ASKING A QUESTION. I HAVEN'T FINISHED YET, JUDGE.

3 THE COURT: LET ME HEAR THE REST OF THE
4 QUESTION.

5 Q. WOULD YOU COME INTO THIS COURTROOM AND LIE FOR
6 ADRIAN GADSON?

7 A. NO, I WOULDN'T.

8 MRS. MURPHY: OBJECTION, YOUR HONOR.
9 HE'S BOLSTERING THE WITNESS AND ASKED HER IF SHE'S
10 UNDER OATH. SHE'S OBVIOUSLY UNDER OATH.

11 THE COURT: I UNDERSTAND. THANK YOU,
12 SIR. YOU'RE BOLSTERING. SUSTAINED.

13 MR. DAVIS: THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU, SIR. SHE'S
15 BOLSTERING. THANK YOU.

16 Q. WHEN YOU LEARNED THAT SHE WAS ARRESTED IN THIS
17 CASE; WHAT WAS YOUR REACTION?

18 MRS. MURPHY: YOUR HONOR.

19 THE COURT: SUSTAINED.

20 Q. DID YOU LEARN THAT SHE HAD BEEN ARRESTED?

21 A. ADRIAN.

22 Q. UH-UH.

23 A. THEY DON'T TELL ME ANYTHING THAT THEY FIGURE I'M
24 GOING TO GET UPSET OVER. NO, I DIDN'T KNOW SHE WAS
25 ARRESTED.

FLORA MAE JENKINS - DIRECT/MR. DAVIS

620

1 Q. BUT YOU'VE BEEN HERE THE WHOLE WEEK, HAVE YOU NOT?

2 A. YES.

3 Q. YOU GO TO CHURCH?

4 A. OH, YES.

5 Q. TELL US WHAT ROLE YOU SERVE IN THE CHURCH.

6 A. I'M THE MOTHER OF MY CHURCH.

7 Q. YOU'RE THE MOTHER OF THE CHURCH. WHY DO YOU GET TO
8 BE THE MOTHER OF THE CHURCH?

9 A. MY HUSBAND IS THE PASTOR.

10 Q. HOW LONG HAS HE BEEN A PASTOR?

11 A. 48 YEARS.

12 Q. 48 YEARS? HE WOULDN'T GET MAD IF YOU MISSED IT BY
13 A LITTLE BIT. FORTY-EIGHT YEARS?

14 A. YES.

15 Q. YOU'RE THE MOTHER OF THE CHURCH. WHAT'S THE NAME
16 OF THE CHURCH?

17 A. DANGLE TEMPLE PENTECOSTAL HOLINESS.

18 MRS. MURPHY: YOUR HONOR, I OBJECT TO THE
19 RELEVANCE TO THIS PARTICULAR QUESTION.

20 THE COURT: SUSTAINED.

21 Q. THERE'S NO QUESTION THAT YOU ARE THE MOTHER OF THE
22 CHURCH?

23 MRS. MURPHY: OBJECTION, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 Q. IS ADRIAN A HARD WORKER?

FLORA MAE JENKINS - CROSS/MR. DUKES

621

1 A. OH, YES, SHE IS.

2 Q. YOU'VE GOT PERSONAL KNOWLEDGE THAT SHE'S BEEN
3 HAVING TO WORK THE SAME WEEK WHILE WE HAVE COURT
4 GOING ON THAT NIGHT?

5 MRS. MURPHY: OBJECTION. YOUR HONOR,
6 HE'S LEADING THE WITNESS.

7 THE COURT: SUSTAINED. DO NOT LEAD,
8 PLEASE.

9 MR. DAVIS: THANK YOU, JUDGE.

10 Q. YOU HAD A DOCTOR'S APPOINTMENT THIS WEEK, DID YOU
11 NOT?

12 A. YES, I DID.

13 Q. DID YOU HAVE TO CANCEL IT?

14 A. YES, SIR.

15 Q. TO BE HERE, ISN'T THAT CORRECT; TO BE HERE TO
16 TESTIFY?

17 A. RIGHT.

18 MRS. MURPHY: YOUR HONOR---

19 THE COURT: SUSTAINED.

20 MR. DAVIS: NO FURTHER QUESTIONS.

21 THE COURT: YES, SIR, MR. DUKES.

22 MR. DUKES: YES, MA'AM.

23 CROSS EXAMINATION

24 BY MR. DUKES:

25 Q. YOUR NAME IS FLORA MAE JENKINS?

FLORA MAE JENKINS - CROSS/MR. DUKES

622

- 1 A. RIGHT.
- 2 Q. AND YOU'RE THE GRANDMOTHER---
- 3 A. OF ADRIAN.
- 4 Q. AND OF THE FIVE CHILDREN THAT SHE HAS?
- 5 A. GREAT GRANDMOTHER.
- 6 Q. GREAT GRANDMOTHER OKAY; I'VE GOT YOU. AND YOUR
- 7 HUSBAND IS A GREAT GRANDFATHER?
- 8 A. A STEP GREATGRANDFATHER.
- 9 Q. OKAY. BUT I'M TALKING ABOUT -- WHAT WAS YOUR FIRST
- 10 HUSBAND'S NAME?
- 11 A. EUGENE WASHINGTON.
- 12 Q. EUGENE WASHINGTON?
- 13 A. YES.
- 14 Q. AND HE'S DECEASED?
- 15 A. YES.
- 16 Q. HOW OLD WAS HE WHEN HE DIED?
- 17 A. HE WAS 64 YEARS OLD.
- 18 Q. I THINK YOU SAID HE HAD AN ANEURISM?
- 19 A. NO. HE HAD A MASSIVE HEART ATTACK.
- 20 Q. AND YOU TOOK CARE OF Child
- 21 A. YES, I DID. I TOOK CARE OF ALL OF THEM.
- 22 Q. AND HE'S DIFFICULT TO FOLLOW; KEEP UP WITH?
- 23 A. OH, YES.
- 24 Q. AND HE'S ACCIDENT PRONE?
- 25 A. VERY HYPER.

FLORA MAE JENKINS - CROSS/MR. DUKES

623

1 Q. AND YOU KNOW WILLIAM DEAN BURDEN, DON'T YOU?

2 A. YES, I DO.

3 Q. IS THAT THE GENTLEMAN SETTING DOWN THERE WITH MY
4 CLIENT?

5 A. YES.

6 Q. HAVE YOU EVER OBSERVED HIM WITH THE CHILDREN?

7 A. YES.

8 Q. DO YOU THINK HE TAKES CARE OF CHILDREN PROPERLY?

9 A. WELL, I HAVEN'T SEEN HIM, WHEN I VISIT, I JUST
10 HAVEN'T SEEN HIM AROUND WITH THE CHILDREN. I CAN'T
11 SAY.

12 Q. DO YOU KNOW THAT HE HAD HELP TO TAKE CARE OF THE
13 CHILDREN?

14 A. I HEARD SO.

15 Q. AND THAT HE COOKED MEALS FOR THEM?

16 A. I HEARD SO.

17 Q. BUT YOU'VE NEVER SEEN HIM DO ANYTHING WRONG TO THE
18 CHILDREN?

19 A. NO, I HAVEN'T.

20 Q. THANK YOU VERY MUCH.

21 THE COURT: ANYTHING FURTHER?

22 MR. DUKES: NO, SIR.

23 THE COURT: ALL RIGHT. MRS. MURPHY;
24 CROSS-EXAMINATION?

25 MRS. MURPHY: THANK YOU, YOUR HONOR.

FLORA MAE JENKINS - RE-DIRECT/MRS. MURPHY

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RE-DIRECT EXAMINATION

BY MRS. MURPHY:

Q. GOOD AFTERNOON, MRS. JENKINS?

A. GOOD AFTERNOON.

Q. MRS. JENKINS, YOU TESTIFIED THAT YOU CUSTODY OF
Child CORRECT?

A. YES.

Q. AND THAT'S BECAUSE D.S.S. TOOK THEM AWAY FROM YOUR
DAUGHTER; CORRECT?

A. YES.

Q. NOW YOU TOOK Child TO THE PEDIATRICIAN DURING
THAT PORTION THAT YOU HAD CUSTODY OF THEM?

A. D.S.S. CAME AND TOOK HIM.

Q. ALL RIGHT. DID YOU EVER GO WITH D.S.S.?

A. NO. MY HUSBAND WAS SICK AT THE TIME. I COULDN'T
PARTICIPATE IN THAT.

Q. SO DO YOU REMEMBER TAKING HIM TO THE PEDIATRICIAN
ON NOVEMBER THE FIRST?

A. D.S.S. CAME AND TAKE HIM. I KNOW HE HAD TO GO.
THEY CAME AND TAKE HIM.

Q. ALL RIGHT. SO YOU NEVER TOOK HIM TO THE
PEDIATRICIAN?

A. NO, I NEVER DID.

Q. ALL RIGHT, MA'AM. NOW, YOU WEREN'T PRESENT WHEN
Child BROKE HIS THE FIRST TIME, WERE YOU?

FLORA MAE JENKINS - RE-DIRECT/MRS. MURPHY

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- 1 A. NO.
- 2 Q. AND YOU WEREN'T PRESENT WHEN Child WAS BLINDED,
3 WERE YOU?
- 4 A. NO.
- 5 Q. AND YOU WEREN'T PRESENT WHEN Child BROKE HIS LEG
6 THE SECOND TIME?
- 7 A. NO.
- 8 Q. AND YOU WEREN'T PRESENT WHEN HE RECEIVED SCARRING
9 ON HIS BACK? HE HAD SCARS ON HIS BACK. DID YOU
10 KNOW ABOUT THOSE?
- 11 A. THE ONE ON HIS BOTTOM, I KNOW ABOUT THEM. BUT ANY
12 OTHER ONES, EXCEPT THE BRUISES THAT THEY FELL AND
13 BUMPED THEIR HEAD; THEY FELL AND BUMPED THEIR
14 HEAD. GOD KNOWS THEY GOT A LOT AT MY HOUSE. BUT
15 THE ONE OF HIS BOTTOM. I KNOW ABOUT THAT.
- 16 Q. DO YOU RECALL ANY KIND OF INJURIES ON HIS BACK?
- 17 A. NO.
- 18 Q. YOU WEREN'T PRESENT WHEN ANY OF THAT OCCURRED?
- 19 A. NO.
- 20 Q. YOU WEREN'T PRESENT WHEN ANY OF THAT OCCURRED?
- 21 A. NO.
- 22 Q. AND YOU WEREN'T PRESENT WHEN HIS EAR WAS TORN?
- 23 A. NO.
- 24 Q. OR SCARRED?
- 25 A. NO.

FLORA MAE JENKINS - RE-CROSS/MR. DAVIS

626

1 Q. NO FURTHER QUESTIONS.

2 MR. DAVIS: JUST A FEW QUESTIONS TO
3 RE-ESTABLISH SOME THINGS.

4 THE COURT: ALL RIGHT.

5 RE-CROSS EXAMINATION

6 BY MR. DAVIS:

7 Q. THIS IS YOUR GRANDCHILD?

8 A. RIGHT.

9 Q. YOUR SON WAS HER FATHER?

10 A. MY OLDEST SON WAS HER FATHER.

11 Q. OKAY. AND WHEN THESE CHILDREN WERE IN YOUR
12 CUSTODY, DID SHE REGULARLY VISIT THOSE CHILDREN?

13 A. WHEN HER TIME WAS TO VISIT THE CHILDREN, SHE DID
14 COME.

15 Q. OKAY. NOW, I KNOW YOU'RE PART OF THE OLD
16 GENERATION. I DON'T MEAN THAT NEGATIVELY. BUT DO
17 YOU APPROVE OF SHACKING?

18 A. HUH?

19 Q. DO YOU APPROVE OF SHACKING?

20 A. NO, I DON'T.

21 Q. SO WHEN YOU COME TO THE HOUSE, EVERYBODY BETTER
22 SCRAM; ISN'T THAT TRUE?

23 A. YES.

24 Q. THANK YOU.

25 THE COURT: VERY WELL. YES, SIR, MR.

FLORA MAE JENKINS - RE-DIRECT/MR. DUKES

627

1 DUKES? ANY RE-CROSS?

2 MR. DAVIS: JUST ONE QUESTION.

3 RE-DIRECT EXAMINATION

4 MR. DUKES:

5 Q. YOUR HUSBAND'S NAME WAS EUGENE WASHINGTON?

6 A. RIGHT..

7 Q. YOUR SON'S NAME IS WHAT?

8 A. ALFRED GADSON.

9 Q. ALFRED GADSON?

10 A. YES.

11 Q. AND WHAT DID HE DIE OF?

12 MRS. MURPHY: OBJECTION, YOUR HONOR. I'M
13 GOING TO OBJECT TO RELEVANCE.

14 THE COURT: SUSTAINED.

15 MR. DAVIS: YOUR HONOR---

16 THE COURT: DO YOU WANT TO COME FORWARD
17 AND LET ME HEAR FROM YOU?

18 (AT THIS TIME BENCH CONFERENCE IS HELD.)

19 THE COURT: MR. DUKES, ANYTHING FURTHER?

20 MR. DUKES: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: VERY WELL. ALL RIGHT. YES,

22 MA'AM, MRS. MURPHY. ANY RE-CROSS?

23 MRS. MURPHY: NO RE-CROSS.

24 THE COURT: YOU MAY COME DOWN. CALL YOUR
25 NEXT WITNESS, PLEASE.

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 MR. DAVIS: WILLOW MAE GADSON, PLEASE.

2 - - - - -

3 WHEREUPON,

4 WILLOW MAE GADSON, WHO AFTER BEING FIRST

5 DULY SWORN TO TELL THE TRUTH,

6 TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. DAVIS:

9 Q. MRS. GADSON, I'M GOING TO GO RIGHT TO -- WHAT'S

10 YOUR RELATIONSHIP TO MY CLIENT, ADRIAN GADSON?

11 A. MY DAUGHTER.

12 Q. THAT'S THE ONLY CHILD YOU HAVE?

13 A. I HAVE A SON.

14 Q. SO YOU'VE GOT TWO KIDS?

15 A. YES.

16 Q. HOW OLD IS THE SON?

17 A. HE'S 24.

18 Q. HAS HE BEEN IN THE COURTROOM THIS WEEK ALSO?

19 A. YES.

20 Q. OKAY. NOW, HOW MANY GRANDS DO YOU HAVE?

21 A. FIVE.

22 Q. SO THE ONLY GRANDS THAT YOU HAVE IS THROUGH YOUR
23 DAUGHTER?

24 A. YES.

25 Q. OKAY. AND I'M GOING TO GO RIGHT TO NOVEMBER THE

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 THIRD, 2001. WHERE WERE YOU LOCATED AT THE TIME,
2 MA'AM?

3 A. I WENT BY MY DAUGHTER'S HOUSE TO SEE IF SHE WANTED
4 TO GO TO THE STORE, BUT I DIDN'T GOT OUT. SO SHE
5 CAME, AND WE -- BECAUSE I REMEMBER SHE WANTED
6 SOMETHING -- A DRESS TO GO TO CHURCH FOR JUST THE
7 NEXT DAY.. AND WE WENT TO CATOE, THIS OTHER STORE
8 BY CATOE, AND WE WENT TO FOOD LION.

9 Q. I'M GOING TO STOP YOU RIGHT THERE. YOU ACTUALLY
10 DID NOT GO INTO THE HOUSE?

11 A. NO.

12 Q. WHERE DO THEY LIVE AT?

13 A. ON PIGEON BAY ROAD. I DON'T KNOW THE ADDRESS, BUT
14 IT'S PIGEON BAY ROAD.

15 Q. HAD YOU BEEN THERE BEFORE?

16 A. YES.

17 Q. HOW MANY TIMES WOULD YOU SAY BEFORE NOVEMBER THE
18 THIRD, 2001, YOU HAD BEEN THERE?

19 A. LOTS OF TIMES.

20 Q. DESCRIBE THAT HOME FOR THE JURY, THE INSIDE
21 STRUCTURE. DESCRIBE IT.

22 A. IT WAS A TWO BEDROOM AND A KITCHEN AND A DEN.

23 Q. DO YOU KNOW WHAT THEY WERE PAYING FOR RENT ON THAT
24 PLACE?

25 A. THREE-SIXTY.

WILLOW MAE GADSON - DIRECT/MR. DAVIS

630

1 MRS. MURPHY: OBJECTION; RELEVANCE.

2 THE COURT: WHAT'S THE RELEVANCE?

3 MR. DAVIS: WELL, YOUR HONOR, THE COP
4 SAID IT WAS SUCH A RUN DOWN PLACE.

5 THE COURT: WELL, THAT'S THE AMOUNT OF
6 RENT. SUSTAINED.

7 MR. DAVIS: WELL, YOUR HONOR, THE COPS
8 SAID IT WAS SUCH A RUN-DOWN PLACE.

9 THE COURT: WELL, THAT'S THE AMOUNT OF
10 RENT. SUSTAINED.

11 MR. DAVIS: WELL, YOU DON'T PAY A LOT OF
12 MONEY FOR A DUMP. THAT'S WHAT I WAS SAYING, JUDGE.

13 Q. HOW MANY BEDS WERE IN THE HOUSE?

14 A. THERE WAS TWO BIG BEDS.

15 Q. OKAY. SO THE CHILDREN HAD A PLACE TO STAY, A
16 BEDROOM THAT IS?

17 A. YES.

18 Q. OKAY. BUT YOU DIDN'T GO IN THIS PARTICULAR
19 AFTERNOON?

20 A. NO. I WAS GOING TO WAIT UNTIL I COME BACK. I
21 ALWAYS GO IN AND VISIT.

22 Q. DID ANYTHING HAPPEN WHILE Y'ALL WERE SHOPPING?

23 A. ONCE WE GET TO THE FOOD LION STORE, AND MY DAUGHTER
24 SAID "WELL, LET ME GO IN AND CHECK ON THE
25 CHILDREN." SO SHE WENT---

WILLOW MAE GADSON - DIRECT/MR. DAVIS

631

1 Q. STOP RIGHT THERE. HAD YOU BEEN SHOPPING WITH HER
2 BEFORE?

3 A. YES.

4 Q. IN THE PAST?

5 A. YES.

6 Q. DID SHE HAVE A HABIT OF CHECKING BACK ON THE
7 CHILDREN TO MAKE SURE THEY WERE ALL RIGHT?

8 A. YES.

9 Q. OKAY. SO THIS PARTICULAR DAY, SHE WAS FOLLOWING
10 THAT SAME HABIT?

11 A. YES.

12 Q. OKAY. GO AHEAD.

13 A. AND SO MY SISTER WHICH WAS THE SUPERVISOR OVER THE
14 FAMILY DOLLAR; SHE WENT IN THAT STORE. AND MY
15 SISTER LET HER CALL. AND WHEN SHE DID, I SEE SHE
16 WAS UPSET. AND I SAID "WHAT HAPPENED?" AND SHE
17 SAY "WE'VE GOT TO GO."

18 MRS. MURPHY: OBJECTION, YOUR HONOR;
19 HEARSAY AS TO WHAT OTHER PEOPLE WERE SAYING.

20 MR. DAVIS: SHE'S TALKING ABOUT THAT
21 PHONE CALL SHE GOT FROM A HOUSE, RIGHT?

22 MRS. GADSON: YES.

23 Q. SHE TESTIFIED?

24 A. YES. HE HAS CALLED AND SAID SOMETHING HAPPENED TO

25 ONE OF THE KIDS. TO COME AND HE DOES NOTHING

WILLOW MAE GADSON - DIRECT/MR. DAVIS

632

1 WHATEVER. WE WENT THERE. AND ONCE WE GOT THERE, I
2 SAW HIM LAYING ON THE FLOOR.

3 Q. SO WHEN YOU GOT THERE -- STOP RIGHT THERE, NOW.
4 WHEN YOU GOT THERE, HE WAS ON THE FLOOR. WHEN YOU
5 SAY "HE"; WHO ARE YOU TALKING ABOUT?

6 A. Child

7 Q. AND HOW OLD WAS Child

8 A. FIVE.

9 Q. HOW WOULD YOU DESCRIBE Child

10 A. HE'S AN ACTIVE LITTLE BOY?

11 Q. AN ACTIVE LITTLE BOY?

12 A. VERY ADORABLE.

13 Q. VERY ADORABLE. WELL, I CAN TELL BY THE PHOTOGRAPHS
14 THAT HE IS VERY ADORABLE. AND HE WAS ON THE FLOOR
15 WHEN YOU GOT THERE?

16 A. YES. I ASKED THE FATHER WHAT HAPPENED.

17 Q. I KNOW YOU ASKED -- WAS IT IN A NICE, CALM VOICE?

18 A. NO; I WAS SO UPSET, I ASKED WHAT HAPPENED. AND HE
19 SAID Child HAD HIT HIS HEAD, AND HE WAS ON THE
20 PHONE WITH E.M.S. AND I WAS LIKE I WANTED TO PICK
21 HIM UP AND TAKE HIM IN THE CAR, BUT I DON'T KNOW
22 WHAT BAD SHAPE HE WAS. AND THE E.M.S. WAS LIKE
23 TAKING A WHILE. IT WAS LIKE I'VE GOT TO GO MEET
24 THEM SO THEY CAN KNOW WHERE MY DAUGHTER LIVES AT.
25 SO I WENT---

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 Q. NOW, PIGEON BAY; YOU KNOW, THAT AIN'T LIKE SUBURBIA
2 SUBURBS. IT'S BACK IN A CERTAIN AREA THERE OF
3 SUMMERVILLE, IS IT NOT?

4 A. HER HUSBAND IS FURTHER BACK IN THE WOODS LIKE IN A
5 SPECIAL---

6 Q. IT'S NOT OFF THE MAIN ARTERY IS WHAT I'M TRYING TO
7 SAY LIKE ARTERY, MAIN HIGHWAY?

8 A. I DON'T KNOW WHAT---

9 Q. BUT DID YOU GO AND MEET E.M.S.?

10 A. YES; I JUST LEAVE; AND I WENT AND JUMPED IN MY CAR.
11 AND I WENT -- I MET THEM ON THE WAY; THE ROAD YOU
12 TURN IN SO I COULD SHOW THEM HOW YOU GET THERE IN A
13 HURRY -- I'M NOT SURE WHERE THEY GOT THERE IN A
14 HURRY.

15 Q. NOW YOU HEARD THE TESTIMONY OF THE E.M.S.
16 PERSONNEL. THEY SAID THEY WERE THERE IN ABOUT FOUR
17 MINUTES.

18 A. NO.

19 Q. SOUNDS LIKE IT WAS LONGER THAN THAT.

20 A. IT WAS LONGER.

21 Q. IT APPEARED TO BE LONGER?

22 A. IT WAS LONGER BECAUSE I WANTED TO PICK HIM UP, LIKE
23 I SAID. I SAID "WHAT'S TAKING THEM SO LONG."

24 Q. OKAY. DID YOU GO BACK TO THE HOUSE AFTER YOU LED
25

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 A. YES, I WENT IN THE HOUSE. WELL, I WENT OUTSIDE
2 BECAUSE THEY WAS LIKE TAKING HIM IN, YOU KNOW,
3 CHECKING HIM OR WHATEVER. SO ME AND MY DAUGHTER
4 GOT IN THE E.M.S., AND I WENT BEHIND THEM.

5 Q. NOW, HOW WOULD YOU DESCRIBE YOUR DAUGHTER NOW AS
6 SHE'S ABOUT TO GET IN THIS VEHICLE, THIS E.M.S.
7 VEHICLE, IN REFERENCE TO HER CHILD?

8 A. SHE WAS TOTALLY UPSET WHEN WE SAW HIM ON THE FLOOR.

9 Q. SHE WAS TOTALLY UPSET?

10 A. SHE WAS TOTALLY UPSET.

11 Q. DID SHE ASK MR. BURDEN WHAT HAPPENED?

12 A. YES.

13 MRS. MURPHY: OBJECTION; HEARSAY.

14 THE COURT: JUST A SECOND. NEXT

15 QUESTION.

16 Q. DID YOU HEAR HER MAKE ANY COMMENTS TO MR. WILLIAM
17 BURDEN?

18 A. SHE JUST SAY WHAT HAPPENED TO HIM.

19 MR. DAVIS: OBJECTION.

20 THE COURT: YOUR OBJECTION ON THE BASIS
21 OF HEARSAY?

22 MR. DAVIS: I DIDN'T THINK IT WAS
23 HEARSAY, YOUR HONOR. SHE CAN TESTIFY TO WHAT SHE
24 HEARD. IF NOT FOR THE TRUTH OF THE MATTER; JUST

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 THE COURT: I THINK IF SHE HEARD IT; JUST
2 AN OUT-OF-COURT STATEMENT WHICH IS BEING SUBMITTED
3 FOR THE TRUTH OF THE MATTER ASSERTED, THAT'S
4 HEARSAY.

5 MR. DAVIS: JUST THAT HE HEARD? I DIDN'T
6 SAY WHAT THE CONTENT OF THE STATEMENT. DID HE HEAR
7 A CONVERSATION OR ANY CONVERSATION BETWEEN THEM?

8 THE COURT: SHE WAS SAYING WHAT HE SAID.

9 Q. OKAY. DON'T TELL WHAT ME THEY SAID, SWEETHEART.
10 DID YOU HEAR A CONVERSATION BETWEEN THEM?

11 A. NO; BECAUSE I DIDN'T REALLY STAY. I JUST JUMPED IN
12 THE CAR---

13 Q. DID SHE LEAVE IN THE E.M.S.?

14 A. YES.

15 Q. OKAY. AND WHAT DID YOU DO?

16 A. I FOLLOWED BEHIND THEM.

17 Q. YOU FOLLOWED BEHIND THEM?

18 A. YES.

19 Q. AND WHERE DID YOU GO?

20 A. I WENT TO THE MEDICAL CENTER WITH THEM.

21 Q. YOU WENT TO THE MEDICAL CENTER?

22 A. YES.

23 Q. YOU ARE GOING TO TAKE THE GRANDBABY OVER TO THE
24 MEDICAL CENTER?

25 A. TRIDENH MEDICAL CENTER

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 Q. OKAY. WHERE IS THAT LOCATED?

2 A. IN SUMMERVILLE.

3 Q. HOW LONG WOULD YOU SAY IT TOOK FOR Y'ALL TO GET TO
4 THAT LOCATION?

5 A. PROBABLY ABOUT FIFTEEN MINUTES OR SO.

6 Q. WHEN YOU GOT THERE, WHAT TOOK PLACE?

7 A. THEY WAS LIKE -- THE DOCTORS -- I DIDN'T GET A
8 CHANCE TO GET IN THERE; BUT MY DAUGHTER WAS IN
9 THERE BECAUSE SHE RIDE IN THE E.M.S., AND I ASKED
10 HER WHAT HAPPENED TO Child AND SHE SAID, YOU
11 KNOW, THAT---

12 MRS. MURPHY: OBJECTION, YOUR HONOR, TO
13 THE OUT OF COURT STATEMENT.

14 THE COURT: YES, SIR.

15 Q. AS A RESULT OF WHAT YOU MAY HAVE OVERHEARD; DID YOU
16 STAY AT THE HOSPITAL?

17 A. YES; I STAYED AT THE HOSPITAL UNTIL FURTHER NOTICE.
18 AND THEY WAS GOING TO TRANSFER HIM---

19 Q. WERE YOU THERE IN FACT THAT MEDUCARE HELICOPTER
20 ARRIVED?

21 A. NO, I WASN'T.

22 Q. WHERE HAD YOU GONE?

23 A. YES, I WAS, BECAUSE I REMEMBER I WAS THERE. AND
24 THEY SAID -- SOME OF THE PEOPLE THAT'S IN THE
HOSPITAL AND THIS LADY THAT I KNOW; SHE CAME AND

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 HELD MY HAND. SHE SAID "WE'RE GOING TO HAVE TO SAY
2 A PRAYER FOR SHY." ALL OF US GOT TOGETHER AND
3 SHE'D STAY A PRAYER FOR HIM.

4 Q. DID Y'ALL PRAY FOR HIM?

5 A. YES.

6 Q. AFTER YOU PRAYED, WHAT DID YOU DO NEXT?

7 A. THEY SAID THEY WAS GOING TO---

8 Q. WHAT DID YOU DO AFTER HAVING PRAYED?

9 A. I TOLD MY DAUGHTER I'VE GOT TO GO TO STAY WITH THE
10 REST OF THE KIDS, AND SHE GO TO THE HOSPITAL WHERE
11 SHY IS.

12 Q. SO THE DISCUSSION WAS MADE THAT YOU GO BACK TO THE
13 HOUSE IN PIGEON BAY AND SHE GO WOULD GO TO THE
14 MEDICAL UNIVERSITY IN CHARLESTON?

15 A. YES; WITH HER CHILD.

16 Q. DID YOU SEE DETECTIVE MARSHALL?

17 A. NO; I DIDN'T SEE HIM AT THE TIME.

18 Q. YOU DIDN'T SEE DETECTIVE MARSHALL?

19 A. NO.

20 Q. DETECTIVE MARSHALL DIDN'T EVER APPROACH YOU?

21 A. NO, HE DIDN'T.

22 Q. DIDN'T COME AND HAVE ANY CONVERSATION WITH YOU?

23 A. NO.

24 Q. OKAY. DID YOU SEE YOUR DAUGHTER GET IN THE PATROL
25 CAR WITH DETECTIVE MARSHALL?

WILLOW MAE GADSON - DIRECT/MR. DAVIS.

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1 MRS. MURPHY: OBJECTION, YOUR HONOR; HE'S
2 LEADING THE WITNESS.

3 A. NO I DID NOT BECAUSE I---

4 THE COURT: MA'AM, LET ME EXPLAIN THIS TO
5 YOU. WHEN SOMEBODY SAYS "OBJECTION," YOU MUST NOT
6 ANSWER. ALL RIGHT. OBJECTION IS?

7 MRS. MURPHY: HE'S LEADING THE WITNESS.

8 THE COURT: I'LL ALLOW IT. THE QUESTION
9 WAS DID SHE SEE THAT. I'LL ALLOW THAT. OVERRULED.

10 Q. DO YOU UNDERSTAND THE QUESTION?

11 A. YES.

12 Q. OKAY. YOU MUST RESPOND. DID YOU SEE YOUR DAUGHTER
13 GET IN THE PATROL CAR DRIVEN BY DETECTIVE MARSHALL?

14 A. NO, I DIDN'T.

15 Q. OKAY. DID YOU KNOW THAT YOUR DAUGHTER HAD WENT TO
16 THE SUMMERVILLE POLICE DEPARTMENT?

17 A. NO.

18 Q. YOU WENT BACK TO THE HOUSE?

19 A. I WENT BACK TO THE HOUSE.

20 Q. WHO WAS AT THE HOUSE WHEN YOU GOT THERE?

21 A. THE FATHER; JUST DEAN.

22 Q. WHERE WAS THE OTHER CHILDREN?

23 A. ALL OF THEM WAS THERE. THEY WERE SLEEPING.

24 Q. THE CHILDREN WERE STILL SLEEPING?

25 A. YES; THEY WERE SLEEPING. AND THEN WHEN I WENT, TIA

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 HEARD ME, AND TEEL GOT UP.

2 Q. TIA IS THE OLDEST DAUGHTER?

3 A. THE OLDEST ONE.

4 Q. SHE GOT UP?

5 A. UH-HUH.

6 Q. AND HOW LONG DID YOU STAY AT THE HOUSE?

7 A. I STAYED UNTIL D.S.S. OR WHOEVER, THE POLICE AND
8 ALL, CAME. SO I STAYED THERE. BUT I WAS THINKING
9 THAT MY DAUGHTER WENT TO THE HOSPITAL.

10 Q. YOU THOUGHT YOUR DAUGHTER WAS AT M.U.S.C.?

11 A. YES.

12 Q. BUT SHE WAS NOT?

13 A. SHE WAS NOT.

14 Q. WHEN DID YOU LEARN THAT YOUR DAUGHTER WAS AT THE
15 SUMMERVILLE POLICE DEPARTMENT ON DEMMING WAY ON
16 HIGHWAY 78?

17 A. WHEN I CALLED -- I THINK SHE CALLED, AND I SAID --
18 FIRST I CALLED MY MOTHER-IN-LAW. I SAID "HAD
19 AN ACCIDENT."

20 Q. WHEN YOU SAY YOU CALLED YOUR MOTHER-IN-LAW, YOU'RE
21 TALKING ABOUT THE YOUNG LADY THAT TESTIFIED
22 EARLIER?

23 A. YES. AND THEN I SAID -- I THINK IT WAS ADRIAN
24 CALLED ME AND SAID SHE WAS DOWN TO THE POLICE
25 STATION. AND I'M LIVE. "HONOR--"

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 STATION." I SAID, "WHY DIDN'T YOU GO DOWN TO THE
2 HOSPITAL."

3 MRS. MURPHY: OBJECTION.

4 THE COURT: ALL RIGHT. THERE'S AN
5 OBJECTION. DID YOU HEAR THAT?

6 THE WITNESS: YES, SIR.

7 MRS. MURPHY: HE'S GETTING READY TO GO
8 INTO WHAT THE DEFENDANT TOLD HER ON THE TELEPHONE.

9 Q. YOU TOLD HER WHAT IS SHE DOING DOWN AT THE POLICE
10 DEPARTMENT, DID YOU NOT?

11 A. YES.

12 Q. ALL RIGHT.. YOU WERE TALKING TO HER.

13 A. YES.

14 Q. WHAT ARE DOING AT THE POLICE DEPARTMENT; RIGHT?

15 A. YES.

16 Q. OKAY. YOU CAN'T GET INTO WHAT SHE TOLD YOU. BUT
17 YOU KNEW AT THAT POINT THAT SHE WAS AT THE POLICE
18 DEPARTMENT?

19 A. YES.

20 Q. WHAT TIME WAS THAT CALL MADE, DO YOU THINK?

21 A. IT WAS ABOUT ELEVEN.

22 Q. ELEVEN O'CLOCK. NOW, WE JUST WANT TO BACK UP A
23 LITTLE. WHAT TIME DO YOU THINK YOU LEFT THE
24 SUMMERVILLE MEDICAL CENTER?

PROBABLY ABOUT SEVEN.

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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- 1 Q. YOU THINK IT WAS SOME TIME AROUND SEVEN O'CLOCK?
- 2 A. I THINK.
- 3 Q. OKAY. NOW, WHILE YOU'RE AT THE HOUSE, OFFICER
- 4 BOTTEN DOES SHOW UP FROM DORCHESTER; RIGHT?
- 5 A. THE OTHER ONE CAME.
- 6 Q. THE OTHER FELLOW; OFFICER BOTTEN?
- 7 A. YES.
- 8 Q. DID HE REQUIRE YOU TO GIVE HIM A STATEMENT?
- 9 A. RIGHT NOT AT THE MOMENT; BUT YES, HE DID.
- 10 Q. DID YOU GIVE A STATEMENT?
- 11 A. YES.
- 12 Q. AND IN THAT STATEMENT -- DO YOU HAVE A COPY OF THAT
- 13 STATEMENT? DO YOU HAVE A COPY OF YOUR STATEMENT?
- 14 A. THEY'RE SUPPOSED TO HAVE A COPY.
- 15 Q. THAT'S NOT MY QUESTION.
- 16 A. AND I DON'T HAVE A COPY OF IT.
- 17 Q. DID THEY GIVE YOU A COPY THAT NIGHT?
- 18 A. NO, I DIDN'T GET A COPY.
- 19 Q. THEY DIDN'T TELL YOU YOU HAD A RIGHT TO HAVE A COPY
- 20 OF YOUR STATEMENT?
- 21 A. NO, I DIDN'T GET ONE.
- 22 Q. YOU DIDN'T GET ONE? DID HE GIVE YOU ONE?
- 23 A. NO.
- 24 Q. DID HE GIVE YOU A COPY?

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 Q. DID HE GIVE YOU ONE SAYING YOU'VE GOT A RIGHT TO
2 KEEP ONE? DID HE GIVE YOU ONE?

3 A. I DIDN'T GET ONE.

4 MRS. MURPHY: OBJECTION, YOUR HONOR.

5 THE COURT: YES, SIR, MR. DAVIS; DON'T
6 LEAD. SUSTAINED.

7 MR. DAVIS: ALL RIGHT, JUDGE.

8 Q. YOU DON'T HAVE A COPY OF YOUR STATEMENT?

9 A. NO.

10 Q. TELL US WHAT YOU SAID IN THAT STATEMENT AS BEST YOU
11 RECALL.

12 A. THE SAME THING I WAS JUST SAYING.

13 Q. OKAY. AND JUST WHAT YOU WERE JUST SAYING; YOU WERE
14 SAYING YOU WERE YOU NOT AT HOME WHEN E.M.S. WAS
15 RESPONDING; ISN'T THAT CORRECT?

16 A. NO, I WASN'T.

17 Q. AND NOT ONLY WERE NOT AT HOME; YOUR DAUGHTER WAS
18 NOT AT HOME?

19 A. NO.

20 Q. AND YOU GAVE THAT STATEMENT TO BOTTEN EARLIER,
21 ISN'T THAT CORRECT?

22 A. YES.

23 Q. NOW, DID YOU HAVE TO GO PICK YOUR DAUGHTER UP FROM
24 212 DEMMING WAY, HIGHWAY 78?

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 Q. WHAT TIME DID YOU GO AND PICK YOUR DAUGHTER UP?

2 A. IT WAS LIKE WAY AFTER TWELVE, OR SOMETHING TO ONE.

3 Q. WAY PAST TWELVE O'CLOCK, DID YOU SEE DETECTIVE

4 MARSHALL WHEN YOU GOT THERE TO 21278 DEMMING?

5 A. NO.

6 Q. YOU DIDN'T SEE HIM AGAIN?

7 A. NO, I DIDN'T SEE HIM.

8 Q. YOU SAW YOUR DAUGHTER, THOUGH?

9 A. YES.

10 Q. WHERE WAS SHE AT?

11 A. STANDING OUT ON THE OUTSIDE.

12 Q. STANDING ON THE OUTSIDE?

13 A. AND ME AND MY SON WENT AND PICKED HER UP.

14 Q. NOW, TELL US WHAT YOU TOLD YOUR DAUGHTER. YOU HAD

15 ALREADY SAID ON THE TELEPHONE ABOUT "I THOUGHT YOU

16 WERE AT M.U.S.C. DID Y'ALL HAVE ANY FURTHER

17 DISCUSSION ABOUT HER NOT BEING PRESENT AT

18 M.U.S.C.?

19 A. NO. I ASKED HER; I SAID "WHAT ARE YOU DOING DOWN

20 NEXT TO THE POLICE STATION WHEN YOU SHOULD BE WITH

21 YOUR SON. SHE SAID---

22 MRS. MURPHY: OBJECTION, YOUR HONOR. HE'S
23 LEADING THE WITNESS.

24 Q. NOW, TELL US WHAT YOU TOLD YOUR DAUGHTER. YOU HAD

25 ALREADY SAID ON THE TELEPHONE ABOUT I THOUGHT YOU

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 WERE AT THE M.U.S.C. DID Y'ALL HAVE ANY FURTHER
2 DISCUSSION ABOUT HER NOT BEING PRESENT AT
3 M.U.S.C.?

4 A. NO; I ASKED YOU; I SAID, "WHAT ARE YOU DOING NEXT
5 TO THE POLICE STATION WHEN YOU SHOULD BE WITH YOUR
6 SON. SHE SAID---

7 MRS. MURPHY: NO. I ASKED HER; I SAID
8 "WHAT ARE YOU DOING DOWN NEXT TO THE POLICE
9 STATION WHEN YOU SHOULD BE WITH YOUR SON?" SHE
10 SAID---

11 MRS. MURPHY: OBJECTION, YOUR HONOR;
12 SUSTAINED.

13 Q. OKAY. YOU DON'T HAVE TO TELL ME WHAT HE SAID. YOU
14 DON'T HAVE TO SAY WHAT HE SAID. YOU DON'T HAVE TO
15 SAY WHAT HE SAID. BUT FOR ALL PRACTICAL PURPOSES,
16 SHE DIDN'T GET TO GO TO M.U.S.C.?

17 MRS. THOMAS: OBJECTION, YOUR HONOR.

18 MR. DAVIS: YOU DON'T HAVE TO TELL ME
19 WHAT HE SAID. YOU DON'T HAVE TO TELL ME WHAT HE
20 SAID. BUT FOR ALL PRACTICAL PURPOSES, SHE DIDN'T
21 GET TO GO TO M.U.S.C.?

22 MRS. MURPHY: OBJECTION, YOUR HONOR; HE'S
23 LEADING THE WITNESS.

24 THE COURT: JUST A SECOND. LET ME HEAR
25 THE QUESTION.

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 Q. SHE WAS AT THE SUMMERVILLE LAW ENFORCEMENT
2 DEPARTMENT THERE WITH MARSHALL; ISN'T THAT
3 CORRECT?

4 A. YES. SHE---

5 THE COURT: SUSTAINED. THAT'S LEADING,
6 MR. DAVIS. PLEASE DON'T LEAD.

7 MR. DAVIS: I'LL REPHRASE IT, JUDGE.

8 THE COURT: YES, MA'AM. YOU'RE
9 CONTINUING TO ANSWER WHEN THERE'S AN OBJECTION, ALL
10 RIGHT? OKAY. REMEMBER THAT. REMEMBER WHEN THERE
11 IS AN OBJECTION -- WHEN YOU SEE THIS LAWYER STAND
12 YOU SHOULD DO LIKE THIS. IN OTHER WORDS, YOU BE
13 QUIET WHEN SHE STANDS BECAUSE SHE'S GOING TO SAY
14 OBJECTION. I KNOW YOU'RE IN THE MIDDLE OF YOUR
15 RESPONSE, AND YOU'VE GOT YOUR MIND ON WHAT YOU'RE
16 GOING TO SAY. BUT YOU MUST STOP WHEN SHE STANDS TO
17 OBJECT. THANK YOU. ALL RIGHT, YOU MAY PROCEED.

18 Q. YOU DID PICK YOUR DAUGHTER UP AFTER 12 THAT NIGHT?

19 A. YES.

20 Q. WHERE DID Y'ALL GO?

21 A. WE WENT STRAIGHT TO THE MEDICAL -- M.U.S.C.

22 Q. CHARLESTON?

23 A. YES.

24 Q. TO DO WHAT?

25 A. TO SEE Child

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 Q. DID YOU GET TO SEE Child

2 A. YES, WE DID.

3 Q. DID YOU TALK TO THE DOCTORS?

4 A. NO; I THINK IT WAS THE NURSE WAS ASKING, YOU KNOW,
5 HOW HE WAS DOING BECAUSE THE DOCTOR WASN'T RIGHT
6 THERE AT THE TIME.

7 Q. DID YOU STAY ALL NIGHT; OR DID YOU HAVE TO GO BACK
8 HOME THAT SAME NIGHT?

9 A. WE DIDN'T STAY ALL NIGHT. WE STAYED THAT MORNING,
10 AND WE LEFT.

11 Q. STAYED ALL MORNING? DID YOU KNOW Child GENERAL
12 CONDITION WHEN YOU LEFT?

13 A. I HAD TALKED TO ONE OF MY SISTER-IN-LAWS ON THE
14 PHONE.

15 MRS. MARSHALL: OBJECTION, YOUR HONOR.

16 Q. YOU CAN'T TALK ABOUT TALKING TO YOUR SISTERS. BUT
17 THE MATTER OF THE FACT IS YOU KNEW HIS GENERAL
18 CONDITION WHEN HE LEFT THAT MORNING?

19 A. YES.

20 Q. IS YOUR DAUGHTER A GOOD MOTHER TO HER CHILDREN?

21 A. YES; SHE LOVES HER KIDS.

22 Q. SHE LOVES HER KIDS?

23 A. I'M GOING TO TELL YOU HOW SHE LOVES HER KIDS. I
24 HAVE FLASHBACKS FROM ALL OF THIS. SHE'S NOT WELL
25 EITHER, AND SHE LOVES HER KIDS. SHE'LL SPEND EVERY

WILLOW MAE GADSON - DIRECT/MR. DAVIS

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1 PENNY SHE HAS. SHE TAKES THE PICTURES. AND SHE
2 HAS THEM LAYING ACROSS THE DRESSER OR EITHER SHE
3 SLEEPS WITH THEM. AND SHE REALLY LOVES HER KIDS.

4 Q. THIS HAS BEEN DIFFICULT FOR HER, HASN'T IT?

5 A. YES. SHE TRIES TO WORK; AND NIGHTS SLEEPING. AND
6 I'M THE SAME. SHE WENT TO THE DOCTOR A COUPLE OF
7 TIMES BECAUSE SHE WASN'T WELL; AND THAT'S NOT HER.

8 Q. YOU'VE SAT IN THIS COURTROOM, AND YOU'VE HEARD THE
9 TESTIMONY ABOUT A TARGETED CHILD; HAVE YOU NOT?

10 A. YES.

11 Q. DID YOU EVER WITNESS ADRIAN APPLY ANY PHYSICAL
12 CORPORAL PUNISHMENT TO ANY OF THESE CHILDREN?

13 A. NO, SHE DIDN'T. SHE LOVED HER -- SHE HAD THEM
14 SPOILED.

15 Q. SPOILED?

16 A. SHE DIDN'T HAVE NO PARTICULAR CHOSEN ONE.

17 Q. WHEN'S THE LAST TIME YOU'VE SEEN Child: [REDACTED]

18 A. (NO RESPONSE.)

19 Q. I'LL STRIKE THE QUESTION. I HAVE NO FURTHER
20 QUESTIONS.

21 THE COURT: VERY WELL, MR. DUKES.

22 MRS. MURPHY?

23 MRS. MURPHY: THANK YOU, YOUR HONOR.

24

WILLOW MAE GADSON - CROSS/MRS. MURPHY

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1 BY MRS. MURPHY:

2 Q. MRS. GADSON, I UNDERSTAND YOU LOVE YOUR DAUGHTER
3 VERY MUCH?

4 A. YES.

5 Q. AND Y'ALL STILL LOVE Child

6 A. I LOVE ALL OF THEM.

7 Q. ALL YOUR GRANDCHILDREN INCLUDING Child

8 A. YES.

9 Q. DID YOU EVER GO WITH Child TO THE PEDIATRICIAN?

10 A. YES.

11 Q. AND THAT WOULD HAVE BEEN DR. PENCE'S OFFICE?

12 A. YES.

13 Q. DO YOU RECALL TAKING HIM THERE BACK IN 1999?

14 A. YES.

15 Q. DO YOU RECALL TELLING THE DOCTOR THAT YOU EXPECTED
16 CHILD ABUSE, AND YOU NEED HELP SOME HELP WITH
17 SUGGESTIONS?

18 A. NO. I DON'T KNOW WHERE THAT COME FROM.

19 Q. HAVE YOU SEEN Child MEDICAL RECORDS?

20 A. NO; WHEN WE TAKE Child OR ANY ONE OF THOSE KIDS,
21 IT'S GOT TO BE BECAUSE THEY'RE SICK.

22 Q. YOU DO RECALL TAKING HIM BACK IN 1999?

23 A. (NO RESPONSE.)

24 Q. YOU DON'T DISPUTE IF IT'S IN THE RECORDS THAT YOU

WILLOW MAE GADSON - CROSS/MRS. MURPHY

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1 MR. DAVIS: YOUR HONOR, THE BEST EVIDENCE
2 IS IN THE RECORD. IT SPEAKS FOR ITSELF. I MEAN,
3 SHE SAYS SHE RECALL AT ONE POINT THAT THE BEST
4 EVIDENCE WAS---

5 THE COURT: WOULD YOU LIKE TO LOOK AT THE
6 RECORD?

7 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
8 17. IF YOU'LL LOOK DOWN ON THE NOTATION ON
9 11/11/99. CAN YOU TELL US WHAT THAT SAYS?

10 THE COURT: DO YOU WANT HER TO PUBLISH
11 THAT PART OF THE RECORD?

12 MRS. MURPHY: YES, MA'AM.

13 THE COURT: WOULD YOU POINT TO THE PART
14 THAT YOU'D LIKE FOR HER TO PUBLISH? THE DEFENSE?
15 Q. WOULD YOU PLEASE READ THAT RIGHT THERE?

16 THE COURT: JUST READ THAT ALOUD TO THE
17 JURY, PLEASE. IS THAT WHAT YOU WISH HER TO DO?

18 MRS. MURPHY: YES, MA'AM.

19 THE COURT: ALL RIGHT.

20 A. Child [REDACTED] IS LIVING WITH GRANDMOTHER, MRS. -- WHAT
21 NAME IS THIS? I CAN'T UNDERSTAND THAT WRITING
22 THERE.

23 MRS. MURPHY: "11-11-99, Child [REDACTED] IS
24 LIVING WITH GRANDMOTHER, MRS. BONITA NEEDS OPINION

WILLOW MAE GADSON - CROSS/MRS. MURPHY

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1 SUGGESTIONS." YOU WERE THERE?

2 A. OH, YES. I HAD WHEN HE HAD HIS LEG BROKEN.
3 THAT'S THE ONLY TIME I KEPT HIM WHEN HE HAD HIS LEG
4 BROKEN AT THE TIME BECAUSE SHE WAS HELPING. AND MY
5 MOTHER-IN-LAW WAS HELPING.

6 Q. YOUR MOTHER-IN-LAW WAS HELPING. AND YOU KEPT
7 Child YOU AND YOUR MOTHER-IN-LAW, WHEN CUSTODY
8 WAS TAKEN AWAY FROM THE DAUGHTER; CORRECT?

9 A. YES.

10 Q. NOW, MS. GADSON, YOU WEREN'T PRESENT WHEN Child
11 BROKE HIS LEG THE FIRST TIME, WERE YOU, IN 1996?

12 A. YES; YES; I WAS.

13 Q. WHAT HAPPENED WHEN HE BROKE HIS LEG THAT TIME?

14 A. THE FIRST TIME?

15 Q. YES, MA'AM.

16 A. I WOULD USUALLY GO OVER THERE TO HELP HER; AND
17 SHE-- THAT'S THE TIME WHEN THEY HAD THE OXYGEN
18 HOOKED UP TO HELP; AND SHE TRIPPED AND FELL WITH
19 THE BABY. AND THEY TOOK HIM TO THE MEDICAL CENTER.

20 Q. AND YOU WERE IN THE ROOM WHEN THAT HAPPENED, OR IS
21 WHAT SHE TOLD YOU HAPPENED?

22 A. THAT'S WHAT SHE HAD TOLD YOU.

23 Q. YOU DIDN'T SEE IT?

24 A. NO; I DIDN'T SEE IT. BUT I WENT OVER THERE AND

WILLOW MAE GADSON - CROSS/MRS. MURPHY

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1 SHOWING ME WHAT HAPPENED HOW SHE HAD FALLEN WITH
2 THE BABY BECAUSE HE WAS ON A HEART MONITOR BECAUSE
3 THE CORD HAD WIND UP AROUND HER FEET. THAT'S HOW
4 SHE TRIPPED.

5 Q. WAS DEFENDANT BURDEN THERE?

6 A. YES.

7 Q. WAS HE IN THE ROOM WHEN IT HAPPENED?

8 A. YES.

9 Q. AND YOU WERE IN SEPARATE ROOMS?

10 A. NO; MY DAUGHTER TOLD ME THAT'S WHAT HAPPENED
11 BECAUSE WHEN I CAME OVER THERE AND ASKED HER WHAT
12 HAPPENED, SHE TOLD ME.

13 MR. DAVIS: OBJECT TO THE LINE OF
14 QUESTIONS. IT'S ALL HEARSAY.

15 THE COURT: YOU'VE GOT TO OBJECT WHEN THE
16 QUESTION IS ASKED; MR. DAVIS, RATHER THAN LISTENING
17 TO---

18 MR. DAVIS: WELL, I OBJECT AT THIS POINT

19 THE COURT: VERY WELL. THERE'S NO
20 QUESTION POSED AT THIS POINT BUT JUST ANSWERED. IT
21 COMES TOO LATE. YOU MAY PROCEED, MRS. MURPHY.

22 Q. MS. GADSON, WERE YOU PRESENT IN THE HOME WHEN THE
23 LEG WAS BROKEN?

24 A. NO.

WILLOW MAE GADSON - CROSS/MRS. MURPHY

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1 BLINDED?

2 A. NO.

3 Q. WERE YOU PRESENT IN THE HOME WHEN Child LEG WAS
4 BROKEN THE SECOND TIME?

5 A. NO.

6 Q. WERE YOU PRESENT, OR DID YOU KNOW OF ANY CIGARETTE
7 BURNS ON Child'S BEHIND?

8 A. NO. HE USUALLY HAS LIKE A RASH, YOU KNOW.

9 Q. YOU'VE HAD A LOT OF CHILDREN, HAVEN'T YOU?

10 A. YES.

11 Q. AND RASHES COVER THEIR BOTTOM IN A VAST AREA, DO
12 THEY NOT?

13 A. HE ALWAYS HAS SOMETHING LIKE A LITTLE BIRTH MARK ON
14 HIS BACK. YES, HE DOES; BECAUSE THEY WENT ALL THE
15 TIME. HE HAS GOT A BAD RASH, TOO.

16 Q. WERE YOU PRESENT WHEN THE LOOPING SCARS OR BURNS
17 WERE PUT ON HIS BACK?

18 A. NO. I KNOW HE HAS LIKE -- IT LOOKS LIKE A BIRTH
19 MARK.

20 Q. WERE YOU PRESENT WHEN HIS EAR WAS HURT; WHERE HE'S
21 GOT THE BEG SCAR ON HIS LEFT EAR?

22 A. YES.

23 Q. WERE YOU IN THE ROOM WHEN THAT HAPPENED?

24 A. NO; I WASN'T IN THE ROOM WHEN IT HAPPENED.

WILLOW MAE GADSON - CROSS/MRS. MURPHY

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1 A. NO; I WASN'T IN THE ROOM WHEN IT HAPPENED.

2 Q. DID YOU SEE IT HAPPEN?

3 A. NO, I DIDN'T SEE IT WHEN IT HAPPENED.

4 Q. SO YOU WEREN'T PRESENT WHEN IT HAPPENED?

5 A. NO. BUT CAN I---

6 MR. DAVIS: YOU CAN EXPLAIN THAT.

7 A. THEY'RE ALLERGIC TO INSECT BITES. AND Child
8 THEY HAVE SOME TYPE OF SKIN; SO IF HE GETS LIKE A
9 BUMP OR SOMETHING, HE WILL SCRATCH, AND IT WILL
10 MAKE IT WHITER THAN IT IS. AND I HAVE SEEN IT FOR
11 MYSELF.

12 Q. YOU SAW AN INSECT BITE ON HIS EAR?

13 A. I'M SAYING, IT COULD HAVE BEEN BITE HIM OR EITHER
14 HE HURTS BECAUSE HE AND HIS BROTHER, THEY USUALLY
15 DO, OR THEY BE ACTIVE, YOU KNOW. HE COULD HAVE
16 HURT IT SOMEHOW OR ANOTHER.

17 Q. BUT YOU DON'T KNOW HOW IT HAPPENED?

18 A. NO.

19 Q. AND, OF COURSE, YOU WEREN'T PRESENT ON NOVEMBER THE
20 THIRD WHEN THESE LAST INJURIES OCCURRED?

21 A. NOVEMBER THE THIRD? NO, I WASN'T PRESENT.

22 Q. THANK YOU. WE HAVE NO FURTHER QUESTIONS.

23 MR. DAVIS: JUST A FEW, YOUR HONOR.

24 RE-DIRECT EXAMINATION

25 BY MR. GADSON.

WILLOW MAE GADSON - CROSS/MRS. MURPHY

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1 Q. SHE SAYS YOU'VE GOT A LOT OF CHILDREN. AND YOU
2 CONSIDER TWO A LOT OF CHILDREN?

3 A. THERE'S TWO; A GIRL AND A BOY.

4 Q. HAVE YOU GOT ANY MORE?

5 A. NO.

6 Q. AND THE REASON YOU BECAME INVOLVED WITH THIS
7 NOVEMBER THE 11TH DATE IS BECAUSE MRS. JENKINS
8 HUSBAND HAD PNEUMONIA, AND YOU HAD TO HELP OUT;
9 ISN'T THAT CORRECT?

10 A. YES.

11 Q. DID YOU READ THOSE NOTES ON THAT THING THAT SHE WAS
12 TALKING ABOUT JUST A MINUTE AGO; THIS MEDICAL---

13 MRS. MURPHY: OBJECTION, YOUR HONOR.

14 THE COURT: JUST A SECOND.

15 A. NO, I DID NOT.

16 THE COURT: MA'AM?

17 THE WITNESS: OH; I'M SORRY.

18 THE COURT: YOUR OBJECTION, MRS MURPHY?

19 MRS. MURPHY: THAT HE'S LEADING THE
20 WITNESS.

21 THE COURT: DO NOT LEAD THE WITNESS, MR.
22 DAVIS.

23 MR. DAVIS: ALL RIGHT.

24 Q. DID YOU WRITE THOSE NOTES THAT SHE REFERRED TO AND

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 A. NO, I DID NOT.

2 Q. OKAY.

3 MR. DAVIS: NO FURTHER QUESTIONS.

4 THE COURT: VERY WELL. YES, SIR?

5 MRS. DUKES: NO FURTHER QUESTIONS.

6 THE COURT: ALL RIGHT, MRS. MURPHY?

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

9 THE COURT: ALL RIGHT. YOU MAY COME
10 DOWN. CALL YOUR NEXT WITNESS, PLEASE.

11 MR. DAVIS: WE CALL MRS. GADSON TO THE
12 STAND.

13 THE COURT: ALL RIGHT.

14 -----

15 WHEREUPON,

16 ADRIAN GADSON, WHO AFTER PREVIOUSLY
17 FIRST DULY SWORN TO TELL THE TRUTH,
18 TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. WHERE DO YOU LIVE, MS. GADSON?

22 A. I LIVE IN SUMMERVILLE.

23 Q. HOW LONG HAVE YOU LIVED IN SUMMERVILLE?

24 A. ABOUT SEVEN YEARS.

25 Q. SEVEN YEARS?

ADRIAN GADSON - DIRECT/MR.DAVIS

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- 1 A. YES.
- 2 Q. HOW MANY CHILDREN DO YOU HAVE?
- 3 A. FIVE.
- 4 Q. WHAT ARE THEIR NAMES?
- 5 A. SAKEIA, TYSHEME, WILLIAM, AND TOTIANO.
- 6 Q. DID YOU NAME ALL THOSE CHILDREN?
- 7 A. ME, MY BROTHER, AND WILLIAM'S STEPSISTER.
- 8 Q. AND Y'ALL CAME UP WITH THE NAMES?
- 9 A. YES.
- 10 Q. WHAT IS YOUR RELATIONSHIP TO WILLIAM BURDEN?
- 11 A. GIRLFRIEND AND BOYFRIEND.
- 12 Q. HOW LONG HAVE Y'ALL BEEN GIRLFRIEND AND BOYFRIEND?
- 13 A. NINE YEARS.
- 14 Q. NINE YEARS?
- 15 A. YES.
- 16 Q. HE'S THE FATHER OF ALL YOUR CHILDREN?
- 17 A. YES.
- 18 Q. I WANT TO GO BACK TO SOMETHING. DID YOU KNOW
- 19 ANYTHING ABOUT ANY INJURY TO YOUR CHILD'S EYE IN
- 20 REFERENCE THAT WOULD CAUSE BLINDNESS?
- 21 A. NO.
- 22 Q. ANYTHING WHATSOEVER?
- 23 A. NO.
- 24 Q. YOU LISTENED TO DR. SIMONS TESTIFY OR DR. FARROW
- 25 BACK ON SEPTEMBER OF 1997. I THINK THEY REFERENCED

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 SOME TYPE OF OPERATION?

2 A. YES.

3 Q. SAY Y'ALL CAN BE LOCATED AFTER THE CHILD CAME OUT
4 OF THE ANESTHESIA. DO YOU WANT TO SHARE THAT WITH
5 US?

6 A. ME AND MY FATHER; THEY PUT US IN A WAITING ROOM.

7 Q. YOU'VE GOT TO TALK UP, NOW. MAKE IT WAY BACK IN
8 THIS CORNER HERE.

9 A. ME AND MY FATHER WAS IN THE WAITING ROOM AREA.

10 Q. YOUR FATHER'S NAME IS WHAT?

11 A. ALFRED GADSON.

12 Q. IS HE LIVING NOW?

13 A. NO.

14 Q. OKAY. HE'S SINCE PASSED AWAY?

15 A. YES.

16 Q. BUT HE WAS THERE WHEN YOU WERE TALKING TO DR.
17 SAUNDERS AND DR. ALFERO?

18 A. I DIDN'T TALK TO DR. SAUNDERS.

19 Q. YOU DIDN'T TALK TO DR. SAUNDERS?

20 A. NO.

21 Q. WHO DID YOU TALK WITH?

22 A. DR. ALFERO.

23 Q. OKAY. DID DR. ALFERO ACTUALLY DO THE OPERATION
24 THEY TALKED ABOUT IT?

25 A. YES.

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 Q. WHEN WAS IT DONE IN RELATIONSHIP TO THE TIME DR.
2 SAUNDERS PUT ON THIS VIDEOTAPE TAPE SAYING THEY
3 COULDN'T FIND YOU OR YOUR FAMILY?

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

6 MR. DAVIS: IT'S IN EVIDENCE.

7 THE COURT: DON'T LEAD, MR. DAVIS.

8 MR. DAVIS: ALL RIGHT, YOUR HONOR.

9 A. YOU SAID WHEN WAS THE OPERATION?

10 Q. NO, SIR. I DIDN'T SAY WHEN WAS THE OPERATION.

11 THE COURT: ASK THE QUESTION AGAIN.
12 DON'T LEAD. SUSTAINED.

13 MR. DAVIS: THANK YOU, JUDGE.

14 Q. YOU SAID YOU TALKED TO DR. ALFERO; ISN'T THAT
15 CORRECT?

16 A. YES.

17 Q. WAS THAT AFTER THE EVENTS THAT OCCURRED ON
18 SEPTEMBER THE 27TH, 1997, WHEN THEY SAID THEY
19 COULDN'T FIND YOU?

20 A. THAT WAS BEFORE.

21 Q. THAT WAS BEFORE. AND WHAT WAS YOUR UNDERSTANDING
22 OF WHAT DR. ALFERO WAS SUPPOSED TO DO FOR YOUR SON?

23 A. HE SAID THAT HE HAD A CATARACT, BUT HE DIDN'T TELL
24 ME IT WAS IN BOTH EYES.

25 Q. HE DIDN'T TELL YOU IT WAS IN BOTH EYES?

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 A. NO.

2 Q. NOW, WHAT CAUSED YOU TO TAKE THAT CHILD TO THE EYE
3 INSTITUTE? WHAT MADE YOU TAKE THAT CHILD THERE?

4 A. THEY SENT AN APPOINTMENT IN THE MAIL.

5 Q. OKAY. WELL, WHY WAS AN APPOINTMENT SET?

6 A. I HAVE NO IDEA.

7 Q. WELL, WAS THE CHILD HAVING ANY PROBLEMS WITH HIS
8 EYES?

9 A. NO.

10 Q. SO YOU DIDN'T EVEN KNOW THE CHILD WAS HAVING OR
11 EXPERIENCING ANY PROBLEMS WITH HIS EYES WHEN YOU
12 TOOK HIM THERE?

13 A. NO.

14 Q. SO WHEN YOU WENT THERE ON SEPTEMBER THE 27TH, THAT
15 WAS THE FIRST TIME YOU KNEW THE CHILD EVEN HAD
16 CATARACTS IN BOTH EYES?

17 A. YES.

18 Q. DID YOU SIGN A CONSENT FORM LATER FOR THAT CHILD,
19 SHYHEME, TO HAVE AN OPERATION?

20 A. YES.

21 Q. DID THE CHILD HAVE THE OPERATION?

22 A. YES.

23 Q. OKAY. YOU SIGNED FOR IT?

24 A. YES.

25 Q. DID WILLIAM BURDEN HAVE TO SIGN OR YOU SIGNED?

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 A. I SIGNED.

2 Q. ALL RIGHT. DO YOU KNOW ANYTHING ABOUT YOUR CHILD
3 RECEIVING A BLUNT TRAUMA TO THE HEAD?

4 A. NO.

5 Q. OKAY. IN 1996, TELL US HOW THAT LITTLE BOY'S LEG
6 GOT FRACTURED THAT TIME.

7 A. IN 1996, I JUST GOT THROUGH FEEDING HIM. I WAS
8 WALKING FROM THE LIVING TO THE BEDROOM. HE WAS ON
9 THE APNEA MONITOR AND THE OXYGEN TANK; AND SOMEHOW
10 THE CORDS GOT CAUGHT UP WITH MY FEET; AND I TRIPPED
11 AND FELL.

12 Q. AND, NOW, TO MAKE SURE; DID YOU FALL WITH THE FULL
13 WEIGHT OF YOUR BODY ON THAT CHILD, OR WHAT DID YOU
14 DO?

15 A. I DIDN'T FALL WITH THE FULL WEIGHT OF MY BODY.

16 Q. TELL THE JURY WHAT YOU DID.

17 A. I FELL ON MY SIDE.

18 Q. IN AN EFFORT TO DO WHAT?

19 A. TO KEEP FROM SMASHING MY BABY.

20 Q. THANK YOU. NOW, YOU TOOK HIM TO SEEK MEDICAL
21 ATTENTION AFTER THAT HAPPENED?

22 A. YES.

23 Q. WHERE DID YOU TAKE HIM?

24 A. I TOOK HIM TO THE ROPER HOSPITAL.

25 Q. YOU DIDN'T KEEP HIM AT HOME?

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 A. NO.

2 Q. YOU TOOK HIM TO SEEK MEDICAL ATTENTION?

3 A. YES.

4 Q. YOU GAVE HIM TO THE DOCTORS?

5 A. YES.

6 Q. THEY TREATED HIM?

7 A. THEY TOLD ME THAT I WOULD HAVE TO TAKE HIM TO A
8 MEDICAL---

9 Q. M.U.S.C.?

10 A. YES.

11 Q. DID YOU TAKE HIM TO M.U.S.C.?

12 A. YES.

13 Q. DID YOU SIGN THE NECESSARY CONSENT FORMS THAT WERE
14 NECESSARY TO TREAT YOUR CHILD?

15 A. YES.

16 Q. NOW, AT THIS TIME DID YOU HAVE ANY OTHER KIDS?

17 A. NO.

18 Q. YOU DIDN'T HAVE THE EIGHT YEAR OLD AT THAT TIME?

19 A. OH, YES; I HAD THE EIGHT YEAR OLD.

20 Q. I DON'T MEAN AT THE HOSPITAL. BUT YOU HAD OTHER
21 KIDS AT THE TIME?

22 A. YES.

23 Q. HOW OLD WAS THE OTHER CHILD AT THIS TIME?

24 A. ONE; GOING ON TWO.

25 Q. OKAY. SO AT THAT TIME HOW MANY KIDS DID YOU HAVE?

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 IN '96 WHEN YOU TRIPPED AND FELL ON THE CHILD?

2 A. THREE.

3 Q. AND WHO'S THE FATHER OF THREE OF THOSE KIDS?

4 A. WILLIAM BURDEN.

5 Q. OKAY. SO YOU TOOK THE CHILD TO THE MEDICAL
6 UNIVERSITY OF SOUTH CAROLINA?

7 A. YES.

8 Q. OKAY. YOU SIGNED ANY CONSENT FORMS THAT WERE
9 NECESSARY?

10 A. YES.

11 Q. OKAY. ANYBODY THERE; DR. SARAH SCHUH OR ANYBODY
12 IMPRESS UPON YOU ABOUT ANY D.S.S. INVOLVEMENT IN
13 1996?

14 A. NO.

15 Q. NOW, 1997, WERE YOU -- TELL US ABOUT IN 1997
16 BECAUSE THE CHILD GOT A FRACTURE AGAIN, ISN'T THAT
17 CORRECT?

18 A. NO; THAT WAS '98.

19 Q. '98; I'M SORRY. 1998. WERE YOU AT HOME AT THE
20 TIME?

21 A. NO.

22 Q. SO MR. BURDEN WAS AT HOME?

23 A. YES.

24 Q. AND AS A RESULT, YOU HAD TO TAKE THE CHILD BACK TO
25 WHERE?

ADRIAN GADSON - DIRECT/MR.DAVIS

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- 1 A. THE MEDICAL UNIVERSITY.
- 2 Q. THE SAME MEDICAL UNIVERSITY?
- 3 A. YES.
- 4 Q. AND YOU GAVE A MEDICAL HISTORY TO THE DOCTORS?
- 5 A. YES.
- 6 Q. AND IN THAT MEDICAL HISTORY, YOU SHARED WHAT MR.
- 7 BURDEN TOLD YOU WHAT HAPPENED?
- 8 A. YES.
- 9 Q. OKAY. AT THIS TIME D.S.S. WAS INVOLVED?
- 10 A. YES.
- 11 Q. THE CHILDREN WERE TAKEN FROM YOU?
- 12 A. YES.
- 13 Q. MRS. JACOBS CAME INTO PLAY; YOUR GRANDMOTHER?
- 14 A. YES.
- 15 Q. TO TAKE ONE OR ALL THE CHILDREN?
- 16 A. ALL.
- 17 Q. YOU WEREN'T EVEN AT HOME?
- 18 A. NO.
- 19 Q. BUT THEY TOOK ALL YOUR CHILDREN?
- 20 A. YES.
- 21 Q. HOW LONG DID THEY KEEP YOUR CHILDREN?
- 22 A. THEY'VE STILL GOT THEM.
- 23 Q. THEY'VE STILL GOT THEM AS FAR AS YOU'RE CONCERNED.
- 24 BUT FROM '98, HOW LONG DID THEY KEEP THEM; UNTIL
- 25 JUNE THE 8TH LIKE MR. MARSHALL TALKED ABOUT

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 A. YES.

2 Q. NOW, BACK IN '98, DID THEY HAVE AN OCCASION TO EVER
3 HAVE A CONVERSATION WITH THIS MAN HERE, DETECTIVE
4 MARSHALL?

5 A. ONLY THAT ONE TIME HE CAME TO THE HOUSE.

6 Q. IN 1998?

7 A. YES.

8 Q. DID I REPRESENT YOU IN 1998?

9 A. YES.

10 Q. WERE ANY CRIMINAL CHARGES LODGED AGAINST YOU IN
11 1998?

12 A. NO.

13 Q. WERE YOU REQUIRED TO DO CERTAIN THINGS IN 1998 LIKE
14 ATTENDING PARENTING EFFECTIVE TRAINING CLASSES?

15 A. YES.

16 Q. DID YOU GO?

17 A. YES.

18 Q. WAS IT HELPFUL?

19 A. YES.

20 Q. IN 1998, HOW MANY CHILDREN DID YOU HAVE AT THAT
21 TIME?

22 A. FOUR.

23 Q. FOUR. DID YOU HAVE AN ADDITION BY THEN?

24 A. YES.

25 Q. WHAT WAS YOUR ADDITION?

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 A. MY ONE YEAR OLD BABY.

2 Q. YOU'VE GOT TO TELL US THE NAME.

3 A. TITIANI.

4 Q. WHO'S THE FATHER?

5 A. WILLIAM BURDEN.

6 Q. ALL THIS TIME WHEN YOU'RE LIVING WITH WILLIAM
7 BURDEN?

8 A. YES.

9 Q. OKAY. DID YOU DO ANYTHING TO CAUSE ANY INJURY TO
10 YOUR CHILD IN 1998?

11 A. NO.

12 Q. LET'S FAST FORWARD. DECEMBER THE THIRD, 2001.
13 WHERE WERE YOU AT WHEN THIS HAPPENED?

14 A. I WAS SHOPPING.

15 Q. SHOPPING WITH WHO?

16 A. WITH MY MOTHER.

17 Q. WHERE WERE Y'ALL LOCATED?

18 A. WE WERE GOING TO THE STORE TO GET THINGS FOR THE
19 KIDS, AND I HAD TO GET A DRESS FOR CHURCH.

20 Q. NOW, YOU CAME OUT OF THAT HOUSE WHEN YOU LEFT. SO
21 TELL US ABOUT, FIRST OF ALL, THE CONDITION OF THE
22 HOME INSIDE.

23 A. THE HOME WAS NOT FILTHY; AND WE DID NOT JUST HAVE
24 ONE BED IN THE HOUSE.

25 Q. TELL THE JURY HOW MANY BEDS YOU HAD IN YOUR HOUSE.

ADRIAN GADSON - DIRECT/MR.DAVIS

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- 1 A. WE HAD TWO BEDS, A TODDLER BED, AND A CRIB.
- 2 Q. AND WHAT WAS THE GENERAL CONDITION OF YOUR CHILDREN
- 3 WHEN YOU LEFT HOME?
- 4 A. THEY WERE FINE.
- 5 Q. FINE. WERE YOU WORKING AT THE TIME BACK IN
- 6 NOVEMBER THE THIRD, 2001. DID YOU HAVE A JOB?
- 7 A. YES.
- 8 Q. WHERE WERE YOU WORKING?
- 9 A. AT LINCOLN INDUSTRIAL FABRIC.
- 10 Q. AND WHAT WERE YOUR HOURS?
- 11 A. 7:30 TO 7:30.
- 12 Q. 7:30 IN THE AFTERNOON OR 7:30 IN THE MORNING?
- 13 A. SWING SHIFT.
- 14 Q. SO SOMETIMES YOU WORKED FROM 7:30 IN THE MORNING TO
- 15 7:30 IN THE AFTERNOON, AND THEN FROM 7:30 IN THE
- 16 AFTERNOON UNTIL 7:30 IN THE MORNING?
- 17 A. YES.
- 18 Q. HOW MANY DAYS PER WEEK?
- 19 A. FIVE DAYS ONE WEEK; AND LIKE TWO OR THREE DAYS THE
- 20 NEXT.
- 21 Q. HOW LONG HAD YOU BEEN DOING THAT BEFORE NOVEMBER
- 22 THE THIRD, 2001? HOW LONG HAD YOU BEEN DOING THAT?
- 23 A. ABOUT FIVE MONTHS.
- 24 Q. FIVE MONTHS YOU'VE BEEN DOING THAT. AND DURING
- 25 THIS TIME YOU HAVE FIVE CHILDREN; ISN'T THAT

ADRIAN GADSON - DIRECT/MR. DAVIS

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1 CORRECT?

2 A. YES.

3 Q. GOT A NEW ADDITION?

4 A. YES.

5 Q. WHAT'S THAT CHILD'S NAME?

6 A. TATIANA BURDON.

7 Q. WHO IS THE FATHER OF THAT CHILD?

8 A. WILLIAM BURDEN.

9 Q. SO Y'ALL WERE SHOPPING? AND WHAT HAPPENS?

10 A. WE'RE OUT SHOPPING. AND I TOLD MY MOTHER THAT I
11 WAS GOING TO CALL THE HOUSE.

12 Q. YOU CALLED THE HOUSE?

13 A. YES.

14 Q. WHEN YOU CALLED TO THE HOUSE, WHAT DID YOU LEARN?

15 A. I CALLED THE HOUSE, AND WILLIAM ANSWERED THE PHONE.

16 HE WAS UPSET AND SAYING THAT SOMETHING HAPPENED TO

17 Child I NEEDED TO COME HOME RIGHT AWAY.

18 Q. WHAT DID YOU DO, MOM?

19 A. I HANG UP THE PHONE AND RUSHED OUT THE DOOR TO GET
20 MY MOTHER.

21 Q. AND YOU WENT HOME?

22 A. YES.

23 Q. WHEN YOU GET TO THE HOUSE, TELL THIS JURY WHAT YOU
24 FOUND.

25 A. I FOUND Child ON THE FLOOR, LAYING, AND HIS EYES

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 WERE IN THE BACK OF HIS HEAD, AND HIS ARMS WERE
2 TURNED UP INWARDS, AND HIS FEET WERE POINTED
3 OUTWARD. HE WAS UNRESPONSIVE. IF YOU CALLED HIS
4 NAME OR ANYTHING, HE WASN'T RESPONDING.

5 Q. YOU CALL OUT SHYHEEM; HE DIDN'T RESPOND BACK TO
6 YOU?

7 A. NO.

8 Q. WHAT DID YOU DO NEXT?

9 A. I WAS PULLING HIS ARM AND RUBBING HIM BECAUSE THEY
10 TOLD WILLIAM NOT TO MOVE HIM AROUND OR ANYTHING
11 LIKE THAT; SO I DIDN'T PICK HIM UP OR ANYTHING.

12 Q. E.M.S. CAME?

13 A. YES.

14 Q. WHERE WERE YOU AT WHEN E.M.S. CAME?

15 A. STILL BESIDE Child

16 Q. WHAT DID THEY TELL YOU? DID E.M.S. GIVE YOU ANY
17 INSTRUCTIONS?

18 A. NO. THEY JUST PICKED HIM UP AND PUT HIM IN THE
19 BACK OF THE AMBULANCE.

20 Q. WHAT DID YOU DO?

21 A. I WENT IN WITH HIM.

22 Q. YOU WENT WHERE?

23 A. IN THE AMBULANCE WITH HIM.

24 Q. DID YOU DECIDE TO TRY TO FIND OUT WHAT HAPPENED?

25 A. NO; NOT AT THE TIME.

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 Q. NOT AT THAT TIME? WHAT WAS YOUR MAJOR CONCERN?

2 A. ABOUT MY SON.

3 Q. THAT BEING YOUR MAJOR CONCERN THEN, YOU WENT IN THE
4 AMBULANCE WITH YOUR CHILD?

5 A. YES.

6 Q. WHERE DID YOU GO?

7 A. WE WENT TO TRIDENT MEDICAL CENTER.

8 Q. WHEN Y'ALL GOT TO TRIDENT MEDICAL CENTER, GIVE US A
9 PICTURE OF WHAT HAPPENED; SHOW US.

10 A. THEY TOOK HIM IN THE E.R.; AND THEY WAS TAKING HIS
11 BLOOD PRESSURE AND THINGS LIKE THAT AND TRYING TO
12 FIND OUT WHAT WAS GOING ON WITH HIM, AND ASKING ME
13 QUESTIONS. AND THEY SAID THEY WERE GOING TO RUN
14 SOME TESTS AND DO A CAT SCAN TO SEE WHAT WAS GOING
15 ON WITH HIM -- THEY SAID THEY THOUGHT THAT HE WAS
16 HAVING SEIZURES.

17 Q. YOU HEARD DR. GOLDMAN -- HE WAS THE EMERGENCY ROOM
18 PHYSICIAN. DO YOU RECALL THAT?

19 A. YES.

20 Q. DID YOU TALK TO DR. GOLDMAN?

21 A. YES.

22 Q. WERE YOU THE ONE WHO PROVIDED THE HISTORY TO DR.
23 GOLDMAN?

24 A. YES.

25 Q. NOW AFTER YOU PROVIDED THAT HISTORY

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 YOU PLAY? WHAT WERE YOU DOING AT THE HOSPITAL?

2 A. WHAT WAS I DOING?

3 Q. YES.

4 A. I WAS STILL IN THE ROOM WITH Child

5 Q. STILL IN THE ROOM WITH SHY?

6 A. YES.

7 Q. TELL US THE FIRST TIME YOU SEE, IF YOU DID AT ALL,
8 SEE DETECTIVE MARSHALL?

9 A. I SAW DETECTIVE MARSHALL MINUTES AFTER THAT, I WAS
10 IN THE WAITING ROOM.

11 Q. THE WAITING ROOM. WHAT HAPPENED? DID HE COME UP
12 TO YOU AND SAID "TELL US?"

13 A. HE CAME IN AND SAID TY AND THEM WAS -- DETECTIVE
14 MARSHALL; AND HE WAS ASKING ME QUESTIONS. HE ASKED
15 ME IF I WOULD ME IF I WOULD COME WITH HIM FOR
16 QUESTIONING.

17 Q. FOR QUESTIONING?

18 A. YES.

19 Q. WHAT DID YOU TELL HIM?

20 A. I TOLD HIM YES.

21 Q. YOU DIDN'T THINK YOU NEEDED TO GO WITH YOUR CHILD?

22 A. YES.

23 Q. WELL, WHY DIDN'T YOU TELL HIM?

24 A. BECAUSE I THOUGHT THAT I HAD TO GO WITH HIM. I

ADRIAN GADSON - DIRECT/MR.DAVIS

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- 1 Q. YOU THOUGHT THAT YOU HAD TO GO WITH HIM?
- 2 A. YES.
- 3 Q. WHERE WAS YOUR MOM?
- 4 A. MY MOM; SHE WAS BACK AT THE HOUSE.
- 5 Q. SHE HAD ALREADY LEFT AND WENT BACK TO THE HOUSE?
- 6 A. YES.
- 7 Q. YOU WENT IN THE CAR WITH HIM?
- 8 A. YES.
- 9 Q. WHERE DID HE PUT YOU IN THE CAR?
- 10 A. I WAS IN THE FRONT.
- 11 Q. OKAY. YOU RODE WITH HIM?
- 12 A. YES.
- 13 Q. BACK TO 212 DEMMING WAY?
- 14 A. YES.
- 15 Q. ON THE WAY TO DEMMING WAY, WERE Y'ALL TALKING AT
- 16 ALL?
- 17 A. NO; HE GOT BACK TO DEMMING WAY.
- 18 Q. OKAY. WHAT HAD HAPPENED TO YOUR SON?
- 19 A. I DON'T KNOW. ALL I KNOW IS THAT THEY HAD TO
- 20 TRANSPORT HIM TO THE MEDICAL UNIVERSITY.
- 21 Q. LET ME ASK YOU THAT QUESTION AGAIN. YOU DIDN'T
- 22 KNOW WHAT HAD HAPPENED TO YOUR SON?
- 23 A. NO.
- 24 Q. WHY DIDN'T YOU KNOW?
- 25 A. (NO RESPONSE.)

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 Q. MA'AM; WHY DIDN'T YOU KNOW?

2 A. BECAUSE I WASN'T AT THE HOSPITAL.

3 Q. WHY WEREN'T YOU AT THE HOSPITAL?

4 A. BECAUSE I LEFT WITH DETECTIVE MARSHALL.

5 Q. AND HOW LONG DID YOU STAY WITH DETECTIVE MARSHALL?

6 A. FOR ABOUT FOUR HOURS.

7 Q. FOUR HOURS?

8 A. YES, SIR.

9 Q. WHAT WERE Y'ALL DOING FOR FOUR HOURS?

10 A. HE WAS ASKING ME QUESTIONS.

11 Q. QUESTIONS. BUT YOU HAD ALREADY TOLD HIM THAT YOU
12 WEREN'T AT HOME; ISN'T THAT CORRECT?

13 A. YES, SIR.

14 Q. DID HE GIVE YOU A RIDE BACK HOME?

15 A. NO.

16 Q. DID YOU ASK HIM FOR A RIDE BACK HOME?

17 A. NO.

18 Q. DID YOU KNOW ANYTHING ABOUT YOUR CHILD FOUR HOURS
19 LATER?

20 A. NO.

21 Q. WERE YOU CONCERNED ABOUT YOUR CHILD FOUR HOURS
22 LATER?

23 A. YES.

24 Q. WERE YOU CONCERNED ABOUT YOUR CHILD AT ALL DURING
25 THAT WHOLE PERIOD OF THE FOUR HOURS?

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 A. YES.

2 Q. WELL, WHY DIDN'T -- DID YOU SHARE THAT WITH
3 DETECTIVE MARSHALL?

4 A. NO, I DIDN'T.

5 Q. WHY DIDN'T YOU?

6 A. AT ONE POINT, I THINK HE ASKED WHY WAS I CRYING. I
7 SAID BECAUSE I WAS CONCERNED ABOUT MY CHILD.

8 Q. HE ASKED YOU WHY YOU WERE CRYING?

9 A. YES.

10 Q. YOU TOLD HIM YOU WERE CONCERNED ABOUT YOUR CHILD?

11 A. YES.

12 Q. BUT THAT DIDN'T STOP DETECTIVE MARSHALL, THOUGH,
13 DID IT?

14 MRS. MURPHY: OBJECTION, YOUR HONOR.

15 THAT'S LEADING.

16 Q. DID THAT STOP DETECTIVE MARSHALL FROM TALKING TO
17 YOU?

18 THE COURT: SUSTAINED.

19 Q. YOU GAVE HIM STATEMENT HIM A STATEMENT WHICH THE
20 COURT HAS RULED IS IN EVIDENCE. HOW DID Y'ALL GET
21 ON A CONVERSATION ABOUT 1998?

22 A. HE BROUGHT IT UP.

23 Q. HE BROUGHT UP A CONVERSATION ABOUT 1998. AND I
24 WANT YOU TO READ FROM THE BEGINNING HERE -- THIS IS

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 FROM NOVEMBER THE THIRD, 2001. AND I WANT YOU STOP
2 RIGHT HERE WHERE IT SAYS TRYING TO HELP HIM.
3 PLEASE; YOU CAN READ IT, SWEETHEART.

4 A. "NOVEMBER THE THIRD, 2001; I, ADREAN GADSON WENT
5 SHOPPING WITH MY MOTHER. THE STORES THAT WE WENT
6 TO WERE CATOES, WAL-MART, IT'S FASHION, AND A SEVEN
7 DOLLAR STORE AND FAMILY DOLLAR. I MADE A PHONE
8 CALL TO MY HOUSE TO LET THEM KNOW WHERE I WAS AT,
9 WHEN DEAN TOLD ME TO HURRY UP AND COME HOME BECAUSE
10 SOMETHING WAS WRONG WITH Child [REDACTED] SO ME AND MY
11 MOTHER RUSHED HOME TO SEE WHAT WAS WRONG. WHEN I
12 GOT THERE, Child [REDACTED] WAS LYING ON THE LIVING ROOM
13 FLOOR UNRESPONSIVE LIKE HE WAS HAVING A SEIZURE.
14 WILLIAM HAD ALREADY MADE THE CALL TO E.M.S. BEFORE
15 WE GOT THERE. HE TOLD US THAT HE WAS FEEDING HIM
16 AND AFTERWARDS HE WAS GIVING HIM A BATH. DEAN TOLD
17 ME THAT Child [REDACTED] WAS WEAK AND COULD BARELY STAND UP
18 AND BUMPED HIS HEAD; AND HE STARTED ACTING LIKE HE
19 COULDN'T BREATHE SO HE WAS TRYING TO HELP HIM."

20 Q. AND YOU TOLD DETECTIVE MARSHALL THAT; ISN'T THAT
21 CORRECT?

22 A. YES.

23 Q. THAT WAS THE EXTENT OF WHAT YOU KNEW HAD HAPPENED
24 ON NOVEMBER THE THIRD, 2001; ISN'T THAT TRUE?

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 Q. BUT THAT WASN'T ENOUGH, WAS IT?

2 A. NO.

3 Q. HE WENT IN 1998. AND THEN HE AT THAT POINT SAID
4 "MS. GADSON, I WANT YOU TO KNOW NOW, AS WE TALK
5 ABOUT 1998, THERE'S A LITTLE CONSTITUTION THAT WE
6 LIVE BY CALLED THE UNITED STATES CONSTITUTION---

7 MRS. MURPHY: OBJECTION, YOUR HONOR.

8 HE'S TESTIFIED AND---

9 THE COURT: LET ME HEAR THE QUESTION.

10 DON'T ANSWER THE QUESTION, MS. GADSON.

11 Q. THE U.S. CONSTITUTION THAT YOU HAVE CERTAIN
12 CONSTITUTIONAL RIGHTS; ONE OF THEM THAT YOU HAVE A
13 RIGHT NOT TO INCRIMINATE YOURSELF. DID HE TELL YOU
14 THAT?

15 THE COURT: JUST A SECOND.

16 MRS. MURPHY: OBJECTION, YOUR HONOR.

17 THAT'S LEADING.

18 THE COURT: I'LL ALLOW THAT QUESTION. YOU
19 MAY RESPOND.

20 MR. DAVIS:

21 MA'AM?

22 THE COURT: I'LL ALLOW IT.

23 Q. DID HE TELL YOU SO YOU HAD THE RIGHT TO HAVE A
24 LAWYER PRESENT?

25 A. NO.

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 Q. DID HE TELL YOU THAT -- YOU KNOW, YOU DIDN'T HAVE
2 TO TALK TO HIM ANY MORE. DID HE TELL YOU THAT?

3 A. NO.

4 Q. YOU UNDERSTAND NOW, THOUGH?

5 A. YES.

6 Q. THAT STATEMENT STARTS WITH 1998?

7 A. YES.

8 Q. CAUSED YOU TO BE SITTING IN THAT CHAIR YOU'RE IN;
9 IS THAT CORRECT?

10 MRS. MURPHY: OBJECTION, YOUR HONOR.
11 THAT'S LEADING.

12 THE COURT: LEADING. MR. DAVIS, DON'T
13 LET ME HAVE TO HAVE THAT OBJECTION AGAIN, ALL
14 RIGHT?

15 MR. DAVIS: THANK YOU, JUDGE.

16 Q. HOW WILL YOU DESCRIBE -- WELL, FIRST BEFORE YOU GET
17 THERE, I HAND YOU WHAT'S BEEN MARKED FOR
18 IDENTIFICATION AS TWO PHOTOGRAPHS MARKED FOR
19 IDENTIFICATION PURPOSES ONLY. YOU CAN HAND IT BACK
20 -- NUMBER TWO AND NUMBER THREE FOR IDENTIFICATION
21 PURPOSES. I'M GOING TO ASK YOU, FIRST ALL, DID YOU
22 TAKE THESE PHOTOGRAPHS?

23 A. YES, I DID.

24 Q. ARE THEY A CLEAR AND ACCURATE DEPICTION OF THE
25 CONTENT PERTAINING TO CHILDREN?

ADRIAN GADSON - DIRECT/MR.DAVIS

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- 1 A. YES.
- 2 Q. WHO ARE THE CHILDREN INVOLVED?
- 3 A. WILLIAM BURDEN.
- 4 Q. ALL RIGHT. HAVE THOSE PICTURES BEEN ALTERED IN ANY
- 5 WAY WHATSOEVER?
- 6 A. NO.
- 7 Q. WHO ARE THE CHILDREN THAT ARE IDENTIFIED IN THOSE
- 8 PHOTOGRAPHS?
- 9 A. TATIANA, TEKIA, TYSHEEN, WILLIAM AND
- 10 Q. AND WHAT EVENT DOES THAT PHOTOGRAPH DESCRIBE, IF
- 11 ANY?
- 12 A. WILLIAM'S BIRTHDAY PARTY.
- 13 Q. WILLIAM'S BIRTHDAY PARTY? THE FATHER OF THE
- 14 CHILDREN?
- 15 A. THE BABY BOY.
- 16 Q. THE FATHER OF THE CHILDREN?
- 17 A. THE LITTLE BOY'S NAMED WILLIAM. I APOLOGIZE.
- 18 MR. DAVIS: JUDGE, I MOVE TO HAVE THOSE
- 19 PHOTOGRAPHS MOVED INTO EVIDENCE.
- 20 MRS. MURPHY: NO OBJECTION, YOUR HONOR.
- 21 THE COURT: VERY WELL.
- 22 DEFENDANT'S EXHIBIT NOS. 2 & 3
- 23 ADMITTED AS EVIDENCE
- 24 Q. YOU SAY THAT WAS LITTLE WILLIAM'S BIRTHDAY?
-

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 Q. NOW, AS WE TALK ABOUT THE TWINS; THERE'S BEEN --
2 WHEN WERE THEY BORN; THE TWINS?

3 A. JANUARY THE SECOND OF '96.

4 Q. HOW FAR ALONG WERE YOU IN YOUR PREGNANCY WHEN THAT
5 HAPPENED?

6 A. SIX MONTHS.

7 Q. SIX MONTHS?

8 A. YES.

9 Q. AND WHY DID THEY HAVE TO TAKE THE CHILDREN EARLY?

10 A. THEY WERE BREACH.

11 Q. THEY WERE BREACH?

12 A. YES.

13 Q. AND SO THEY TOOK THE CHILDREN EARLY?

14 A. YES.

15 Q. YOU KNEW THEY WERE TWINS DURING THE WHOLE
16 PREGNANCY?

17 A. NO.

18 Q. YOU WEREN'T AWARE THEY WERE TWINS WHEN YOU WERE
19 CARRYING THEM?

20 A. NO.

21 Q. SO YOU ONLY LEARNED THAT AT THE CONCLUSION WHEN YOU
22 FOUND OUT THEY WERE BREACH?

23 A. YES.

24 Q. AND DID THEY COME HOME WITH YOU AFTER THE SIX

ADRIAN GADSON - DIRECT/MR. DAVIS

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- 1 HOME?
- 2 A. NO.
- 3 Q. DID THEY REMAIN IN THE HOSPITAL?
- 4 A. YES.
- 5 Q. HOW LONG?
- 6 A. FOR LIKE TWO-AND-A-HALF MONTHS.
- 7 Q. AND DURING THIS TWO-AND-A-HALF MONTH PERIOD, DID
- 8 YOU GET TO SEE THE TWINS?
- 9 A. YES; I VISITED THE HOSPITAL.
- 10 Q. HOW OFTEN?
- 11 A. VERY OFTEN.
- 12 Q. VERY OFTEN? OKAY. AND SO -- DO YOU KNOW THEIR
- 13 BIRTH WEIGHT?
- 14 A. YES.
- 15 Q. WHAT IS IT?
- 16 A. TYSHENE WHICH IS THE OLDEST TWIN; HE WAS TWO
- 17 POUNDS, ONE OUNCE. AND WAS ONE POUND
- 18 THIRTEEN OUNCES.
- 19 Q. ONE POUND THIRTEEN OUNCES?
- 20 A. YES.
- 21 Q. AND THE OTHER ONE WAS TWO POUNDS THIRTEEN OUNCES?
- 22 A. ONCE OUNCE.
- 23 Q. VERY, VERY TINY CHILDREN; ISN'T THAT RIGHT?
- 24 A. YES.
- 25 Q. NOW WHEN WERE THEY

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 YOUR OTHER CHILDREN WHEN THEY CAME HOME?

2 A. NO.

3 Q. WHAT WAS THE DIFFERENCE?

4 A. (NO RESPONSE.)

5 Q. BETWEEN THESE TWINS AND, SAY, THE EIGHT YEAR OLD
6 WHEN YOU BROUGHT HER HOME FROM THE HOSPITAL, OKAY;
7 DID YOU HAVE ANY SPECIAL CONDITION OR SPECIAL
8 THINGS YOU HAD TO DO WITH THESE TWINS?

9 A. YES.

10 Q. TELL US.

11 A. Child WAS ON APNEA, A MONITOR, AND OXYGEN. AND
12 LIKE EVERY ONCE IN A WHILE THE APNEA MONITOR WOULD
13 GO OUT. HE WOULD HAVE TO PAT HIM ON HIS BACK
14 BECAUSE THE DOCTOR SAID HE FORGETS TO BREATHE.

15 Q. GO AHEAD, BABY.

16 A. AND TYSHEEN; THEY TOOK HIM OFF; BUT Child STAYED
17 ON IT FOR A FEW MONTHS.

18 Q. NOW, DO YOU CUT IT OFF WHEN HE GOES TO BED AT
19 NIGHT, OR IT'S JUST IN THE DAYTIME, I WANT TO KNOW?

20 A. IT STAYS ON ALL THE TIME.

21 Q. SO THIS IS A 24 HOUR THING?

22 A. YES.

23 Q. AND WHO IS THE CARETAKER DURING ALL THIS TIME?

24 A. WILLIAM AND ME.

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 CHILDREN?

2 A. NO.

3 Q. THEY AIN'T GOT NOBODY IN THE HOME MAKING SURE THAT
4 SOMEBODY IS THERE TO HELP ALL THE TIME -- D.S.S.
5 THAT IS?

6 A. NO.

7 Q. D.S.S. IS NOT AT YOUR HOME?

8 A. NO.

9 Q. M.U.S.C. SENDING ANYBOBY FROM THE HOSPITAL TO HELP
10 YOU?

11 A. ONE NURSE CAME LIKE ONE TIME A WEEK.

12 Q. ONE TIME A WEEK?

13 A. BUT SHE ONLY DID THE BIRTH WEIGHT AND MEASURED HIS
14 HEIGHT.

15 Q. HOW LONG DID THIS GO ON?

16 A. ABOUT FOUR MONTHS, I GUESS.

17 Q. FOUR MONTHS. AT THIS TIME YOU HAVE ONE OTHER
18 CHILD?

19 A. YES.

20 Q. THAT'S THE GIRL?

21 A. YES.

22 Q. OKAY. GOES ON FOR FOUR MONTHS?

23 A. YES.

24 Q. IS THERE ANY REQUIREMENT OF FOLLOW-UP TO THE
HOSPITAL SEPARATE AND APART FROM WHAT YOU'RE DOING

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 AT HOME?

2 A. IS IT WHAT?

3 Q. ANY FOLLOW-UP; YOU KNOW ANY MEDICAL FOLLOW-UP. YOU
4 KNOW HERE YOU'RE AT THE HOUSE. THEY'RE ON THE
5 MONITOR. THE HEART MONITOR; THE BREATHING MONITOR.
6 DO YOU HAVE TO TAKE THEM TO THE HOSPITAL TOO?

7 A. YES.

8 Q. HOW OFTEN?

9 A. VERY OFTEN. WE HAVE TO TAKE THEM TO THEIR
10 APPOINTMENTS AT THE CLINIC.

11 Q. D.S.S. COULDN'T TAKE YOUR CHILDREN TO THEIR
12 APPOINTMENTS?

13 A. NO.

14 Q. WHO TOOK THEM TO THEIR APPOINTMENTS?

15 A. WE DID.

16 Q. NOW, DID ONE OF THE CHILDREN -- DID THEY DEVELOP AT
17 THE SAME RATE?

18 A. NO; NOT REALLY.

19 Q. SHARE WITH US -- LET US KNOW; HOW DID THEY DEVELOP
20 IN COMPARISON?

21 A. WELL, THEY STARTED SITTING UP AND CRAWLING REAL
22 LATE.

23 Q. REAL LATE. WE NEED TO KNOW. WE DON'T KNOW.

24 A. THEY STARTED SITTING UP LIKE WHEN THEY WERE EIGHT

ADRIAN GADSON - DIRECT/MR.DAVIS

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1 THAT NINE MONTHS.

2 Q. NINE MONTHS?

3 A. YES.

4 Q. DID YOUR EIGHT YEAR OLD RESPOND IN THE SAME WAY
5 DURING THAT PERIOD OF TIME?

6 A. NO.

7 Q. OKAY. TELL US ABOUT WHAT AGE DID YOU THINK THESE
8 CHILDREN STARTED TO WALK?

9 A. IT WAS AFTER THEY WERE ONE.

10 Q. MA'AM?

11 A. IT WAS AFTER AGE ONE.

12 Q. DO YOU KNOW HOW LONG AFTER ONE THEY STARTED
13 WALKING; AND DID BOTH OF THEM START WALKING AT THE
14 SAME TIME?

15 A. TYSHENE STARTED WALKING BEFORE Child HE STARTED
16 WALKING LIKE FOURTEEN MONTHS.

17 Q. FOURTEEN MONTHS. AND WHAT ABOUT Child

18 A. STARTED LIKE 17 MONTHS.

19 Q. ALMOST 17 MONTHS?

20 A. YES.

21 Q. HE STARTED WALKING?

22 A. YES.

23 Q. WHEN HE WALKED, WAS IT EASY? TELL US. DESCRIBE
24 THAT. WE DON'T KNOW.

25 A. THE BOTH OF THEM, THEY DIDN'T WALK LIKE NORMAL

ADRIAN GADSON - DIRECT/MR.DAVIS

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- 1 KIDS.
- 2 Q. THEY DID NOT?
- 3 A. NO.
- 4 Q. DID THEY FALL?
- 5 A. YES.
- 6 Q. TRIP OVER THINGS?
- 7 A. YES.
- 8 Q. WHO WAS THE PRIMARY CARE TAKERS?
- 9 A. WHO CAME TO THE HOUSE?
- 10 Q. NO; WHOEVER TOOK CARE OF THEM?
- 11 A. THE BOTH OF US DID. THEY.
- 12 Q. BOTH OF Y'ALL DID?
- 13 A. YES.
- 14 Q. DID THEY REQUIRE YOU TO DO A PSYCHOLOGICAL
- 15 EVALUATION, DID THEY NOT?
- 16 A. YES.
- 17 Q. D.S.S. ASKED YOU. YOU DID IT, DID YOU NOT?
- 18 A. YES.
- 19 Q. DO YOU USE ALCOHOL?
- 20 A. NO.
- 21 Q. DRUGS?
- 22 A. NO.
- 23 Q. HAVE YOU GOT ANY CRIMINAL RECORD?
- 24 A. NO.
- 25 Q. HOW OLD WERE YOU WHEN YOU HAD YOUR FIRST CHILD?

ADRIAN GADSON - DIRECT/MR.DAVIS

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- 1 A. EIGHTEEN.
- 2 Q. EIGHTEEN. HOW OLD WERE YOU WHEN YOU HAD YOUR
- 3 SECOND CHILD?
- 4 A. NINETEEN.
- 5 Q. THAT'S WHEN YOU HAD THE TWINS?
- 6 A. YES.
- 7 Q. AND HOW OLD WHEN YOU HAD YOUR FOURTH CHILD?
- 8 A. ABOUT 22.
- 9 Q. AND YOUR LAST CHILD?
- 10 A. TWENTY-FIVE.
- 11 Q. AND YOU WORK FOR A LIVING, ISN'T THAT CORRECT?
- 12 A. YES.
- 13 Q. YOU FINISHED HIGH SCHOOL?
- 14 A. YES.
- 15 Q. WHAT HIGH SCHOOL DID YOU ATTEND?
- 16 A. BERKELEY HIGH.
- 17 Q. BERKELEY HIGH SCHOOL?
- 18 A. YES.
- 19 Q. WHAT YEAR DID YOU FINISH HIGH SCHOOL?
- 20 A. '94.
- 21 Q. 1994?
- 22 A. '94.
- 23 Q. ANY OTHER MAN THAT'S BEEN IN YOUR LIFE OTHER THAN
- 24 WILLIAM BURDEN?
- 25 A. NO.

ADRIAN GADSON - CROSS/MR. DUKES

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1 Q. THE ONLY MAN?

2 A. YES.

3 Q. DO YOU LOVE HIM?

4 A. YES.

5 Q. HAVE YOU HAD ANY KNOWLEDGE OR HAD ANY FEAR THAT HE
6 WOULD HARM HIS OWN KIDS?

7 A. NO.

8 Q. MA'AM?

9 A. NO.

10 Q. MA'AM?

11 A. NO. DID I HAVE ANY KNOWLEDGE THAT HE WOULD---

12 Q. OR FEAR THAT HE WOULD HARM HIS OWN CHILDREN?

13 A. NO.

14 MR. DAVIS: NOTHING FURTHER.

15 THE COURT: ALL RIGHT. MR. DUKES;

16 CROSS-EXAMINATION?

17 MR. DUKES: I HAVE JUST A FEW QUESTIONS.

18 CROSS-EXAMINATION

19 BY MR. DUKES:

20 Q. DO YOU RECOGNIZE THIS PICTURE? (INDICATING.)

21 A. YES.

22 Q. AND WHAT IS THIS?

23 A. THE STATEMENT I WROTE ON NOVEMBER THE THIRD.

24 Q. NOVEMBER THE THIRD. AND YOU WROTE THAT WHERE?

25 A. AT THE STATION

ADRIAN GADSON - CROSS/MR. DUKES

687

1 Q. AT THE LAW ENFORCEMENT COMPLEX?

2 A. YES.

3 Q. DEMMING WAY IN SUMMERVILLE?

4 A. YES.

5 Q. AND WHO WAS PRESENT WHEN YOU GAVE THIS STATEMENT?

6 A. DETECTIVE MARSHALL.

7 Q. AND YOU TOLD THEM WHAT YOU KNEW ABOUT NOVEMBER THE
8 THIRD, DIDN'T YOU?

9 A. YES.

10 Q. AND THEN YOU WERE ASKED ABOUT 1998?

11 A. YES.

12 Q. AND YOU TOLD THEM THAT YOU WASN'T AT HOME AT THAT
13 TIME, DIDN'T YOU?

14 A. YES.

15 Q. AND THAT WILLIAM WAS HOME?

16 A. YES.

17 Q. AND HE TOLD YOU THAT THE CHILD HAD FALLEN AND
18 BROKEN HIS LEG?

19 A. YES.

20 Q. BUT THEN YOU ENDED AND UP BY SAYING LATER HE TOLD
21 YOU HE HAD SPANKED HIM?

22 A. YES.

23 Q. DO YOU THINK HE SPANKED HIM AND BROKE HIS LEG?

24 A. IF I BELIEVED THAT HE BROKE HIS LEG, I WOULDN'T BE

25

WITH HIM

ADRIAN GADSON - CROSS/MR. DUKES

688

- 1 Q. SO THAT'S NOT TRUE?
- 2 A. NO.
- 3 Q. AND YOU DIDN'T WRITE THAT OF YOUR OWN FREE WILL AND
- 4 ACCORD?
- 5 A. NO; HE TOLD ME TO WRITE IT IF I WANTED MY KIDS
- 6 BACK.
- 7 Q. WHO TOLD YOU THAT?
- 8 A. DETECTIVE MARSHALL.
- 9 Q. DO YOU THINK WILLIAM BURDEN HAS EVER INTENTIONALLY
- 10 HURT ANY OF YOUR CHILDREN?
- 11 A. NO.
- 12 Q. HAS HE BEEN A GOOD HUSBAND?
- 13 A. YES.
- 14 Q. A GOOD FATHER?
- 15 A. YES.
- 16 Q. AND HOW OFTEN HAS HE BEEN WITH THESE CHILDREN BY
- 17 HIMSELF? I MEAN, YOU WORK A LOT, DON'T YOU?
- 18 A. YES.
- 19 Q. AND WHEN YOU'RE WORKING, WHO TAKES CARE OF THOSE
- 20 CHILDREN?
- 21 A. WILLIAM.
- 22 Q. AND WHO COOKS FOR THEM?
- 23 A. WILLIAM.
- 24 Q. AND I UNDERSTAND THESE CHILDREN EVEN HAVE TO BE

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

689

1 A. YES.

2 Q. THEY DON'T GO TO THE BATHROOM ON THEIR OWN?

3 A. NO.

4 Q. WHO DOES THAT?

5 A. WILLIAM.

6 Q. HAVE YOU EVER SEEN HIM DO ANYTHING CRUEL TO THESE
7 CHILDREN?

8 A. NO.

9 Q. THANK YOU VERY MUCH.

10 THE COURT: ALL RIGHT, MRS. MURPHY;
11 CROSS-EXAMINATION.

12 MRS. MURPHY: THANK YOU, YOUR HONOR.

13 RE-DIRECT EXAMINATION

14 BY MRS. MURPHY:

15 Q. MRS. GADSON, YOUR EARLIER TESTIMONY WAS AT 1996
16 WHEN Child [REDACTED] LEG WAS FIRST BROKEN THAT YOU DIDN'T
17 FALL AND TELL EVERYBODY YOU FELL TO THE SIDE -- CAN
18 YOU STAND UP AND DEMONSTRATE? YOU DON'T HAVE TO
19 FALL, BUT SHOW US HOW YOU WERE HOLDING HIM IN
20 RELATION TO HIM FALLING.

21 A. I HAD HIM ON MY SHOULDER TO THE LEFT.
22 (INDICATING.)

23 Q. AND WHICH WAY DID HE FALL? WHICH WAY DID YOU FALL?
24 YOU SAID YOU FELL ON YOUR SIDE. WHICH SIDE DID YOU
25 FALL ON?

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

690

1 A. ON THIS SIDE. (INDICATING.)

2 Q. YOU FELL ON YOUR LEFTHAND SIDE. AND YOU WERE
3 HOLDING HIM ON -- HE WAS FACING YOU, OR WAS HE
4 FACING OUT?

5 A. HE WAS FACING ME.

6 Q. HE WAS FACING YOU. AND YOU FELL ON YOUR SIDE SO AS
7 NOT TO CRUSH HIM?

8 A. YES.

9 Q. SO BASICALLY YOUR TESTIMONY IS THAT YOU TOOK THE
10 BLOW FOR HIM?

11 A. DID I WHAT?

12 Q. DID YOU TAKE THE FALL FOR HIM?

13 A. YES.

14 Q. ALL RIGHT. YOU MAY SIT DOWN. (WITNESS RETURNS TO
15 WITNESS STAND.) ALL RIGHT. IN 1998, YOUR KIDS WERE
16 TAKEN AWAY FROM YOU; RIGHT?

17 A. YES.

18 Q. AND WHY WAS THAT, MS. GADSON?

19 A. BECAUSE I TOOK THE BABY AWAY.

20 Q. YOU KNEW THAT HE HAD BROKEN LEG, DID YOU
21 NOT?

22 A. I DIDN'T SAY THAT I KNEW THAT HE BROKE HIS LEG. I
23 TOLD THEM WHAT HE TOLD ME. I WASN'T SURE THAT HE
24 BROKE THE LEG.

25 Q. YOU TOLD HIM WHAT HE TOLD YOU?

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

691

1 A. YES.

2 Q. IS THAT YOUR TESTIMONY TODAY?

3 A. YES.

4 Q. SO HE TOLD YOU TO TELL THEM THAT YOU WERE HOME WITH
5 THE CHILD, AND NOW YOU'RE SAYING YOU'RE NOT HOME
6 WITH THE CHILD?

7 A. HE DID WHAT?

8 Q. YOU JUST TESTIFIED THAT YOU TOLD ALL THE
9 AUTHORITIES AT THE TIME THAT -- WHAT DID YOU TELL
10 THEM AT THE TIME?

11 A. I TOLD THEM I WAS HOME AT THE TIME.

12 Q. BUT YOU WEREN'T, WERE YOU?

13 A. NO.

14 Q. SO YOU LIED TO THE AUTHORITIES BACK THEN?

15 A. YES.

16 Q. TO PROTECT HIM?

17 A. NO; TO PROTECT OUR FAMILY.

18 Q. TO PROTECT YOUR FAMILY?

19 A. YES.

20 Q. WHAT ABOUT Child

21 A. I TOLD THEM TO PROTECT MY FAMILY, LIKE I SAID.

22 Q. WHAT ABOUT Child

23 A. HE IS PART OF MY FAMILY.

24 Q. BUT YOU COVERED FOR HIM. YOU TOLD A LIE; DID YOU

25 NOT? YOU WEREN'T

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

692

1 A. NO.

2 Q. BUT YOU FELT TO PROTECT HIM -- YOU CONSIDER HIM
3 YOUR FAMILY, RIGHT?

4 A. I CONSIDER HIM AND MY KIDS AS MY FAMILY.

5 Q. RIGHT. SO HE'S PART OF WHO YOU SAY YOU'RE
6 PROTECTING; CORRECT?

7 A. YES.

8 Q. AND SO YOU LIED ABOUT BEING HOME IN 1998 AND TOOK
9 THE FAULT FOR BREAKING HIS LEG; CORRECT?

10 A. YES.

11 Q. AND YOU THINK BY TAKING THE FALL AND PROTECTING THE
12 LEG AND HAVING YOUR CHILDREN TAKEN AWAY FROM YOU IS
13 PROTECTING YOUR FAMILY?

14 A. I DIDN'T THINK THAT THEY WOULD TAKE ALL OF MY KIDS.

15 Q. JUST Child

16 A. NO; I SAID ALL OF MY KIDS.

17 Q. AS A MATTER OF FACT, IN FAMILY COURT, YOU AGREED --
18 YOU CAME TO CONSENT THAT YOU WERE FOUND GUILTY OF
19 CHILD ABUSE; CORRECT?

20 A. YES.

21 Q. I'M GOING TO ASK YOU IF YOU'VE BEEN GIVEN A COPY OF
22 THIS BEFORE; THIS ORDER STATING THAT THAT THAT'S
23 WHAT YOU AGREED TO?

24 A. YES.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

693

1 I'D LIKE TO INTRODUCE IT AS STATE'S 20.

2 THE COURT: VERY WELL. MR. DUKES; ANY
3 OBJECTION?

4 MR. DUKES: NO OBJECTION.

5 MR. DAVIS: I OBJECT, YOUR HONOR. IT'S
6 AN EXTRINSIC DOCUMENT. I DON'T KNOW WHAT PURPOSE
7 IT IS BEING USED FOR. SHE COULD HAVE
8 CROSS-EXAMINED HER; BUT ACTUALLY BEING INTRODUCED
9 INTO EVIDENCE, I THINK IT IS AN EXTRINSIC DOCUMENT,
10 THAT IT'S PREJUDICIAL, THE FACT OUTWEIGHS ITS
11 PROBATIVE WORTH.

12 THE COURT: OVERRULED.

13 STATE'S EXHIBIT NO. 20

14 ADMITTED AS EVIDENCE

15 Q. MRS. GADSON, SO IN 1998, YOU TAKE THE FALL; YOU GET
16 THE CHILD ABUSE AGAINST YOU KNOWING THAT HE BROKE A
17 LEG?

18 A. YES.

19 Q. AND AS PART OF THIS ORDER, YOU'RE ORDERED TO GO
20 THROUGH PARENTING CLASSES?

21 A. YES.

22 Q. AND CLASSES TO HELP YOUR CHILDREN DRIVE BECAUSE
23 THEY WEREN'T DRIVING; RIGHT?

24 A. YES.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

694

1 FRANCIS HOSPITAL; HOME HEALTH CARE. (INDICATING.)

2 A. YES.

3 Q. DO YOU KNOW WHAT THAT IS?

4 A. YES.

5 Q. THAT'S A DOCUMENT TERMINATING YOU FROM THAT PROGRAM
6 FOR NOT COMPLYING WITH IT, IS IT NOT?

7 A. YES.

8 MRS. MURPHY: YOUR HONOR, I'D LIKE TO
9 INTRODUCE THIS AS STATE'S EXHIBIT 21.

10 MR. DAVIS: I OBJECT, YOUR HONOR; SAME
11 GROUND; ONE; NOTHING HAS CHANGED. IT'S EXTRINSIC
12 EVIDENCE. SAME OBJECTION.

13 THE COURT: I'M GOING TO SUSTAIN THE
14 OBJECTION.

15 STATE'S EXHIBIT NO. 21

16 MARKED FOR I.D.

17 MR. DAVIS: THANK YOU, JUDGE.

18 THE COURT: IT'S HEARSAY.

19 Q. BUT YOU WERE TERMINATED FROM THAT PROGRAM FOR NOT
20 COMPLYING, WERE YOU NOT?

21 A. YES.

22 Q. YOU ALSO WERE ORDERED TO UNDERGO A MENTAL
23 EVALUATION WITH DR. MCCLAIN; CORRECT?

24 A. CORRECT.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

695

1 INTRODUCED INTO EVIDENCE WHICH IS THAT EVALUATION
2 WITH DR. MCCLAIN?

3 A. I'M NOT SURE.

4 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
5 DEFENDANT'S EXHIBIT NUMBER FIVE, MS. GADSON, AND
6 ASK YOU IF YOU CAN RECOGNIZE THAT. SEE IF YOU CAN
7 READ THAT?

8 A. YES, I DO.

9 Q. AND YOU'RE FAMILIAR WITH ITS CONTENTS?

10 A. YES.

11 Q. AND YOU'RE FAMILIAR WITH TELLING -- DO YOU REMEMBER
12 TELLING DR. MCCAIN THAT YOU HAD PROBLEMS WITH YOUR
13 PARENT CHILD RELATIONSHIP WITH Child

14 A. I DIDN'T TELL HIM I HAD PROBLEMS.

15 Q. YOU DON'T REMEMBER THAT?

16 A. NO.

17 Q. DO YOU REMEMBER TELLING HIM THAT YOU YOU MADE ANGRY
18 IMPULSES? DO YOU REMEMBER HIM TALKING TO YOU ABOUT
19 THAT?

20 A. THAT WHAT?

21 Q. THAT YOU MADE ANGRY IMPULSES; PERIODIC ANGRY
22 OUTBURSTS?

23 A. THAT I MADE?

24 Q. YES?

25 A. NO.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

696

1 Q. DID HE EVER DISCUSS THAT WITH YOU?

2 A. NO.

3 Q. DO YOU REMEMBER HIM RECOMMENDING TO YOU THAT YOU
4 PARTICIPATE IN FAMILY THERAPY?

5 A. THAT I PARTICIPATE?

6 Q. FOR EITHER INDIVIDUAL OR FAMILY THERAPY TO ADDRESS
7 THESE STRESSORS TO HELP YOU DEVELOP EFFECTIVE
8 FAMILY STRUCTURE AND COMMUNICATION PATTERNS OF YOUR
9 CHILD MANAGEMENT SKILLS?

10 A. NO.

11 Q. YOU DON'T REMEMBER THAT?

12 A. NO.

13 Q. WAS IT IMPORTANT TO YOU TO COMPLY WITH THE DOCTOR'S
14 ORDERS AND THE COURT ORDERS TO TRY TO GET YOUR
15 CHILDREN BACK?

16 A. YES.

17 Q. BUT YOU DON'T REMEMBER ANY OF HIS RECOMMENDATIONS
18 TO YOU?

19 A. I DON'T REMEMBER THAT.

20 Q. WELL, DO YOU RECALL -- WAS IT IMPORTANT TO YOU AT
21 THE TIME TO GET OTHER PROFESSIONALS INVOLVED WITH
22 YOUR KIDS?

23 A. I WENT TO PROFESSIONALS THAT D.S.S. SENT ME TO.

24 Q. WHICH D.S.S.? THE PARENTING CLASS PROGRAM?

25 A. NO; AT MENTAL HEALTH.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

697

1 Q. NOT THE ONE THAT YOU WERE TERMINATED FROM? YOU
2 WENT TO ANOTHER ONE?

3 A. (NO RESPONSE.)

4 Q. WHERE DID YOU GO?

5 A. WHAT DO YOU MEAN, LIKE THE OTHER NURSES THAT COME
6 TO THE HOUSE AND DEAL WITH THEIR DEVELOPMENT?

7 Q. LET'S GET DOWN TO THE MENTAL EVALUATION PART. YOU
8 DON'T RECALL ANY OF THE DOCTORS RECOMMENDATIONS TO
9 YOU TO HELP YOU GET YOUR CHILDREN BACK; IS THAT
10 CORRECT? YOU DON'T RECALL ANY OF THE
11 RECOMMENDATIONS?

12 A. NO.

13 Q. THAT WASN'T IMPORTANT ENOUGH TO YOU TO TRY TO
14 REMEMBER THAT?

15 A. (NO RESPONSE.)

16 Q. YES? NO?

17 A. YES.

18 Q. BUT YOU DON'T, DO YOU?

19 A. (NO RESPONSE.)

20 Q. NOW, MS. GADSON, LET'S GET TO YOUR STATEMENT---

21 THE COURT: THERE'S A QUESTION THERE.
22 ARE YOU WITHDRAWING THE QUESTION, MRS. MURPHY.

23 Q. DO YOU REMEMBER?

24 A. NO.

25 Q. IN YOUR STATEMENT OF NOVEMBER THE THIRD OF THIS

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

698

1 YEAR, YOUR TESTIMONY HERE THIS MORNING AND THIS
2 AFTERNOON IS DETECTIVE MARSHALL FORCED YOU TO SAY
3 WHAT REALLY HAPPENED IN 1998, IS THAT YOUR
4 TESTIMONY HERE?

5 A. HE DID.

6 Q. HE FORCED YOU TO TELL THE TRUTH?

7 A. HE TOLD ME IF I DIDN'T WRITE THAT STATEMENT THAT I
8 WOULDN'T GET MY KIDS BACK.

9 Q. SO HE TOLD YOU EXACTLY WHAT YOU WROTE HERE?

10 A. HE SAID WHEN I FINISHED WRITING ABOUT NOVEMBER THE
11 THIRD, HE SAID TO WRITE ABOUT 1998.

12 Q. BUT DID YOU WRITE THE TRUTH?

13 A. ABOUT 1998?

14 Q. YES?

15 A. YES.

16 Q. SO YOU KNEW -- LET ME ASK YOU TO READ YOUR
17 STATEMENT ABOUT WHAT HAPPENED IN 1998. START RIGHT
18 THERE WHERE IT SAYS "END."

19 A. "IN THE END, 1998, Child GOT A BROKEN LEG BECAUSE
20 I WAS TOLD THAT HE HAD FALLEN FROM THE CRIB AND
21 LANDED ON A HARD TOY. BASED ON WHAT HE TOLD, I
22 DON'T THINK IT IS TRUE."

23 Q. KEEP GOING TO THE SECOND PAGE.

24 A. "BACK IN '98, I WAS WORKING AT BURGER KING. DEAN
25 CALLED ME AT WORK AND SAID THAT HE THINKS Child

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

699

1 LEG IS BROKEN. WHEN I GOT THERE, HE WAS HOLDING
2 HIM AND SAID "I THINK HIS LEG IS BROKEN." SO I
3 RUSHED HIM TO THE HOSPITAL. I ASKED HIM HOW DID
4 Child BROKE HIS LEG." AND HE SAID THAT HE HAD
5 FALLEN FROM THE CRIB AND ONTO A TOY. AFTER I CAME
6 FROM THE HOSPITAL, HE TOLD ME THAT HE SPANKED HIM."

7 Q. SO AFTER YOU CAME HOME FROM THE HOSPITAL, HE TOLD
8 YOU HE SPANKED HIM, AND THAT BROKE THE CHILD'S
9 LEG? CORRECT?

10 A. (NO RESPONSE.)

11 Q. YES OR NO?

12 MR. DAVIS: IT CALLS FOR SPECULATION.
13 SHE SAID SHE DOESN'T KNOW. SHE DOESN'T KNOW. THAT
14 CALLS FOR SPECULATION. SHE SAID SHE DOESN'T KNOW.
15 I CALL THAT CONJECTURE.

16 THE COURT: IS THERE AN OBJECTION?

17 MR. DAVIS: I OBJECT, YOUR HONOR; THAT
18 CALLS FOR SPECULATION, CONJECTURE. SHE DOESN'T
19 KNOW.

20 THE COURT: I SEE. SHE CAN ANSWER IT IF
21 SHE KNOWS.

22 Q. HE TOLD YOU HE SPANKED THE CHILD AND BROKE HIS LEG?

23 A. NO, HE DIDN'T SAY THAT. HE SAID THAT HE SPANKED
24 THE CHILD. THAT'S HOW HIS LEG GOT BROKEN.

25 Q. ONE YEAR YOU SAY "BASED ON WHAT YOU --

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

700

1 DON'T THINK IT'S TRUE THAT THE CHILD BROKE HIS LEG
2 FALLING FROM HIS CRIB." NOW, THAT'S WHAT YOU WROTE
3 RIGHT THERE; CORRECT?

4 A. YES.

5 Q. AND SO YOU THOUGHT HE WAS LYING TO YOU ABOUT HOW
6 THE CHILD BROKE HIS LEG?

7 A. I DIDN'T THOUGHT HE WAS LYING TO ME.

8 Q. WHAT PART OF "I DON'T THINK IS TRUE" IS LYING TO
9 YOU?

10 A. BECAUSE DETECTIVE MARSHALL ASKED ME IF I THOUGHT IT
11 WAS TRUE. AND WHEN I -- I TOLD HIM NO; AND HE TOLD
12 ME TO WRITE IT DOWN ON A PAPER.

13 Q. SO THIS IS ALL DETECTIVE MARSHALL'S DOING. YOU
14 REALLY BELIEVE HIM THAT HE FELL FROM THE CRIB?

15 A. YES, I KNOW THAT HE FELL FROM THE CRIB.

16 Q. YOU BELIEVE THAT?

17 A. HE'S AN ACTIVE CHILD.

18 Q. YES; BUT YOU BELIEVE THAT HE FELL FROM THE CRIB,
19 NOT FROM A TWO STORY SHELF? WHICH ONE DO YOU
20 BELIEVE?

21 A. I BELIEVE THAT HE DID CRAWL OUT OF THE CRIB.

22 Q. AND FELL FROM WHICH ONE; THE CRIB OR THE SHELF?

23 A. THE SHELF.

24 Q. SO YOU BELIEVE WHAT HE SAYS EVERY TIME?

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

701

1 Q. YOU BELIEVED HIM BACK THEN THAT IT WAS JUST A CRIB.
2 YOU BELIEVE HIM TODAY THAT IT WAS A SHELF. WHICH
3 ONE WAS IT?

4 A. MA'AM, I'M NOT SURE IF IT'S FROM THE CRIB OR THE
5 SHELF.

6 Q. SO YOU DON'T KNOW?

7 A. NO.

8 Q. AND YOU SAID IN YOUR STATEMENT THAT YOU DON'T THINK
9 IT'S TRUE WHAT HE TOLD YOU?

10 A. YES.

11 Q. AND YOU STATE IN HERE "I CAME FROM THE HOSPITAL,
12 AND HE TOLD ME HE SPANKED HIM. THAT'S WHAT YOU
13 WROTE. IS THAT NOT TRUE?

14 A. YES.

15 Q. SO YOU KNOW THAT THE CHILD'S LEG IS BROKEN IN '98;
16 CORRECT?

17 A. YES.

18 Q. YOU DON'T BELIEVE -- YOU SAID HE TOLD ME; I DON'T
19 BELIEVE IT'S TRUE. AND HE TOLD ME HE SPANKED HIM.
20 BUT YOU'RE TELLING THIS JURY HERE TODAY THAT YOU
21 DIDN'T HAVE ANY FEAR OR ANY PRIOR KNOWLEDGE OF HIM
22 HURTING THE CHILD?

23 A. I DIDN'T HAVE ANY FEAR. IF I DID HAVE FEAR, THEN I
24 WOULDN'T HAVE ALLOWED HIM AROUND THE KIDS.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

702

1 HE BROKE THE CHILD'S LEG, DID YOU NOT?

2 A. NO.

3 Q. WHAT DOES YOUR STATEMENT SAY?

4 A. MY STATEMENTS SAID THAT.

5 Q. YOUR STATEMENT SAYS THAT YOU DIDN'T BELIEVE HIS
6 STORY AND THAT HE SPANKED HIM; CORRECT?

7 A. YES.

8 Q. AND SO YOU KNEW THAT HE BROKE THE CHILD'S LEG;
9 CORRECT?

10 A. NO, I DIDN'T, MA'AM.

11 Q. BUT YOU LIED FOR HIM. YOU WERE WILLING TO LIE FOR
12 HIM IN COURT AND TAKE THE FALL; CORRECT?

13 A. YES.

14 Q. AND YOU WERE WILLING TO LOSE YOUR CHILDREN FOR HIM
15 TO TAKE THE FALL?

16 A. I TOLD YOU BEFORE THAT I DIDN'T THINK THAT THEY
17 WOULD TAKE MY KIDS.

18 Q. SO YOU DIDN'T THINK OF THE CONSEQUENCES, THEN, DID
19 YOU?

20 A. NO.

21 Q. AND YOU ALSO TESTIFIED EARLIER THAT YOU DIDN'T KNOW
22 YOUR CHILD WAS BLIND UNTIL YOU TOOK HIM TO THE
23 DOCTOR. YOU DIDN'T NOTICE ANY VISION PROBLEMS?

24 A. NO.

ADRIAN GADSON - RE-DIRECT/MRS. MURPHY

703

1 THE COURT: VERY WELL. RE-DIRECT?

2 MR. DAVIS: NO, MA'AM.

3 THE COURT: YOU MAY COME DOWN. CALL YOUR
4 NEXT WITNESS, PLEASE, MR. DAVIS.

5 MR. DAVIS: I REST, YOUR HONOR.

6 THE COURT: VERY WELL. WILL THERE BE ANY
7 REPLY?

8 MRS. MURPHY: NO REPLY, YOUR HONOR.

9 THE COURT: VERY WELL. LADIES AND
10 GENTLEMEN, LET ME TELL YOU WHERE WE ARE IN THIS
11 CASE AND TALK TO YOU A LITTLE BIT ABOUT
12 SCHEDULING. YOU HAVE NOW HEARD ALL OF THE
13 WITNESSES AND RECEIVED ALL OF THE EXHIBITS WHICH
14 YOU WILL IN THIS CASE. WHAT REMAINS FOR US TO DO IN
15 THIS CASE ARE ARGUMENTS OF COUNSEL AND MY CHARGE ON
16 THE LAW. THAT IS STILL A SUBSTANTIAL AMOUNT OF
17 WORK THAT REMAINS TO BE DONE. AND LADIES AND
18 GENTLEMEN, I NEED TO TALK WITH YOU A LITTLE BIT
19 MORE ABOUT OUR SCHEDULING. OUR SCHEDULE IS AS
20 FOLLOWS: I HAVE A COMMITMENT WHICH I MUST ATTEND
21 TOMORROW. IT IS PART OF MY JUDICIAL DUTIES; AND I
22 MUST ATTEND TOMORROW. SO I CANNOT DO THAT WORK
23 TOMORROW. SO I CANNOT DO THAT WORK TOMORROW. WHAT
24 WE'RE GOING TO DO IS THAT WE'RE GOING TO CONCLUDE
25 THIS CASE ON MONDAY. AND WE WILL DO THAT BEGINNING

MOTIONS

704

1 AT NINE O'CLOCK MONDAY MORNING. NOW, ANY OF YOU
2 THAT NEED ANYTHING FOR WORK FOR TOMORROW OR FOR
3 MONDAY, THAT IS ABSOLUTELY NOT A PROBLEM. WE WILL
4 CERTAINLY GET THOSE FOR YOU FROM THE CLERK'S OFFICE
5 SO THAT YOU HAVE THEM FOR YOUR WORK. LET ME TELL
6 YOU THAT -- COUNSEL, LET ME SEE YOU JUST A SECOND.
7 (AT THIS TIME BENCH CONFERENCE IS HELD.)

8 THE COURT: ALL RIGHT. LET ME TELL YOU
9 WHAT MY CONCERN IS SO YOU'LL UNDERSTAND IT. IT'S
10 NOW 5:15. THERE ARE MATTERS THAT I MUST HEAR
11 OUTSIDE YOUR PRESENCE GIVEN WHERE WE ARE IN THE
12 CASE WHICH MEANS THAT WE WOULD PROBABLY MINIMALLY
13 THAT WOULD TAKE THIRTY MINUTES; MINIMALLY MORE LIKE
14 45. SO WE WOULD BE LOOKING AT BEGINNING THE
15 CLOSING ARGUMENTS NO EARLIER THAN SIX O'CLOCK.
16 CLOSING ARGUMENTS IN THIS MATTER COULD TAKE EASILY
17 AN HOUR-AND-A-HALF TO EVEN TWO HOURS TO EVEN TO
18 HOURS; AND THEN THERE'S MY CHARGE ON THE LAW. AND,
19 SEE, YOU'RE LOOKING AT NOT EVEN RECEIVING THIS CASE
20 AT THE EARLIEST UNTIL APPROXIMATELY EIGHT O'CLOCK.
21 I'M WORRIED ABOUT YOU BEING TIRED TO BE HONEST. AND
22 THAT'S THE REASON THAT I THINK IT'S BEST IF WE
23 RETURN MONDAY WHEN EVERYBODY IS FRESH IN THIS
24 MATTER. THAT'S THE REASON FOR THAT. WE'LL GET YOU
25 SOMETHING FOR WORK ON THURSDAY.

MOTIONS

705

1 YOU'VE PROBABLY SAID I'M IN JURY DUTY THIS WEEK.
2 AND THEY'RE PROBABLY LIKE OKAY, WHAT'S MY NEW --
3 CERTAINLY YOUR EMPLOYEES WILL UNDERSTAND WE NEED TO
4 PROCEED ON MONDAY. AND I THINK THAT'S BEST.

5 NOW, WE'RE GOING TO BE GOING
6 HOME. YOU'RE GOING TO BE GOING HOME ON THE
7 WEEKEND. PROBABLY NOT OVER THE WEEKEND THE
8 CURIOSITY WON'T GET ANY WORSE OVER THE WEEKEND;
9 PROBABLY NOT OVER THE WEEKEND, THE CURIOSITY WON'T
10 GET ANY WORSE OVER THE WEEKEND, BUT IT'S GOING TO
11 BE MORE TONIGHT. SO JUST BE MINDFUL TO PUT IT ON
12 THE JUDGE. WHOEVER IS CURIOUS, PLEASE TELL THEM
13 THAT YOU MUST NOT, CANNOT DISCUSS THIS MATTER,
14 CANNOT LET ANYBODY DISCUSS IT WITH YOU. HOWEVER,
15 WHEN YOU'VE BEEN DISCHARGED FROM YOUR SERVICE FROM
16 YOUR SERVICE ON THIS JURY, THEN YOU WILL CERTAINLY
17 BE AT LIBERTY. IF WE HAVE SOMEBODY WHO HAS A
18 PARTICULAR PROBLEM; IF YOU WILL, WHEN YOU GO BACK,
19 IF YOU WILL JUST WRITE A NOTE AND LET ME KNOW WHAT
20 THAT IS ABOUT. WE'LL CERTAINLY DEAL WITH THAT
21 ISSUE.

22 LADIES AND GENTLEMEN, I'M GOING
23 TO SEND YOU TO YOUR JURY ROOM. ANY ONE WHO HAS ANY
24 KINDS OF THOSE CONCERNS BEFORE EVERYBODY LEAVES,
25 JUST WRITE THOSE DOWN. LET ME HAVE THOSE BACK

MOTIONS

706

1 - BEFORE YOU LEAVE TONIGHT. THANK YOU VERY MUCH.

2 (AT THIS TIME JURY RETIRES FOR THE NIGHT.)

3 THE COURT: THANK YOU VERY MUCH. ARE
4 THERE ANY MOTIONS? ANY MOTIONS?

5 MR. DUKES: YES, MA'AM.

6 THE COURT: YES, MA'AM, MR. DUKES?

7 MR. DUKES: I RENEW MY MOTION FOR A
8 DIRECTED VERDICT.

9 THE COURT: THANK YOU SO MUCH. AND ON
10 THE SAME BASIS, I WOULD RESPECTFULLY DENY YOUR
11 MOTION.

12 MR. DAVIS: AND I WOULD RENEW MY MOTION
13 IN CONJUNCTION OF EVERYTHING I SAID AT THE
14 CONCLUSION OF THE STATE'S CASE EVEN MORE SO NOW,
15 BUT EQUALLY.

16 THE COURT: THANK YOU SO MUCH. AND I
17 THANK BOTH OF YOU FOR YOUR MOTIONS. AND I
18 RESPECTFULLY DENY THEM. I DO THINK THERE IS
19 EVIDENCE BEFORE THIS JURY, TAKING THE EVIDENCE IN
20 THE LIGHT MOST FAVORABLE TO THE STATE AS I HAVE
21 CHARGE IT TO THAT THIS JURY COULD COME BACK. SO ON
22 THAT BASIS, I WILL RESPECTFULLY DENY YOUR MOTION
23 AND NOTE YOUR EXCEPTION. LET ME TELL YOU WHAT I DO
24 WANT TO DO. AND I KNOW IT'S LATE. I KNOW YOU'RE
25 TIRED. BUT I DID WANT TO OUTLINE FOR YOU THE

MOTIONS

707

1 CHARGE BEFORE YOU GO HOME AND GIVE YOU AN IDEA OF
2 WHERE I AM AND WHAT I'M LOOKING AT. AND Y'ALL
3 SHARE WITH ME YOUR THOUGHTS. THE TWO EXHIBITS, THE
4 TWO PHOTOGRAPHS THAT WERE THE TWO LAST EXHIBITS
5 THAT WENT IN IN MS. GADSON'S CASE; MR. DAVIS, THEY
6 ARE IMPROPERLY MARKED. IS THERE ANY OBJECTION
7 RATHER THAN HAVING TO BE TWO AND THREE TO HAVE THEM
8 BE 6 AND 7?

9 MR. DAVIS: NO OBJECTION.

10 THE COURT: NO OBJECTION FROM ANYONE.

11
12
13
14
15
16
17 (WHEREUPON AT 6:30 COURT WAS ADJOURNED FOR THE
18 DAY.)
19
20
21
22
23
24
25

HEARING IN CHAMBERS

708

1 MONDAY, OCTOBER 28, 2002

2 (THE FOLLOWING TAKES PLACE IN CHAMBERS.)

3

4 THE COURT: LET THE RECORD REFLECT BOTH

5 COUNSEL HAVE WAIVED THE PRESENCE OF THEIR CLIENT

6 FOR THIS PURPOSE. I RECEIVED A PHONE CALL ON

7 FRIDAY AFTERNOON FROM MY LAW CLERK, MRS. ALICE ANN

8 LEARMEN ABOUT 3:15, AND SHE HAD RECEIVED A

9 TELEPHONE CALL FROM MRS. HARDEE THOMAS REGARDING A

10 MATTER. AND I'LL ASK MRS. HARDEE THOMAS TO PUT

11 THAT ON THE RECORD IN JUST A MOMENT. AND ON FRIDAY

12 AFTER I, MYSELF, CALLED MR. STEVE DAVIS' OFFICE AND

13 ASKED HIS ASSISTANT TO SEE IF SHE COULD FIND MRS.

14 MURPHY AND MR. DAVIS AND PUT THEM ON THE PHONE SO

15 THAT I COULD SPEAK WITH THEM. AND I WAS GOING TO

16 HAVE THEM BOTH CONTACT MRS. HARDEE THOMAS AT THE

17 SAME TIME SO THEY COULD TALK TO HER. BEING IT WAS

18 LATE FRIDAY AFTERNOON, IT WAS DIFFICULT TO GET

19 EVERYONE TOGETHER. BUT I THINK THAT ULTIMATELY

20 EVERYBODY TALKED TO EVERYBODY. AND, SO, I'M JUST

21 GOING TO ASK MRS. HARDEE THOMAS TO PUT ON THE

22 RECORD NOW WHAT OCCURRED, AND THEN WE'LL TAKE IT

23 FROM THERE.

24 MRS. HARDEE-THOMAS: OKAY. ABOUT 2:15,

25 THIS CLIENT CAME INTO MY OFFICE WITH HER FATHER

HEARING IN CHAMBERS

709

1 INDICATING THAT SHE CAME TO PICK UP HER FILE. I
2 STAYED IN MY OFFICE; AND MY SECRETARY WAS AT
3 ANOTHER DESK. AND SHE CAME BACK TO MY OFFICE AND
4 TOLD ME WHO WAS THERE. I SAID, "WELL, I THINK THIS
5 PERSON IS ON THE JURY. I'M NOT GOING TO GO UP
6 FRONT. I NEED FOR YOU TO TELL HER THAT I'M NOT
7 GOING TO GO UP FRONT; THAT SHE CAN COME BACK ON
8 MONDAY TO PICK UP HER FILE BECAUSE SHE'S ON THE
9 JURY."

10 THE COURT: NOT THE JURY PANEL, BUT THE
11 ACTUAL TRIAL JURY?

12 MRS. HARDEE-THOMAS: THE TRIAL THAT'S
13 GOING ON WHICH I'M NOT A PART OF, BUT I JUST FELT
14 INAPPROPRIATE IN TALKING TO HER. THE FATHER WAS
15 INDICATING WHETHER OR NOT HE COULD COME BACK AND
16 PICK UP THE FILE; AND I SAID "YES, YOU CAN PICK IT
17 UP ON MONDAY." AND I WAS SPEAKING TO THE FATHER
18 THROUGH THE SPEAKER PHONE FROM MY OFFICE. I NEVER
19 LEFT MY OFFICE. AT THAT TIME SHE SAID SHE WANTED
20 TO SPEAK TO ME ON ANOTHER MATTER REGARDING HER
21 BEING IN HARDEE'S RESTAURANT WITH THE DEFENDANT. I
22 SAID, "WAIT A MINUTE; YOU'RE NOT SUPPOSED TO TALK
23 TO ANYBODY ABOUT THAT; THAT NEEDS TO BE TAKEN UP
24 WITH THE JUDGE. I SAID, I'M GOING TO CALL THE
25 JUDGE NOW, AND I'M GOING TO CALL THE SOLICITOR'S

HEARING IN CHAMBERS

710

1 OFFICE NOW TO TELL THEM ABOUT THIS, AND YOU'RE TO
2 LEAVE. AND THAT WAS THE END OF THAT.

3 THE COURT: ALL RIGHT. AND THEN YOU
4 CALLED THE SOLICITOR'S OFFICE?

5 MRS. HARDEE-THOMAS: I CALLED THE
6 SOLICITOR AND SPOKE TO WALTER BAILEY. AND THEN I
7 CALLED JUDGE GOODSTEIN.

8 THE COURT: ALL RIGHT. VERY WELL. AND
9 DID YOU -- YOU ULTIMATELY TALKED TO MR. DAVIS --
10 NO; I TALKED TO MR. DAVIS.

11 MRS. HARDEE-THOMAS: YOU TALKED TO MR.
12 DAVIS. I CALLED HIS OFFICE. I SPOKE TO HIS
13 SECRETARY. AND THEN I GOT A MESSAGE FROM HIM ON MY
14 CELL PHONE REGARDING THIS. BUT I LEFT IN DETAIL TO
15 HIM WHAT ACTUALLY HAPPENED.

16 THE COURT: GREAT. ALL RIGHT. AND, MRS.
17 MURPHY, I THINK YOU WERE OUT OF POCKET; BUT I
18 GATHER YOU WERE FILLED IN BY MR. BAILEY OR SOMEONE.

19 MRS. MURPHY: YES, MA'AM.

20 THE COURT: VERY WELL. I DON'T KNOW WHAT
21 HAS OCCURRED. I THINK IT IS -- AND, OF COURSE, THE
22 JURY'S NAME IS MRS. SALTERS?

23 MRS. HARDEE-THOMAS: RIGHT; MONICA
24 SALTERS.

HEARING IN CHAMBERS

711

1 APPROPRIATE. BUT I JUST ASK MRS. SALTERS TO STEP
2 IN AND FIND OUT WHAT HAS OCCURRED. AND THEN WE'LL
3 TAKE IT FROM THERE. AND IT'S CERTAINLY UP TO YOU,
4 BOTH OF YOU, WHETHER OR NOT YOU WISH TO HAVE YOUR
5 CLIENTS PRESENT. MR. DUKES AND MR. DAVIS?

6 MR. DAVIS: I HAVE MY CLIENT PRESENT.

7 THE COURT: YES; AND I THINK MR. DUKES.

8 MR. DUKES: THERE'S NO ALLEGATIONS
9 AGAINST MY CLIENT.

10 THE COURT: YES; THERE'S NO ALLEGATIONS
11 AGAINST YOUR CLIENT.

12 MR. DUKES: HE'S RIGHT BACK HERE; BUT I
13 DON'T THINK IT'S NECESSARY FOR HIM TO BE PRESENT.

14 THE COURT: VERY WELL. WOULD YOU GO GET
15 MRS. SALTERS?

16 (AT THIS TIME MRS. SALTERS COMES INTO CHAMBERS.)

17 THE COURT: HELLO; IT'S SO GOOD TO SEE
18 YOU THIS MORNING. AND I KNOW THERE ARE LOTS OF
19 PEOPLE IN HERE; AND I APOLOGIZE TO YOU FOR THAT.
20 BUT THERE'S JUST SOME INFORMATION THAT CAME TO MY
21 ATTENTION, AND I WANT TO BE SURE EVERYTHING IS FINE
22 WITH YOU.

23 MRS. SALTERS: EVERYTHING'S FINE WITH ME.

24 THE COURT: WONDERFUL. AND I HAD SOME
25 CONCERN ABOUT -- APPARENTLY YOU'VE HAD SOME CONCERN

HEARING IN CHAMBERS

712

1 ABOUT SOMETHING THAT HAPPENED, AND I JUST WANTED
2 YOU TO HAVE A CHANCE TO TELL ME ABOUT WHAT
3 HAPPENED.

4 MRS. SALTERS: WELL, I WASN'T SURE. SEE,
5 WE HAVE A FEW SMOKERS IN THERE.

6 THE COURT: SURE.

7 MRS. SALTERS: SOMEBODY HAS TO WATCH US;
8 CAME TO OUR CAR. AND WHEN IT CAME TO LUNCH, THERE
9 WERE SEVEN JURORS, AND SHE WALKED IN WITH HER
10 MOTHER; AND I WASN'T SURE IF THAT WAS GROUNDS FOR A
11 MISTRIAL OR WHATEVER.

12 THE COURT: YOU ARE SO KIND.

13 MRS. SALTERS: WE DIDN'T TALK OR
14 ANYTHING, YOU KNOW.

15 THE COURT: YOU ARE SO KIND. IN OTHER
16 WORDS, YOU WERE SIMPLY AT LUNCH WITH OTHER JURORS
17 IN ST. GEORGE -- THREE RESTAURANTS; FOUR
18 RESTAURANTS.

19 MRS. SALTERS: RIGHT.

20 THE COURT: AND WE ALL BUMP INTO EACH
21 OTHER AT LUNCH?

22 MRS. SALTERS: RIGHT.

23 THE COURT: THANK YOU SO MUCH. FIRST OF
24 ALL LET ME TELL YOU, YOU DID EXACTLY THE RIGHT

HEARING IN CHAMBERS

713

1 THAT TO MY ATTENTION; AND I'M SO GREATFUL TO YOU.
2 AND I WANT TO THANK YOU SO VERY, VERY MUCH FOR
3 THAT, AND TELL YOU THAT WE ARE A VERY CLOSE SMALL
4 COMMUNITY, AND THAT'S JUST PART OF WHAT HAPPENS.
5 AND I GATHER THERE WAS ABSOLUTELY NO REACTION FROM
6 WHAT YOU'VE INDICATED?

7 MRS. SALTERS: NO.

8 THE COURT: NUMBER ONE; YOU DID THE
9 ABSOLUTELY RIGHT THING TO LET ME KNOW. AND NUMBER
10 TWO, IT'S NOT A PROBLEM UNLESS YOU TELL ME THAT
11 CAUSES YOU SOME SORT OF CONCERN.

12 MRS. SALTERS: NONE AT ALL.

13 THE COURT: THANK YOU SO MUCH FOR
14 BRINGING THAT TO MY ATTENTION. THAT'S ABSOLUTELY
15 NOT A PROBLEM. IN FACT, THERE IS A FANTASTIC
16 LITTLE RESTAURANT -- AND IT'S NOT EVEN IN
17 DORCHESTER COUNTY; IT'S IN ANOTHER PART OF THE
18 STATE. AND I WAS HOLDING COURT THERE. AND I'M
19 SURE THIS HAPPENED TO BE ON COURT T.V. AND THESE
20 PEOPLE WERE FROM CALIFORNIA. SO, BY THE END OF
21 THIS PARTICULAR TRIAL THAT WENT ON FOR QUITE SOME
22 TIME, EVERYBODY LOVED THIS RESTAURANT, AND WE ENDED
23 UP HAVING BOTH SIDES, EVERYBODY INVOLVED INCLUDING
24 THE T.V. FOLKS; WE TOOK THEM TO THE RESTAURANT, AND
25 EVERYBODY WAS THERE EATING TOGETHER. SO, IT'S

HEARING IN CHAMBERS

714

1 ABSOLUTELY NOT WRONG. DID MRS. SALISBURY GET YOU
2 ALL A LITTLE BREAKFAST THIS MORNING?

3 MRS. SALTERS: OH, YES.

4 THE COURT: IS EVERYBODY ABOUT READY TO
5 GO?

6 MRS. SALTERS: YES; THEY'RE ALL WAITING.
7 MUCH.

8 THE COURT: WONDERFUL. THANK YOU SO
9 MUCH. THANK YOU AGAIN FOR SHARING THAT WITH ME.
10 WELL, LET ME JUST CONCLUDE THIS BY SAYING THANK YOU
11 FOR BEING SO CAREFUL, YOU KNOW; AND I KNOW THAT
12 BECAUSE WE'RE SUCH A CLOSE-KNIT COMMUNITY, THAT'S
13 NOT YOUR FIRST TIME THAT YOU'VE HAVE CONCERNS ABOUT
14 BUMPING INTO FOLKS INVOLVED WITH A TRIAL. I
15 ABSOLUTELY -- YOU KNOW, ST. GEORGE IS A LOVELY,
16 SMALL COMMUNITY. AND YOU'RE GOING TO BUMP INTO
17 PEOPLE. IF YOU'RE GOING TO GET LUNCH, YOU'RE GOING
18 TO BUMP INTO SOMEBODY. SO THANK YOU ALSO, MRS.
19 GASTON FOR HANDLING THAT APPROPRIATELY BECAUSE
20 APPARENTLY THERE WAS SOME CONTACT, AND THAT WAS
21 EXACTLY THE RIGHT WAY TO HANDLE THAT. SO THANK YOU
22 FOR THAT AS WELL. AND UNLESS ANYBODY HAS ANY
23 CONCERNS OR QUESTIONS, I THINK THIS MATTER IS NOT A
24 PROBLEM. THANK YOU.

25

MOTIONS

715

1 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

2 THE COURT: ANYTHING BEFORE WE BRING THE
3 JURY OUT FROM THE STATE?

4 MRS. MURPHY: NO, MA'AM.

5 THE COURT: FROM THE DEFENSE?

6 MR. DAVIS: NO, MA'AM.

7 THE COURT: THANK YOU ALL SO MUCH. LET'S
8 HAVE OUR JURY.

9 MR. DAVIS: I TOLD THE PROSECUTOR THAT I
10 WOULD REQUIRE HER TO OPEN.

11 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

12 THE COURT: GOOD MORNING, LADIES AND
13 GENTLEMEN. AND I HOPE THAT EACH AND EVERY ONE OF
14 YOU HAD A VERY GOOD AND PLEASANT WEEKEND. AND I DO
15 WANT TO TELL YOU HOW WE'RE GOING TO BE PROCEEDING.
16 IN A MOMENT, YOU'RE GOING TO HAVE THE OPPORTUNITY
17 TO HEAR THE CLOSING ARGUMENTS OF THE ATTORNEYS.
18 AND I WANTED TO EMPHASIZE A COUPLE OF THINGS ABOUT
19 THE CLOSING ARGUMENTS. THE FIRST THING THAT I WANT
20 YOU TO REMEMBER IS THAT WHAT THE LAWYERS SAY IS NOT
21 EVIDENCE. EVIDENCE CAME FROM THE SWORN TESTIMONY
22 OF THE WITNESSES AND FROM THE EXHIBITS WHICH WERE
23 ADMITTED INTO EVIDENCE. AND, OF COURSE, THOSE
24 EXHIBITS WILL BE WITH YOU IN YOUR JURY ROOM DURING
25 YOUR DELIBERATIONS. WHAT THE ATTORNEYS; THE ROLE

MOTIONS

716

1 OF THE CLOSING ARGUMENTS IS TO ALLOW THEM AN
2 OPPORTUNITY TO ARGUE TO YOU DIFFERENT PORTIONS OF
3 THE EVIDENCE AND FROM THEIR PROSPECTIVE TO TELL YOU
4 THE EVIDENCE WHICH THEY THINK YOU SHOULD PAY
5 ATTENTION TO DURING YOUR DELIBERATIONS. THEY WILL
6 ARGUE TO YOU WHAT THEY BELIEVE YOUR VERDICT SHOULD
7 BE. AND THAT'S CERTAINLY APPROPRIATE. BUT OF
8 COURSE, LADIES AND GENTLEMEN, THE COURT; I WILL
9 TELL YOU WHAT THE LAW IS, AND YOU WILL MAKE YOUR
10 DETERMINATION ABOUT WHAT THE FACTS ARE BASED UPON
11 WHAT YOU HAVE HEARD. THE CLOSING ARGUMENTS ARE SO
12 IMPORTANT, BUT I DID WANT TO TAKE A MOMENT AND
13 REITERATE AND ASK TO PLEASE REMEMBER TO LISTEN
14 CLOSELY TO ALL THAT THE LAWYERS HAVE TO SAY DURING
15 THEIR CLOSING ARGUMENTS.

16 YOU'RE GOING TO FIRST HEAR FROM
17 MRS. MURPHY IN HER PRINCIPAL CLOSING ARGUMENT. SHE
18 WILL TALK TO YOU ABOUT THE LAW IN THIS MATTER AND
19 FROM THE PERSPECTIVE OF THE STATE. YOU WILL THEN
20 HEAR CLOSING ARGUMENT FROM MR. DUKES AND HIS
21 CLOSING ARGUMENT ON BEHALF OF HIS CLIENT; AND MR.
22 BURDEN. AND THEN YOU'RE GOING TO HEAR FROM MR.
23 DAVIS AND HIS CLOSING ARGUMENT ON BEHALF OF MS.
24 GADSON. AND THEN YOU'RE GOING TO HEAR REBUTTAL OR

25 REBUTTAL ARGUMENT FROM THE

MOTIONS

717

1 CONCLUDE THE CLOSING ARGUMENTS. THEN WE'RE GOING
2 TO TAKE A BREAK.

3 THEN AFTER THE BREAK -- YOU WILL
4 CONTROL THAT BREAK. YOU'LL BE READY FOR A BREAK, I
5 THINK. WHEN YOU ALL HAVE TAKEN YOUR BREAK, YOU'RE
6 GOING TO RETURN. AND I'M GOING TO GIVE YOU THE
7 CHARGE ON THE LAW. DURING YOUR NEXT BREAK WHEN WE
8 BREAK INBETWEEN THE CLOSING ARGUMENTS AND MY
9 CHARGE, THERE'S GOING TO BE A MENU IN YOUR JURY
10 ROOM. SO IN ADDITION TO YOUR TAKING A BREAK, I
11 WANT YOU TO ORDER YOUR LUNCH, AND THEN WE'LL PICK
12 UP YOUR LUNCH, AND THEN WE'LL PICK UP YOUR LUNCH
13 AFTER YOU'VE DONE THAT SO THAT AT THE CONCLUSION OF
14 THE CHARGE ON THE LAW, THEN YOU'LL HAVE AN
15 OPPORTUNITY TO HAVE SOME LUNCH AND THEN BEGIN YOUR
16 DELIBERATIONS.

17 LADIES AND GENTLEMEN, YOU KNOW MY
18 CHILDREN ACCUSE ME OF BEING A NAG. SO MAYBE I'M
19 NAGGING YOU. BUT I WILL CONCLUDE BY SAYING PLEASE
20 GIVE THERE LAWYERS YOUR UNDIVIDED ATTENTION AS WE
21 LISTEN TO THE CLOSING ARGUMENTS. MRS. MURPHY?

22 MRS. MURPHY: THANK YOU, YOUR HONOR.
23
24
25

CLOSING ARGUMENT - MRS. MURPHY

718

CLOSING ARGUMENT

BY MRS. MURPHY

1
2
3
4 GOOD MORNING, LADIES AND
5 GENTLEMEN OF THE JURY; AS JUDGE GOODSTEIN JUST TOLD YOU,
6 IS MY FIRST OPPORTUNITY TO COME BEFORE YOU THIS MORNING
7 AND DO WHAT'S CALLED OPEN ON THE LAW. AND BASICALLY AT
8 THIS POINT AND TIME WHAT I HAVE THE OPPORTUNITY TO DO
9 BEFORE YOU IS GO THROUGH EACH OF THE CHARGES THE
10 DEFENDANT IS CHARGED WITH AND EXPLAIN TO YOU WHAT THE
11 LAW STATES THAT THE STATE MUST PROVE TO YOU BEYOND A
12 REASONABLE DOUBT. AFTER THAT POINT, BOTH THE ATTORNEYS
13 WILL HAVE AN OPPORTUNITY IF THEY WANT TO MAKE THEIR
14 CLOSING REMARKS. AND AT THAT POINT, I WILL THEN AGAIN
15 HAVE AN OPPORTUNITY TO COME BEFORE YOU AND MAKE MY
16 CLOSING STATEMENT TO YOU.

17 THE DEFENDANT, ADRIAN GADSON, IS
18 CHARGED UNDER SECTION 20-7-50 WITH UNLAWFUL CONDUCT
19 TOWARDS A CHILD. IN SOUTH CAROLINA IT IS UNLAWFUL FOR A
20 PERSON WHO HAS CHARGE OR CUSTODY OF A CHILD WHO IS A
21 PARENT OR GUARDIAN OF A CHILD OR WHO IS RESPONSIBLE FOR
22 THE WELFARE OF A CHILD TO EITHER (1) PLACE THE CHILD AT
23 UNREASONABLE RISK OF HARM AFFECTING THE CHILD'S LIFE,
24 PHYSICAL OR MENTAL HEALTH OR SAFETY; OR TO DO CAUSE TO

CLOSING ARGUMENT - MRS. MURPHY

719

1 CHILD SO THAT THE LIFE OR HEALTH OF A CHILD IS
2 ENDANGERED OR LIKELY TO BE ENDANGERED, OR TO WILLFULLY
3 ABANDON THE CHILD.

4 DEFENDANT BURDEN IS CHARGED WITH
5 ASSAULT AND BATTERY WITH INTENT TO KILL. IN ORDER TO
6 CONVICT THE DEFENDANT OF ASSAULT AND BATTERY WITH INTENT
7 TO KILL, SHE HAS TO FOLLOW SEVERAL ELEMENTS. FIRST,
8 THAT THE DEFENDANT UNLAWFULLY APPLIED VIOLENT PHYSICAL
9 FORCE TOWARDS Child BY STRIKING HIM REPEATEDLY.
10 SECONDLY, THAT AS A RESULT OF THIS VIOLENT ACT, Child
11 S BODY WAS VIOLENTLY STRUCK. THIRD, THAT THE
12 DEFENDANT INTENDED TO APPLY THE UNLAWFUL VIOLENT FORCE
13 TOWARD Child BY VIOLENTLY STRIKING HIM; AND THAT THE
14 DEFENDANT KNEW THAT AS A RESULT OF THIS FORCE, Child
15 WOULD BE FORCEFULLY STRUCK. FOURTH, THE CIRCUMSTANCES
16 OF AGGRAVATION EXISTED. JUDGE GOODSTEIN WILL GO THROUGH
17 SEVERAL CIRCUMSTANCES OF AGGRAVATION, MOST OF WHICH ARE
18 IMPORTANT IN THIS CASE IS THE SIZE DIFFERENTIAL.
19 Child IS A YOUNG CHILD, THE DEFENDANT A GROWN MAN.
20 THE FIFTH ELEMENT WOULD BE THAT THE DEFENDANT, MR.
21 BURDEN, KNEW OF THE CIRCUMSTANCES OF AGGRAVATION AND WAS
22 RECKLESS AS TO WHETHER THESE CIRCUMSTANCES OF
23 AGGRAVATION EXISTED. THE DEFENDANT INTENDED TO KILL
24 Child BY THE ACT OF VIOLENTLY STRIKING HIM. AND
25 SEVENTH, THE DEFENDANT ACTED WITH MALICE.

CLOSING ARGUMENT - MRS. MURPHY

720

1 JUDGE GOODSTEIN WILL GO INTO THE
2 LAW AS TO WHAT INTENT IS, AND BASICALLY YOU CAN'T OPEN
3 THE DEFENDANT'S MIND IN HALF AND DISSECT HIS BRAIN TO
4 TELL US EXACTLY WHAT HIS INTENT WAS. BUT CERTAINLY YOU
5 CAN INFER INTENT BY HIS ACTIONS. SHE WILL ALSO DEFINE
6 MALICE TO YOU AND WHAT IT MEANS. IN ITS POPULAR
7 PARTICULAR SENSE, MALICE CONVEYS THE MEANING OF HATRED,
8 ILL WILL, HOSTILITY TOWARDS ANOTHER. IN ITS LEGAL
9 SENSE, HOWEVER, IT'S EMPLOYED IN THE DESCRIPTION THAT IT
10 DOESN'T NECESSARILY EMPLOY ILL WILL TOWARDS AN
11 INDIVIDUAL INJURED BUT SIGNIFIES A GENERAL, MALIGNANT,
12 RECKLESSNESS OF THE LIVES AND SAFETIES OF OTHERS OR A
13 CONDITION OF THE MIND WHICH SHOWS A HEART REGARDLESS OF
14 SOCIAL DUTY AND BENT ON MISCHIEF.

15 AFORETHOUGHT; ALL THAT MEANS IS
16 THE SOME POINT PRIOR TO THE MALICIOUS ACT OR AT THE TIME
17 OF THE MALICIOUS ACT. SO BY THE DEFENDANT RAISING HIS
18 FOOT KNOWING THAT IT'S WRONG THE SECOND BEFORE, IS
19 SUFFICIENT TO COVER AFORETHOUGHT. THE DEFENDANT,
20 BURDEN, IS ALSO CHARGED UNDER SECTION 16-3-95 OF THE
21 SOUTH CAROLINA CODE OF LAWS WHICH IS INFLICTION OR
22 ALLOWING INFLICTION OF GREAT BODILY INJURY UPON A
23 CHILD. UNDER SUB SECTION A, IT IS UNLAWFUL TO INFLICT
24 GREAT BODILY INJURY UPON A CHILD -- IN THIS CASE Child
25 -- AND GREAT BODILY INJURY IS DEFINED AS BODILY

CLOSING ARGUMENT - MRS. MURPHY

721

1 INJURY WHICH CREATES A SUBSTANTIAL RISK OF DEATH OR
2 CAUSES SERIOUS PERMANENT DISFIGUREMENT OF PROTRACTED
3 LOSS AND IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER
4 OR ORGAN.

5 LADIES AND GENTLEMEN, THOSE ARE
6 THE CHARGES FOR WHICH THE DEFENDANTS ARE CHARGED WITH AT
7 THIS TIME WHICH YOU WILL HAVE AN OPPORTUNITY TO MAKE A
8 DECISION ON. AT THIS TIME I'LL TURN IT OVER TO DEFENSE
9 COUNSEL TO MAKE THEIR CLOSING ARGUMENTS ON THE CASE.
10 AND LIKE I STATED EARLIER, I'LL HAVE A CHANCE TO COME
11 BEFORE YOU AND TELL YOU WHY THESE ELEMENTS HAVE BEEN
12 PROVEN BEYOND A REASONABLE DOUBT AND WHY YOU SHOULD FIND
13 THESE DEFENDANTS GUILTY. THANK YOU.

14 THE COURT: THANK YOU, MRS. MURPHY. YES,
15 SIR, MR. DUKES.

16 MR. DUKES: MAY IT PLEASE THE COURT?

17 THE COURT: YES, SIR.

18 MR. DUKES: MR. DAVIS.

19 MR. DAVIS: YES; THANK YOU.
20
21
22
23
24
--

CLOSING ARGUMENT - MR. DUKES

722

CLOSING ARGUMENT

BY MR. DUKES

MR. FOREMAN AND LADIES AND GENTLEMEN
OF THE JURY; I FIRST WANT TO THANK YOU ON BEHALF OF
WILLIAM BURDEN. I WAS APPOINTED TO REPRESENT MR.
BURDEN. AND SOMETIMES THAT'S REALLY NOT AN ISSUE, BUT
ALSO IT BRINGS AN OBLIGATION. ALSO IN THIS CASE IT
BRINGS GREAT RESPONSIBILITY UPON ME. MR. BURDEN IS
CHARGED WITH TWO SERIOUS CRIMES. AND HE SITS OVER
THERE, OVER ON THE CORNER OF THAT TABLE BY ME. BUT,
REALLY, WHO IS HE? HE'S A 32 YEAR OLD THAT WAS RAISED
IN BERKELEY COUNTY. HE'S A FATHER OF TEN CHILDREN. HE
QUIT SCHOOL IN THE NINTH GRADE TO GO TO WORK FOR HIS
FATHER AS A CARPENTER. HE WORKED WITH HIM AS A
CARPENTER FOR MANY YEARS. HE'S TAKEN A COUPLE OF JOBS
OUTSIDE OF THAT AS A PLUMBER. AND I THINK HE TOLD YOU
HE CAN DO PLUMBING WORK. HE CAN DO PLUMBING WORK. AND
HE GOT A G.E.D. ON HIS OWN; AND HE CAN ALSO READ
BLUEPRINTS.

BACK IN NOVEMBER OF LAST YEAR,
2001, MR. BURDEN DIDN'T ACT PRUDENTLY, I DON'T THINK.
BUT WHETHER HE ACTED PRUDENTLY OR NOT IS NOT THE
QUESTION. THE QUESTION IS DID HE ACT CRIMINALLY. HE

CLOSING ARGUMENT - MR. DUKES

723

1 WAS TAKING CARE OF HIS FIVE CHILDREN. HIS WIFE, HIS
2 GIRLFRIEND, THE MOTHER OF HER CHILDREN AND HER MOTHER,
3 HAD GONE SHOPPING. THE CHILD HAD BEEN SICK THAT WEEK.
4 THEY TOOK HER TO DR. PENCE. AND THE QUESTION I ASKED
5 YOU HERE IS WHERE WAS DR. PENCE. HE'S THE TREATING
6 PHYSICIAN. HE WASN'T HERE. HIS WIFE WAS HERE; AND PUT
7 SOME OF HIS NOTES INTO EVIDENCE. AND YOU'LL BE ABLE TO
8 SEE THOSE WHEN YOU GO INTO THE JURY ROOM. SOMETHING
9 ABOUT -- IN ONE OF THEM THERE'S SOMETHING ABOUT CHILD
10 ABUSE. BUT THAT WAS BACK IN 1998. AND THE CHILDREN,
11 WHEN SHE WAS CARED BY SOMEONE ELSE. D.S.S. HAD THEM IN
12 THEIR CUSTODY AT THAT TIME. SO, I MEAN, IT WAS EVIDENT
13 THAT SOMETHING WAS GOING ON. NOW, HE DIDN'T COME IN TO
14 ANSWER THE QUESTIONS. HE SENT HIS WIFE AS CUSTODIAN.

15 I THINK THERE'S A VERY
16 IMPORTANT QUESTION THAT WE NEED TO ANSWER IS WHO IS --
17 WHERE IS Child OR ? HE WAS FIVE YEARS OLD AT THE
18 TIME. I THINK HIS BIRTHDAY WAS IN JANUARY, 1996. THAT
19 MAKES HIM SIX YEARS OLD THEN. HE WAS A YOUNG MAN. HE
20 WAS A YOUNG MAN. BUT A YOUNG MAN CAN TESTIFY IN COURT.
21 ALL HE'S GOT TO DO IS UNDERSTAND THE DIFFERENCE BETWEEN
22 A LIE AND THE TRUTH. ANY PERSON THAT AGE OR YOUNGER CAN
23 TESTIFY IN THAT WITNESS CHAIR RIGHT THERE. WHERE IS HE?
24 THE FATHER KNOWS WHAT HE LOOKS LIKE. HE'S A LITTLE BOY

CLOSING ARGUMENT - MR. DUKES

724

1 WERE TAKEN AT THE SAME PARTY; AND HE'S THE LITTLE BOY
2 WITH THE STRIPED SHIRT. AND I THINK YOU CAN SEE HIS
3 TWIN. FIRST OF ALL, WE HAD TROUBLE GETTING THIS INTO
4 EVIDENCE. THE SOLICITOR OBJECTED. NOW, THEY'RE IN.
5 NOW YOU CAN AT LEAST SEE HIM IN A PICTURE. BUT WHY
6 ISN'T HE HERE? BECAUSE HE RECEIVED PROBABLY NO
7 INJURIES. HE TESTIFIED THAT HE WAS BORN SIX MONTHS
8 EARLY, HE AND HIS TWIN, AND TY, I THINK THEIR NAMES
9 ARE. SIX MONTHS EARLY. AND HE'S HAD MULTIPLE, MULTIPLE
10 PROBLEMS BECAUSE OF THAT.

11 THE BEST THAT I CAN RECALL IS --
12 AND LET ME SAY THIS: IF I SAY SOMETHING, IF I
13 MISINTERPRET, IF MR. DAVIS MISINTERPRETS, OR MRS. MURPHY
14 MISINTERPRETS SOMETHING THAT COMES FROM THAT WITNESS
15 STAND, YOU TAKE IT DOWN IN YOUR NOTES AS YOU HEARD IT
16 AND NOT FROM WHAT WE SAY BECAUSE WE'RE ADVOCATES. MRS.
17 MURPHY'S JOB IS TO GET A CONVICTION FOR THE STATE OF
18 SOUTH CAROLINA. MY JOB IS TO DO THE BEST I CAN FOR MR.
19 BURDEN. SO YOU TAKE WHAT YOU HEARD FROM THAT WITNESS
20 STAND, NOT WHAT WE SAY, BUT WHAT YOU SEE IN EVIDENCE AND
21 WHAT YOU REMEMBER AS TESTIMONY FROM THAT WITNESS STAND.
22 THAT'S WHAT THIS CASE IS DECIDED ON. YOU FIND THE FACTS
23 FROM THAT. SIX MONTHS OLD; HE WAS BORN AT SIX MONTHS
24 OLD; AT PRESENT HE WEIGHS 35 POUNDS AND IS THREE FOOT

CLOSING ARGUMENT - MR. DUKES

725

1 MEDICAL PROBLEMS. HE'S BLIND IN ONE EYE. AND I'LL GO
2 INTO THAT A LITTLE LATER. HE'S FRAGILE. BUT THE
3 TESTIMONY IS HE'S ALSO VERY ACTIVE; VERY ACTIVE. I
4 THINK THERE'S A PSYCHOLOGICAL REPORT OF HIS MOTHER WHICH
5 SHE DISCUSSED WITH A PSYCHIATRIST HOW ACTIVE HE IS. IT'S
6 IN EVIDENCE. LOOK AT THAT. LOOK AT THAT.

7 I THINK TO THE BEST OF MY
8 RECOLLECTION, SIX INJURIES THAT WE TALK ABOUT TO THIS
9 YOUNG MAN. THE EYE DOCTOR. HE SAID THAT HE EXAMINED
10 HIM, AND HE HAD REPORTED NO ABUSE OR NOTHING; THAT WAS
11 THE FIRST INJURY BECAUSE HE'S BLIND IN ONE EYE. BUT SIX
12 MONTHS OR SO AGO WHEN MRS. MURPHY CAME DOWN AND SHOWED
13 HIM THE FILE, HE DECIDED IT WAS CHILD ABUSE. HE DIDN'T
14 THINK SO BACK THEN. BUT NOW HE'S GOT 20/20 VISION OR
15 20/10, SOMETHING BETTER THAN WHAT HE HAD BACK THEN. AND
16 HE'S SAYING THAT THE KID WAS ABUSED AND THAT'S WHY HE'S
17 BLIND IN THE EYE. BUT WHY DIDN'T HE SAY IT WHEN HE WAS
18 DOWN? HE WASN'T EVEN THE ONE THAT DID THE SURGERY. HE
19 WASN'T THE SURGEON. WHAT'S THE BEST EVIDENCE THERE?
20 THEN SOMEBODY SAID -- THIS EXPERT FROM ANDERSON, SOUTH
21 CAROLINA. THAT'S DOCTOR -- I THINK HIS NAME WAS DR.
22 WOODARD. DR. WOODARD. HE WAS SHIPPED A BUNCH OF PAPERS
23 BY THE SOLICITOR. HE WENT SOMEWHERE IN AN OFFICE BACK
24 BY HIMSELF, AND HE LOOKED THROUGH ALL HIS THINGS. AND
25 HE'S THE ONE THAT TESTIFIED ABOUT ALL THESE INJURIES

CLOSING ARGUMENT - MR. DUKES

726

1 BEING INFLICTED BY EITHER THAT WOMAN OR THAT MAN. HE'S
2 NEVER SEEN THE CHILD. WELL, THE DOCTORS HAD SEEN THE
3 CHILD. WELL, THE DOCTORS HAD OPERATED ON HIM. WHERE IS
4 THE CHILD?

5 DR. WOODWARD SAID THERE WAS A
6 CIGARETTE BURN. AND THERE'S BEEN TALK ABOUT A CIGARETTE
7 BURN. AND NEITHER ONE OF THESE TWO PEOPLE EVEN SMOKE.
8 THEY TESTIFIED IT WAS DIAPER RASH AND A SKIN DISORDER
9 AND THAT HE WAS ALLERGIC TO INSECT BITES. THE THIRD
10 INJURY WAS SAY A BELT BUCKLE. AND I THINK I HEARD FROM
11 THE TESTIMONY THAN HE HAD A BIRTHMARK. BUT YOU TAKE THE
12 TESTIMONY YOU HEARD, AND YOU DECIDE ON THAT. THE NEXT
13 INJURY WAS THE INJURY WHEN HE HAD HIS LEG BROKEN, ONE OF
14 HIS LEGS. BUT HIS MOTHER WAS TOTING HIM AND FELL. THE
15 EXPERT SAID THAT WAS PRETTY BELIEVABLE; THAT BUT FOR
16 SOME OF THESE OTHER THINGS, HE WOULD BELIEVE THAT. AND
17 HE LOOKS AT THE TOTALITY IS WHAT HE SAYS.

18 WELL, THEN THE NEXT INJURY WAS
19 WHEN HE GOT HIS LEG BROKEN AGAIN. HE LOOKS AT THE
20 TOTALITY IS WHAT HE SAID. WELL, THEN THE NEXT INJURY
21 WAS WHEN HE GOT HIS LEG BROKEN AGAIN. NOW, THIS IS
22 WHERE WE HAVE A PROBLEM, I THINK, BECAUSE HE COMES OUT
23 AND SAYS THE MOTHER WAS WORKING AT BURGER KING, AND HIS
24 FATHER WAS HOME, AND THE LITTLE BOY CRAWLED UP THE CRIB,

CLOSING ARGUMENT - MR. DUKES

727

1 OFF THE SHELF; AND HE ALSO FELL ON AN OBJECT, AND HE GOT
2 ANOTHER LEG BROKEN. THEY SAID THAT'S CHILD ABUSE.
3 COULD THAT NOT MEAN THAT HE'S FRAGILE AND SUFFERS FROM
4 BROKEN BONES PRETTY READILY. OF COURSE THEY SHOULD NOT
5 HAVE LIED ABOUT IT. MR. BURDEN, YOU KNOW, HAS GOT FIVE
6 CHILDREN IN BERKELEY HE'S TRYING TO SUPPORT, TOO, AND HE
7 WAS BEHIND IN CHILD SUPPORT THEN. AND HE DIDN'T WANT TO
8 GO TO JAIL, SO THEY MADE THIS STORY UP. HE WASN'T EVEN
9 NAMED A PARTY -- WELL, HE WAS NAMED A PARTY IN THIS
10 ACTION, BUT THERE WAS NO FINDING AGAINST HIM. THE
11 MOTHER HAD HER CHILDREN TAKEN AWAY. AND IN ORDER TO GET
12 HER CHILDREN BACK, SHE AGREED TO A FINE. SHE WAS LISTED
13 IN A DATA BASE AS HAVING ABUSED A CHILD. SHE WENT TO A
14 PARENTING SCHOOL. AND, YOU KNOW, PROBABLY MR. BURDEN
15 SHOULD HAVE WENT TO ONE, TOO. BUT THAT WAS SOMETHING
16 THAT WAS WORKED OUT TO GET THE CHILDREN BACK. D.S.S.
17 HAD TOOK THEM. THEY HAD TO COME OUT AND TAKE THEM JUST
18 LIKE THEY DID THIS SATURDAY NIGHT WITHOUT ANY COURT
19 ORDER OR ANYTHING. THEY GET REMOVED FROM THE EMERGENCY
20 PROTECTION. THEY HAVE A SHORT HEARING WITHIN 72 HOURS.
21 THEY WERE SCARED OF WHAT THEY WERE GOING TO DO. WHEN
22 PEOPLE GET SCARED, THEY DO CRAZY THINGS. THEY MADE UP
23 SOMETHING. THEY SHOULD NOT HAVE DONE THAT.

24 BUT YOU HEARD WILLIAM BURDEN SIT
25 ON THIS WITNESS STAND, AND HE TOLD YOU WHAT HAPPENED.

CLOSING ARGUMENT - MR. DUKES

728

1 HE WENT THROUGH FROM SHOCK. READ HIS STATEMENT. HE
2 GAVE A WRITTEN STATEMENT. SEE IF THERE'S ONE WORD OF A
3 LIE IN THAT STATEMENT. THE 911 CALL. THERE IS A LIE IN
4 THERE. AND HE TOLD YOU WHY. HE GAVE 911, THE MOTHER'S
5 BROTHER'S NAME BECAUSE HE'S STILL BEHIND IN CHILD
6 SUPPORT. BUT READ 911; LISTEN TO IT AND TELL ME HE
7 DON'T GET REMORSEFUL; HE'S NOT TORN UP. HE CALLED 911.
8 HE CAME INTO A SITUATION THAT AFTERNOON HE HAD NEVER RUN
9 INTO BEFORE. HE SAID HE HAD FED THE YOUNGEST CHILD
10 AND. THE NEXT TO THE TWINS AND THE OLDEST. THESE TWO
11 TWINS TAKE A NAP EVERY AFTERNOON. HE WENT INTO THAT
12 ROOM, AND HE CALLED TY AND . AND TY JUMPED UP JUST
13 LIKE HE USUALLY DID, BUT DIDN'T. HAD A SEIZURE.
14 HE PANICKED. HE TRIED TO STAND HIM UP, AND HE FELL. HE
15 TRIED TO STAND HIM UP AGAIN. HE FELL. HE TRIED TO
16 STAND HIM UP AGAIN. HE FELL. HE CARRIED HIM IN THE
17 BATHROOM. AND HE SAID HE WAS HOLDING HIM BY ONE TRYING
18 TO RUN WATER ON HIM, AND HE FELL IN THE BATHTUB. HE
19 TESTIFIED THAT HE WAS WITH THE CHILD ABOUT THE WHOLE
20 TIME. HE WAS THE PRINCIPAL CARETAKER. HIS WIFE WAS
21 WORKING AT THAT TIME, BUT AT THIS TIME SHE HAD GONE
22 SHOPPING. HE WAS TAKING CARE OF THEM EVERY DAY. HE WAS
23 COOKING THE MEALS. HE SAID THEY NEVER REALLY HAD BEEN
24 POTTY TRAINED. THEY WORE BRIEFS, AND THEY MESSED IN

CLOSING ARGUMENT - MR. DUKES

729

1 CHANGED THEIR PANTS, AND HE COOKED THEIR MEALS. HE WAS
2 A CARING, COMPASSIONATE PERSON, A CARING COMPASSIONATE
3 PERSON WHO HAS HAD TEN CHILDREN. MAYBE THAT'S WRONG
4 THAT HE HAD SO MANY CHILDREN AND HE'S NOT UP TO DATE
5 WITH HIS CHILD SUPPORT IN BERKELEY COUNTY. I DON'T KNOW
6 THAT I AGREE WITH THAT. I DON'T KNOW THAT I AGREE WITH
7 HIS ACTIONS. HE SAID HE TOOK A BEDROOM SHOE, AND HE
8 SLAPPED THE CHILD ON HIS CHEST TWICE. YOU'LL SEE THOSE
9 PICTURES. THEY'RE IN EVIDENCE. THERE ARE SOME BRUISES
10 AROUND HIS HEAD. THE LAST EXPERT WITNESS; WHAT DID HE
11 SAY? DID THOSE BLOWS TO THE CHEST CAUSE ANY DAMAGE?
12 NO. YOU CAN RUN ACROSS A LITTLE CHILD WITH A CAR, AND
13 IT'S NOT GOING TO BREAK NO BONES OR HURT HIM. WERE THE
14 WOUNDS TO THE HEAD SUPERFICIAL? OH, YES; THEY WERE
15 SUPERFICIAL? OH, YES, THEY WERE SUPERFICIAL. THEY WERE
16 COMING COMPLETELY FROM THEM. AND HE SAID SOMEBODY HIT
17 THEM. LOOK AT THAT MAN OVER THERE AND SEE IF YOU THINK
18 HE COULD KICK ONE OF HIS TEN CHILDREN. IT'S A QUESTION
19 YOU'VE GOT TO ANSWER.

20 THE EXPERT WITNESS HAD ANSWERS
21 FOR EVERYTHING BECAUSE HE WAS GETTING PAID TO HAVE THEM.
22 HE'S NEVER SEEN THE CHILD. NEVER SEEN THE CHILD. A LOT
23 OF CONFLICT IN TESTIMONY; AND YOU HAVE A DIFFICULT JOB.
24 YOU'VE GOT TO FIND THE FACTS; THE TRUTH. WHAT REALLY

CLOSING ARGUMENT - MR. DUKES

730

1 GENTLEMEN OF THE JURY, AND IT'S AN AWESOME
2 RESPONSIBILITY. BUT WE KNOW YOU WILL DO THAT BECAUSE
3 YOU WILL SHIFT, SIFT THROUGH THINGS, AND LOOK AT THE
4 LITTLE THINGS. HOW DO YOU TELL WHETHER SOMEBODY IS
5 TELLING THE TRUTH? IF I KNEW THAT, MY JOB WOULD BE
6 EASY. YOU HAVE TO JUDGE THE DEMEANOR, THE CHARACTER,
7 THE WAY THE WITNESSES CONDUCTED THEMSELVES. YOU HAVE TO
8 USE YOUR OWN COMMON SENSE AND EXPERIENCE. THAT'S WHY
9 YOU'VE BEEN SELECTED. YOU'VE BEEN CONSIDERED A JURY OF
10 HIS PEERS. WE EACH HAVE A RIGHT IN THIS COUNTRY IF WE
11 ARE CHARGED WITH A CRIME TO HAVE A TRIAL BY JURY. WE
12 HAVE A RIGHT FOR THE STATE THAT MUST PROVE US GUILTY
13 BEYOND A REASONABLE DOUBT. THE STATE TRIES TO SHIFT THE
14 BURDEN. YOU ASK THEM QUESTIONS "WHY DO YOU DO THIS;"
15 "WHY DO YOU DO THAT?" BUT THE BURDEN HAS NO BURDEN AS
16 FAR AS PROOF. THE STATE HAS THAT BURDEN. HE DOESN'T
17 HAVE TO TESTIFY, BUT HE TOOK THE WITNESS STAND. AND I
18 SUBMIT TO YOU THERE'S TWO LIES. ONE ABOUT THE SECOND
19 LEG BREAK, AND WHEN HE GIVES 911, THE DISPATCHER, THE
20 WRONG NAME.

21 IF YOU LOOK AT THE MEDICAL
22 RECORDS, I THINK YOU'LL FIND THAT HAD SEVERE
23 BREATHING PROBLEMS. HE WAS WORRIED ABOUT HIS BREATHING,
24 AND HE WAS HAVING A SEIZURE. AND HE DID A STUPID THING.

CLOSING ARGUMENT - MR. DUKES.

731

1 CHEST. BUT, YOU KNOW, EMERGENCY MEDICAL SITUATIONS;
2 WHAT DOES E.M.S. DO WHEN THEY COME TO SOMEBODY THAT IS
3 NOT BREATHING? DO THEY TREAT SOMEBODY GENTLE, OR DO
4 THEY DO WHAT THEY THINK IS NECESSARY TO GET LIFE GOING
5 AGAIN?

6 DO YOU KNOW DR. SARA SCHUH HAS BEEN
7 THE EXPERT IN SOUTH CAROLINA FOR CHILDREN TESTIFYING FOR
8 A LONG, LONG, TIME. WAS HER TESTIMONY CONSISTENT WITH
9 THE EXPERT WITNESS? WHY WASN'T SHE THE EXPERT ON CHILD
10 ABUSE? SHE'S TESTIFIED 100 TIMES. I THINK SHE SAID
11 SHE'S TESTIFIED -- I'M NOT EXACTLY SURE -- 15 OR 16
12 TIMES. SHE ALWAYS TESTIFIED FOR THE STATE, AND---

13 MRS. MURPHY: OBJECTION, YOUR HONOR. I'M
14 GOING TO OBJECT TO THIS LINE OF ARGUMENT IN THAT
15 IT'S NOT EVIDENCE AND HE'S TRYING TO PURPORT TO THE
16 JURY WHAT THE STANDARDS FOR QUALIFICATIONS OF
17 EXPERTS TO TESTIFY ON CERTAIN MATTERS.

18 THE COURT: LADIES AND GENTLEMEN,
19 REMEMBER THAT WHAT THE LAWYERS ARGUE TO YOU IS NOT
20 EVIDENCE. THE EVIDENCE, OF COURSE, CAME FROM THE
21 WITNESSES WHO TESTIFIED IN THIS MATTER AND THE
22 EXHIBITS WHICH WERE ADMITTED INTO EVIDENCE. YOU
23 MAY PROCEED, MR. DUKES. BE MINDFUL OF THAT, OF
24 COURSE.

CLOSING ARGUMENT - MR. DUKES

732

1 IS WILLIAM BURDEN, AND WHAT IS THE QUESTION IN THIS
2 CASE, IS IS WILLIAM BURDEN GUILTY OF ASSAULT AND BATTERY
3 WITH INTENT TO KILL. YOU'VE HEARD MRS. MURPHY GO OVER
4 ALL THE POINTS. THEY'RE NO DIFFERENT FROM ASSAULT AND
5 BATTERY WITH INTENT TO KILL AND MURDER EXCEPT YOU'RE
6 UNSUCCESSFUL. BECAUSE A PERSON WHO WILL KILL SOMEBODY,
7 CALL E.M.S.; DOES HE PANIC AND DO STUPID THINGS? HE
8 SAID HE TRIED TO RESUSCITATE HIM BY BREATHING IN HIS
9 MOUTH. HE CHECKED HIS MOUTH. YOU HEARD WHAT ALL HE
10 SAID HE DID. THE LITTLE BOY HAD BEEN TO THE DOCTOR THAT
11 WEEK. HE WAS TAKING SOME MEDICINE. HE SAID WHEN HE GOT
12 UP HE HAD MUCUS COMING FROM HIS NOSE. HE WAS ALREADY
13 HAVING A SEIZURE. THAT SEIZURE WAS NOT CAUSED BY
14 WILLIAM BURDEN. THAT SEIZURE WAS CAUSED BY SOME MEDICAL
15 CONDITION OR SOMETHING ELSE THAT THE LITTLE BOY SUFFERED
16 FROM. I'LL SUBMIT TO YOU THERE'S NO EVIDENCE THAT HE
17 INTENDED TO MURDER, KILL THIS YOUNG MAN. I SUBMIT TO
18 YOU HE LOVED THIS YOUNG MAN. HE LOVES THE MOTHER. HE'S
19 A TENDER, CARING COMPASSIONATE YOUNG MAN PUT IN THE BAD
20 SITUATION.

21 HE'S ALSO CHARGED WITH CHILD
22 ABUSE, INFLECTION OF GREAT BODILY HARM UPON A CHILD.
23 THERE'S NO QUESTION THAT HE INFLICTED SOME SORT OF -- I
24 WOULDN'T SAY DAMAGE -- BUT HIS IRRATIONAL BEHAVIOR. HE

CLOSING ARGUMENT - MR. DUKES

733

1 MARKS ON HIM. THE CHILD HAS FALLEN SEVERAL TIMES. BUT
2 LOOK AT THE MARKS. WHAT DID THE EXPERT WITNESS SAY? ALL
3 THESE WOUNDS WERE SUPERFICIAL. HE WILL COMPLETELY
4 RECOVER. BUT LOOK AT THE MARKS. WHAT DID THE EXPERT
5 WITNESS SAY? ALL HIS WOUNDS WERE SUPERFICIAL. HE WILL
6 COMPLETELY RECOVER.

7 SO, LADIES AND GENTLEMEN OF THE
8 JURY; I'M GOING TO CONCLUDE MY REMARKS. BUT I'M GOING
9 TO ASK YOU FOR THIS ON BEHALF OF MY CLIENT. GIVE HIM
10 THE CONSIDERATION. LOOK THROUGH THE TESTIMONY. LOOK
11 THROUGH THE EVIDENCE. WEIGH IT FULLY. THAT'S ALL WE
12 CAN ASK. AND WE BELIEVE IF YOU DO THAT, JUSTICE WILL BE
13 SERVED AND YOU'LL FIND THAT HE DID NOT INTEND TO KILL
14 ANYBODY. HE DID NOT INTEND TO INFLICT SERIOUS BODILY
15 HARM AGAINST ANYBODY. THE BUSINESS OF CRIMINAL LAW IS
16 GUILTY MINDS AND ATTENTION. YOU MUST DETERMINE HIS
17 INTENTIONS. AND IF YOU DO THAT, I THINK YOU'LL FIND
18 THERE'S NO EVIDENCE THAT HE WAS INTENDING TO DO ANYTHING
19 BEYOND A REASONABLE DOUBT. THAT'S ALL WE ASK. LOOK FOR
20 THAT. THIS MAN HAS BEEN IN JAIL SINCE NOVEMBER SINCE
21 NOVEMBER OF 2001. HE HAS SUFFERED, AND CONTINUES TO
22 SUFFER BECAUSE HE LOVES HIS CHILDREN, AND HE LOVES THE
23 MOTHER OF HIS CHILDREN. GIVE HIM JUSTICE. THANK YOU
24 VERY MUCH.

25 THE COURT: THANK YOU, MR. DUKES. MR.

CLOSING ARGUMENT - MR. DAVIS

734

1 DAVIS? AND MR. DAVIS?

2 MR. DAVIS: IF IT PLEASE THE COURT?

3 THE COURT: YES.

4 - - - - -
5 CLOSING ARGUMENT

6 BY MR. DAVIS

7
8 I WANT TO REINTRODUCE MYSELF.

9 IT'S BEEN A WEEK. I FEEL LIKE WE'RE BEEN TOGETHER FOR A
10 WHILE. AND I WAS VERY CONCERNED ABOUT US REALLY
11 BREAKING UP FOR THE WEEKEND, YOU KNOW, BECAUSE THE
12 TENDENCY IS; YOU KNOW, WE GO BACK TO OUR NORMAL
13 ROUTINES. I DON'T KNOW ABOUT Y'ALL AS A GROUP, BUT I
14 TELL YOU THAT FOR ME I COULD NOT GO BACK TO MY NORMAL
15 ROUTINE BECAUSE WE'RE STILL HERE, AND THERE HAS NOT BEEN
16 ANY FINAL DECISION IN THIS MATTER. I WANT TO COMMEND
17 EACH AND EVERY ONE OF YOU. I THINK THAT Y'ALL HAVE BEEN
18 VERY, VERY ATTENTIVE. AND I HOPE AND PERCEIVE THAT WHEN
19 I SAID IN THE OPENING STATEMENT ABOUT A REFERENCE TO
20 SUPERMAN AND A REFERENCE TO UNDERDOG, WAS REALLY NOT
21 TAKEN OUT OF CONTEXT. I THINK Y'ALL HAVE HAD AN
22 OPPORTUNITY TO SEE SOME ASPECT OF WHAT I DO. I TOLD YOU
23 IN OPENING STATEMENT THAT I MAKE NO APOLOGIZES FOR WHAT
24 I DO. I'M A FATHER MYSELF. I'VE GOT THREE BOYS. I'VE
25 GOT A DAUGHTER I DIDN'T MENTION HER BUT SHE'S HERE

CLOSING ARGUMENT - MR. DAVIS

735

1 ALL OF MY REFERENCE; AND I'VE GOT A GRANDDAUGHTER.
2 SHE'S 28 -- MY DAUGHTER THAT IS. BUT I'VE GOT THREE
3 SONS. AND THIS WHOLE THING TO ME JUST DOES NOT MAKE
4 SENSE. THAT'S HOW I CHARACTERIZE IT. IT JUST DOESN'T
5 MAKE SENSE. IT DOESN'T MAKE SENSE IN A LOT OF
6 PARTICULAR WAY. YOU KNOW, IT DOESN'T MAKE SENSE THAT
7 WE'RE HERE TO BE HONEST. IT DON'T MAKE SENSE THAT
8 ADRIAN GADSON STANDS HERE WITH HER LIFE HELD IN THE
9 BALANCE. IT REALLY DOESN'T MAKE SENSE. YOU KNOW, IT
10 DON'T MAKE SENSE WHEN WE LOOK BACK AT WHAT OCCURRED ON
11 NOVEMBER THE THIRD, 2001. IT DOESN'T MAKE SENSE IF
12 HERE'S A YOUNG LADY WHO IS A MOTHER. SHE HAS NO
13 CRIMINAL RECORD. AND I JUST WANT TO ALLUDE TO SOMETHING
14 THAT MR. GENE DUKES TALKED ABOUT. WHERE'S IS D.S.S.?
15 WHERE IS D.S.S.? HERE MY CLIENT IS CHARGED WITH AN
16 OFFENSE OF UNLAWFUL NEGLECT BY PARENT OR CUSTODIAN. AND
17 THE STATE CAN GO TO ANDERSON, PAY A FELLOW \$150 AN HOUR
18 AND CAN'T BRING SOMEONE FROM D.S.S AND COME IN THIS
19 COURT AND SIT AT THAT WITNESS CHAIR, THAT FACT-FINDING
20 CHAIR, AND SHARE WITH YOU WHAT A HORRIBLE, HORRIBLE,
21 PERSON I REPRESENT. BUT A D.S.S. REPRESENTATIVE
22 PRESENTED ITSELF.

23 OFFICER BOTTEN CAME AND
24 TESTIFIED, TALKED ABOUT TAKING SOME PHOTOGRAPHS. HE

CLOSING ARGUMENT - MR. DAVIS

736

1 THE PHOTOGRAPH THEY BROUGHT. AND I TELL YOU; IT SURE
2 WOULD HAVE BEEN HELPFUL TO BRING SOME PHOTOGRAPHS INSIDE
3 THE HOUSE, UNFIT MOTHER, ONE BED IN THE HOUSE, FIVE
4 CHILDREN, MOTHER OUT SHOPPING, FATHER IN CONTROL OF THE
5 KID. SURE WOULD HAVE HELPED; IT WOULD HAVE HELPED A
6 LOT. DETECTIVE MARSHALL; IT WOULD HAVE HELPED A LOT.
7 DETECTIVE MARSHALL; IT WOULD HAVE HELPED A LOT. GOT TO
8 STATE MY FORM. I HOPE THEY DON'T DRAFT THESE THINGS
9 JUST FOR SAKE. THEY DRAFT IT FOR A PURPOSE. THEY GOT
10 IT, AND THEY PUT TWO WITNESS LOCATIONS ON THIS BOX; TWO
11 WITNESSES. YOU KNOW, IN BIBLICAL TERMS, IT'S TOTALLY
12 UNFAIR FOR ONE PERSON TO SWEAR AGAINST ANOTHER PERSON.
13 THERE'S A REASON FOR THAT. BECAUSE MY WORD IS EQUALLY
14 GOOD OR TRUTHFUL AS YOUR WORD. AND THAT'S WHY WHEN THEY
15 MADE A DECISION TO PUT THIS FORM TOGETHER, SAYING WE
16 SHOULD HAVE TWO WITNESSES; NOT UNLIKE WHEN DETECTIVE
17 MARSHALL HAD TO PUT A FEMALE IN HIS VEHICLE, HE'S GOT TO
18 CALL IN ADVANCE AND LET THEM KNOW; HEY; IT TAKES ME
19 FIVE, TEN, FIFTEEN MINUTES TO GET TO 212 DEMMING WAY.
20 AND THERE'S A REASON FOR THOSE THINGS. AND WHEN THIS
21 SYSTEM DOES NOT FOLLOW THOSE PROCEDURES AND WE RUN THE
22 RISK THAT EVERYTHING THAT IS DONE TO US COMES INTO
23 QUESTION. I HAD NEVER SERVED ONE DAY IN THE MILITARY.
24 MY FATHER SERVED IN WORLD WAR II. HE GOT A PURPLE

CLOSING ARGUMENT - MR. DAVIS

737

1 YEARS. THE CLOSEST I'LL EVER GET TO DISPLAY MY
2 PATRIOTIC DUTIES IS TO DEFEND PEOPLE LIKE ADRIAN GASDEN.
3 SOME OF YOU, THE CLOSEST YOU'LL EVER GET TO DISPLAY YOUR
4 PATRIOTIC DUTIES IS WHAT YOU'RE RIGHT NOW; SERVING ON
5 THE JURY. AND IN THAT CAPACITY, YOU SHOULD REQUIRE THAT
6 THE STATE OF SOUTH CAROLINA BRING MORE TO YOU THAN A
7 HAND THAT IS STOMPED UPON TO REQUIRE MORE THAN THAT.

8 AND I'M REMINDED OF A POEM BY
9 RUDYARD KIPLING THAT SAYS "IF YOU CAN KEEP YOUR HEAD
10 WHEN ALL THOSE AROUND YOU HAVE LOST YOUR HEAD AND BLAME
11 IT ON YOU; IF YOU CAN TRUST YOURSELF WHEN ALL MEN DOUBT
12 YOU AND GIVE ALLOWANCE FOR THEIR DOUBTING TOO. IT'S A
13 HORRIBLE, HORRIBLE THING FOR A MOTHER TO BE PUT IN THE
14 POSITION TO HAVE TO TAKE A WITNESS STAND AND DEFEND
15 THEMSELVES. IT'S A HORRIBLE, HORRIBLE THING. IT
16 DOESN'T MAKE SENSE TO ME THAT A MOTHER WOULD JUMP IN AN
17 EMERGENCY ROOM, EMERGENCY VEHICLE, ON NOVEMBER THE
18 THIRD, JUMP IN A VEHICLE, AND FOLLOW HER CHILD TO A
19 EMERGENCY ROOM. AND THEN FIFTEEN TO TWENTY TO THIRTY
20 MINUTES LATER VOLUNTARILY PLACE HERSELF IN DETECTIVE
21 MARSHALL'S VEHICLE. IT DOESN'T MAKE SENSE. IT DON'T
22 MAKE SENSE. THEY KNEW THAT SHE WAS NOT AT HOME. WHY
23 DID OFFICER BUTTON HAVE TO CALL FIVE OR TEN TIMES WHILE
24 SHE IS IN THE CUSTODY OF THIS MAN? MY CHILD IN ROUTE TO
25 M.U.S.C., HER HANDS IN NO WAY CONNECTED AND I WANT YOU

CLOSING ARGUMENT - MR. DAVIS

738

1 TO WATCH THIS INDICTMENT THAT COMES INTO PLAY,

2 THE SOLICITOR READ SOME LAW TO
3 YOU ABOUT UNREASONABLE RISK. BUT I'M SHOWING YOU THAT'S
4 NOT WHAT'S IN THAT INDICTMENT THAT HAS BEEN PRESENTED TO
5 YOU. THAT INDICTMENT SAYS THAT MY CLIENT LEFT HER CHILD
6 WITH WILLIAM BURDEN WHO HAS BEEN INDICTED WITH ASSAULT
7 AND BATTERY WITH INTENT TO KILL. I BEG TO DIFFER THAT
8 THAT WAS NOT THE CASE ON NOVEMBER THE THIRD, 2001. HE
9 HAD NOT BEEN INDICTED ON ANYTHING. WHY WAS IT
10 UNREASONABLE? THIS MOTHER BELIEVED HER CHILD AND HER
11 CHILDREN, THE FATHER OF HER CHILDREN; YEAH, I WAS THERE
12 WHEN D.S.S. REQUIRED HER TO GO TO P.E.T. CLASSES AND
13 HAVE A PSYCHOLOGICAL EVALUATION.

14 THE STATE HAS A LOT OF POWER.
15 I'M REMINDED OF A STORY ABOUT SOLOMOM AND THE TWO
16 MOTHERS; ONE WHO SLAPPED ON A CHILD THAT SUFFOCATED TO
17 DEATH. AND SOLOMON SAID "WHAT ARE WE GOING TO DO; LET'S
18 CUT THE CHILD IN HALF." THE MOTHER, THE TRUE MOTHER,
19 SAID "GIVE THE CHILD TO THE OTHER LADY." IT'S NO
20 DIFFERENT TODAY. YES, SHE AGREED TO A FINDING OF NEGLECT
21 AT D.S.S. HANDS. GIVE ME BACK MY CHILDREN. WHERE IS
22 D.S.S.? TELL ME, WHERE IS D.S.S.? TELL ME WHERE IS
23 D.S.S.? YOU DON'T HAVE TO SUBPOENA THEM; THEY WORK FOR
24 THE STATE. THEY ALL SHARE THE SAME TAX DOLLARS. THAT

CLOSING ARGUMENT - MR. DAVIS

739

1 NOVEMBER THE 3, 2001, MY CLIENT
2 HAS NOT HAD ANY CONTACT OTHER THAN SOME SPECIAL SETTING
3 WITH HER CHILDREN. THAT'S HORRIBLE. THEY TOOK THE FOUR
4 MONTHS OLD CHILD AT THE TIME. CAN YOU IMAGINE THE
5 SHOCK? BUT THAT'S WHAT YOU'VE SEEN ALL WEEK WITH MY
6 CLIENT TO HAVE TO BE SEPARATED FROM A FOUR MONTH OLD
7 CHILD. THE CHILD IS APPROXIMATELY FOURTEEN MONTHS;
8 ALMOST SIXTEEN MONTHS OF AGE NOW. SHE HAS LOST
9 SOMETHING THAT THEY CAN NEVER GIVE BACK TO HER. THAT
10 MAY EXPLAIN WHY D.S.S. IS NOT HERE. THEY CAN'T GIVE HER
11 BACK. THEY CANNOT. BUT EACH ONE OF YOU AS JURORS,
12 THEY'RE GOING TO HAVE AN OPPORTUNITY TO GIVE HER
13 SOMETHING BACK. Y'ALL ARE GOING TO HAVE AN OPPORTUNITY
14 TO GIVE HER BACK SOMETHING, AND IT'S GOING TO COME
15 THROUGH Y'ALL'S DELIBERATION.

16 YOU KNOW, THERE'S ONE EXPERT I
17 WANT TO TALK ABOUT BECAUSE MR. DUKES HAS TALKED ABOUT
18 THEM. BUT IT'S ONE EXPERT I WANT YOU TO PAY CLOSE
19 ATTENTION TO. THAT WAS DR. SARA SCHUH BECAUSE DR. SARA
20 SCHUH SAYS THAT SHE'S AT M.U.S.C., SHE'S BEEN THERE FOR
21 OVER 29 YEARS. NO D.S.S. WAS CALLED IN THIS MATTER AT
22 ANY TIME WHILE SHE WAS AT M.U.S.C. BUT THE CRITICAL
23 FACT I WANT TO BRING INTO PLAY IS THIS: SOLICITOR WENT
24 TO ANDERSON, SOUTH CAROLINA, GOT A FORENSIC PATHOLOGIST,
25 TO COME IN WITH

CLOSING ARGUMENT - MR. DAVIS

740

1 MRS. MURPHY: YOUR HONOR, I'M GOING TO
2 OBJECT AS TO STANDARD QUALIFICATION AS TO WHAT
3 EXPERTS CAN TESTIFY TO. ACCORDING TO THE JURY THAT
4 DR. SCHUH QUALIFIED AS AN EXPERT TESTIFIED ABOUT
5 HER CHILD. AND MAKING IT OUT TO BE THE STATE
6 DIDN'T USE HER BUT WHEN THE TESTIMONY'S PRESENTED,
7 IT'S IMPROPER TO BRING THAT---

8 THE COURT: YOU MAY PROCEED.

9 MR. DAVIS: THANK YOU. SHE'LL HAVE AN
10 OPPORTUNITY TO ARGUE WITH YOU.
11 AND THIS POINT; TRUST ME. IF I HAVE OFFENDED ANY OF
12 YOU, PLEASE DON'T HOLD THAT AGAINST MY CLIENT. WHEN I
13 GET UP IN THE MORNING, IT WOULD BE GREAT IF I WOULD STAY
14 IN MY BED. BUT, YOU KNOW, I LEARNED A LONG TIME IF I
15 STAY IN MY BED, THEN IT WOULDN'T GET DONE. SAD TO SAY;
16 WHEN I MAKE A DECISION TO GET INVOLVED IN THIS, I DON'T
17 KNOW BUT ONE SPEED. I'M GOING TO GIVE IT ALL. WHEN I
18 GO HOME TONIGHT, I LAY IN MY BED AND I GO TO SLEEP
19 BECAUSE, YOU KNOW WHAT, I'M GOING TO DO ALL I CAN FOR
20 ADRIAN GASTON BECAUSE WHEN I LEAVE HERE, OR IF I SEE HER
21 AGAIN, OR I SEE THE FAMILY, OR I SEE ANYONE, I CAN FEEL
22 CONTENTED; YOU KNOW, MR. DAVIS; YOU DID ALL YOU CAN DO.
23 AND THAT HAS BEEN MY CRITERIA IN LIFE; THAT'S BEEN MY
24 PREMISE TO BE AND EXCEL AT WHATEVER I DO. YOU KNOW,

CLOSING ARGUMENT - MR. DAVIS

741

1 INTERRUPTED WAS THIS: DR. SCHUH SAID THE BATTERED CHILD
2 SYNDROME HAS EXPANDED BEYOND ITS ORIGINAL PURPOSE. NOW,
3 I HOPE Y'ALL HAVE GOT THAT IN YOUR NOTES BECAUSE THAT
4 WAS IMPORTANT TO ME. THAT WAS IMPORTANT TO ME BECAUSE
5 THE STATE DIDN'T MAKE A DECISION AND INQUIRE OF HER
6 ANYTHING ABOUT BATTERED SYNDROME OR TARGETED CHILD. IT
7 DOESN'T MAKE SENSE THAT A MOTHER OF FIVE CHILDREN AND
8 ONE PARTICULAR CHILD WHO HAPPENS TO COME INTO THE WORLD
9 AT 28 WEEKS. CHILDREN WEREN'T MADE TO COME INTO THE
10 WORLD AT 28 WEEKS. CHILDREN WERE MADE TO COME INTO THE
11 WORLD A FULL TERM. DR. SANDERS TESTIFIED TO THAT.
12 THESE CHILDREN HAD DEVELOPMENTAL PROBLEMS. SO WHEN
13 THINGS PRESENTED THEMSELVES, IT WASN'T NO CRIME FOR
14 D.S.S. IN 1996. IT WASN'T NO CRIME FOR D.S.S. IN 1997.
15 IT WASN'T NO CRIME FOR THAT. BUT, YOU KNOW, GOING BACK
16 TO WHAT I ALLUDED TO EARLIER; IF YOU'RE GOING TO PROCEED
17 WITH THE STATE'S LYNCHING BECAUSE THE STATE CAN LYNCH---

18 MRS. MURPHY: OBJECTION, YOUR HONOR. THE
19 STATE IS REFERRING TO THE STATE'S PROPER
20 PROSECUTION WHERE HIS CLIENT IS---

21 THE COURT: I'LL SUSTAIN THE OBJECTION.

22 MR. DAVIS: THANK YOU, JUDGE.

23 WELL, THERE YOU GO AGAIN. THE QUESTION REMAINS THE ONLY
24 TIME THAT MY CLIENT FINDS HERSELF IN THIS POSITION IS

CLOSING ARGUMENT - MR. DAVIS

742

1 SANDERS AND SAYS "HEY, THIS IS ALL THE OTHER THINGS I
2 HAVE IN CONJUNCTION OF TOTALITY OF THE CIRCUMSTANCES.
3 THIS IS WHAT I HAVE." AND THEN ALL THE DIAGNOSES AND
4 PROGNOSIS THAT WERE MADE EARLIER; ALL OF A SUDDEN WE CAN
5 GIVE A DIFFERENT OPINION; NOT THAT THEY PINPOINT WITH
6 ANY FACTS OR EVIDENCE, BUT GIVE A DIFFERENT OPINION.
7 AND THAT OPINION, THEN, IS TO CONVINCE YOU, THE STATE,
8 TO COME IN HERE NOW AND CONVINCE YOU AND BECOME A PART
9 OF THIS, BECOME A PART OF THIS LYNCHING.

10 MRS. MURPHY: OBJECTION, YOUR HONOR.

11 YOU'VE ALREADY RULED THAT THEY CAN'T CALL IT
12 LYNCHING.

13 THE COURT: SUSTAINED, MR. DAVIS.

14 IF YOU CAN STAND TO HEAR THE TRUTH TWISTED BY NAVES
15 (PHONETICALLY SPELLED) AND SPOKEN FOR FOOLS; IMAGINE!
16 CAN YOU IMAGINE FOR A MOMENT ADRIAN GADSON SITTING OVER
17 THERE AND ALL OF THESE EXPERTS NOW SUPPOSEDLY HAS THE
18 TRUTH; THEY'VE GOT THE TRUTH NOW OR BE LIED UPON.
19 DON'T DEAL IN LIES OR BE HATED. DON'T GIVE WAY TO HATE.
20 YET DON'T LOOK TOO GOOD OR SPEAK TOO WISE.

21 I GUESS THE QUESTION EACH ONE OF
22 Y'ALL ARE GOING TO HAVE; WHAT MOTHER WOULD LEAVE HER
23 CHILDREN IN THE CARE AND THE CUSTODY OF THIS MAN.
24 SIMPLE! SIMPLE AS THAT. IF YOU BELIEVE THE STATE'S

CLOSING ARGUMENT - MR. DAVIS

743

1 NOT HAVE, THEREFORE SHE SHOULD BE PUNISHED." I BEG TO
2 DIFFER. YOU HEARD THE TESTIMONY OF, I THINK, THE
3 GRANDMOTHER; THE GRANDMOTHER. I JUST CAN'T UNDERSTAND
4 HOW THE STATE'S LOVE CAN BE GREATER THAN A MOTHER'S
5 LOVE. I JUST CAN'T UNDERSTAND THAT; OR THE STATE'S LOVE
6 CAN BE GREATER THAN THE GRANDMOTHER'S LOVE. I JUST
7 CAN'T UNDERSTAND IT. IT DOESN'T MAKE SENSE TO ME. A
8 MOTHER WHO CARRIED HER CHILD FULL-TERM, FULL-TERM, FIVE
9 OF THEM, TWINS INCLUDED, AND TURN AROUND AND CAUSE
10 INJURIES TO THEM, OR ALLOW SOMEONE ELSE TO INJURE A
11 CHILD. IT DOESN'T MAKE SENSE. IT DOESN'T MAKE SENSE..
12 COME HERE ADRIAN; PLEASE COME
13 HERE. (AT THIS TIME THE DEFENDANT, ADRIAN GADSON, COMES
14 FORWARD.) I WANT Y'ALL TO REALIZE THAT SHE IS REAL.
15 THIS AIN'T NO T.V. COURT. SHE'S REAL. THIS IS REAL.
16 THIS IS NOT TELEVISION COURT. THIS IS AN INDIVIDUAL.
17 THIS IS A PERSON. THIS IS A MOTHER. THIS IS A MOTHER.
18 THIS IS A MOTHER; A MOTHER WHO WAS LOCKED AWAY FROM HER
19 CHILD FOR ABOUT FOUR HOURS AT THE SUMMERVILLE LAW
20 ENFORCEMENT CENTER WHILE HER CHILD LAID IN THE
21 HOSPITAL. THE MOTHER'S PROCESS HASN'T CHANGED. ALL HER
22 CHILDREN FOR ONE MAN. BEEN A MOTHER SINCE SHE WAS 18
23 YEARS OF AGE. SHE KNOWS NO OTHER MAN. THE STATE HAS
24 MADE US PARTNERS IN CRIME TODAY. THE STATE HAS MADE
25 THIS DECISION THAT OUR CASE MUST BE TRIED AT THE SAME

CLOSING ARGUMENT - MR. DAVIS

744

1 TIME; NOT US! THE STATE. WE'VE BEEN FORCED THIS HAND
2 TO PLAY. THE STATE OF SOUTH CAROLINA HAS SAID "Y'ALL
3 MUST BE TRIED TOGETHER." Y'ALL ARE PARTNERS IN CRIME. A
4 PICTURE CAN PAINT A THOUSAND WORDS. YOU KNOW, ARE THESE
5 ABUSED CHILDREN TO YOU? YOU'VE GOT A GENE, AND YOU
6 SPLIT IT IN HALF. YES; I'M NOT SAYING IN ALL SITUATIONS
7 TWINS ARE GOING TO BE THE SAME; BUT WE KNOW IN THIS
8 SITUATION THAT FROM THE INCEPTION OF THESE TWINS, IT
9 DIDN'T FARE TOO WELL; PARTICULARLY ONE OF THEM. DID ANY
10 OF THE OTHER CHILDREN? THEY HAD AN EIGHT YEAR OLD
11 DAUGHTER IN THE HOME. IT DOESN'T MAKE SENSE. BATTERED
12 CHILD SYNDROME, TARGETED CHILD, WHATEVER YOU CALL IT,
13 SLAP ON THE HEAD; IT DOESN'T MAKE SENSE. CHILDREN ARE
14 HAPPY. THE MOTHER IS CELEBRATING. THE MOTHER WORKS TWO
15 JOBS. THIS AIN'T WHAT THE STATE WANTS IT TO BE. YOU
16 KNOW, IF YOU SET OUT FOR A CONCLUSION, YOU CAN REACH IT.
17 IF YOU PUT FACTS TOGETHER AND LOOK FROM ONE PERSPECTIVE,
18 YOU CAN. THESE CHILDREN ARE HAPPY.

19 THIS AIN'T WHAT THE STATE WANTS
20 IT TO BE. YOU KNOW, IF YOU SET OUT FOR A CONCLUSION,
21 YOU CAN REACH IT. IF YOU PUT FACTS TOGETHER AND LOOK
22 FROM ONE PERSPECTIVE, YOU CAN. THESE CHILDREN ARE
23 HAPPY, AND THESE CHILDREN NEED THEIR MOTHER. I'M
24 FINISHED NOW. AND I'M NOT GOING TO GO IN THE JURY ROOM
25 WITH YOU THEY DON'T ALLOW THAT. THEY DON'T ALLOW

CLOSING ARGUMENT - MR. DAVIS

745

1 THAT. AND THAT'S QUITE FAIR WITH ME. BUT I HOPE THAT
2 IN SOME SMALL WAY THAT I HAVE PUT FORTH SOMETHING OF
3 SIGNIFICANCE AS Y'ALL CAN CHAMPION (PHONETICALLY
4 SPELLED) HER CAUSE WHEN SHE'S NOT GIVEN AN OPPORTUNITY
5 TO BE PRESENT IN YOUR JURY DELIBERATION ROOM.

6 ALL TWELVE OF YOU MUST DECIDE.
7 AND YOU SHOULD DO NO INJURY TO YOUR CONVICTION; NO
8 INJURY TO YOUR CONSCIENCE. BUT IN THE WORDS OF SOMEONE
9 GREATER THAN I; REMEMBER THAT YOU HAVE NO FRIENDS TO
10 REWARD, AND YOU HAVE NO ENEMY TO PUNISH. MR. DUKES AND
11 ALL OF US HAVE A JOB. THE STATE HAS A JOB. THE JUDGE
12 HAS A JOB. I HAVE A JOB. BUT THE MOST IMPORTANT JOB
13 YOU HAVE IS TO SEEK JUSTICE; SEEK JUSTICE. I THINK IF
14 YOU SEEK JUSTICE IN THIS CASE, I AM SATISFIED AND
15 CONFIDENT THAT YOU WILL ALLOW ADRIAN GADSON TO GO BACK
16 HOME. RE-UNIFICATION WITH HER CHILDREN WHO LOVE HER,
17 WHO NEED HER, AND DESIRE HER PRESENCE. THANK YOU.

18 THE COURT: THANK YOU, MR. DAVIS. MRS.
19 MURPHY?

20 MRS. MURPHY: THANK YOU, YOUR HONOR. MAY
21 IT PLEASE THE COURT?

22 THE COURT: YES.
23
24

CLOSING ARGUMENT - MRS. MURPHY

746

CLOSING ARGUMENT

BY MRS. MURPHY

1
2
3
4 LADIES AND GENTLEMEN, I TOO WOULD
5 LIKE TO THANK YOU ON BEHALF OF THE STATE OF SOUTH
6 CAROLINA FOR YOUR ATTENTIVENESS THROUGHOUT THESE
7 PROCEEDINGS AND CERTAINLY ON BEHALF OF Child [REDACTED]
8 WHO IS THE VICTIM IN THIS CASE. LAST WEDNESDAY I TOLD
9 YOU THAT Child [REDACTED] HAS BEEN A PRIMARY TARGET OF
10 VIOLENCE AND NEGLECT THROUGHOUT HIS LIFE. AND CERTAINLY
11 THE PROCEEDINGS IN THIS TRIAL, YOU'VE GOTTEN A GLIMPSE
12 OF WHAT HIS LIFE WAS LIKE IN THE FIRST FIVE YEARS. THIS
13 CHART, IF WE CAN GET IT TO COOPERATE WITH US THIS
14 MORNING, GOES THROUGH SOME OF THE INJURIES. FIRST, ON
15 4/19 OF '96, HE SUFFERED HIS FIRST BROKEN FEMUR.

16 LADIES AND GENTLEMEN, YOU HEARD
17 THE DEFENDANT, MS. ADRIAN GADSON, UP HERE ON THAT
18 WITNESS STAND TALKING ABOUT HOW THAT BROKEN FEMUR
19 HAPPENED. SHE TESTIFIED BEFORE YOU THAT SHE WAS HOLDING
20 THIS INFANT, FOUR MONTHS OLD AT THE TIME, WHEN MOST
21 CHILDREN ARE BEING SNUGGLED AND LOVED UPON, THAT SHE
22 SOMEHOW TRIPPED, BUT THAT SHE TOOK THE FULL BRUNT OF
23 THAT FORCE. THERE IS NO WAY THAT IF HER TESTIMONY IS
24 TRUE THAT BREAK WOULD HAVE HAPPENED THE WAY IT DID. YOU

CLOSING ARGUMENT - MRS. MURPHY

747

1 HAVE TO GET DOCTORS TO REVIEW X-RAYS AND PHOTOGRAPHS.
2 AND THEY HAVE TO BE QUALIFIED TO GIVE YOU AN OPINION
3 BECAUSE CERTAINLY I'M NOT A DOCTOR, AND YOU'RE NOT
4 DOCTORS. THEY HAVE TO GIVE OPINIONS BASED ON THEIR
5 EXPERTISE, THEIR TRAINING. AND CERTAINLY THEY WERE
6 QUALIFIED BY THIS COURT TO DO SO. AND DR. WOODARD GAVE
7 YOU AN OPINION THAT A FALL OF THAT NATURE WOULD NOT
8 PRODUCE ENOUGH STRENGTH TO PRODUCE THAT KIND OF BREAK;
9 THAT CHILDREN'S BONES ARE VERY PLIABLE. THEY ALMOST
10 BEND. AND CERTAINLY HER STORY DOES NOT MAKE SENSE.
11 STANDING UP, FALLING ON THE SIDE. SHE TAKES THE BRUNT
12 OF THE FALL. HE TESTIFIED THAT THAT FALL IS CONSISTENT
13 WITH NON-ACCIDENTAL MEANS, WITH A BLUNT FORCE TRAUMA
14 BREAK.

15 WITHIN A YEAR HE SUFFERED
16 BLINDNESS. IT'S DISCOVERED IN OCTOBER OF 1997. SO WHEN
17 MOST CHILDREN ARE WALKING AROUND, EXPLORING THEIR NEW
18 WORLD, TRYING TO GET INTO THINGS, LOOKING AT THE WORLD
19 AND SEEING WHAT IT'S ALL ABOUT, Child [REDACTED] SUFFERS A
20 VIOLENT BLOW TO HIS HEAD; TRAUMA THAT WHICH CAUSES HIM
21 TO GO BLIND. AND WHY WAS IT DISCOVERED? BECAUSE
22 M.U.S.C. HAPPENED TO SEND A NOTICE TO THE HOUSE THAT YOU
23 NEED TO GET YOUR EYES CHECKED. THIS ATTENTIVE, LOVING
24 MOTHER, DIDN'T EVEN NOTICE HER CHILD WAS BLIND. SHE

CLOSING ARGUMENT - MRS. MURPHY

748

1 ANYTHING. DOES THAT TELL YOU THERE'S NEGLIGENT?

2 CERTAINLY.

3 DR. SAUNDERS TESTIFIED THAT BLUNT
4 FORCE TRAUMA CONSISTENT WITH CHILD ABUSE WOULD CAUSE
5 THAT. ANY PROBLEMS WITH PREMATUREITY HAD BEEN RULED OUT
6 BY THAT POINT THAT IT WAS CONSISTENT WITH EITHER A
7 PUNCH, BLUNT FORCE TRAUMA, AND/OR VIOLENT SHAKING OF A
8 CHILD. THE NEXT YEAR, 1998, HE SUFFERS A SECOND BROKEN
9 LEG. SHE FIRST SAYS THAT SHE WAS ALONE WITH THE CHILD
10 AND TOOK THE FALL FOR HIM IN 1998. AND HE GETS UP HERE
11 AND SAYS THAT HE WAS ALONE WITH THE CHILD. AND NOW
12 DURING THIS STATEMENT, HE SAYS HE CLIMBED UP ON THE
13 SECOND SHELF AND FELL. FIRST IT WAS HE FELL OUT OF THE
14 CRIB. SHE TESTIFIED THAT SHE KNEW IN HER OWN STATEMENT
15 IN CROSS-EXAMINATION, IN HER OWN STATEMENT, THAT SHE
16 KNEW HE HAD BROKEN THE CHILD'S LEG. HE TOLD HER HE HAD
17 SPANKED THE CHILD AND BROKE THE CHILD'S LEG. BUT SHE
18 WENT TO COURT, TO FAMILY COURT, AND TOOK THE FALL FOR
19 HIM. AND WHEN I ASKED HER "WHO WERE YOU TRYING TO
20 PROTECT?" SHE SAID "HER FAMILY." SHE MEANT HER
21 BOYFRIEND; NEVER HER FAMILY. NOTICE SHE NEVER COULD SAY
22 Child NAME. WHO? Child OR MY FAMILY? SHE WASN'T
23 TRYING TO TOOK PROTECT HIM. SHE WAS TRYING TO PROTECT
24 THAT MAN WHO SHE KNEW BROKE HER CHILD'S LEG.

CLOSING ARGUMENT - MRS. MURPHY

749

1 TYPE OF PATTERN OF THAT BREAK FROM REVIEW OF THE X-RAYS
2 HAD TO HAVE BEEN CAUSED BY TWISTING OR A TORSION WITH A
3 VIOLENT BLOW. THE CHILD HAD TO HAVE EITHER BEEN
4 STANDING WITH A FOOT PLANTED AND WAS VIOLENTLY STRUCK;
5 THAT IT WAS NOT CONSISTENT WITH THE CHILD FALLING OUT OF
6 A CRIB. THE MEDICAL EVIDENCE DOES NOT BACK UP WHAT
7 THEY'RE SAYING. DURING THE TIME PERIOD, D.S.S. DID TAKE
8 THE CHILDREN AWAY AFTER THIS SECOND BREAK. AND IT'S
9 JUST MIRACULOUS THAT DURING THE TIME PERIOD THE CHILDREN
10 ARE NOT HER CUSTODY, THEY HAVE NO OTHER INJURIES.

11 THE CIGARETTE BURNS. THE DEFENSE
12 COUNSEL AND DEFENDANT'S OWN TESTIMONY HAS COME UP WITH
13 THREE DIFFERENT THEORIES FOR HOW THESE CIGARETTE BURNS
14 GOT ON Child FIRST THEY'RE INSECT BITES. THE DOCTOR
15 TESTIFIED THAT THE TYPE OF BURN WAS NOT CONSISTENT WITH
16 THAT TYPE OF PATTERN; THAT IT WAS NOT AN INSECT BITE.
17 THEN THEY SAID IT WAS A RASH. BUT WHAT DIDN'T MAKE
18 SENSE ABOUT THE RASH IS THAT Child WAS IN A FULL BODY
19 CAST FROM BEING VIOLENTLY BEATEN AND BREAKING HIS LEG
20 THAT HE GOT A RASH. LADIES AND GENTLEMEN, THOSE
21 INJURIES OF CIGARETTE BURNS WERE NOTED WHEN HE WAS
22 BROUGHT IN FOR THE SECOND FEMORAL BREAK; NOT AFTER HIS
23 CAST WAS TAKEN OFF. SO THAT'S IMPOSSIBLE. A RASH
24 DOESN'T OCCUR IN ONE SPOT AS IF SOMEONE HAD HELD A
25 CIGARETTE TO THE SKIN

CLOSING ARGUMENT - MRS. MURPHY

750

1 HAPPEN THAT WAY.

2 AND THE THIRD EXPLANATION THAT
3 THEY CAME UP WITH; "WELL, THEN, IT MUST HAVE BEEN A
4 BIRTH MARK." FUNNY HOW IT'S A BIRTH MARK THAT DOESN'T
5 COME UP UNTIL THE CHILD COMES IN WITH A SECOND BROKEN
6 LEG; A BIRTH MARK THAT'S A SCAR. THE CHILD HAD NO
7 INJURIES DURING THAT TIME THAT HE'S NOT IN HER CUSTODY.
8 YOU DO HAVE A CHILD'S PEDIATRIC RECORDS; AND I DO WANT
9 YOU TO LOOK AT THAT EXHIBIT. AND LOOK AT IT FOR TWO
10 REASONS. FIRST OF ALL, THE EXTENT OF THE VISITS. HE
11 TESTIFIED THAT WAS THE EXTENT OF VISITS AT THE PRACTICE.
12 A CHILD WITH THIS MANY PROBLEMS IS ONLY TAKEN IN SEVERAL
13 TIMES. AND LOOK WHO BRINGS THE CHILD IN; THE
14 GRANDMOTHER. NOT THE MOTHER! NOT THE ONE WHO IS
15 RESPONSIBLE FOR THIS CHILD FOR CARING FOR THIS CHILD,
16 BUT THE GRANDMOTHER!

17 DEFENSE COUNSEL ALSO TELLS YOU
18 THAT, YOU KNOW, D.S.S. SHOULD BE HERE. D.S.S. SHOULD
19 HAVE HELPED HER WITH THESE CHILDREN. D.S.S. SHOULD HAVE
20 DONE THIS, SHOULD HAVE DONE THAT. WELL, D.S.S. IS NOT A
21 PARTY TO THIS ACTION. D.S.S. IS FAMILY COURT. DURING
22 HIS DIRECT EXAMINATION OF ADRIAN GADSON, HE SAID "DOES
23 D.S.S. HELP YOU FEED THESE KIDS; DOES D.S.S. TAKE YOU TO
24 YOUR DOCTOR'S APPOINTMENTS; DID D.S.S. DO THIS; DID

CLOSING ARGUMENT - MRS. MURPHY

751

1 THE STATE'S JOB TO LOVE AND PROTECT AND RAISE THESE
2 CHILDREN. IT'S THEIRS. SINCE WHEN DO YOU GIVE BIRTH
3 AND GIVE CUSTODY OVER TO D.S.S. SO THAT THEY CAN RAISE
4 THEIR KIDS; SO THAT THEIR KIDS AREN'T ABUSED? WHEN IS
5 IT D.S.S.'S RESPONSIBILITY TO MAKE SURE THESE KIDS ARE
6 PROTECTED? IT'S NOT! IT'S THEIRS; AND THAT'S WHY WE'RE
7 HERE.

8 HE REFERS TO D.S.S. AS THE
9 GESTAPO; TAKING KIDS AWAY. YES, THE KIDS WERE IN HARM;
10 AND THE KIDS WERE TAKEN AWAY. NO QUESTION ABOUT THAT.
11 THEY'RE DOING THEIR JOB. SHE'S NOT. HE'S NOT. THEY
12 ARE. ANOTHER IMPORTANT THING ABOUT D.S.S.; YOU'LL HAVE
13 DEFENDANT'S EXHIBIT NUMBER FIVE HERE. HER CHILDREN WERE
14 TAKEN AWAY FROM HER. SHE WAS ORDERED TO UNDERGO THIS
15 MENTAL STATUS EXAMINATION. I WANT YOU TO READ THIS
16 DOCUMENT BECAUSE WHEN I ASKED HER ON CROSS-EXAMINATION;
17 "WELL, WAS IT IMPORTANT FOR YOU TO GET YOUR KIDS BACK?"
18 SHE DIDN'T KNOW WHAT THE RECOMMENDATIONS WERE. SHE
19 DIDN'T COMPLY WITH TREATMENT. SHE DIDN'T CARE. SHE
20 TOOK THE FILE. THEY TOOK HER KIDS AWAY. BUT SHE STILL
21 HAS MR. BURDEN. THAT'S WHAT MATTERS TO HER. I WANT YOU
22 THE READ THIS DOCUMENT WHERE DEFENSE PUT IT IN AND WHERE
23 IT TALKS ABOUT THAT Child DOES NOT DISPLAY SIGNS OF
24 HAPPINESS. NO KIDDING! BY THIS TIME HE'S TWO. HE'S

CLOSING ARGUMENT - MRS. MURPHY

752

1 IT ALSO SAYS THAT SHE PRESENTS
2 HERSELF IN A DEFENSIVE MANNER; TRIED TO PUT HERSELF IN
3 THE MOST POSITIVE LIGHT. AND WHEN YOU WEIGH THE
4 CREDIBILITY OF THOSE WITNESSES FROM THAT WITNESS STAND,
5 ASK YOURSELF WHO HAS A HISTORY OF LYING IN FAMILY COURT
6 AND PUTTING HERSELF IN THE MOST POSITIVE LIGHT. SHE
7 DOES. IT ALSO STATES IN HERE THAT SHE DOES NOT FEEL A
8 SENSE OF CLOSENESS TO Child THAT IT'S COLD AND
9 UN-EMOTIONAL PARENT-CHILD CONTACT AND THAT SHE HAS
10 PERIODIC ANGRY OUTBURSTS. COMPLETELY CONSISTENT WITH
11 PUTTING HER CHILD IN HARMS WAY HERSELF AND JUST TO
12 PLEASE HIM; NOT PROTECTING THAT CHILD. READ THIS
13 EVALUATION. SHE DIDN'T CARE TO GET THE KIDS BACK. SHE
14 DIDN'T KNOW WHAT DOCTOR HAD RECOMMENDED. SHE DIDN'T GO
15 TO THE CLASSES. SHE WAS TERMINATED.

16 THERE'S BEEN SOME TESTIMONY, TOO,
17 THAT Child WAS SMALL; THAT HE FAILED TO THRIVE. IT
18 MAKES AN INFERENCE THERE; HE WAS THE TARGETED ONE. HE
19 WAS SMALL. HE WAS THE ONE THEY PICKED ON. HE'S NOT FED
20 PROPERLY. SHE DIDN'T GO BY THESE PARENTING CLASSES.
21 THE STATE TRIED TO GIVE HER A CHANCE. THEY TRIED TO GET
22 HER HELP. SHE DIDN'T COMPLY. NOW DEFENSE COUNSEL IS
23 ABSOLUTELY RIGHT ABOUT ONE THING IS THAT IT DOES NOT
24 MAKE SENSE BECAUSE THESE TWO PEOPLE ARE CHARGED WITH THE

CLOSING ARGUMENT - MRS. MURPHY

753

1 SHE'S NOT A MOTHER. GIVING BIRTH DOES NOT MAKE A
2 MOTHER. A MOTHER CARES FOR HER CHILD. A MOTHER LOVES
3 HER CHILD AND PROTECTS HER CHILD. SHE MAY HAVE GIVEN
4 BIRTH TO Child BUT CERTAINLY SHE'S NOT A MOTHER.

5 COUNSEL WANTS YOU TO BELIEVE THAT
6 DETECTIVE MARSHALL SOMEHOW FORCED HER INTO GIVING THIS
7 STATEMENT. YOU'LL HAVE THE STATEMENT BACK THERE. IT'S
8 BEEN INTRODUCED INTO EVIDENCE. AND RIGHT HERE AT THE
9 BOTTOM IT SAYS "I HAVE READ THE FOREGOING STATEMENT OR
10 HAVE HAD IT READ TO ME, AND IT'S TRUE AND CORRECT TO THE
11 BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT
12 FREELY AND VOLUNTARILY AND VOLUNTARILY." FREELY AND
13 VOLUNTARILY! ONLY AT THE POINT WHERE SHE REALIZES THAT
14 IF YOU BELIEVE HER STATEMENT WHICH IS GIVEN FREELY AND
15 VOLUNTARILY THAT SHE ADMITTING TO YOU, THIS CHARGE FOR
16 WHICH SHE'S FACING HERE TODAY, THAT SHE KNEW HE BROKE
17 HIS LEG, BUT SHE GOES SHOPPING. WHAT'S MORE IMPORTANT?
18 OBVIOUSLY THAT PERFECT DRESS SHE WAS LOOKING FOR. SHE
19 KNEW HE HAD BROKEN HIS LEG. SHE LIED FOR HIM BEFORE.
20 "WELL, IF SOMETHING HAPPENS, MAYBE I CAN LIE FOR HIM
21 AGAIN." THAT'S NOT A MOTHER, LADIES AND GENTLEMEN. THAT
22 MAKES HER GUILTY OF THIS CHARGE.

23 SHE MAKES A BIG DEAL ABOUT HER
24 GOING TO DETECTIVE MARSHALL'S OFFICE RATHER THAN TO THE

CLOSING ARGUMENT - MRS. MURPHY

754

1 ASKED TO GO TO THE HOSPITAL. SHE COULD HAVE GONE HAD IF
2 SHE WANTED TO. DETECTIVE MARSHALL TESTIFIED THAT SHE
3 NEVER ONCE ASKED ABOUT THE CONDITION OF HER CHILD DURING
4 THAT WHOLE TIME. AND HER OWN MOTHER TESTIFIED ON THIS
5 WITNESS STAND THAT SHE'S THE ONE -- HER OWN MOTHER HAD
6 TEARS -- I'M SURE HER MOTHER LOVES THIS CHILD. BUT HER
7 OWN MOTHER TESTIFIED THAT SHE PICKED UP MS. GADSON; AND
8 SHE'S THE ONE THAT TOLD MS. GADSON "YOU NEED TO BE WITH
9 YOUR CHILD." SHE DID NOT TESTIFY THAT MS. GADSON ASKED
10 TO GO. SHE DID NOT TESTIFY THAT SHE WANTED TO GO, THAT
11 SHE WAS CONCERNED ABOUT HER GOING. BUT HER OWN MOTHER
12 IS THE ONE THAT SAYS "YOU NEED TO GO; YOU NEED TO BE
13 THERE;" KNOWING SHE WASN'T GOING TO GO OTHERWISE.

14 DR. SCHUH TESTIFIED THAT THE MEDICAL
15 RECORDS INDICATE SHE WAS NOT AT M.U.S.C. THE NEXT DAY.
16 SHE COULD NOT BE FOUND. DR. SAUNDERS TESTIFIED THAT HIS
17 RECORDS ALSO REFLECT THAT AFTER HER CHILD IS HAVING
18 SURGERY IN AN EYE, THEY CAN'T BE FOUND; THEY'RE NOT
19 THERE. THE PEDIATRIC RECORDS SHOW THE SAME THING; ONLY
20 GRANDMA EVER TAKES THEM TO THE DOCTOR. THEY WOULD HAVE
21 YOU BELIEVE THAT DETECTIVE MARSHALL FORCED HER IN
22 THERE. HE TESTIFIED THE DOOR WAS OPEN. SHE CONCURRED
23 TO THAT. SHE COULD HAVE LEFT IF SHE HAD SHE WANTED TO.
24 HE HAD A POTENTIAL MURDER INVESTIGATION ON HIS HANDS.

CLOSING ARGUMENT - MRS. MURPHY

755

1 FIND OUT WHAT HAPPENED. AND BECAUSE HE'S SEEKING THE
2 TRUTH ABOUT WHAT HAPPENED, DEFENSE COUNTY WANTS YOU TO
3 JUST COMPLETELY DISCOUNT IT AND THROW IT OUT THE WINDOW
4 THAT HE WAS IN HER CUSTODY. SHE WAS FREE TO GO. SHE
5 LEFT. SHE WASN'T IN CUSTODY. SHE SIGNED THAT
6 STATEMENT. IT'S IN HER OWN HANDWRITING. SHE KNEW HE
7 BROKE HIS LEG. AND SHE STILL LEFT HIM THERE.

8 LADIES AND GENTLEMEN, DEFENDANT
9 BURDEN'S DIFFERENT STORIES DON'T ADD UP EITHER. WHEN HE
10 TESTIFIED BEFORE YOU ON THURSDAY, HE ADDED "OH; AND HE
11 HIT HIS HEAD ON THE DOOR;" NEVER ONCE STATING THAT
12 BEFORE. SO WHICHEVER THE STATEMENTS YOU LISTEN TO, THEY
13 STILL ARE NOT CONSISTENT WITH THE MEDICAL TESTIMONY.
14 THE MEDICAL EXPERTS TESTIFIED THAT THESE SEIZURES WERE
15 NOT CAUSED BY ANY FEVER OR ANY OTHER ABNORMALITIES; THAT
16 DR. SCHUH HAD REVIEWED THE PEDIATRICIAN'S RECORDS FROM
17 TWO DAYS BEFORE, AND HE DID NOT HAVE A FEVER; THAT THE
18 CAUSES OF SEIZURES WERE ALL RULED OUT OTHER THAN BLUNT
19 FORCE TRAUMA. SO THE MEDICAL EVIDENCE SHOWS YOU THAT
20 WHAT HE'S TELLING YOU IS NOT CORRECT. HE DIDN'T WALK IN
21 THERE AND FIND HIM IN A SEIZURE. HE CAUSED THE SEIZURE
22 BY BEATING THIS CHILD OR BY STOMPING THE CHILD. THE
23 SAME WORDS THE DEFENSE COUNSEL DID NOT LIKE IN OPENING;
24 DIDN'T LIKE STOMPING. I DON'T LIKE STOMPING. I'M SURE
25

CLOSING ARGUMENT - MRS. MURPHY

756

61

1 HAPPENED. THE MEDICAL EVIDENCE ISN'T CONSISTENT WITH
2 GRABBING A HOUSE SHOE AND BEATING HIM ON THE CHEST. THE
3 DOCTORS TESTIFIED THERE'S A FULL SHOE PRINT OUTLINE ON
4 Child YOU HAVE TO -- IF YOU GRAB IT, IT'S NOT GOING
5 TO LEAVE A FULL SHOE PRINT OUTLINE.

6 HE DID TELL DETECTIVE MARSHALL
7 UPON HIS ARREST THAT HE LOST IT AND BEAT Child WITH A
8 SHOE. HE'S ADMITTED TO YOU THAT. HE WOULDN'T ADMIT
9 THAT ON THE WITNESS STAND. BUT THEN HE ALSO TOLD YOU
10 THAT WHILE HE WAS ON THE 911 TAPE WITH THE DISPATCHER
11 THAT HE WAS SCREAMING "SHY; SHY." THAT'S NOT ON THERE.
12 WHICH ONE OF HIS STORIES IS CONSISTENT? NONE! THE
13 MEDICAL EVIDENCE IS CONSISTENT. IT'S NOT CAUSED BY
14 ACCIDENTAL MEANS. AND IF IT'S NOT MALICIOUS TO
15 VIOLENTLY STOMP AND BEAT A CHILD, I DON'T KNOW WHAT IS.

16 NOW WHAT HIS INTENT WAS; LIKE I
17 TOLD YOU BEFORE, I CAN'T DISSECT HIS BRAIN AND LOOK AT
18 WHAT HE WAS THINKING AND LOOK AT WHAT HIS INTENT WAS AS
19 TO THE FINAL OUTCOME. BUT YOU CAN INFER HIS INTENT FROM
20 HIS ACTIONS. AND CERTAINLY HE'S A VERY ARTICULATE MAN.
21 HE'S GOT ENOUGH COMMON SENSE TO KNOW THAT BY VIOLENTLY
22 STOMPING AND KICKING A CHILD, IT'S GOING TO CAUSE
23 SUBSTANTIAL INJURY. YOU CAN INFER THE INTENT TO KILL BY
24 HIS ACTIONS, LADIES AND GENTLEMEN.

CLOSING ARGUMENT - MRS. MURPHY

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1 ABOUT, YOU KNOW, THESE WOUNDS ARE SUPERFICIAL BUT THEY
2 DIDN'T BREAK THE SKIN. LADIES AND GENTLEMEN, INTERNAL
3 CRANIAL BLEEDING, A SUBDURAL HEMATOMA, THAT WAS NEARLY
4 FATAL HAD MEDICAL SCIENCE NOT INTERVENED, CERTAINLY IS
5 GREAT BODILY INJURY. CERTAINLY THEY WERE FATAL IN
6 NATURE. ALL THE DOCTORS TESTIFIED TO THAT. THAT'S WHY
7 HE HAD TO BE MEDUVACED TO M.U.S.C. HAD MEDICAL SCIENCE
8 NOT INTERVENED, THIS CHILD WOULD BE DEAD. ALL DOCTORS
9 TESTIFIED TO THAT EFFECT. SO FOR HIM TO DIMINISH THE
10 INJURIES TO THIS CHILD BECAUSE THERE'S NO BLOOD IN THESE
11 PICTURES AND BECAUSE THEY'RE NOT GORY DOES NOT MINIMIZE
12 THE AFFECT THEY HAD ON THE INSIDE OF THIS CHILD.

13 HE WAS ADVISED NOT TO DO C.P.R.
14 BY THE 911 ATTENDANT. BUT THEN HE SAYS THAT HE WAS
15 DOING C.P.R. DURING CROSS-EXAMINATION HE ALLUDED THAT
16 IT WAS AN ANEURISM. THE DOCTORS TESTIFIED THAT NO, IT
17 WAS NOT AN ANEURISM; IT WAS A SUBDURAL HEMATOMA CAUSED
18 BY BLUNT FORCE TRAUMA TO THE HEAD. DURING HIS CLOSING
19 HE -- SO WE KNOW E.M.S.; YOU KNOW, THEY'RE NOT VERY
20 GENTLE WHEN THEY START DOING C.P.R. THEY COULD HAVE
21 CAUSED THESE INJURIES. I GUARANTEE YOU E.M.S. DOES NOT
22 DO C.P.R. BY STOMPING SOMEBODY ON THE SIDE OF THEIR
23 HEAD. THAT'S NOT HOW YOU DO C.P.R.

24 LADIES AND GENTLEMEN, ALL THE

CLOSING ARGUMENT - MRS. MURPHY

758

1 INFLECTED THOSE WOUNDS ON Child JUDGE GOODSTEIN IS
2 GOING TO INSTRUCT YOU THAT BATTERED CHILD SYNDROME
3 EVIDENCE GIVES RISE TO AN INFERENCE OF THE INJURIES
4 SUSTAINED ON NOVEMBER THE THIRD WERE NON-ACCIDENTAL.
5 NOW, WE DON'T HAVE TO PROVE BEYOND A REASONABLE DOUBT
6 WHO COMMITTED ALL THOSE PRIOR INJURIES ON Child BUT
7 IT CERTAINLY GIVES YOU A GLIMPSE INTO HIS WORLD; A
8 GLIMPSE OF SO CALLED PARENTS AND WHAT Child HAD TO
9 LIVE WITH. DEFENSE COUNSEL ASKED WHERE IS Child WHY
10 ISN'T HE HERE. WELL, YOU KNOW, IT IS VERY SAID JUST
11 LIKE MR. DAVIS SAID THAT THE STATE CARES MORE ABOUT THAT
12 CHILD THAN HIS OWN PARENTS. SURE! I COULD SUBPOENA HIM
13 AND BRING HIM ON THAT WITNESS STAND AND HAVE HIM TESTIFY
14 BEFORE YOU. THINK OF THE TRAUMATIC EFFECT THAT WOULD
15 HAVE ON A CHILD. IT IS SAD. AND IT DOESN'T MAKE SENSE
16 THAT WE'RE HERE TODAY. IT'S UNFORTUNATE THAT WE ARE
17 HERE TODAY. IN A PERFECT WORLD WE WOULDN'T BE HERE
18 TODAY. IN A PERFECT WORLD, CHILDREN WOULD NOT BE
19 STOMPED ON AND BEATEN ON AND ALMOST KILLED BY THE TWO
20 PEOPLE RESPONSIBLE FOR PROTECTING HIM.

21 DEFENSE WOULD ALSO HAVE YOU
22 BELIEVE THAT BECAUSE SHYHEEM WAS SMALL AND HYPER; IN
23 OTHER WORDS NOT PERFECT, THAT IT'S OKAY TO TREAT HIM IN
24 THIS WAY. YOU KNOW DEFENSE COUNSEL WHEN -- DURING THE

CLOSING ARGUMENT - MRS. MURPHY

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1 "WELL, YOU HAD TO STAY UP NIGHTS, AND IT WAS HARD TO
2 FEED HIM, AND HE WAS PREMATURE. LADIES AND GENTLEMEN,
3 THAT'S WHAT PARENTHOOD IS. YES; YOU HAVE TO STAY UP
4 NIGHTS. YOU HAVE TO FEED THEM. YOU HAVE TO TAKE CARE
5 OF THEM. THAT DOESN'T MAKE IT OKAY TO STOMP AND BEAT
6 THIS CHILD JUST BECAUSE HE'S NOT PERFECT. MR. DUKES
7 TALKED ABOUT HIS CLIENT SUFFERING BEING IN JAIL. HE
8 DOESN'T APPEAR TO BE BLINDED TO ME. HE DOESN'T HAVE ANY
9 BROKEN BONES. HE DOESN'T HAVE CIGARETTE BURNS OR LOOP
10 PATTERN INJURIES ON HIS BACK OR SCARS ON HIS EARS.

11 Child DOES.

12 LADIES AND GENTLEMEN, IF YOU
13 HEARD NEWS REPORTS THIS MORNING THAT A DOG HAD BEEN
14 VIOLENTLY BEATEN, BURNED, BROKEN, BLINDED, IT WOULD BE
15 PUBLIC OUTRAGE. THIS ISN'T A DOG WE'RE TALKING. THIS
16 IS A HUMAN BEING COMPLETELY DEPENDENT UPON THOSE TWO FOR
17 HIS CARE, THE TWO RESPONSIBLE FOR HIS WELFARE; PUT HIM
18 WHERE HE'S AT TODAY. DEFENSE COUNSEL MADE NOTE THAT,
19 YOU KNOW, SUPERMAN AND THE UNDERDOG. WELL, I WANT YOU
20 TO FIND FOR THE UNDERDOG TODAY, FOR Child THEY
21 INTRODUCED THESE PICTURES OF A HAPPY CHILD; ONE IN THE
22 STRIPE SHIRT; Child BEFORE HE WAS LEFT ALONE
23 BY HIS MOTHER WITH DEFENDANT BURDEN. Child
24 AFTER. (INDICATING.) THESE ARE THE PICTURES THAT ARE
25 RELEVANT HERE TODAY SUPERMAN BEFORE HE WAS

CLOSING ARGUMENT - MRS. MURPHY

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1 BEATEN BY HIS FATHER. Child AFTERWARDS.
2 (INDICATING.) THAT'S WHAT'S RELEVANT HERE TODAY,
3 LADIES AND GENTLEMEN.

4 THE ONE PICTURE DEFENSE COUNSEL
5 BRINGS IN IS OF ANOTHER CHILD'S BIRTHDAY PARTY. LADIES
6 AND GENTLEMEN, DEFENSE CLAIMS THAT BECAUSE THESE
7 INJURIES ARE NOT BREAKING THE SKIN THAT SOMEHOW THEY'RE
8 LESS SEVERE. SOMETIMES THE DEEPEST WOUNDS ARE THE ONES
9 THAT YOU CAN'T SEE. YOUR VERDICT CAN NEVER GIVE Child
10 WHAT HE DESERVES. IT CAN NEVER TAKE HIM BACK TO AN
11 INFANCY FILLED WITH GENTLE TOUCHES AND LULLABIES. IT
12 CAN GIVE HIM ONE THING. IT CAN GIVE HIM A SENSE OF
13 JUSTICE BECAUSE THE WHOLE ISN'T BAD. IT CAN GIVE HIM
14 POWER AND KNOWLEDGE THAT CHILD ABUSE WILL NOT BE
15 TOLERATED; THAT CHILDREN ARE WORTHWHILE. THE DEFENSE,
16 THESE DEFENDANTS, CANNOT GET AWAY WITH CHILD ABUSE OF
17 THIS TYPE IN THE DORCHESTER COUNTY, LADIES AND
18 GENTLEMEN. YOUR VERDICT CAN DO THAT. YOU CAN'T REPLACE
19 WHAT HE'S LOST, BUT YOU CAN GIVE HIM JUSTICE.

20 I ASK THAT YOU FIND THEM BOTH
21 GUILTY AS CHARGED. THANK YOU.

22 THE COURT: THANK YOU, MRS. MURPHY.

23 LADIES AND GENTLEMEN, WE ARE GOING TO TAKE THE BREAK
24 THAT I SPOKE WITH YOU ABOUT. AND LET ME TELL YOU WHAT

CLOSING ARGUMENT - MRS. MURPHY

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1 TAKE THE TIME THAT YOU NEED. AND IF ANYONE NEEDS TO
2 SMOKE, TO AHEAD AND DO THAT. AND I DO WANT YOU TO ORDER
3 YOUR LUNCH. HOPEFULLY THE MENUS, IF THEY'RE NOT IN YOUR
4 ROOM NOW, THEY WILL BE IN THERE MOMENTARILY. WHEN YOU
5 HAVE SMOKED IF YOU WANT TO SMOKE; IF YOU HAVE JUST TAKEN
6 YOUR BREAK; AND ONCE YOU HAVE FILLED OUT YOUR LUNCHEON
7 REQUEST, IF YOU ALL WILL SIMPLY KNOCK ON THE DOOR, THEN
8 WE WILL CONTINUE. WHAT REMAINS, OF COURSE, IS THE
9 CHARGE ON THE LAW. YOU ARE NOT PREPARED TO DELIBERATE
10 BECAUSE YOU HAVE NOT HEARD MY CHARGE ON THE LAW. SO BE
11 MINDFUL DURING THIS BREAK NOT TO DISCUSS THIS MATTER OR
12 ALLOW ANYONE TO DISCUSS IT WITH YOU. LEAVE YOUR
13 NOTEBOOKS IN YOUR CHAIR, AND STEP TO YOUR JURY ROOM.

14 (AT THIS TIME JURY RETIRES TO JURY ROOM FOR A RECESS.)

15 THE COURT: ALL RIGHT. THANK YOU. WE
16 HAVE THE VERDICT FORM. THERE ARE TWO OF THEM; ONE
17 INVOLVING MR. BURDEN AND ONE, OF COURSE, INVOLVING
18 MS. GADSON. I WANTED YOU ALL TO TAKE A LOOK AT
19 THAT FOR ME, PLEASE. THANK YOU, MAJOR. I'LL BE
20 IN CHAMBERS. IF YOU HAVE ANY CONCERNS ABOUT IT,
21 JUST COME ON BACK AND LET ME HEAR ABOUT IT, AND
22 WE'LL GO OVER IT.

23 (BRIEF RECESS.)

24 THE COURT: ALL RIGHT; SOMEBODY HAS

MOTIONS

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1 BE CHARGED AS A LESSER INCLUDED OFFENSE, ALTHOUGH
2 LAWFUL NEGLECT OF LEGAL CUSTODIAN. AND WE'VE
3 TALKED ABOUT IT. I'VE CONSIDERED IT; AND HAVE
4 DETERMINED THAT CRUELTY TO CHILDREN IS NOT A LESSOR
5 INCLUDED OFFENSE OF UNLAWFUL NEGLECT OF LEGAL
6 CUSTODIAN. I WANTED TO PUT ON THE RECORD FOR THAT.
7 UNLAWFUL NEGLECT BY LEGAL CUSTODIAN, PARTICULAR THE
8 SECTION THAT APPLIES TO THIS CASE, WOULD BE
9 27-50(1); TO PLACE THE CHILD AT UNREASONABLE RISK
10 OF HARM EFFECTING THE CHILD'S LIFE, PHYSICAL OR
11 MENTAL HEALTH OR SAFETY. 27-70; IN ORDER FOR THAT
12 TO BE APPLICABLE, IN THAT THE ALLEGATION OR THE
13 POSITION STATE THAT IS NOT THAT MS. GADSON DID THE
14 PHYSICAL HARM BUT WAS ON NOTICE AND ALLOWED THE
15 CHILD TO BE PLACED AT UNREASONABLE RISK OF THAT
16 HARM. THE ONLY WAY THAT 27-70 COULD BE APPLICABLE
17 WOULD BE IF SHE CAUSED THE ILL TREATMENTS OF HER
18 CHILD. THERE ISN'T ANY ALLEGATION THAT SHE
19 PARTICIPATED; THAT SHE CAUSED THE HARM. THE
20 ALLEGATION IS THAT SHE PLACED THE CHILD AT
21 UNREASONABLE RISK OF HARM. AND I FIND THAT TO BE A
22 DIFFERENT ELEMENT, AND THEREFORE CRUELTY TO
23 CHILDREN I WOULD FIND NOT TO BE A LESSER INCLUDED
24 OFFENSE OF 27-50 AS I UNDERSTAND MR. DAVIS'

MOTIONS

763

1 THE CAUSING OF THE UNREASONABLE RISK OF HARM; NOT
2 THE CAUSING OF THE INJURY.

3 MR. DAVIS: YOUR HONOR, SO THEREFORE IT'S
4 CORRECT THAT YOU'RE NOT GOING TO CHARGE SUBSECTION
5 27-50, PART TWO, TO THE JURY? BUT IT SAYS "DO OR
6 CAUSES TO BE DONE UNLAWFUL OR MALICIOUS, ANY BODILY
7 HARM TO THE CHILD SO THAT LIFE OR HEALTH OF THE
8 CHILD SO THAT LIFE OR HEALTH OF THE CHILD IS IN
9 DANGER OR IS LIKELY TO BE ENDANGERED?" YOU'RE NOT
10 GOING TO CHARGE THAT TO THE JURY?

11 THE COURT: IT IS MY INTENTION NOT TO.
12 DO YOU WISH FOR ME TO?

13 MR. DAVIS: NO, MA'AM.

14 THE COURT: NO; IT WAS NOT MY INTENTION.
15 I DON'T THINK THAT -- IT IS NOT MY INTENTION TO
16 CHARGE THAT.

17 MR. DAVIS: JUST NOTE IT FOR THE RECORD.

18 THE COURT: YES. I THINK THAT IF I WAS
19 GOING TO CHARGE THAT THE SECOND PARAGRAPH; BECAUSE
20 AGAIN, THERE'S NO ALLEGATION ON BEHALF OF THE STATE
21 THAT SHE CAUSED THIS YOUNG FELLOW'S INJURY BUT ONLY
22 THAT THIS -- SHE PLACED HIM AT UNREASONABLE RISK OF
23 HARM. AND I NOTE YOUR EXCEPTION ON THE RECORD.
24 JUST MAKE -- THERE IS SOME QUESTION, MR. DAVIS,
25

MOTIONS

764

1 RAISED AT THE CONCLUSION OF THE CHARGE. MAKE
2 YOURSELF A NOTE; AND I WILL LIKEWISE TRY TO
3 REMEMBER TO RENEW THAT AT THAT POINT.

4 MR. DAVIS: ALL RIGHT.

5 THE COURT: BUT I CERTAINLY -- LET THE
6 RECORD REFLECT IT HAS BEEN FULLY DISCUSSED. I DO
7 NOT INTEND TO CHARGE IT. I'M TELLING YOU I DO NOT
8 INTEND TO CHARGE IT. AND YOU AND I BOTH -- I THINK
9 YOU'VE RAISED IT ADEQUATELY TO THE COURT.

10 MR. DAVIS: THANK YOU, YOUR HONOR.

11 THE COURT: VERY WELL. ANYTHING FURTHER
12 BEFORE WE BRING THE JURY OUT? DID YOU ALL HAVE A
13 CHANCE TO SEE THE JURY FORM?

14 MR. DAVIS: WE'RE READY, YOUR HONOR.
15 THERE IS NO EXCEPTION TO THE GUILTY FORMS.

16 THE COURT: THE VERDICT FORMS.

17 MR. DAVIS: THE VERDICT.

18 THE COURT: LET'S HAVE THE JURY.

19 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

20 THE COURT: LET ME SEE Y'ALL VERY
21 BRIEFLY; JUST BRIEFLY.

22 (AT THIS TIME BENCH CONFERENCE IS HELD.)

23 THE COURT: ALL RIGHT, LADIES AND
24 GENTLEMEN. LET ME TELL YOU JUST TO SORT OF PREVIEW

MOTIONS

765

1 MAYBE AS LONG AS 45 MINUTES. I THINK THAT'S A VERY
2 GENEROUS AMOUNT OF TIME. I THINK IT WILL TAKE ME
3 THAT LONG TO GIVE YOU THE CHARGE ON THE INSTRUCTION
4 ON THE LAW. IT COULD BE LESS. BUT I'LL SORT OF
5 WATCH THE CLOCK. I'M CURIOUS TO KNOW; BUT IT WILL
6 TAKE ME ABOUT 40 TO 45 MINUTES TO GIVE THE ENTIRE
7 CHARGE TO YOU. I'M GOING TO BEGIN THAT PROCESS
8 NOW. AT ANY POINT IN TIME YOU HAVE TROUBLE HEARING
9 ME, JUST RAISE YOUR HAND. I'LL INCREASE TO VOLUME
10 HAPPILY.

11 * * * * *

CHARGE TO THE JURY

766

CHARGE TO THE JURY

BY THE COURT

NOW, MR. PRESIDING JURY AND LADIES AND GENTLEMEN OF THE JURY, THERE ARE TWO INDICTMENTS WHICH CHARGE THE DEFENDANT, MR. WILLIAM DEAN BURDEN, WITH THE CHARGES WITH WHICH WE ARE HERE ABOUT REGARDING HIM. EACH, OF COURSE, OF THE TWO INDICTMENTS CHARGE MR. BURDEN DONE WITH ONE OFFENSE. THE TWO INDICTMENTS CHARGING MR. BURDEN ARE: ASSAULT AND BATTERY WITH INTENT TO KILL AND CHILD ABUSE WITH THE INFLECTION OF GREAT BODILY HARM UPON A CHILD. THERE IS ONE INDICTMENT THAT CHARGES ADRIAN GADSON WITH THE OFFENSE OF UNLAWFUL NEGLECT OF A CHILD BY LEGAL CUSTODIAN.

I REMIND YOU THAT THE FACT THAT MR. BURDEN AND MS. GADSON WERE ARRESTED, CHARGED, AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE, CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. LADIES AND GENTLEMEN, THE INDICTMENTS ARE DOCUMENTS AND ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGE MADE AGAINST THE DEFENDANT.

CHARGE TO THE JURY

766

1

CHARGE TO THE JURY

2

BY THE COURT

3

4

NOW, MR. PRESIDING JURY AND

5

LADIES AND GENTLEMEN OF THE JURY, THERE ARE TWO

6

INDICTMENTS WHICH CHARGE THE DEFENDANT, MR. WILLIAM DEAN

7

BURDEN, WITH THE CHARGES WITH WHICH WE ARE HERE ABOUT

8

REGARDING HIM. EACH, OF COURSE, OF THE TWO INDICTMENTS

9

CHARGE MR. BURDEN DONE WITH ONE OFFENSE. THE TWO

10

INDICTMENTS CHARGING MR. BURDEN ARE: ASSAULT AND

11

BATTERY WITH INTENT TO KILL AND CHILD ABUSE WITH THE

12

INFLICTION OF GREAT BODILY HARM UPON A CHILD. THERE IS

13

ONE INDICTMENT THAT CHARGES ADRIAN GADSON WITH THE

14

OFFENSE OF UNLAWFUL NEGLECT OF A CHILD BY LEGAL

15

CUSTODIAN.

16

I REMIND YOU THAT THE FACT THAT

17

MR. BURDEN AND MS. GADSON WERE ARRESTED, CHARGED, AND

18

INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE,

19

CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS

20

CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF

21

GUILT. LADIES AND GENTLEMEN, THE INDICTMENTS ARE

22

DOCUMENTS AND ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS

23

WHICH CONTAIN THE CHARGE MADE AGAINST THE DEFENDANT.

24

IT'S THE WAY THAT MATTERS ARE BROUGHT INTO THIS COURT.

25

I CHARGE YOU THAT THERE ARE OBVIOUSLY TWO DEFENDANTS IN

CHARGE TO THE JURY

767

1 THIS CASE; MR. BURDEN AND MS. GADSON.

2 THE INDICTMENTS IN THIS CASE
3 ALLEGE DIFFERENT OFFENSES AGAINST THE DEFENDANTS. NOW I
4 WANT TO GO OVER THOSE WITH YOU. FIRST I'M GOING TALK
5 ABOUT THE TWO INDICTMENTS INVOLVING MR. BURDEN. THEN
6 I'M GOING TO TALK TO YOU ABOUT THE ONE INDICTMENT
7 INVOLVING MS. GADSON. I'M GOING TO READ THE INDICTMENTS
8 TO YOU. NOW, THE TWO INDICTMENTS AGAINST MR. BURDEN ARE
9 ASSAULT AND BATTERY WITH INTENT TO KILL, AND CHILD
10 ABUSE, INFLECTION OF GREAT BODILY HARM UPON A CHILD.
11 I'M GOING TO READ THOSE TO YOU NOW. THE INDICTMENT FOR
12 ASSAULT AND BATTERY WITH INTENT TO KILL SAYS THAT
13 WILLIAM DEAN BURDEN DID IN DORCHESTER COUNTY ON OR ABOUT
14 NOVEMBER THE THIRD, 2001, WITH MALICE AFORETHOUGHT DID
15 COMMIT AN ASSAULT AND BATTERY UPON THE VICTIM, Child
16 BY STRIKING THE FIVE YEAR OLD VICTIM MULTIPLE
17 TIMES RENDERING HIM UNCONSCIOUS AND CAUSING MULTIPLE
18 INJURIES ON THE CHILD'S BODY, THIS OFFENSE BEING IN
19 VIOLATION OF SECTION 16-3-620 OF THE CODE OF LAWS OF
20 SOUTH CAROLINA. THAT CONCLUDES THE READING OF THE
21 INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL
22 AGAINST MR. BURDEN.

23 NOW, THE INDICTMENT FOR CHILD
24 ABUSE, INFLECTION OF GREAT BODILY HARM UPON A CHILD, IS
25 THE SECOND INDICTMENT INVOLVING MR. BURDEN, AND IT SAYS

CHARGE TO THE JURY

768

1 THAT THE DEFENDANT, WILLIAM DEAN BURDEN, DID IN
2 DORCHESTER COUNTY ON OR ABOUT NOVEMBER THE THIRD, 2001,
3 KNOWINGLY AND UNLAWFULLY INFLICT GREAT BODILY INJURY
4 UPON Child [REDACTED], A CHILD FIVE YEARS OF AGE WHOSE
5 DATE OF BIRTH IS 1/2/96 THEREBY VIOLATING SECTION
6 16-395(A) OF THE CODE OF LAWS OF SOUTH CAROLINA. THAT
7 IS THE SECOND INDICTMENT INVOLVING MR. BURDEN.

8 NOW, THERE IS ONE INDICTMENT
9 INVOLVING MS. GADSON, AND THAT UNLAWFUL NEGLIGENCE OF A
10 CHILD BY LEGAL CUSTODIAN. THIS INDICTMENT SAYS AS
11 FOLLOWS: THAT ADRIAN GADSON DID IN DORCHESTER COUNTY ON
12 OR ABOUT NOVEMBER THE THIRD, 2001, WILLFULLY AND
13 UNLAWFULLY PLACE HER FIVE YEAR OLD CHILD IN DANGER BY
14 LEAVING THE CHILD IN THE CUSTODY OF WILLIAM D. BURDEN
15 WHO HAS BEEN INDICTED FOR ASSAULT AND BATTERY WITH THE
16 INTENT TO KILL WHEREBY THE SAME CHILD WAS THE VICTIM.
17 THAT IS THE INDICTMENT INVOLVING MS. GADSON. OBVIOUSLY
18 EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE.
19 YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE
20 EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY
21 YOUR DECISION AS TO ANY OTHER INDICTMENT. THE
22 INDIVIDUAL DEFENDANT, MR. BURDEN, MAY BE ACQUITTED OR
23 CONVICTED ON EITHER OR BOTH OF THE OFFENSES WITH WHICH
24 HE IS CHARGED. MS. GADSON MAY BE ACQUITTED OR CONVICTED
25 ONLY ON THE ONE OFFENSE WITH WHICH SHE IS CHARGED. YOU

CHARGE TO THE JURY

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1 WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR
2 NOT GUILTY FOR EACH INDICTMENT. THE CASE OF EACH
3 DEFENDANT AND THE EVIDENCE AND LAW CONCERNING THAT
4 DEFENDANT SHOULD BE, MUST BE, CONSIDERED SEPARATELY AND
5 INDIVIDUALLY. YOUR VERDICT DOES NOT HAVE TO BE THE SAME
6 FOR BOTH DEFENDANTS. THE FACT THAT YOU MAY FIND ONE
7 DEFENDANT GUILTY OR NOT GUILTY SHOULD NOT CONTROL YOUR
8 VERDICT AS TO THE OTHER DEFENDANT. IT WILL DEPEND UPON
9 YOUR VIEW OF THE TESTIMONY AND EVIDENCE. YOU MUST TAKE
10 EACH DEFENDANT AND CONSIDER THE EVIDENCE AS TO THAT
11 DEFENDANT AND MY INSTRUCTIONS TO YOU ON THE LAW. YOU
12 WILL THEN WRITE A SEPARATE VERDICT OF GUILTY OR NOT
13 GUILTY FOR EACH OF THE TWO INDICTMENTS DIRECTED OR
14 CHARGING MR. BURDEN AND A SEPARATE VERDICT OF GUILTY OR
15 NOT GUILTY ON THE ONE INDICTMENT DIRECTED TOWARDS OR
16 CHARGING MS. GADSON. IN OTHER WORDS, EACH OF THESE
17 INDICTMENTS MUST BE CONSIDERED SEPARATELY AND
18 INDIVIDUALLY, AND EACH OF DEFENDANTS MUST BE CONSIDERED
19 SEPARATE AND INDIVIDUALLY.

20 NOW, I TELL YOU THAT EACH OF
21 THESE DEFENDANTS, MR. BURDEN AND MS. GADSON, HAVE PLED
22 NOT GUILTY TO THE INDICTMENT OR INDICTMENTS WITH WHICH
23 HE OR SHE IS CHARGED, AND THESE PLEAS PUT THE BURDEN ON
24 THE STATE TO PROVE A DEFENDANT GUILTY OF THE INDICTMENT

CHARGE TO THE JURY

770

1 PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
2 SOUTH CAROLINA IS NEVER, IS NEVER, REQUIRED TO PROVE
3 HIMSELF OR HERSELF INNOCENT.

4 I CHARGE YOU THAT IT IS AN
5 IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL
6 CASE, NO MATTER WHAT THE SERIOUSNESS OF THE CRIME MAY
7 BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME
8 FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS
9 BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT
10 BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF
11 INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR
12 DELIBERATIONS, BUT IT ACCOMPANIES EACH DEFENDANT
13 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT
14 BASED UPON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND
15 A REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE IS
16 LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS
17 OF THE DEFENDANT, EACH OF THESE DEFENDANTS, WHICH
18 REMAINS WITH HIM AND REMAINS WITH HER UNTIL IT HAS BEEN
19 STRIPPED FROM HIM OR FROM HER BY EVIDENCE SATISFYING YOU
20 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. THE
21 PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT
22 IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT
23 TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE
24 JURY, ARE SATISFIED FROM THE EVIDENCE OF A DEFENDANT'S

CHARGE TO THE JURY

771

1 EACH OF THESE DEFENDANTS INDIVIDUALLY.

2 LADIES AND GENTLEMEN, WHAT IS
3 REASONABLE DOUBT? A REASONABLE DOUBT IS THE KIND OF
4 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE
5 TO ACT. THE STATE HAS THE BURDEN OF PROVING A DEFENDANT
6 GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE
7 SERVED AS JURORS IN CIVIL CASES WHERE YOU WERE TOLD THAT
8 IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY
9 TRUE THAN NOT TRUE SUCH AS THE GREATER WEIGHT OR THE
10 PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE
11 STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST
12 BE BEYOND A REASONABLE DOUBT. PROOF BEYOND A REASONABLE
13 DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
14 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS
15 WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND IN
16 CRIMINAL CASES, THE LAW DOES NOT REQUIRE PROOF THAT
17 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED UPON YOUR
18 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
19 THAT A DEFENDANT IS GUILTY OF THE CRIME CHARGED OR THE
20 DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND
21 THAT DEFENDANT GUILTY OF THAT CRIME. IF, ON THE OTHER
22 HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THAT
23 DEFENDANT IS NOT GUILTY OF THAT CHARGE, YOU MUST GIVE
24 THAT DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM OR

CHARGE TO THE JURY

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1 I REMIND YOU THAT DURING THIS
2 TRIAL YOU AND I HAVE HAD CERTAIN DUTIES TO PERFORM. AS
3 THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER
4 THE TRIAL OF THIS CASE. BUT I ALSO HAVE THE DUTY TO
5 RULE ON THE ADMISSIBILITY OF EVIDENCE OFFERED DURING
6 THIS TRIAL. YOU ARE TO CONSIDER THE COMPETENT EVIDENCE
7 BEFORE YOU AND ONLY THE COMPETENT EVIDENCE BEFORE YOU.
8 YOU ARE TO CONSIDER THE TESTIMONY WHICH HAS BEEN
9 PRESENTED AND ANY EXHIBITS WHICH HAVE BEEN MADE A PART
10 OF THE RECORD IN THIS CASE. I HAVE THE ADDITIONAL DUTY
11 TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE
12 PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS
13 CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY
14 THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE
15 ANY IDEA AS TO WHAT THE LAW IS OR WHAT IT OUGHT TO BE
16 AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE
17 LAW IS, YOU MUST ABANDON YOUR PRECONCEIVED IDEA BECAUSE
18 YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW
19 EXACTLY AS I STATE IT TO YOU.

20 NOW LADIES AND GENTLEMEN, IN
21 EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY
22 AND THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN THE
23 CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON,
24 OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN
25 A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGES OF THE

CHARGE TO THE JURY

773

1 FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I
2 HAVE SAID DURING THE PROGRESS OF THIS TRIAL AND RULING
3 UPON THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE, OR
4 ANYTHING THAT I SAY NOW OR DURING THE COURSE OF THESE
5 INSTRUCTIONS TO YOU THAT I HAVE ANY OPINION ABOUT THE
6 FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE
7 AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A
8 MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS
9 JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE
10 VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE
11 PRESENTED IN THIS TRIAL.

12 LET'S TALK ABOUT THE EVIDENCE
13 THAT CAN BE PRESENTED IN A TRIAL BECAUSE GENERALLY THERE
14 ARE TWO TYPES OF EVIDENCE WHICH IS PRESENTED DURING A
15 TRIAL; DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.
16 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS
17 TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYE
18 WITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
19 THE FACT, THE MAIN FACT, TO BE PROVED. CIRCUMSTANTIAL
20 EVIDENCE IS A PROOF OF A CHAIN OF FACTS AND
21 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS
22 EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS
23 FROM WHICH THE MAIN FACT MAY BE INFERRED.
24 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON

CHARGE TO THE JURY

774

1 ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO
2 BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE NOR
3 IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
4 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU
5 SHOULD WEIGH ALL THE EVIDENCE IN THE CASE. AND AFTER
6 WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF
7 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT,
8 YOU MUST FIND THE DEFENDANT NOT GUILTY OF THAT CHARGE.

9 NOW, I WANT TO TALK A LITTLE BIT
10 MORE ABOUT CIRCUMSTANTIAL AND DIRECT EVIDENCE. WHEN THE
11 STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, YOU MAY NOT
12 CONVICT A DEFENDANT UNLESS EVERY CIRCUMSTANCE RELIED ON
13 BY THE STATE IS PROVEN BEYOND A REASONABLE DOUBT. AND
14 ALL OF THE CIRCUMSTANCES SO PROVEN ARE CONSISTENT WITH
15 EACH OTHER AND TAKEN TOGETHER POINT CONCLUSIVELY TO THE
16 GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER
17 REASONABLE HYPOTHESIS. IT IS NOT SUFFICIENT THAT THE
18 CIRCUMSTANCES CREATE A PROBABILITY EVEN IF IT IS A
19 STRONG PROBABILITY. IF ASSUMING THE CIRCUMSTANCES ARE
20 TRUE, THERE IS A REASONABLE HYPOTHESIS WHICH DOES NOT
21 INCLUDES THE GUILT OF THE ACCUSED ON THAT CHARGE, THE
22 PROOF HAS FAILED.

23 NOW, NECESSARILY, LADIES AND
24 GENTLEMEN, AS YOU DETERMINE THE FACTS OF THIS CASE, YOU

CHARGE TO THE JURY

775

1 TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS
2 BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO
3 ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE THE
4 EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH. IN
5 DETERMINING THE BELIEVABILITY OR CREDIBILITY OF
6 WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY
7 BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL
8 WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF
9 THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART
10 OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE
11 THE TESTIMONY OF A WITNESS IN ITS ENTIRETY, OR YOU MAY
12 REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU
13 MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU
14 ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THE
15 CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND THE
16 MANNER OF A WITNESS WHILE ON THE WITNESS STAND OR WHILE
17 TESTIFYING.

18 NOW, LADIES AND GENTLEMEN, IN
19 THIS CASE YOU HAVE HEARD THE TESTIMONY OF INDIVIDUALS
20 WHO HAVE BEEN DETERMINED TO BE EXPERT WITNESSES. YOU
21 CONSIDER EXPERT TESTIMONY IN THE SAME MANNER AS YOU DO
22 ANY OTHER TESTIMONY, AND YOU GIVE IT THE WEIGHT TO WHICH
23 YOU BELIEVE IT IS ENTITLED WHEN CONSIDERED WITH ALL THE
24 OTHER EVIDENCE IN THE CASE. EXPERT TESTIMONY, LADIES

CHARGE TO THE JURY

776

1 UNDERSTAND THE EVIDENCE AND NOT FOR THE PURPOSE OF
2 CONTROLLING YOUR JUDGMENT. THE VALUE OF EXPERT
3 TESTIMONY DOES NOT DEPEND UPON THE SKILL AND KNOWLEDGE
4 PROFESSED BY THE EXPERT. IN OTHER WORDS, TESTIFIED TO,
5 TALKED ABOUT, BY THE EXPERT, BUT UPON THE SKILL AND
6 KNOWLEDGE THAT THE EXPERT ACTUALLY POSSESSES. IT IS FOR
7 YOU TO JUDGE WHETHER AN EXPERT POSSESSES SUCH KNOWLEDGE.
8 IN THIS REGARD, YOU MAY CONSIDER THE EXPERT'S TRAINING,
9 EXPERIENCE, ABILITY TO COMMUNICATE IDEAS TO YOU, THE
10 LOGIC OF THE EXPERT'S OPINION, THE FACTUAL SUPPORT FOR
11 THE OPINION, AND ALL THE OTHER FACTORS AS YOU WOULD
12 JUDGE AND WEIGH THE TESTIMONY OF OTHER WITNESSES. THE
13 VALUE AND THE EFFECT OF EXPERT TESTIMONY ARE MATTERS
14 SOLELY TO BE DETERMINED AND ESTIMATED BY YOU.

15 NOW, LADIES AND GENTLEMEN, IN
16 ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT
17 IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO
18 BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE
19 PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, WILLFULNESS,
20 OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN
21 BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT
22 IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY
23 FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE
24 IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY.

CHARGE TO THE JURY

777

1 BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND. SO THE
2 LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE
3 CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU
4 MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
5 REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO
6 ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT
7 INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY
8 AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS
9 OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF
10 THE CASE.

11 CRIMINAL INTENT IS A MENTAL
12 STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO
13 DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE
14 CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS, OF COURSE,
15 YOU DO INDIVIDUALLY REGARDING EACH CHARGE AND EACH OF
16 THESE DEFENDANTS, AND YOU DO THIS ANALYSIS INDIVIDUALLY.
17 CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO
18 ACT. IT MAY ARISE FROM NEGLIGENCE OR RECKLESSNESS OR
19 INDIFFERENCE TO DUTY OR TO CONSEQUENCES THAT ARE
20 CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL
21 INTENT.

22 NOW, LADIES AND GENTLEMEN, IN
23 THIS MATTER THERE HAVE BEEN STATEMENTS ALLEGED TO HAVE
24 BEEN MADE BY EACH OF THESE DEFENDANTS. THEY HAVE BEEN

CHARGE TO THE JURY

778

1 HAS DETERMINED THAT THE STATEMENTS WERE ADMISSIBLE, I
2 INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION OF
3 WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT. IF THE
4 DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE
5 WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT
6 VOLUNTARILY AND OF HIS OR HER OWN FREE WILL. THIS MEANS
7 THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE,
8 FEAR, THREATS, COERCION, OR INTIMIDATION OR BY HOPE OR A
9 PROMISE OF LENIENCY OR A REWARD OF ANY KIND. IN
10 DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU
11 SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE
12 DEFENDANTS AND THE DETAILS OF THE QUESTIONING. SOME OF
13 THE FACTORS THAT YOU MUST CONSIDER ARE THE AGE OF THE
14 DEFENDANT, THE DEFENDANT'S EDUCATION OR LACK OF IT, THE
15 DEFENDANT'S MENTAL ABILITY OR CAPACITY; THE DEFENDANT'S
16 I.Q. OR INTELLIGENCE; THE DEFENDANT'S BACKGROUND AND
17 ENVIRONMENT; THE PLACE AND LENGTH OF DETENTION; THE
18 NATURE OF THE QUESTIONING, THE ADVICE OR LACK THEREOF TO
19 THE DEFENDANT OF HIS OR HER CONSTITUTIONAL RIGHTS
20 INCLUDING BUT NOT LIMITED TO THE RIGHT TO REMAIN SILENT;
21 THAT ANY STATEMENT COULD BE USED AGAINST HIM OR HER IN A
22 COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; THAT
23 IF HE OR SHE COULD NOT AFFORD A LAWYER, A LAWYER WOULD
24 BE APPOINTED TO REPRESENT HIM OR HER WITHOUT ANY COST;

CHARGE TO THE JURY

779

1 TIME. YOU MUST CAREFULLY CONSIDER ALL OF THE
2 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO
3 AN ALLEGED STATEMENT. THE STATE HAS THE BURDEN OF
4 PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED
5 STATEMENT WAS VOLUNTARY. IF YOU DETERMINE THAT IT WAS,
6 YOU MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION
7 THAT YOU DEAL PROPER. YOU MUST DECIDE WHAT WEIGHT, IF
8 ANY, SHOULD BE GIVEN TO THE ALLEGED STATEMENT. IF YOU
9 DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND
10 VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT
11 CONSIDER THE STATEMENT AT ALL.

12 NOW, THERE HAS BEEN EVIDENCE
13 PRESENTED THAT PERHAPS WITNESSES HAVE MADE PRIOR
14 STATEMENTS WHICH WERE NOT CONSISTENT WITH THE WITNESSES
15 PRESENT TESTIMONY. YOU MAY USE THIS EVIDENCE TO DECIDE
16 WHETHER OR NOT TO BELIEVE THE WITNESS. YOU MAY ALSO USE
17 EVIDENCE OF THE EARLIER CONTRADICTORY STATEMENTS TO
18 DETERMINE THE TRUTH OF THOSE STATEMENTS. IT IS UP TO
19 YOU TO DECIDE WHETHER TO BELIEVE THE EARLIER STATEMENTS
20 OR THE TESTIMONY GIVEN AT TRIAL. IF A WITNESS IS SHOWN
21 TO HAVE KNOWINGLY TESTIFIED UNTRUTHFULLY CONCERNING ANY
22 MATERIAL MATTER, YOU MAY CONSIDER THIS IN DETERMINING
23 WHETHER TO TRUST THE WITNESSES TESTIMONY AS TO OTHER
24 MATTERS. YOU MAY REJECT ALL OF THAT WITNESS OR GIVE ALL

CHARGE TO THE JURY

780

1 IT DESERVES.

2 NOW LADIES AND GENTLEMEN, IN A
3 MOMENT I'M GOING TO BEGIN TO GIVE YOU THE CHARGE OR THE
4 INSTRUCTION ON THE LAW ON THE INDIVIDUAL CHARGES. I'M
5 FIRST GOING BEGIN WITH THE CHARGES DIRECTED AT MR.
6 BURDEN. AND FIRST OF ALL WE'RE GOING TO TALK ABOUT
7 ASSAULT AND BATTERY WITH INTENT TO KILL. AND THAT HAS
8 WHAT'S CALLED A LESSER INCLUDED OFFENSE. AND WE'RE
9 GOING TO TALK ABOUT THAT. AND THE LESSER INCLUDED
10 OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL IS
11 CALLED ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
12 NATURE. AND THEN I'M GOING TO TALK TO YOU ABOUT THE
13 SECOND OFFENSE WITH WHICH MR. BURDEN IS CHARGED, AND
14 THAT IS THE INFLICTION OF GREAT BODILY INJURY UPON A
15 CHILD. AND THEN ONCE I HAVE FINISHED THOSE TWO CHARGES,
16 THEN I'M GOING TO TALK ABOUT THE CHARGE WHICH HAS BEEN
17 BROUGHT AGAINST MS. ADRIAN GADSON, AND THAT IS UNLAWFUL
18 CONDUCT TOWARDS A CHILD. AGAIN THAT JUST GIVES YOU AN
19 OVERVIEW OF WHAT I'M GOING TO BE TALKING ABOUT.

20 NOW, ASSAULT AND BATTERY WITH
21 INTENT TO KILL WITH WHICH MR. BURDEN HAS BEEN CHARGED IS
22 DEFINED AS FOLLOWS: IN ORDER TO PROVE ASSAULT AND
23 BATTERY WITH INTENT TO KILL, THE STATE MUST PROVE BEYOND
24 A REASONABLE DOUBT THAT THE DEFENDANT, MR. BURDEN,

CHARGE TO THE JURY

781

1 PERSON OF ANOTHER WITH MALICE AFORETHOUGHT. I'M GOING
2 TO BREAK THAT DOWN NOW IN DIFFERENT PARTS. WHAT IS AN
3 ASSAULT? AN ASSAULT OCCURS WHEN A PERSON UNLAWFULLY
4 ATTEMPTS OR OFFERS TO COMMIT A VIOLENT INJURY UPON
5 ANOTHER PERSON AND HAD THE PRESENT ABILITY TO COMPLETE
6 THE ATTEMPTED INJURY. AN ASSAULT IS THE INTENTIONAL
7 CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM.
8 IT IS NOT NECESSARY THAT THE ATTEMPTED INJURY OR HARM
9 ACTUALLY TAKE PLACE. FOR EXAMPLE, IF I WALK UP TO YOU
10 AND WHEN WE ARE WITHIN ARM'S REACH, I DRAW BACK TO HIT
11 YOU; THAT IS AN ASSAULT. A BATTERY IS THE UNLAWFUL
12 TOUCHING OF ANOTHER PERSON BY A PERSON WHO HAS COMMITTED
13 THE ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY A
14 PART OF THE ACCUSED'S BODY OR BY ANY OBJECT THE ACCUSED
15 PUTS IN MOTION. A BATTERY IS THE COMPLETION OF THE
16 ASSAULT BY USING OR APPLYING FORCE TO ANOTHER PERSON,
17 HOWEVER SLIGHT, IN A RUDE, ANGRY, OR RESENTFUL MANNER
18 WITHOUT LEGAL JUSTIFICATION FOR DOING SO. USING MY
19 EARLIER EXAMPLE, IF I CARRY THROUGH THE ASSAULT BY
20 HITTING YOU, THAT IS THE BATTERY; ASSAULT, BATTERY.
21 MALICE IS HATRED ILL WILL OR HOSTILITY TOWARDS ANOTHER
22 PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT
23 WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO
24 INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW

CHARGE TO THE JURY

782

1 MALICE AFORETHOUGHT DOES NOT
2 REQUIRE THAT MALICE EXIST FOR ANY PARTICULAR TIME BEFORE
3 THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND
4 OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT
5 AS IT IS COMMITTED. THEREFORE, THERE MUST BE A
6 COMBINATION OF THE PREVIOUS AND EVIL INTENT IN THE ACT.
7 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED. THESE
8 TERMS EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS
9 OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY BE
10 SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY
11 INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
12 PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS
13 WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR
14 WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH
15 WAS LATER ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR
16 A PERSON, OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW
17 THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE
18 EXPRESS MALICE. MALICE MAY BE INFERRED FROM CONDUCT
19 SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED
20 MALICE MAY ALSO ARISE WHEN THE DEED IS DONE WITH A
21 DEADLY WEAPON. A DEADLY WEAPON IS ANY ARTICLE,
22 INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH
23 OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN
24 USED AS A DEADLY WEAPON DEPENDS UPON THE FACTS AND

CHARGE TO THE JURY

783

1 OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS. A PISTOL, A
2 SHOTGUN, A RIFLE, A DERK, A DAGGER, A KNIFE, METAL
3 KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB, LIGHTER FLUID;
4 A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT
5 OPERATING.

6 A HAND OR A FIST IS NOT NORMALLY
7 CONSIDERED A DEADLY WEAPON; HOWEVER, UNDER SOME
8 CIRCUMSTANCES DEPENDING ON THE MANNER AND MEANS OF ITS
9 USE, THE WOUNDS INFLICTED, AND OTHER RELEVANT FACTS, A
10 HAND OR A FIST MAY BE CONSIDERED A DEADLY WEAPON. IT IS
11 FOR YOU TO DECIDE IN THIS CASE BEYOND A REASONABLE DOUBT
12 WHETHER OR NOT A HAND OR FIST IS A DEADLY WEAPON. NOW
13 ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE
14 FACTS SHOW THAT THEY HAVE BEEN USED TO INFLICT SERIOUS
15 BODILY HARM OR DEATH. IF FACTS ARE PROVED BEYOND A
16 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF
17 MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE
18 SIMPLY AN EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG
19 WITH ALL THE OTHER EVIDENCE IN THE CASE. AND YOU MAY
20 GIVE IT THE WEIGHT TO WHICH YOU DECIDE IT SHOULD
21 RECEIVE. A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT
22 OF ASSAULT AND BATTERY WITH INTENT TO KILL, BUT THERE
23 MUST BE A GENERAL INTENT TO COMMIT SERIOUS BODILY
24 INJURY. INTENT MEANS INTENDING THE RESULT WHICH

CHARGE TO THE JURY

784

1 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT
2 AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
3 REASONABLY INFER INTENT. EVIDENCE OF THE CHARACTER OF
4 THE ASSAULT, THE CHARACTER OF THE INSTRUMENT USED, THE
5 MANNER IN WHICH IT WAS USED, THE PURPOSE TO BE
6 ACCOMPLISHED, AND THE RESULTING WOUNDS OR INJURIES MAY
7 BE CONSIDERED IN DETERMINING THE INTENT WITH WHICH THE
8 ASSAULT WAS COMMITTED. INTENT MAY BE INFERRED WHEN IT
9 IS DEMONSTRATED THAT THE DEFENDANT VOLUNTARILY AND
10 WILLFULLY COMMITS AN ACT THE NATURAL TENDENCY OF WHICH
11 IS TO DESTROY ANOTHER'S LIFE.

12 NOW, LADIES AND GENTLEMEN, IF YOU
13 FIND THAT THE STATE HAS NOT PROVEN THAT THE DEFENDANT,
14 BURDEN, IS GUILTY OF ASSAULT AND BATTERY WITH INTENT TO
15 KILL, YOU MUST THEN DETERMINE WHETHER THE STATE HAS
16 PROVED THAT THE DEFENDANT, MR. BURDEN, IS GUILTY OF
17 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.
18 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
19 INCLUDES ALL OF THE ELEMENTS OF ASSAULT AND BATTERY WITH
20 THE INTENT TO KILL EXCEPT MALICE AFORETHOUGHT. IN
21 ADDITION, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
22 AN AGGRAVATING CIRCUMSTANCE. INCLUDED WITHIN THE
23 OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL IS
24 THE LESSER OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND
25 AGGRAVATED NATURE.

CHARGE TO THE JURY

785

1 HIGH AND AGGRAVATED NATURE, INCLUDES ALL OF THE ELEMENTS
2 OF ASSAULT AND BATTERY WITH INTENT TO KILL EXCEPT MALICE
3 AFORETHOUGHT. AND THE STATE MUST PROVE BEYOND A
4 REASONABLE DOUBT AN AGGRAVATING CIRCUMSTANCE.

5 NOW WHAT IS AN ACTIVATED
6 CIRCUMSTANCE? WELL, CIRCUMSTANCES OF AGGRAVATION
7 INCLUDE THE USE OF A DEADLY WEAPON, THE INTENT TO COMMIT
8 A FELONY, THE INFLICTION OF SERIOUS BODILY INJURY, A
9 GREAT DISPARITY BETWEEN THE AGES OR PHYSICAL CONDITIONS
10 OF THE PARTIES, THE DIFFERENCE IN THE GENDERS OF THE OF
11 PARTIES, THE TAKING OF INDECENT LIBERTIES OR
12 FAMILIARITIES WITH A FEMALE THROUGH THE USE OF FORCE;
13 THE PURPOSEFUL INFLICTION OF SHAME AND DISGRACE. THESE,
14 OF COURSE, ARE ONLY EXAMPLES OF CIRCUMSTANCES OF
15 AGGRAVATION.

16 LADIES AND GENTLEMEN, I HAVE NOW
17 CONCLUDED THE CHARGE OF THE OFFENSE OF ASSAULT AND
18 BATTERY WITH INTENT TO KILL AND THE LESSER INCLUDED
19 OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
20 NATURE. THAT PART OF THE CHARGE REGARDS THE INDICTMENTS
21 OF ASSAULT AND BATTERY WITH INTENT TO KILL DIRECTED
22 TOWARDS MR. BURDEN. THE NEXT OFFENSE THAT I'M GOING TO
23 BE SPEAKING WITH YOU ABOUT ALSO IS DIRECTED TOWARDS MR.
24 BURDEN, AND THAT IS INFLICTION OF GREAT BODILY INJURY

CHARGE TO THE JURY

786

1 PROVISION OF 16-3-95 ENTITLED INFLICTION OR ALLOWING
2 INFLICTION OF GREAT BODILY INJURY UPON A CHILD STATES AS
3 FOLLOWS: PARAGRAPH A: THE STATE MUST PROVE -- LET ME
4 SAY FIRST THAT IT IS UNLAWFUL TO INFLICT GREAT BODILY
5 INJURY UPON A CHILD. AND THE STATE MUST PROVE TO YOUR
6 SATISFACTION BEYOND A REASONABLE DOUBT THAT THE
7 DEFENDANT, MR. BURDEN, INFLICTED GREAT BODILY INJURY
8 UPON A CHILD. NOW LADIES AND GENTLEMEN, GREAT BODILY
9 INJURY MEANS BODILY INJURY WHICH CREATES A SUBSTANTIAL
10 RISK OF DEATH OR WHICH CAUSES SERIOUS OR PERMANENT
11 DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE
12 FUNCTION OF ANY BODILY MEMBER OR ORGAN. ALSO, LADIES
13 AND GENTLEMEN, KEEP IN MIND THAT THE STATE MUST PROVE
14 THIS BEYOND A REASONABLE DOUBT.

15 LADIES AND GENTLEMEN, LET ME ALSO
16 TELL YOU THAT CHILD MEANS A PERSON UNDER THE AGE OF
17 EIGHTEEN. NOW, LADIES AND GENTLEMEN, I HAVE CONCLUDED
18 DISCUSSING WITH YOU THE CHARGE OR THE INSTRUCTION ON THE
19 LAW REGARDING THE OFFENSES WITH WHICH MR. BURDEN IS
20 CHARGED. NOW I'M GOING TO SHIFT AND TALK ABOUT THE ONE
21 CHARGE WITH WHICH MS. GADSON IS CHARGED. AND I'LL DO
22 THAT NOW. AND AGAIN THAT IS CALLED UNLAWFUL CONDUCT
23 TOWARDS A CHILD. THE DEFENDANT ADRIAN GADSON IS CHARGED
24 WITH UNLAWFUL CONDUCT TOWARDS A CHILD. THE STATE MUST
25 PROVE BEYOND A REASONABLE DOUBT

CHARGE TO THE JURY

787

1 ADRIAN GADSON, HAD CHARGE OR CUSTODY OF THE CHILD, WAS
2 THE PARENT OR GUARDIAN OF THE CHILD, OR WAS RESPONSIBLE
3 FOR THE CARE AND SUPPORT OF THE CHILD. A PERSON
4 RESPONSIBLE FOR A CHILD'S WELFARE INCLUDES THE CHILD'S
5 PARENT, GUARDIAN, OR FOSTER PARENT. THIS, OF COURSE,
6 DOES NOT INCLUDE A PERSON WHOSE ONLY ROLE IS AS A
7 CARE-GIVER AND WHOSE CONTACT IS ONLY INCIDENTAL WITH THE
8 CHILD SUCH AS THE BABYSITTER. THE STATE MUST ALSO PROVE
9 BEYOND A REASONABLE DOUBT THAT MS. GADSON PLACED THE
10 CHILD AT UNREASONABLE RISK OF HARM AFFECTING THE CHILD'S
11 LIFE, PHYSICAL OR MENTAL HEALTH OR SAFETY. AND, AGAIN,
12 A CHILD MEANS A PERSON UNDER THE AGE OF EIGHTEEN YEARS
13 OLD. THAT CONCLUDES THE CHARGE ON UNLAWFUL CONDUCT
14 TOWARDS A CHILD.

15 NOW LADIES AND GENTLEMEN, YOU
16 HAVE HEARD TESTIMONY REGARDING WHAT IS REFERRED TO AS
17 THE BATTERED SYNDROME. AND I WANT TO TALK ABOUT THAT
18 FOR JUST A MOMENT. THIS TESTIMONY MAY SUPPORT AN
19 INFERENCE THAT THE CHILD'S INJURIES WERE NOT SUSTAINED
20 BY ACCIDENTAL MEANS. THAT IS THE ONLY AREA FROM WHICH
21 THIS TESTIMONY WOULD BE CONSIDERED SHOULD YOU CONSIDER
22 IT. IF YOU CHOOSE TO CONSIDER IT, IT IS OFFERED ONLY ON
23 THE ISSUE REGARDING WHETHER THE CHILD'S INJURIES WERE OR
24 WERE NOT SUSTAINED BY ACCIDENTAL MEANS.

CHARGE TO THE JURY

788

1 TESTIMONY MAY SUPPORT AN INFERENCE THAT THE CHILD'S
2 INJURIES WERE NOT SUSTAINED BY ACCIDENTAL MEANS. AN
3 INFERENCE, LADIES AND GENTLEMEN, IS SIMPLY AN
4 EVIDENTIARY FACT WHICH SHOULD YOU CHOOSE TO CONSIDER,
5 YOU WOULD CONSIDER ALONG WITH ALL THE OTHER EVIDENCE IN
6 THE CASE AND THAT YOU WOULD GIVE THIS EVIDENCE THE
7 WEIGHT TO WHICH YOU DEEM AND DECIDE IT SHOULD RECEIVE.
8 NOW LADIES AND GENTLEMEN, DURING THE COURSE OF THIS
9 TRIAL, SOME OF YOU HAVE WANTED TO TAKE NOTES AND SOME OF
10 YOU HAVE TAKEN NOTES. YOU MAY TAKE YOUR NOTES -- OR LET
11 ME SAY MAY HAVE YOUR NOTES -- IN THE JURY ROOM, AND YOU
12 MAY USE THEM DURING YOUR DELIBERATIONS IF YOU WISH. AS
13 I TOLD YOU AT THAT TIME BEGINNING OF THE TRIAL, YOUR
14 NOTES ARE ONLY INTENDED TO BE AN AIDE** TO YOUR MEMORY,
15 AND THEY SHOULD NOT TAKE PRECEDENCE OVER YOUR OWN
16 INDEPENDENT RECOLLECTION. THOSE JURORS WHO HAVE NOT
17 TAKEN NOTES WHICH IS PERFECTLY FINE OR WITHIN YOUR
18 PROVINCE SHOULD RELY ON YOUR MEMORIES OF THE EVIDENCE,
19 AND YOU SHOULD NOT BE INFLUENCED BY THE FACT THAT
20 ANOTHER JUROR SIMPLY HAPPENED TO HAVE TAKEN NOTES
21 BECAUSE THOSE NOTES ARE ONLY FOR THE NOTE-TAKER'S OWN
22 PERSONAL USE IN ASSISTING HIS OR HER MEMORY OF THE
23 EVIDENCE. I WILL REMIND YOU THAT NOTES ARE NOT TO BE
24 USED FOR ANY OTHER PURPOSE THAN REFRESHING THE
25 NOTE TAKER'S

CHARGE TO THE JURY

789

1 NOW LADIES AND GENTLEMEN, NOTHING
2 THAT I MAY HAVE SAID OR DONE DURING THE COURSE OF THIS
3 TRIAL HAS BEEN IN ANY WAY INTENDED TO EXPRESS OR SUGGEST
4 A VIEW OF THE CASE AND OPINION AS TO THE FACTS, THE
5 WEIGHT OF THE EVIDENCE, OR THE CREDIBILITY OF THE
6 WITNESSES. IF ANY OF MY ACTIONS OR WORDS SEEN TO SO
7 INDICATE, YOU MUST DISREGARD THEM. FIRST OF ALL, KNOW
8 THAT NO SUCH INFERENCE OR EXPRESSION OR VIEW HAS BEEN
9 INTENDED, BUT YOU MUST DISREGARD WHATEVER YOU THINK YOU
10 MAY HAVE SEEN AND FORM YOUR OWN OPINION AS TO THESE
11 MATTERS.

12 NOW LADIES AND GENTLEMEN, OF
13 COURSE I AM REQUIRED TO DECLARE THE LAW AS I HAVE DONE
14 THROUGH INSTRUCTIONS NOW BEING GIVEN TO HELP GUIDE YOU
15 THROUGH A JUST AND LAWFUL VERDICT. THE FACT THAT I
16 HAVE, OF COURSE, INSTRUCTED ON THESE VARIOUS MATTERS
17 MUST NOT BE TAKEN BY YOU IN ANY REGARD AS INDICATING AN
18 OPINION OF THE COURT AS TO WHAT YOU SHOULD FIND TO BE
19 THE FACTS OR AS TO WHAT YOUR VERDICT SHOULD BE. NOW,
20 I'M GOING GO OVER WITH YOU IN JUST A MOMENT THE VERDICT
21 FORM, AND THEN YOU ALL WILL STEP OUT OF THE COURTROOM.
22 AND ON THIS NEXT OCCASION, MR. HOLLINGSWORTH, MR.
23 CALLOWAY, YOU ALL REMAIN HERE IN THE COURTROOM AS OUR
24 ALTERNATES. THANK YOU SO MUCH. NOW, MR. WESLER, AS THE

CHARGE TO THE JURY.

790

1 INDICATE YOUR VERDICT OF THE JURY ON THE VERDICT FORM
2 ONCE THOSE DELIBERATIONS HAVE ENDED. YOU WILL ACTUALLY
3 TAKE PHYSICAL POSSESSION OF THE VERDICT FORM. AND THAT
4 WILL BE YOUR TASK ONCE THE DELIBERATIONS ARE CONCLUDED.
5 AND I WOULD TELL YOU THAT THE VERDICT FORMS; THERE ARE
6 ACTUALLY TWO. 23 VERDICT FORMS. THERE IS ONE PIECE OF
7 PAPER THAT CONCERNS THE INDICTMENTS INVOLVING MR.
8 BURDEN; AND THEN THERE'S ONE PIECE OF PAPER, THE VERDICT
9 FORM FOR THE CHARGE, DIRECTED TOWARDS MRS. GADSON. AND
10 YOU WILL SEE BECAUSE I HAVE PUT STATE OF SOUTH CAROLINA
11 VS. WILLIAM DEAN BURDEN ON THE CAPTION OF ONE; AND THE
12 STATE OF SOUTH CAROLINA VS. ADRIAN GADSON ON THE CAPTION
13 OF THE OTHER. THAT WILL LET YOU KNOW THAT ONE OF THESE
14 PIECES OF PAPER INVOLVES MS. GADSON AND ONE INVOLVES MR.
15 BURDEN.

16 NOW, KEEP IN MIND THAT THE
17 VERDICT WHICH YOU WILL RENDER WILL EITHER BE GUILTY OR
18 NOT GUILTY. I CAN JUST AS EASILY HAVE JUST SAID NOT
19 GUILTY OR GUILTY. AND THE WRITTEN POSSIBILITIES ARE
20 WRITTEN ON THIS PIECE OF PAPER. AND YOU MUST NOT TAKE
21 ANY HIDDEN MEANING FROM THE FACT THAT ONE WORD HAPPENS
22 TO BE FIRST FOLLOWED BY ANOTHER WORD. YOU MUST KNOW
23 THAT IT COULD JUST HAVE EASILY BEEN THE OTHER WAY
24 AROUND. IT'S JUST WHEN YOU PUT WORDS ON PAPER, ONE
25 NECESSARILY HAS GOT TO BE FIRST AND THEN ONE THE

CHARGE TO THE JURY

791

1 NECESSARILY GOT TO BE NEXT. PLEASE TAKE NO HIDDEN
2 MEANING FROM THE COURT IN THE ORDER WHICH THESE THINGS
3 ARE POSTED ON PAPER.

4 NOW, I'M GOING TO GO OVER MR.
5 BURDEN'S VERDICT FORM FIRST. I COULD JUST AS EASILY GO
6 OVER MRS. GADSON'S, BUT I'M GOING TO GO OVER MR.
7 BURDEN'S FIRST. NOW, NUMBER ONE STATES -- WELL, BEFORE
8 I DO THAT, I WANT YOU TO KEEP IN MIND THAT YOUR VERDICT
9 MUST BE UNANIMOUS. YOU MUST REACH THESE DECISIONS
10 UNANIMOUSLY. AND WHAT THAT MEANS IS THAT THE VERDICT
11 THAT YOU REACH, OR THE VERDICTS THAT YOU REACH IN THIS
12 CASE, MUST BE THE VERDICT OF EACH AND EVERY ONE OF YOU.
13 THIS IS NOT THE VERDICT OF THE MAJORITY OF YOU OR ANY
14 ONE OF YOU. THIS MUST BE THE VERDICT OF EACH AND EVERY
15 ONE OF YOU.

16 NOW, NUMBER ONE SAYS AS TO THE
17 CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL, WE
18 THE JURY, UNANIMOUSLY FIND THE DEFENDANT -- THIS IS MR.
19 BURDEN -- AND THERE ARE TWO POSSIBLE VERDICTS, GUILTY OR
20 NOT GUILTY. KEEP IN MIND I COULD HAVE JUST AS EASILY
21 SAID NOT GUILTY OR GUILTY. THERE'S NO HIDDEN MEANING,
22 LADIES AND GENTLEMEN. NOW, IF AS TO CHARGE OF ASSAULT
23 AND BATTERY WITH INTENT TO KILL, IF YOU, LADIES AND
24 GENTLEMEN, FIND THAT MR. BURDEN IS NOT GUILTY OF ASSAULT

CHARGE TO THE JURY

792

1 PROVEN THAT HE IS NOT GUILTY OF ASSAULT AND BATTERY WITH
2 INTENT TO KILL, THEN YOU PROCEED TO NUMBER TWO AND
3 CONSIDER NUMBER TWO BECAUSE THAT IS THE LESSER INCLUDED
4 OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
5 NATURE. AND THAT IS NUMBER TWO. AND IT SAYS AS TO THE
6 LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH
7 AND AGGRAVATED NATURE, WE THE JURY FIND THE DEFENDANT
8 GUILTY OR NOT GUILTY. AND YOU MAKE DECISION. AND I
9 WOULD SUGGEST THAT WHATEVER THE VERDICT IS, YOU JUST
10 CIRCLE IT. UNDERLINE IT SO IT'S CLEAR WHAT THE VERDICT
11 OF THE JURY IS.

12 NOW, THAT WILL CONCLUDE YOUR
13 CONSIDERATION OF ASSAULT AND BATTERY WITH INTENT TO
14 KILL. THE NEXT INDICTMENT THAT YOU WOULD CONSIDER AND
15 THE NEXT CHARGE IS INFLICTION OF GREAT BODILY INJURY
16 UPON A CHILD. AND THAT IS CONTAINED IN NUMBER THREE.
17 THAT SAYS AS TO THE CHARGE OF INFLICTION OF GREAT BODILY
18 INJURY UPON A CHILD WE, THE JURY, UNANIMOUSLY FIND THE
19 DEFENDANT, MR. BURDEN, IN TWO POSSIBLE VERDICTS, GUILTY
20 OR NOT GUILTY. WHEN YOU HAVE CONCLUDED YOUR
21 DELIBERATIONS ON THIS VERDICT FORM, THEN YOU SIGN -- AND
22 YOU KNOW WHO YOU ARE. AND TODAY IS THE 28TH OF
23 OCTOBER. 2002. NOW, THIS SAYS STOPPING IN YOUR
24 DELIBERATIONS REGARDING MR. BURDEN. NOW WITH REGARDS TO
25 MS. GADSON THIS TO YOU

CHARGE TO THE JURY

793

1 PLEASE CIRCLE THE APPROPRIATE VERDICT BELOW AND FOLLOW
2 THE ACCOMPANYING INSTRUCTIONS CAREFULLY. NUMBER (1) AS
3 TO THE CHARGE OF UNLAWFUL NEGLIGENT OF A CHILD BY LEGAL
4 CUSTODIAN, WE THE JURY -- AND AGAIN UNANIMOUSLY -- FIND
5 FOR THE DEFENDANT -- THIS IS REFERRING, OF COURSE, TO
6 MS. GADSON -- AND THE TWO POSSIBLE VERDICTS OF GUILTY OR
7 NOT GUILTY. OBVIOUSLY GUILTY OR NOT GUILTY. NOW, WHEN
8 YOU MAKE YOUR DETERMINATION, THEN A UNANIMOUS
9 DETERMINATION, THEN YOU WILL CIRCLE OR UNDERLINE THE
10 UPPER BLOCK "THE UNANIMOUS VERDICT OF THIS JURY;" AND
11 YOU SIGN HERE AND DATE IT. WHEN YOU HAVE CONCLUDED YOUR
12 DELIBERATIONS, THEN YOU'LL KNOCK ON THE DOOR. YOU WILL
13 RETURN TO THE COURTROOM. YOU WILL ACTUALLY PASS THE
14 VERDICT FORM TO PROBABLY MRS. SALISBURY OR PERHAPS TO
15 SOMEBODY ELSE WHO WILL IN TURN PASS THAT TO ME. JUST
16 KNOW THAT IT'S NOT YOUR TASK TO PUBLISH THE VERDICT. IT
17 COMES FROM THE COURT FIRST BEFORE IT IS PUBLISHED.

18 NOW, IN A MOMENT I'M GOING TO BE
19 SENDING YOU TO YOUR JURY ROOM. AND I'M GOING TO GIVE
20 YOU AN INSTRUCTION NOT TO DISCUSS THIS MATTER OR ALLOW
21 ANYONE TO DISCUSS IT WITH YOU. AND YOU'RE LIKE "WAIT A
22 MINUTE NOW; WAIT A MINUTE NOW; YOU'VE BEEN TELLING US
23 ALL ALONG; AT THIS POINT IS WHEN WE START TO
24 DELIBERATE." NOW, I WANT TO EXPLAIN TO YOU WHAT HAPPENS

CHARGE TO THE JURY

794

1 OCCASION, I'M GOING TURN TO THESE ATTORNEYS BECAUSE THEY
2 OUGHT TO BE AFFORDED AN OPPORTUNITY TO TALK TO ME A
3 MOMENT ABOUT THE CHARGE BECAUSE I HAVE TO DO TWO THINGS.
4 I HAVE TO GIVE YOU ALL OF THE LAW THAT YOU MAY NEED FOR
5 YOUR DELIBERATIONS. AND I'VE GOT TO STATE IT TO YOU
6 CORRECTLY. AND I'LL SIMPLY TURN TO THEM AND ASK THEM
7 "HAVE I STATED THE LAW CORRECTLY; HAVE I GIVEN THESE
8 FOLKS ALL THE LAW THAT THEY MAY NEED FOR THEIR
9 CONSIDERATION, FOR THEIR DELIBERATIONS." AND SOMETIMES
10 I THINK I'M JUST DOING FINE, AND I'LL JUST STATE
11 SOMETHING INCORRECTLY. I CAN ASSURE YOU THAT IT IS NOT
12 INTENTIONAL, BUT IT HAPPENS. AND SOMETIMES I NEED TO
13 BRING JURORS OUT TO SIMPLY CORRECT SOMETHING THAT I'VE
14 SAID INCORRECTLY. IN THE EVENT THAT I NEED TO DO THAT,
15 I'M GOING TO ASK THAT YOU PLEASE ALLOW ME TO CORRECT MY
16 ERROR IN YOUR MINDS. SOMETIMES I SIMPLY FAIL TO GIVE
17 THE JURY AN INSTRUCTION THAT THEY MAY NEED FOR THEIR
18 DELIBERATIONS, AND SOMETIMES I NEED TO BRING JURORS BACK
19 OUT FOR THE PURPOSE OF GIVING THEM THAT ADDITIONAL
20 INSTRUCTION. IN THE EVENT THAT I NEED TO ASK YOU TO
21 COME BACK OUT FOR THAT PURPOSE, I WOULD SIMPLY ASK THAT
22 YOU NOT CONSIDER THAT INSTRUCTION WITH ANY EMPHASIS.
23 JUST KNOW THIS IS MY OPPORTUNITY TO GET THIS RIGHT, TO
24 GIVE YOU ALL OF THE LAW THAT YOU MAY NEED FOR YOUR

CHARGE TO THE JURY

795

1 NOW, IN THE EVENT THAT I DO NOT
2 NEED TO BRING YOU BACK OUT, THEN YOU WILL BE BROUGHT THE
3 EXHIBITS, THE VERDICT FORM, AND AN INSTRUCTION TO BEGIN
4 YOUR DELIBERATIONS. IF YOU ARE BROUGHT THE EXHIBITS,
5 YOUR VERDICT FORM, AND YOU DO NOT HEAR, OR PERHAPS A
6 SPECIFIC INSTRUCTION TO BEGIN YOUR DELIBERATIONS IS NOT
7 SPECIFICALLY DELIVERED TO YOU, YOU WILL NOT HAVE YOUR
8 VERDICT FORM AND THOSE EXHIBITS UNLESS IT'S TIME FOR YOU
9 TO DELIBERATE. YOU GET THE VERDICT FORMS. YOU GET THE
10 EXHIBITS. YOU BEGIN YOUR DELIBERATIONS. NOW, KEEP IN
11 MIND ALL TWELVE OF YOU MUST BE PRESENT FOR YOU TO
12 DELIBERATE. AND YOU MAY NEED TO TAKE A BREAK. IF YOU
13 NEED TO TAKE A BREAK, TAKE A BREAK, BUT STOP YOUR
14 DELIBERATIONS WHILE YOU TAKE YOUR BREAK, OR IF ONE OF
15 YOUR JURORS NEEDS TO TAKE A BREAK. AND THEN RECONVENE
16 YOUR DELIBERATIONS WHEN ALL TWELVE OF YOU ARE TOGETHER.
17 AGAIN YOU'RE GOING TO HAVE YOUR LUNCH. AND NO DOUBT
18 ONCE LUNCH IS CONCLUDED, SOMEBODY IS GOING TO HAVE TO
19 SMOKE. SO CLEARLY YOU'LL NEED TO TAKE YOUR BREAK THEN.
20 KNOCK ON THE DOOR AND WE'LL MAKE SURE THE SMOKERS SMOKE.
21 BUT JUST BE SURE YOU STOP YOUR DELIBERATIONS, AND THEN
22 RECONVENE WHEN EVERYONE IS TOGETHER AGAIN.

23 NOW, I WANT TO LEAVE YOU WITH
24 THIS LAST COMMENT. THIS LAST COMMENT IS THAT THE WORD

CHARGE TO THE JURY

796

1 MEANS TO SPEAK THE TRUTH. THAT IS MADE YOUR TASK.
2 PLEASE STEP TO YOUR JURY ROOM. DO NOT DISCUSS THIS
3 MATTER, AND DO NOT ALLOW ANYONE TO DISCUSS IT WITH YOU.
4 WE WILL BRING YOU YOUR NOTEBOOKS WHEN WE BRING YOU THE
5 OTHER MATTERS OR THE OTHER THINGS.

6 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

7 THE COURT: MR. HOLLINGSWORTH, AND MRS.
8 CALLOWAY. I'M GOING TO ASK YOU TO JUST REMAIN WITH
9 US. YOUR LUNCH SHOULD BE COMING. BUT LET ME TELL
10 YOU WHY I'M GOING TO ASK YOU TO STAY JUST FOR A FEW
11 MORE MINUTES; BECAUSE I BELIEVE THAT IF SOMETHING
12 SHOULD HAPPEN TO ONE OF OUR TWELVE IN THE NEXT VERY
13 FEW MINUTES THAT I COULD SEAT YOU AND BEGIN THE
14 DELIBERATIONS ANEW. THAT TIME RUNS OUT VERY, VERY
15 QUICKLY, THOUGH. AND HAS THE LUNCH ARRIVED?

16 MR. TAYLOR: NOT YET.

17 THE COURT: I'M GOING TO ASK YOU TO STAY
18 WITH US FOR ABOUT THIRTY MINUTES. Y'ALL WATCH YOUR
19 WATCH, AND WHEN THAT TIME IS UP, YOU GUYS JUST LET
20 ME KNOW. AND AFTER THAT, IF YOU'RE NOT NEEDED, I
21 JUST WANTED TO HAVE A CHANCE TO SPEAK TO YOU VERY
22 BRIEFLY BEFORE YOU GO. IF YOU WILL GO WITH THE
23 MAJOR, HE WILL PUT YOU IN ANOTHER ROOM.

24 (AT THIS TIME ALTERNATE JURORS RETIRE TO JURY ROOM.)

CHARGE TO THE JURY

797

1 FROM THE STATE?

2 MRS. MURPHY: NO, MA'AM.

3 THE COURT: OTHER THAN THE ONE WE
4 ADDRESSED EARLIER?

5 MR. DUKES: I HAVE NONE, YOUR HONOR.

6 THE COURT: ALL RIGHT. OTHER THAN THE
7 ONE WE ADDRESSED EARLIER WHICH INVOLVED THE LESSER
8 INCLUDED DEFENSE, ANY OTHER?

9 MR. DAVIS: OTHER THAN THAT, YOUR HONOR,
10 SECTION 27-70; THAT'S THE ONLY OBJECTION I RAISED,
11 YOUR HONOR.

12 THE COURT: VERY WELL. THANK YOU SO
13 MUCH. COUNSEL, I JUST WANTED TO -- I KNOW YOU ALL
14 HAVE GOT TO GET SOME LUNCH. BUT LET ME SEE YOU
15 BACK IN CHAMBERS FOR JUST A MOMENT BEFORE YOU ALL
16 DISPERSE BECAUSE I KNOW YOU WANT SOME LUNCH. ALL
17 RIGHT. THANK YOU SO MUCH.

18 (AT THIS TIME RECESS IS HELD.)

19

20 THE COURT: ALL RIGHT. WE'VE GOT A
21 REQUEST FROM THE JURY AND IT SAYS THIS: "JUDGE
22 GOODSTEIN, COULD WE PLEASE HAVE YOU GIVE US A LEGAL
23 READING OF 'INTENT TO KILL.'" AGAIN, WE HAVE
24 SEVERAL JURORS WITH QUESTIONS. NOW, WHAT I WOULD

CHARGE TO THE JURY

798

1 AND ASSAULT AND BATTERY WITH INTENT TO KILL AND
2 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
3 NATURE. LET ME HEAR FROM YOU, MRS. MURPHY.

4 MRS. MURPHY: NO OBJECTIONS TO THAT, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. LET ME HEAR FROM
7 YOU, MR. DUKES.

8 MR. DUKES: THE SAME CHARGE THAT YOU GAVE
9 PREVIOUSLY?

10 THE COURT: THE EXACT SAME CHARGE. I'M
11 NOT GOING TO GIVE THE WHOLE THING, BUT I'M GOING TO
12 GIVE THOSE SECTIONS OF THE CHARGE, CRIMINAL INTENT,
13 ASSAULT AND BATTERY WITH INTENT TO KILL, AND THE
14 LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A
15 HIGH AND AGGRAVATED NATURE.

16 MR. DUKES: THAT INCLUDES ALL THE
17 ELEMENTS OF THE INTENT TO KILL WITH MALICE
18 AFORETHOUGHT?

19 THE COURT: YES.

20 MR. DUKES: OKAY.

21 THE COURT: ALL RIGHT. LET'S HAVE THE
22 JURY.

23 (WHEREUPON AT 4:30 P.M. JURY RETURNS TO OPEN COURT FOR
24 FURTHER CHARGE.)

ADDITIONAL CHARGE TO THE JURY

799

1 LADIES AND GENTLEMEN; AND I AM PREPARED TO
2 RE-CHARGE YOU AT THIS TIME. AND I WANTED TO AGAIN
3 OUTLINE FOR YOU WHAT I'M GOING -- THE AREAS THAT I
4 AM GOING TO RECHARGE YOU TO, OR SHOULD I SAY CHARGE
5 AGAIN? I'M GOING TO CHARGE THE FOLLOWING:
6 CRIMINAL INTENT, ASSAULT AND BATTERY WITH INTENT TO
7 KILL, AND THE LESSER INCLUDED OFFENSE OF ASSAULT
8 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. AND
9 I'M GOING TO DO THAT NOW. I'M GOING TO BEGIN WITH
10 INTENT.

ADDITIONAL CHARGE

11
12
13 IN ORDER TO ESTABLISH CRIMINAL
14 LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE,
15 THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE
16 FOR A PARTICULAR CRIME MIGHT BE PURPOSE, INTENT,
17 KNOWLEDGE, RECKLESSNESS OR CRIMINAL NEGLIGENCE.
18 CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A
19 REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER
20 THAT MUST BE DETERMINED BY THE JURY FROM THE
21 CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO
22 WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE
23 IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN
24 AND DETERMINE WHAT THE PERSON HAD IN MIND. SO THE LAW

ADDITIONAL CHARGE TO THE JURY

800

1 CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU
2 MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
3 REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO
4 ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE; BUT
5 INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY
6 AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS
7 OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF
8 THE CASE.

9 CRIMINAL INTENT IS A MENTAL
10 STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO
11 DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE
12 CIRCUMSTANCES SHOWN TO HAVE EXISTED. CRIMINAL INTENT
13 CAN ARISE FROM ACTION OR FAILURE TO ACT. IT MAY ARISE
14 FROM NEGLIGENCE, RECKLESSNESS, OR AN INDIFFERENCE TO
15 DUTY OR TO CONSEQUENCES THAT ARE CONSIDERED BY THE LAW
16 TO BE THE EQUIVALENT OF CRIMINAL INTENT. NOW, ASSAULT
17 AND BATTERY WITH INTENT TO KILL. NOW, THE DEFENDANT,
18 MR. BURDEN, HAS BEEN CHARGED WITH ASSAULT AND BATTERY
19 WITH INTENT TO KILL. IN ORDER TO PROVE ASSAULT AND
20 BATTERY WITH INTENT TO KILL, THE STATE MUST PROVE BEYOND
21 A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED AN
22 UNLAWFUL ACT OF A VIOLENT NATURE TO THE PERSON OF
23 ANOTHER WITH MALICE AFORETHOUGHT. AN ASSAULT OCCURS
24 WHEN A PERSON UNLAWFULLY ATTEMPTS OR OFFERS TO COMMIT A

ADDITIONAL CHARGE TO THE JURY

801

1 TO COMPLETE THE ATTEMPTED INJURY.

2 AN ASSAULT IS THE INTENTIONAL
3 CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM.
4 IT IS NOT NECESSARY THAT THE ATTEMPTED INJURY OR HARM
5 ACTUALLY TAKE PLACE. FOR EXAMPLE, IF I WALK UP TO YOU,
6 AND WHEN WE ARE WITHIN ARM'S LENGTH I DRAW BACK TO HIT
7 YOU; THAT IS AN ASSAULT. A BATTERY IS THE UNLAWFUL
8 TOUCHING OF ANOTHER PERSON BY A PERSON WHO HAS COMMITTED
9 THE ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY A
10 PART OF THE ACCUSED'S BODY OR BY ANY OBJECT THE ACCUSED
11 PUTS IN MOTION. A BATTERY IS THE COMPLETION OF THE
12 ASSAULT BY USING OR APPLYING FORCE TO ANOTHER PERSON
13 HOWEVER SLIGHT IN A RUDE, ANGRY, OR RESENTFUL MANNER
14 WITHOUT LEGAL JUSTIFICATION FOR DOING SO. BY USING MY
15 EARLIER EXAMPLE, IF I CARRY THROUGH THE ASSAULT BY
16 HITTING YOU, THEN THAT IS A BATTERY. ASSAULT; BATTERY.
17 MALICE IS HATRED, ILL WILL, OR HOSTILITY TOWARDS ANOTHER
18 PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT
19 WITHOUT JUST CAUSE OR EXCUSE, AND WITH AN INTENT TO
20 INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW
21 WILL INFER AN EVIL INTENT.

22 MALICE AFORETHOUGHT DOES NOT
23 REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME
24 BEFORE THE ACT IS COMMITTED BUT MALICE MUST EXIST IN THE

ADDITIONAL CHARGE TO THE JURY

802

1 THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A
2 COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.
3 MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE
4 TERMS EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS
5 OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE
6 SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY
7 INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
8 PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS
9 WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR
10 WHEN THE PERSON PREPARED BEFORE HAND TO DO THE ACT WHICH
11 WAS LATER ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR
12 A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW
13 THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE
14 EXPRESS MALICE. MALICE MAY BE INFERRED FROM CONDUCT
15 SHOWING A TOTAL A TOTAL DISREGARD FOR HUMAN LIFE.
16 INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE
17 WITH A DEADLY WEAPON. A DEADLY WEAPON IS ANY ARTICLE,
18 INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH
19 OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN
20 USED AS A DEADLY WEAPON DEPENDS UPON THE FACTS AND
21 CIRCUMSTANCES OF EACH CASE. THE FOLLOWING ARE EXAMPLES
22 OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A
23 SHOTGUN, A RIFLE, A DERK, A DAGGER, A KNIFE, A
24 SLINGSHOT, METAL KNUCKLES, A RAZOR, GASOLINE, FIRE BOMB,

ADDITIONAL CHARGE TO THE JURY

803

1 IS NOT OPERATING. A HAND OR A FIST IS NOT NORMALLY
2 CONSIDERED A DEADLY WEAPON. HOWEVER, UNDER SOME
3 CIRCUMSTANCES, DEPENDING ON THE MANNER AND MEANS OF ITS
4 USE, THE WOUNDS INFLICTED AND OTHER RELEVANT FACTS; A
5 HAND OR FIST MAY BE CONSIDERED A DEADLY WEAPON. IT IS
6 FOR YOU TO DECIDE IN THIS CASE BEYOND A REASONABLE DOUBT
7 WHETHER OR NOT A HAND OR A FIST IS A DEADLY WEAPON.
8 ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE
9 FACTS SHOW THAT THEY HAVE BEEN USED TO INFLICT SERIOUS
10 BODILY HARM OR DEATH. IF FACTS ARE PROVED BEYOND A
11 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF
12 MALICE TO YOUR SATISFACTION. THIS INFERENCE WOULD BE
13 SIMPLY AN EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG
14 WITH ALL THE OTHER EVIDENCE IN THE CASE, AND YOU MAY
15 GIVE IT THE WEIGHT YOU DECIDE IT SHOULD RECEIVE.

16 SPECIFIC INTENT TO KILL IS NOT AN
17 ELEMENT OF ASSAULT AND BATTERY WITH INTENT TO KILL.
18 BUT THERE MUST BE A GENERAL INTENT TO COMMIT SERIOUS
19 BODILY INJURY. INTENT MEANS INTENDING THE RESULT WHICH
20 ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.
21 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT
22 AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
23 REASONABLY INFER INTENT. EVIDENCE OF THE CHARACTER OF
24 THE ASSAULT, THE CHARACTER OF THE INSTRUMENT USED, THE

ADDITIONAL CHARGE TO THE JURY

804

1 ACCOMPLISHED, AND THE RESULTING WOUNDS OR INJURIES MAY
2 BE CONSIDERED IN DETERMINING THE INTENT WITH WHICH THE
3 ASSAULT WAS COMMITTED. INTENT MAY BE INFERRED WHEN IT
4 IS DEMONSTRATED THAT THE DEFENDANT VOLUNTARILY AND
5 WILLFULLY COMMITS AN ACT, THE NATURAL TENDENCY OF WHICH
6 IS TO DESTROY A MOTHER'S LIFE.

7 NOW, IF YOU FIND THAT THE STATE
8 HAS NOT PROVEN THAT THE DEFENDANT IS GUILTY OF ASSAULT
9 AND BATTERY WITH INTENT TO KILL, YOU MUST THEN DETERMINE
10 WHETHER THE STATE HAS PROVED THAT THE DEFENDANT IS
11 GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
12 NATURE. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
13 NATURE INCLUDES ALL OF THE ELEMENTS OF ASSAULT AND
14 BATTERY WITH INTENT TO KILL EXCEPT MALICE AFORETHOUGHT.
15 IN ADDITION, THE STATE MUST PROVE BEYOND A REASONABLE
16 DOUBT AN AGGRAVATING CIRCUMSTANCE. NOW, INCLUDED WITHIN
17 THE OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL
18 IS THE LESSER OFFENSE OF ASSAULT AND BATTERY OF A HIGH
19 AND AGGRAVATED NATURE. ASSAULT AND BATTERY OF A HIGH
20 AND AGGRAVATED NATURE INCLUDES ALL OF THE ELEMENTS OF
21 ASSAULT, BATTERY, WITH INTENT TO KILL EXCEPT MALICE
22 AFORETHOUGHT. IN ADDITION, THE STATE MUST PROVE BEYOND
23 A REASONABLE DOUBT AN AGGRAVATING CIRCUMSTANCE.

24 NOW, CIRCUMSTANCES OF AGGRAVATION
25 INCLUDE THE

ADDITIONAL CHARGE TO THE JURY

805

1 A FELONY, THE INFLICTION OF SERIOUS BODILY INJURY, A
2 GREAT DISPARITY BETWEEN THE AGES OR PHYSICAL CONDITIONS
3 OF THE PARTIES, A DIFFERENCE IN THE GENDERS OF THE
4 PARTIES, THE TAKING OF INDECENT LIBERTIES OF
5 FAMILIARITIES WITH THE FEMALE THROUGH THE USE OF FORCE,
6 THE PURPOSEFUL INFLICTION OF SHAME AND DISGRACE AND
7 RESISTANCE OF LAWFUL AUTHORITY. THESE ARE ONLY EXAMPLES
8 OF CIRCUMSTANCES OF AGGRAVATION.

9 LADIES AND GENTLEMEN, THAT
10 CONCLUDES THE CHARGE ON INTENT AND ASSAULT AND BATTERY
11 WITH INTENT TO KILL AND THE LESSER INCLUDED OFFENSE OF
12 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.
13 I'M NOT GOING TO ASK YOU TO PLEASE STEP BACK TO YOUR
14 JURY ROOM AND CONTINUE YOUR DELIBERATIONS.
15 (AT THIS TIME JURY RETIRES TO JURY ROOM FOR FURTHER
16 DELIBERATIONS.)

17 THE COURT: ANY EXCEPTIONS OR ADDITIONS
18 FROM THE STATE?

19 MRS. MURPHY: NO, MA'AM.

20 THE COURT: FROM MR. DUKES?

21 MR. DUKES: NO, MA'AM.

22 THE COURT: MR. DAVIS?

23 MR. DAVIS: JUST FOR THE RECORD; MAYBE I
24 DIDN'T HEAR CORRECTLY; BUT I THOUGHT THAT YOU

FURTHER DELIBERATIONS

806

1 TALKED ABOUT THE ASSAULT AND BATTERY WITH INTENT
2 COMING DOWN TO AN ASSAULT AND BATTERY OF A HIGH AND
3 AGGRAVATED NATURE. IT SEEMS THAT YOU READ THAT
4 TWICE.

5 THE COURT: OKAY. AND YOU HAVE AN
6 OBJECTION?

7 MR. DAVIS: WELL, I THINK IF THE COURT
8 WOULD CHECK AND SEE -- IT SEEMS LIKE YOU SAID IT
9 TWICE.

10 THE COURT: LET ME SAY TO YOU; PARTS OF
11 IT ARE REPEATED. ONE OF THEM IS EXPLAINING TO THE
12 JURY THAT IT'S A LESSER INCLUDED OFFENSE, AND ONE
13 OF THEM SAYS IF YOU FIND THE STATE HAS NOT PROVED
14 THE DEFENDANT GUILTY OF ASSAULT AND BATTERY WITH
15 INTENT TO KILL, THEN THIS IS WHAT YOU DO. IT SAYS
16 THIS IS A LESSER INCLUDED OFFENSE. I THINK THERE
17 IS A LINE THAT IS REPEATED. YOU ARE PROBABLY
18 CORRECT. ALL RIGHT.

19 MR. DAVIS: YES, MA'AM.

20 THE COURT: VERY WELL. ALL RIGHT. THANK
21 YOU VERY MUCH. THE JURY IS CONTINUING TO
22 DELIBERATE.

23 (AT THIS TIME BRIEF RECESS IS TAKEN.)
24
25

VERDICT

807

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THE COURT: ALL RIGHT. I UNDERSTAND THE JURY HAS REACHED A VERDICT IN THIS CASE. LET'S HAVE THE JURY, PLEASE.

(AT THIS TIME JURY RETURNS TO OPEN COURT.)

THE CLERK: LADIES AND GENTLEMEN LIVE HAVE REVIEWED ON A VERDICT? (ALL JURORS ANSWER IN THE AFFIRMATIVE.)

THE COURT: ALL RIGHT. I HAVE REVIEWED THE VERDICT FORM AND FIND IT TO BE IN DUE FORM AND AM PREPARED AT THIS POINT TO PUBLISH THE VERDICTS. ALL RIGHT. WITH REGARDS TO INDICTMENTS 2002-GS-18-0006 WHICH IS ASSAULT AND BATTERY WITH INTENT TO KILL. QUESTION NUMBER ONE; AS TO THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL, WE, THE JURY UNANIMOUSLY FIND THE DEFENDANT, MR. WILLIAM DEAN BURDEN, GUILTY. WITH REGARDS TO INDICTMENT NUMBER 02-GS-18-0992, CHILD ABUSE, INFLECTION OF GREAT BODILY HARM UPON A CHILD; AS TO THE CHARGE OF GREAT BODILY INJURY UPON A CHILD, WE THE JURY UNANIMOUSLY FIND THE DEFENDANT -- THIS WOULD BE WILLIAM DEAN BURDEN -- GUILTY. SIGNED BY PRESIDING JUROR AND DATED THE 28TH OF OCTOBER, YEAR 2002. WITH REGARDS TO INDICTMENT NUMBER 02-GS-18-0221, THE STATE OF SOUTH CAROLINA VS.

VERDICT

808

1 OF A CHILD BY LEGAL CUSTODIAN, WE, THE JURY
2 UNANIMOUSLY FIND THE DEFENDANT -- OF COURSE THIS IS
3 ADRIAN GADSON -- GUILTY. SIGNED BY MR. JASON
4 WEESLER, 28TH OCTOBER, 2002. LADIES AND GENTLEMEN,
5 IF THIS IS YOUR VERDICT AND REMAINS YOUR VERDICT,
6 PLEASE INDICATE BY RAISING YOUR RIGHT HANDS. (ALL
7 JURORS RAISE HANDS IN THE AFFIRMATIVE.) LET THE
8 JURY REFLECT THAT EACH AND EVERY JUROR HAS HIS OR
9 HER RIGHT HAND RAISED. THANK YOU; AND YOU MAY PUT
10 YOUR HANDS DOWN. ANYTHING BEFORE WE DISMISS THE
11 JURY?

12 MRS. MURPHY: NOTHING FROM THE STATE.

13 THE COURT: MR. DUKES, ON BEHALF OF MR.
14 BURDEN?

15 MR. DUKES: NOTHING FROM THE DEFENDANT.

16 THE COURT: YES, SIR, MR. DAVIS?

17 MR. DAVIS: NOTHING FROM MY CLIENT,
18 ADRIAN GADSON.

19 THE COURT: VERY WELL. ALL RIGHT. NOW,
20 LADIES AND GENTLEMEN, I WANT TO THANK YOU FOR YOUR
21 SERVICE ON THIS JURY. I WANT TO THANK YOU FOR YOUR
22 TIME AND TELL YOU THAT I KNOW THAT YOUR TIME IS
23 PRECIOUS. AND I WANT TO AGAIN THANK YOU FOR IT,
24 NOT ONLY FOR LAST WEEK BUT ALSO FOR THIS WEEK AS

VERDICT

809

1 MATTER IF YOU CHOOSE TO TALK ABOUT IT. IT IS
2 COMPLETELY UP TO YOU. THE PRACTICE OF LAW IS AN
3 ART AND NOT A SCIENCE, AND SOMETIMES LAWYERS WANT
4 TO TALK TO JURORS SO THAT THEY IMPROVE THEIR TRIAL
5 WORK AND MAY ASK YOU TO TALK ABOUT IT SO THAT THEY
6 WILL KNOW WHAT WAS HELPFUL AND ALSO WHAT WASN'T AS
7 HELPFUL. IF YOU WANT TO TALK ABOUT IT WITH THEM,
8 THAT'S PERFECTLY FINE. IF YOU DON'T, AGAIN THAT'S
9 PERFECTLY FINE. I AM TOLD THAT THERE CAN BE
10 DIFFERENT FOLKS THAT DO RESEARCH ABOUT JURORS. I'M
11 TOLD BECAUSE I'VE NEVER KNOWN IT TO HAPPEN. BUT
12 I'M ALWAYS CAREFUL TO TELL JURORS SHOULD ANYONE
13 EVER PERSIST IN TALKING ABOUT A CASE AND YOU DON'T
14 WANT TO TALK ABOUT IT, JUST LET ME KNOW. I'M IN
15 SUMMERVILLE. MY OFFICE IS IN THE BOOK, AND I'LL
16 CERTAINLY BE DELIGHTED TO INTERCEDE ON YOUR
17 BEHALF. NOW, A COUPLE OF THINGS I DO WANT YOU TO
18 KEEP IN MIND. I WANT TO TELL YOU THAT YOU HAVE
19 WELL EARNED YOUR JURY EXEMPTION SHOULD YOU CHOOSE
20 TO EXERCISE IT FOR THE YEAR 2003 AND 2004. NOW,
21 THAT DOESN'T APPLY TO MAGISTRATE'S COURT AND
22 MUNICIPAL COURT BUT CERTAINLY AS TO A COURT OF
23 RECORD. YOU ARE NOW NOT ELIGIBLE TO SERVE IN A
24 COURT OF RECORD FOR THE REMAINDER OF THE YEAR

VERDICT

810

1 COURT OR MUNICIPAL COURT, BUT IT CERTAINLY DOES FOR
2 COURT OF RECORD. KEEP THAT IN MIND AS WELL. ANY
3 OF YOU THAT NEED ANYTHING FOR WORK, MRS. ETHERIDGE
4 AND MRS. FOOTMAN WILL GET THAT FOR YOU. IF YOU'LL
5 JUST WAIT A MOMENT BACK IN THE JURY ROOM, THEY'LL
6 COME TO YOU IMMEDIATELY AND GET YOU THAT
7 INFORMATION THAT YOU MAY NEED FOR YOUR WORK.

8 AND I WOULD SIMPLY END BY AGAIN
9 THANKING YOU FOR YOUR SERVICE ON THIS JURY AND ON
10 THE JURY PANEL LAST WEEK AND AS IT CONTINUED TODAY,
11 AND KNOW THAT IT'S BEEN AN HONOR AND A PRIVILEGE OF
12 MINE TO SERVE WITH YOU IN THIS CAPACITY. CERTAINLY
13 SHOULD OUR PATHS EVER CROSS THIS WAY AGAIN, IT
14 WOULD LIKEWISE BE AN HONOR AND A PRIVILEGE OF MINE
15 TO SERVE WITH YOU AGAIN. YOU ARE AT THIS TIME FREE
16 TO GO; HOWEVER, IF YOU TRY TO SLIP OUT WITH ONE OF
17 MRS. SALISBURY'S BUTTONS, SHE'S LIABLE TO TACKLE
18 YOU. THANK YOU ALL SO VERY MUCH.

19 (AT THIS TIME JURY IS EXCUSED.)

20 THE COURT: MR. DAVIS, DO YOU WISH TO
21 HAVE THE TEN DAYS?

22 MR. DAVIS: I WANT TO TAKE MY CLIENT
23 HOME, YOUR HONOR; SO---

24 THE COURT: I KNOW YOU DO, MR. DAVIS.

VERDICT

811

1 BUT I FIND THAT AT THIS TIME IN THAT THE JURY HAS
2 RENDERED ITS VERDICT, THAT'S WOULD BE
3 INAPPROPRIATE. BUT I DO UNDERSTAND YOUR THOUGHTS
4 ABOUT THAT.

5 MR. DAVIS: ARE WE COMING BACK ON
6 TOMORROW OR---

7 THE COURT: YOU KNOW, I THINK IT'S BEST
8 THAT WE CONCLUDE THE MATTER; HOWEVER, YOU KNOW, I
9 KNOW THAT YOU'VE BEEN HERE QUITE A BIT. I JUST ASK
10 YOU TO GET WITH MRS. MURPHY, AND IF YOU ALL CAN --
11 I'M HAPPY TO HEAR YOU EITHER FIRST THING IN THE
12 MORNING OR JUST BEFORE WE BEGIN AFTER THE LUNCH
13 BREAK, OR LATER IN THE AFTERNOON. I'LL LEAVE IT TO
14 YOU ALL TO MAKE THAT DETERMINATION. I KNOW YOU MAY
15 HAVE SOME FOLKS THAT WANT TO BE PRESENT. SO, AS
16 LONG AS IT OCCURS AT SOME POINT TOMORROW.

17 MR. DAVIS: THANK YOU, YOUR HONOR.

18 THE COURT: ANY OBJECTION TO THAT, MRS.
19 MURPHY?

20 MRS. MURPHY: NO, YOUR HONOR. THE ONLY
21 QUESTION WE WOULD HAVE IS WHETHER OR NOT AT THIS
22 POINT WE WOULD HOLD THE DEFENDANT, MS. GADSON,
23 SINCE THE JURY HAS RENDERED ITS VERDICT.

24 THE COURT: WE JUST TALKED ABOUT THAT.

VERDICT

812

1 THE COURT: THAT'S OKAY. YES; WE HAVE
2 MADE THAT DETERMINATION. SHE WILL STAY WITH US
3 THIS EVENING. VERY WELL. ALL RIGHT.

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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 TRIAL OF THE CAPTIONED CASE IN THE COURT OF GENERAL SESSIONS IN DORCHESTER COUNTY, ON THE 21ST THROUGH 29TH DAYS OF OCTOBER, 2002.

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


OFFICIAL COURT REPORTER

MY COMMISSION EXPIRES: 2/23/2008

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF DORCHESTER) COURT OF GENERAL SESOINS
 3
 4 STATE OF SOUTH CAROLINA)
 5) No. 2002 GS 18 0006, 0224
 6 versus)
 7) PARTIAL TRANSCRIPT OF
 8) RECORD
 9 WILLIAM DEAN BURDEN and)
 ADRIAN GADSON,)
 Defendants)

St. George, South
 Carolina
 October 29, 2002

13 B E F O R E :

14 HONORABLE DIANE GOODSTEIN, Judge

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

17 For the State:

M. MURPHY, Esq.
 Assistant Solicitor

18 For Defendant
 19 Burden:

G. DUKES, Esq.

20 Reporter:

KATHI ADDISON

22 HARRIET P. BENNETT
 23 Reporter, S. C. Court Administration
 P. O. Box 1575
 24 Mt. Pleasant, S. C. 29465
 25

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

2 For the Defendant
3 Gadson:

S. DAVIS, Esq.

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1 (The within matter came before the Court on October
2 29, 2002)

3 THE COURT: All right, we have reconvened early in
4 State versus Mr. Burden and State versus Ms. Gadson, for
5 the purpose of sentencing.

6 Ms. Murphy, we'll begin with you.

7 MS. MURPHY: Thank you, Your Honor. May it please the
8 Court?

9 In regards to Mr. William Dean Burden, he does have a
10 criminal record which includes in 1992 he was arrested for
11 possession with intent to distribute in proximity of a
12 school and possession or cocaine distribution.

13 He pled to crack cocaine possession with intent and was
14 given a sentence of five years, suspended to eighteen months
15 probation, and that Court date was on March 22nd of 1994.

16 He also was convicted of manufacture and possession of
17 schedule one or two narcotics with intent to distribute,
18 first offense, and was given two years, suspended to eighteen
19 months probation.

20 In 1994, he has a conviction for failure to return
21 rental videos; in 1996, driving under suspension, second
22 offense; and his probation was revoked at that point.

23 He had a simple possession of cocaine conviction at that
24 point as well.

25 Your Honor, obviously Your Honor heard the testimony

1 throughout this trial, and in preparation for this case I
2 spoke with quite a few of the medical personnel involved in
3 transporting and caring for Child on November 3rd, 2001.

4 Each one of those medical personnel testified or told
5 me that basically it was a miracle that he survived.

6 Quite frankly, the State -- the State's position is
7 that Mr. Burden should not get credit for a miracle or for
8 the medical personnel's heroics. Had it not been for them,
9 he would be standing before you having killed a child under
10 the age of eleven.

11 Based upon the circumstances and the evidence presented
12 in the past, this little child's life has obviously been one
13 traumatic event right after another.

14 Based upon that, Your Honor, we would respectfully
15 request that you sentence him to the maximum twenty year sen-
16 tence.

17 THE COURT: Thank you so much. All right, Mr. Dukes,
18 let me hear from you.

19 MR. DUKES: Your Honor, he called EMS. He did do
20 that.

21 He's been an exceptional client to represent. He's
22 been agreeable, considerate.

23 He has been much more concerned about what's going to
24 happen to this lady and the children than he has been about
25 himself.

1 I haven't seen many of them like that, as considerate
2 as he has been. He loves this woman and he loves these
3 children. He is a mannerly young man.

4 He certainly has given me no problem. In fact, it has
5 been a pleasure to represent him.

6 I think he and his father would like to say a little
7 something to the Court.

8 THE COURT: I'll be happy to hear from one or both.

9 DEFENDANT'S FATHER: Your Honor, I'm Dean's father.

10 THE COURT: If you will just tell me your full name for
11 our record.

12 DEFENDANT'S FATHER: My name is Max Burden. (Portion
13 not audible on tape) I'm William Dean's father.

14 I never had no trouble with him. (Portion not audible)
15 I'm just asking that you please have mercy.

16 THE COURT: What would you like to say?

17 DEFENDANT: Judge, Your Honor, I was convicted in the
18 Court and as I testified on the stand -- everything I said
19 before the Court was true, but I was convicted.

20 I apologize and I ask for mercy for Adrian. She did
21 nothing wrong. She is not responsible for anything that oc-
22 curred, and I would just ask you to please show leniency to
23 her.

24 THE COURT: I reckon then it's your position that it
25 is the child's fault that he was hurt like he was, is

1 that your position?

2 DEFENDANT: No, maam, I'm not saying that.

3 THE COURT: Well, interestingly enough, I don't know
4 any other explanation other than it's the child's fault he
5 had a subdural hematoma because you and the mother didn't
6 have anything to do with it.

7 Thank you.

8 MR. DUKES: Your Honor, he admitted that he put some
9 bruises on the child when he dropped him.

10 THE COURT: Yes, sir. That's what he did. He dropped
11 him. He did testify to that. That is correct.

12 MR. DUKES: Your Honor, I would ask for mercy on his
13 behalf, even though he asked for mercy on his girlfriend's
14 behalf.

15 You know, I think that he could be -- he could go
16 through some training and treatment and all. I think it's
17 a shame he hasn't had it before, but I think he's a guy that
18 could learn from it.

19 I think he's a guy that could be a contribution to
20 society. He's thirty-two or thirty-one years old, and we
21 would ask that you take that in consideration. He has some
22 sort of record but he has never been violent.

23 We would ask that the Court show whatever mercy it can
24 to him. Thank you very much.

25 THE COURT: Thank you so much, Mr. Dukes. Thank you

1 so very much.

2 All right, let me hear from Ms. Gadson -- let me hear
3 regarding Ms. Gadson and then hear from her.

4 MS. MURPHY: Your Honor, in regards to Ms. Gadson, even
5 though she does not have a prior criminal record, the extent
6 of her involvement only she would know. Certainly this
7 is her child, and she stood by the Defendant to the very
8 end, regardless of the consequences to the child.

9 From the testimony, it is very obvious that it almost
10 resulted in the child's death.

11 She completely neglected and disregarded her responsi-
12 bilities as a parent, and based on those circumstances,
13 Your Honor, we would ask that the Court impose the maximum
14 sentence.

15 THE COURT: Thank you, Ms. Murphy. Mr. Davis?

16 MR. DAVIS: Your Honor, I don't have any magical words
17 to put before this Court. The Court has a feel for the
18 facts and circumstances here.

19 But I will say, with deep down conviction, having
20 served as a prosecutor for some ten years, and being involved
21 in the criminal process for a total of twenty years, that
22 sometimes in the course of events what we do when we are
23 confronted with decisions it has a long term effect upon
24 our future.

25 In 1998 I had the pleasure of representing the young lady

1 and I was actually the counsel involved in the Family Court,
2 and I mean this with all due sincerity that she in 1998
3 agreed to a finding of abuse.

4 Sometimes lawyers make poor decisions, but I wanted her
5 to have her children back because I was confident that she
6 was a good mother.

7 I have always had some concern about her love and de-
8 votion she showed the father of the children, and I was
9 disappointed in her in her relationship with this man here,
10 and the statement wherein she said that she didn't believe
11 what occurred and was said back in 1998.

12 I have never taken any will toward that, Your Honor.
13 He has an obligation to answer for what he did, and I have
14 an obligation to be zealous in my representation of my
15 client here.

16 But I will say that but for the fact that on that
17 uneventful day in 2000 on November 3rd when she was not at
18 home and she went and conversed with Mr. Marshall and shared
19 that she had some prior knowledge of what took place in
20 1998 -- that kind of changed the facts, and changed them to
21 the extent that I have no ill will to them bringing an in-
22 dictment against her in reference for which she stands be-
23 fore you.

24 The jurors of Dorchester County listened to the testi-
25 mony and made a determination on the facts, and we live with

1 that, Your Honor.

2 Looking on the other side -- there are always two
3 sides to each story -- Judge, when you look at the stand-
4 point of her having five children and when you look at the
5 standpoint of this is the only child that has received an
6 injury, for whatever reason -- the jury has spoke on that
7 issue.

8 The point I'm making is that under no circumstances
9 can anyone ever point to the fact that she was actually in-
10 volved in injury to this particular child herself.

11 She may have used poor judgment with reference to liv-
12 ing with the same man who fathered the children and at the
13 same time hurt the children.

14 It's one of those things that they've made shows
15 about. Sleeping with the enemy -- they've made movies
16 about that, and I'm not here to say that I have some mag-
17 ical insight into everything that transpired, but I can
18 tell the Court, with all due honesty, that I feel confident
19 as you sit today in that chair, realizing the full compli-
20 cations that there are going to be with the children, that
21 whatever you decide is just going to add to whatever she
22 has already undergone.

23 She has not had the occasion to actually be involved
24 with the children since November third of 2001. What she
25 is confronted with today is like a continuation of that

1 process.

2 The children are going to be victims, even Child

3 Your Honor.

4 We accept the fact that there is no question but she did
5 not participate in any of this at all.

6 Now, in this whole process, you know, we try to push
7 her to the point of do you believe he did it, and I have
8 not pushed her to that point. I think God will be the final
9 judge of that.

10 I think her conscience and her inner soul will be the
11 final judges of that.

12 But I would ask the Court for every bit of mercy for
13 this young lady. She has no prior criminal record whatsoever,
14 and I do share the fact that Child is miraculously living
15 -- apparently there is no damage that was not brought forth
16 to this Court.

17 I am asking the Court as you look into the sentence to
18 put her in a position that she can be reunited with her
19 children. Her children cries out for her. Her mother,
20 her brother, her grandmother, her friends ask that this
21 Court have mercy.

22 We hope that you can fashion a sentence that will hand
23 out justice but at the same time will be tempered with
24 mercy on behalf of my client.

25 THE COURT: Thank you so much.

1 I need Ms. Murphy -- you need to sign the sentencing
2 sheet.

3 UNKNOWN PERSON: May I be heard?

4 MR. DAVIS: Her mother would like to say something.

5 THE COURT: Sure. Sure. Just identify yourself for
6 our record.

7 MS. GADSON: (First name not audible on tape) Gadson.

8 THE COURT: Yes, maam.

9 MS. GADSON: I just want to say that this is the only
10 daughter that I have and I never had a problem with her,
11 and she love her kids.

12 These people already take her life away by taking her
13 from her children.

14 THE COURT: Who took her life away?

15 MS. GADSON: D.D.S.

16 THE COURT: D.S.S. took her life away?

17 MS. GADSON: Yes, they take her life -- those kids is
18 part of her life, and, you know, (balance of sentence not
19 audible on tape)

20 She have never been in trouble before, and I ask you
21 just to have mercy on her.

22 (Another portion of statement not audible on tape)

23 THE COURT: So you think this is D.S.S.'s fault? Okay.

24 MS. GADSON: And I'm just here because I've got to live
25 with this for the rest of my life.

1 THE COURT: The children are not living with you, are
2 they?

3 MS. GADSON: Not -- no, but I want to get them because
4 I know that they are not being taken care of, so I have
5 written . .

6 THE COURT: So you don't think the children are safe
7 at this point? Have you mentioned that to the Department
8 of Social Services that you don't think they are . .

9 MS. GADSON: I have mentioned it to her before and I'm
10 going to talk to her again about this.

11 THE COURT: All right. Okay. Yes, maam, I understand.
12 She certainly is lucky to have you, maam.

13 All right, Mr. Davis, anything further?

14 MR. DAVIS: No, Your Honor.

15 THE COURT: Anything further from anyone?

16 (No response heard)

17 All right. One second, everyone. I apologize for
18 taking this time. I wanted to look at the statute before
19 I passed sentence under the child abuse, because that is a
20 rather new statute. I did want to look at it one more
21 time before I passed sentence.

22 Somebody has unfortunately walked off with that code
23 book. Ms. Murphy, you don't happen to have that, do you?
24 If you could pass it up, it would be a help.

25 Thank you.

1 All right, Mr. Burden, I'm going to begin with you. I
2 have had, of course, the benefit of hearing the testimony
3 and this jury has made its determination.

4 It is my hope, my sincere hope, that this little boy
5 gets to grow up to be a man and doesn't have to be hurt
6 any more, physically.

7 Of course, he has suffered tremendous, tremendous dam-
8 age and abuse. It just is my sincere hope that this little
9 fellow finds a place where he can be protected and can be
10 safe in terms of being able to grow up and be all that he
11 can be in this world, along with the other children.

12 With regards to 2002 18 0006, assault and battery
13 with intent to kill, I am going to confine you and commit
14 you to the State Department of Corrections for a period of
15 twenty years.

16 With regards to 2002 GS 18 0992, child abuse with the
17 infliction of great bodily harm upon a child, I'm likewise
18 going to commit you to the State Department of Corrections
19 for a period of twenty years.

20 These sentences will run concurrent. Good luck to
21 you.

22 With regard to you, Ms. Gadson, I am going to commit
23 you to the State Department of Corrections for a period of
24 ten years.

25 I'm going to suspend that upon the service of eight

1 years, and five years probation.

2 A special condition of your probation, I want you to
3 receive individual and family counseling and parenting
4 counseling.

5 As a special condition of your probation, you are not
6 to be in the company of children -- of any child -- under
7 the age of eighteen, throughout the period of your proba-
8 tionary time.

9 Good luck to you.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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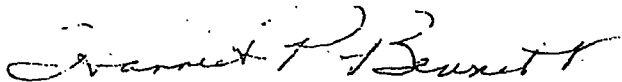
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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing transcript was prepared from the records of Kathi Addison, to the best of my ability, having been heard on October 29, 2002, in the Court of General Sessions for Dorchester County.

FURTHER, I certify that I am neither of kin or counsel to any party to this action, nor do I have any interest in the outcome of the same.



DATED:

February 23, 2004

WITNESSES

Tom Marshall

DCSO

ARREST WARRANT NUMBER

2002DOR22

Arrested:

ACTION OF GRAND JURY

True Bill

Date: 10-17-02

Patry W. Richard

Foreperson of Grand Jury

Date: October 17, 2002

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002GS18-0992

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

October 21, 2002 TERM

THE STATE

vs.

William Dean Burden

Indictment for

CHILD ABUSE/ INFLICTION OF GREAT
BODILY HARM UPON A CHILD

SC Code: 16-3-95(A)

CDR Code: 2766

Class: FEL-C

And being duly sworn,
hereby waive presentment to the Grand

Defendant

I
hereby appear in my own proper person
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2002GS18-0992

At a Court of General Sessions, convened on October 21, 2002 the Grand Jurors of Dorchester County present upon their oath:

CHILD ABUSE/ INFLICTION OF GREAT BODILY HARM UPON A CHILD

That the defendant, William Dean Burden, did in Dorchester County on or about November 3, 2001, knowingly and unlawfully inflict great bodily injury upon Child [REDACTED], a child, 5 years of age (DOB 1-2-96), thereby violating Section 16-3-95(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Maite Murphy, SOLICITOR

WITNESSES

DET. T. MARSHALL, DCSD

ARREST WARRANT NUMBER

H069323

Arrested: Nov 06, 2001

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: January 22, 2002

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2002GS18-0006

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

January 22, 2002 TERM

**THE STATE
VS.**

William Dean Burden

Indictment for

ASSAULT AND BATTERY WITH INTENT
TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class: FLE-C(V)

After being fully advised as to my legal rights,
I hereby waive presentment to the Grand Jury.

Defendant.

hereby appear in my own proper person
plead guilty to the within indictment or t

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2002GS18-0006

At a Court of General Sessions, convened on January 22, 2002 the Grand
Jurors of Dorchester County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That William Dean Burden, did in Dorchester County, on or about November 3, 2001,
with malice aforethought did commit an assault and battery upon the victim, Child
[REDACTED], by striking the five year old victim multiple times rendering him unconscious
and causing multiple injuries on the child's body. This offense being a violation of
Section §16-3-620 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.

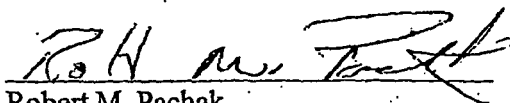
Maite Murphy

Maite Murphy SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 11th, 2004



Robert M. Pachak
Assistant Appellate Defender

South Carolina Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

FORM 5

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

IN THE COURT OF COMMON PLEAS

2006-CP-18-403WILLIAM DEAN BURDEN #288284)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention M'CORMECK CORR INST -
386 REDEMPTION WAY, M'CORMECK, S.C., 29899
2. Name and location of Court which imposed sentence DORCHESTER COUNTY
GENERAL SESSION COURT, ST GEORGE S.C
3. Name(s) of co-defendant(s) (if any) ADRIAN GADSON
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2002-65-18-0006 - A.B.W.E.K - 20 YEARS

- (b) 2002-05-18-0992 - CHILD ABUSE - 20 YEARS
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11-29-02
- (b) 20 YEARS EACH - CONCURRENT
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- ~~(b)~~ after a plea of not guilty TRIAL
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. APRIL 7, 2005
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): COUNSEL'S TRIAL STRATEGY WAS DEFICIENCIES AND
 (a) PREJUDICE, COUNSEL WITHHELD BRADY MATERIAL, FILED NO
 (b) MOTION TO SUPPRESS EVIDENCE, MADE NO OBJECTIONS TO HEARSAY
 (c) TESTIMONY, JUDGE'S ERROR'S IN HER RULEING, NO INVESTIGATION BY MY ATTORNEY, OBTAIN NO EXPERT OPINION IN MY CASE.
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? DIRECT APPEAL
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. DIRECT APPEALS
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S.C COURT OF APPEAL
 ii. _____
 iii. _____

iv.

(c) the disposition thereof:

i.

APPEAL DENIED

ii.

iii.

iv.

(d) the date of each such disposition:

i.

APRIL 7, 2005

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

UNPUBLISHED OPINION

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

N/A

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

N/A

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) WAS NOT A DIRECT APPEAL ISSUE
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. 'TRIAL' GENE DUKES - DORCHESTER COUNTY
PUBLIC DEFENDER.
 ii. APPELLATE ATTORNEY - ROBERT M. PACHAK
OFFICE OF APPELLATE DEFENSE
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL + SENTENCE
 ii. DIRECT APPEAL
 iii. _____

19. State clearly the relief you seek in filing this application:

REVERSED AND REMANDED FOR NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of DORCHESTER)

I, WILLIAM DEAN BURDEN #288284, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

William D. Burden

SWORN to and subscribed before me this 9th
day of MARCH, 2006.

[Signature]

Notary Public

(L.S.)

My Commission Expires: MAY 5, 2008

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, WILLIAM DEAN BURDEN #288284, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

William D. Burden
Applicant

SWORN or affirmed to and subscribed before me this

9th day of MARCH, 2006.

Notary Public
Notary Public

My Commission Expires: MAY 5, 2008

TO: CLERK OF COURT

PLEASE FILE THIS POSTCONVICTION RELIEF
APPLICATION. PLEASE SEND ME A TIME STAMP
FILE COPY BACK TO ME FOR MY FILE.

THANK YOU

WILLIAM DEAN BURDEN #288284
M.C.C.F.

386 REDEMPTION WAY

MCCORMICK S.C 29899

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

William Dean Burden #288284,

Applicant,

vs.

State of South Carolina,

IN THE COURT OF COMMON PLEAS

CASE NO.: 2006-CP-18-403

**APPLICANT'S ADDENDUM TO
HIS APPLICATION FOR POST-
CONVICTION RELIEF**

Clary H. Black
CLERK OF COURT
DORCHESTER COUNTY
2010 DEC -6 PM 1:47
CERTIFIED COPY

William Dean Burden #288284 (hereinafter referred to as "Applicant" or "Mr. Burden") alleges ineffective assistance of trial counsel, Mr. Gene Dukes, in his trial of October 21 through 29, 2002. Applicant was arrested on November 6, 2001; was indicted for Assault and Battery with Intent to Kill on January 2, 2002; then indicted with a second charge of Child Abuse/Infliction of Great Bodily Harm Upon a Child on October 21, 2002. This Addendum of Applicant is intended as an addition to Applicant's original Application for Post-Conviction Relief, identifies page-line designations within the trial transcript that demonstrate ineffective assistance of counsel and identifies arguments in favor of the Court's granting the requested Post-Conviction Relief.

1. The second of two indictments for which Mr. Burden was tried between October 21 and October 29, 2002 was Child Abuse/Infliction of Great Bodily Harm Upon a Child. The indictment is also dated October 21, 2002, the first day of trial. Mr. Burden was given no notice of this indictment until the start of trial. No preparation was made for his defense of this charge. Trial counsel made no motion for continuance or objection against proceeding with the late indictment.

2. Paragraph 12 of the Application sites "made no objection." The following is a list of instances drawn from the trial transcript where no objection was made by Mr. Dukes:

a) Attorney Davis' question to Deputy Botten: "So really when you responded to Summerville Medical Center, the child was still living?"

P 59; LL 18-19. The child did not die. This was a misleading and prejudicial statement and a misstatement of fact. No objection was made.

b) Attorney Davis objects to Solicitor's redirect of Deputy Botten on the reading of Miranda warnings to Defendant Burden as outside the scope of prior cross examination.

P 62; LL 16-25. This is an objection to improper redirect concerning Mr. Burden made by defense counsel for the co-defendant. No objection was made by Mr. Burden's counsel.

c) Judge Goodstein's instruction to the jury at the end of jury selection: "Now after you have heard all the evidence in the case and you've heard the arguments of counsel and my charge on the case, then you will be prepared to discuss or deliberate this matter. I promise you that there will be no doubt in your minds when that time has come."

P 200; LL 10-24. While Judge Goodstein might have meant to indicate the point when deliberations were to begin, another reasonable inference from the court's instruction is that there would or should be no doubt in the jurors' deliberation. Mr. Dukes should have objected to this statement as an improper instruction on the role of the jury and an invasion of the jury's fact finding role, or for a clarification from the court. No objection was made.

d) During the Solicitor's closing argument, she stated: "He (Burden) did tell Detective Marshall upon his arrest that he lost it and Child [REDACTED] with a shoe. He's admitted to you that."

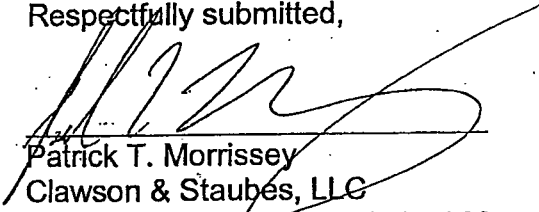
P 789; LL 6-8. Mr Burden did not say either attributed quote. This was a misstatement of fact in the closing of the State. Mr. Dukes neither objected nor corrected the misstatement.

3. Counsel Gene Dukes was in declining health, has since died, and devoted little time to preparation for this trial with Mr. Burden. Mr. Dukes met with Mr. Burden once at the jail in the months before trial. On that occasion Mr. Dukes had the wrong file and misidentified Mr Burden. All other pre-trial visits were made by Ms. Charlene Snowden, investigator for Mr. Dukes. Mr. Burden did see Mr. Dukes before the trial when Mr. Dukes was brought to the jail the weekend before Mr. Burden's trial started. Mr. Dukes was jailed for a DUI charge that day and did not discuss Mr. Burden's case.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

Therefore, for the reasons stated in Mr. Burden's Application for Post-Conviction Relief and this Addendum, we ask the Court to find that Mr. Burden was given ineffective assistance of counsel and to grant Mr. Burden a new trial.

Respectfully submitted,


 Patrick T. Morrissey
 Clawson & Staubes, LLC
 126 Seven Farms Drive, Suite 200
 Charleston, South 29492-8144
 (843) 577-2026

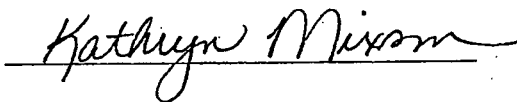
Attorneys for William Dean Burden

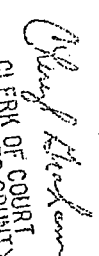
Charleston, South Carolina

December 6, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 6th day of December, 2010.




 CLERK OF COURT
 DORCHESTER COUNTY
 2010 DEC - 6 PM 4:47
 CERTIFIED COPY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON
	)	PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2006-CP-18-403
	)	
William D. Burden #288284,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed March 14, 2006, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Applicant was indicted at the January 2002 term of the Dorchester County Grand Jury for Assault and Battery with Intent to Kill (02-GS-18-0006). He was represented by Gene Dukes, Esquire. On October 29, 2002, the Applicant proceeded to trial after which he was found guilty of the charge. He was sentenced by the Honorable Diane S. Goodstein to confinement for a period of twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Burden, Op. No. 2005-UP-251 (S.C. Ct. App. filed April 7, 2005).

Attached herewith and incorporated herein by reference are the records of the Dorchester County Clerk of Court regarding the subject conviction(s), the Applicant's

records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. "Counsel's trial strategy was deficiencies (sic) and prejudice."
 - b. "Counsel withheld Brady material, filed no motion suppress evidence, made no objections to hearsay testimony."
 - c. "Judge's errors in her ruling."
 - d. "No investigation by my attorney, obtain no expert opinion in my case."

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of

reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant claims the trial judge erred in her rulings. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His

failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

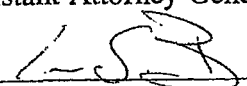
WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

LANCE S. BOOZER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Telephone: (803) 734-3737

3/27, 2008

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

2006-CP-18-403

William D. Burden, 288284,

Applicant,

vs

State of South Carolina,

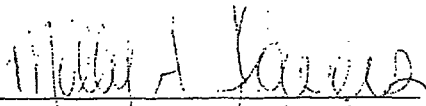
Respondent.

) AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Patrick T. Morrissey
Clawson & Staubes, LLC
126 Seven Farms Dr., Ste. 200
Charleston , SC 29492

DATED this 27th day of March, 2008.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
Case No.: 2006-CP-18-403

William D. Burden, #288284,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

ORDER OF CONTINUANCE

CERTIFIED COPY
2008 DEC -3 PM 4:13
Charles H. Hule
CLERK OF COURT
DORCHESTER COUNTY

This is a post-conviction relief application that was scheduled for an evidentiary hearing on October 28, 2008. One of the witnesses, Maite Murphy, Esquire, will be unavailable that week. Attorneys for the Applicant and Respondent have consulted and Applicant consents to the continuance. This Court granted the continuance upon good cause shown.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief hearing is **CONTINUED to the next term** of post-conviction relief court.
2. The Applicant is remanded to the custody of the Respondent during the pendency of this case.

IT IS SO ORDERED.

Diane S. Goodstein

Diane S. Goodstein
Chief Administrative Judge
First Judicial Circuit

Oct 23, 2008

Orangeburg, South Carolina

1 STATE OF SOUTH CAROLINA

2 COUNTY OF DORCHESTER

CIRCUIT COURT
2006-CP-18-00403

3
4 WILLIAM D. BURDEN,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Tuesday, December 7, 2010

11 Orangeburg, South Carolina

12 BEFORE:

13 THE HONORABLE EDGAR W. DICKSON
14
15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
18 Patrick T. Morrissey, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Mary S. Williams, Esq.
21
22

23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 1154
Aiken, SC 29802-1154

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CHARLENE SNOWDEN

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RECROSS BY MS. WILLIAMS 30

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	MAR	/	ADM
State's			
1 Obituary and SC Supreme Court Order	5		5

1 ON TUESDAY, DECEMBER 7, 2012 AT 11:15 A.M.:

2 THE COURT: Ms. Williams, are you ready?

3 MS. WILLIAMS: Yes, Your Honor. This is Mr. William
4 Burden.

5 Your Honor, this is 2006-CP-18-0403, William Dean
6 Burden versus the State. Mr. Burden faced a charge of
7 assault and battery with intent to kill as well as child
8 abuse with infliction of great bodily harm. He was tried
9 with a co-defendant, Adrian Gadsen. And he was found
10 guilty of those charges.

11 There was an appeal in that case. That appeal was
12 remitted on May 11th, 2005. And this application was
13 filed March 14th, 2006.

14 He was represented at trial by Gene Dukes and
15 Mr. Dukes passed away in 2007. I have a couple of
16 exhibits here which is just his obituary from the
17 Charleston Post and Courier, as well as the order of the
18 Supreme Court of South Carolina appointing a trustee to
19 take over his files after he passed away in August of
20 2007.

21 I believe that opposing counsel has no objection to
22 those being made part of the record just to show why
23 Mr. Dukes is not with us today.

24 MR. MORRISSEY: No objection.

25 MS. WILLIAMS: I'll bring these to the court reporter,

1 (Thereupon, State's Exhibit No. 1, obituary and order
2 of SC Supreme Court, was received into evidence.)

3 MS. WILLIAMS: And, Your Honor, I'll let Mr. Morrissey
4 take over.

5 THE COURT: All right. Mr. Morrissey?

6 MR. MORRISSEY: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. MORRISSEY: Your Honor, Mr. Burden has filed a
9 post conviction relief -- petition for post conviction
10 relief alleging ineffective counsel by Mr. Dukes during
11 his 2002 trial. Mr. Burden was arrested in November of
12 2001. An indictment for assault and battery with intent
13 to kill was presented in January of 2002.

14 In the second indictment, if you look in the Court's
15 record in volume two of two, the child abuse indictment is
16 dated October 21, 2002, which is also the first day of the
17 trial.

18 Mr. Burden in his petition stating ineffective
19 assistance of counsel has stated a number of reasons, but
20 I'd like to start off with what was added in or put into
21 my supplemental addendum added to his petition which is
22 that he was not given notice of the second indictment and
23 only became aware of it actually at trial. Had no
24 preparation for it, no discussions with Mr. Dukes about
25 it.

CHARLENE SNOWDEN - DIRECT

1 There are other elements in the petition and my
2 supplemental talking about failure to object at various
3 times.

4 I -- with the indulgence of the Court, I'd like to
5 address those after witnesses have spoken. I intend to
6 call two witnesses, Mr. Burden, and an investigator
7 working for Mr. Dukes in this trial, Ms. Snowden, who's in
8 the courtroom today.

9 THE COURT: Okay.

10 MR. MORRISSEY: And the third element that I've
11 brought up in my supplemental is just Mr. Dukes' declining
12 health and his ability to provide effective counsel given
13 the state of his health and how it might have affected
14 some of the other issues we're discussing.

15 With that I'd like to call Ms. Snowden as the State's
16 first -- as the Petitioner's first witness.

17 THE COURT: Thank you, sir. Ms. Snowden.

18 CHARLENE SNOWDEN, having been duly sworn, was examined
19 and testified as follows:

20 THE COURT: If you'd have seat, please, ma'am. And
21 state your full name for the record.

22 THE WITNESS: Charlene Snowden, S-N-O-W-D-E-N.

23 THE COURT: All right. Thank you, ma'am.

24 DIRECT EXAMINATION

25 BY MR. MORRISSEY:

CHARLENE SNOWDEN - DIRECT

1 Q. Thank you for being with us today. Could you just
2 give us the benefit of a brief summary of your
3 background?

4 A. I was the first woman magistrate in Dorchester County
5 for 10 years, and then I went to work for the public
6 defender's office in the capacity of being Mr. Dukes'
7 investigator. And I've been with the public defender's
8 office for 10 years since.

9 Q. All right. Mr. Burden's case was around 2002. In
10 2002, what was your job description?

11 A. I was definitely just the investigator for Mr. Dukes
12 at that point.

13 Q. Mr. Burden, sitting next to me here today, is he
14 familiar with you?

15 A. Put on a little weight, I believe, but looks very
16 familiar.

17 Q. What would have been your role in your office with
18 Mr. Dukes as far as interacting with Mr. Burden?

19 A. Most of the interaction with the jail population was
20 done by me on usually a weekly or bi-weekly visit.

21 Q. In the years that you were with Mr. Burden, can you
22 describe any changes that occurred in his health over
23 time?

24 THE COURT: You mean Mr. Dukes?

25 MR. MORRISSEY: I'm sorry. Mr. Dukes.

CHARLENE SNOWDEN - DIRECT

1 THE COURT: Just want to make sure.

2 MR. MORRISSEY: Thank you, Your Honor.

3 THE COURT: Just to be clear on the record.

4 THE WITNESS: Well, he had -- toward the end of his
5 life he had significant health problems that resulted in
6 his inability to even practice law.

7 He was also -- can I say, I really am uncomfortable
8 speaking about somebody who's not here to answer for
9 themselves. So I am uncomfortable about answering this
10 question.

11 BY MR. MORRISSEY:

12 Q. And I apologize. I don't wish you to speak ill of the
13 dead.

14 A. Thank you. He had a drinking problem. He had an
15 alcohol problem.

16 Q. For your comfort level, and just to be clear and have
17 it on the record, you had great respect for Mr. Dukes;
18 correct?

19 A. I think Mr. Dukes was one of the finest attorneys I've
20 ever met and could perform miracles in some situations. I
21 personally saw an inmate from Lieber who was convicted of
22 murder who was again charged with murder and Mr. Dukes
23 managed to pull off of a not-guilty.

24 So I've seen him work significant miracles in cases.

25 Yes, I have.

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1 He was a wonderful attorney. He was an old country-
2 time attorney, not -- more gentle and kind, just a very
3 nice soul and a very good person and a wonderful,
4 wonderful attorney.

5 Q. But I understand that with this respect and admiration
6 for him when he was a healthy attorney acting on all
7 cylinders, as he had health problems that did affect his
8 representation of his clients; correct?

9 A. Yes. I believe so, yes.

10 Q. And you were able to observe that?

11 A. Yes.

12 Q. Mr. Burden's case time frame, 2002, was there a time
13 around trial in October of 2002 that Mr. Dukes was
14 arrested for anything?

15 A. Yes.

16 MS. WILLIAMS: Your Honor --

17 MR. MORRISSEY: What was that?

18 MS. WILLIAMS: -- at this point, I'd just object to
19 the relevance of the question being asked here to this
20 case, because I don't believe it bears anything on
21 Mr. Burden's case.

22 THE COURT: The relevance?

23 MR. MORRISSEY: Your Honor, it's Mr. Burden's
24 observation that Mr. Dukes came to the prison being
25 arrested for a DUI charge the Friday before his trial

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1 began, and that that impacted his ability to prepare for
2 trial in that he was occupied with other matters.

3 MS. WILLIAMS: At this point it is also hearsay. And
4 the best evidence would be the charging documents
5 regarding that, not just folks saying.

6 THE COURT: I will overrule your objection. I'll let
7 you ask the question. We'll get it on the record whether
8 she knows anything about it or not.

9 MR. MORRISSEY: Thank you, Your Honor. And one point,
10 just to close that discussion on it, I would have been
11 more than happy to produce some kind of documentation for
12 it; however, on review, there is no documentation of the
13 charging or his being brought into prison.

14 THE COURT: I understand.

15 BY MR. MORRISSEY:

16 Q. Now, you were aware that there was an arrest for DUI?

17 A. Yes.

18 Q. Mr. Dukes was arrested around the time of Mr. Burden's
19 trial; correct?

20 A. Yes.

21 Q. And would have been placed in the same prison that
22 Mr. Burden was in; correct?

23 A. To my knowledge, yes.

24 Q. Now, when you became involved as the investigator for
25 Mr. Burden's trial, it's my understanding that you were

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1 aware of only one indictment, the assault and battery?

2 A. That's correct.

3 Q. Did you ever become aware of during your involvement
4 with Mr. Burden's case of a second indictment for child
5 abuse?

6 A. No.

7 Q. In your practice and preparation for trial, what would
8 have been done had you been presented with a second
9 indictment for child abuse? What would the office have
10 done for the defense of Mr. Burden?

11 A. Well, first off, we would have given him notice of it
12 had -- I, again, cannot speak for Mr. Dukes. I wasn't
13 involved in the, you know, the behind-the-scenes
14 negotiations for the solicitors or that. But from my
15 personal knowledge I, I would have obviously told

16 Mr. Burden that there was a second indictment against him.

17 Q. And the -- I want to be clear on this. You met with
18 Mr. Burden at the jail; correct?

19 A. Yeah.

20 Q. That's yes. And when you were discussing your role as
21 the investigator, you were the communication conduit for
22 meeting with the clients at the jail; correct?

23 A. Absolutely. That was my function.

24 Q. So if you had -- it would have been your duty then,
25 had you received notice of the second indictment for child

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1 abuse, you would have presented it to Mr. Burden to
2 communicate to him?

3 A. More than likely, yes.

4 Q. And to your knowledge, you were never aware of the
5 child abuse indictment?

6 A. No, I wasn't.

7 Q. All right. How about, what kind of actions you would
8 have done as an investigator in trial preparation, which I
9 understand is your scope of work, if Mr. Burden has the
10 assault and battery with intent to kill that you're aware
11 of and then you are then subsequently shown a child abuse
12 indictment?

13 A. Well, from my personal experience I would have raised
14 a double jeopardy issue on the issue of the elements of
15 the second indictment. I would have called that to
16 somebody's attention; his, Gene's, my own, somebody. I'm
17 fairly confident I would have done that.

18 Q. And to be clear, the concern you would have had would
19 have been the similarity between the assault and battery
20 with intent to kill elements and then the child abuse
21 elements?

22 A. Exactly. Right.

23 Q. To your knowledge, did you have any discussion with
24 Mr. Dukes about any double jeopardy issues?

25 A. No, I did not.

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1 Q. Any conversation with him at all about the second
2 indictment?

3 A. None.

4 Q. Any conversations with Mr. Burden about any double
5 jeopardy?

6 A. None.

7 Q. And if it wasn't Mr. Dukes or you, would there have
8 been any other source through your practice area to have
9 communicated or prepared Mr. Burden for his trial on the
10 second indictment of child abuse?

11 A. No, there wouldn't have been anybody else.

12 Q. Would have been you and Mr. Dukes?

13 A. Correct.

14 Q. And as the office functioned, you would have been
15 involved in Mr. Dukes' preparing arguments for double
16 jeopardy; correct?

17 A. Correct.

18 Q. You would have been preparing documents to submit to
19 the Court?

20 A. Correct.

21 Q. And no such documents were ever prepared?

22 A. Correct.

23 Q. All right. It's Mr. Burden's contention that one
24 visit -- he only had one pretrial visit with Mr. Dukes for
25 the trial in which Mr. Dukes brought with him a number of

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1 files for multiple cases. Would that have been the normal
2 practice?

3 A. Yes.

4 Q. It's Mr. Burden's contention that when he arrived he
5 didn't have his file. Would that have been something that
6 would have occurred around 2002 with Mr. Dukes?

7 A. Mr. Dukes was notorious for losing files. They were
8 everywhere.

9 Q. How much time was Mr. Dukes spending in the office
10 prior to Mr. Burden's trial?

11 A. I don't know because I didn't work with him in his
12 private capacity. I only worked as the public defender --
13 on his public defender cases. He also had a private
14 practice.

15 Q. Okay. But did you observe him doing any trial
16 preparation for Mr. Burden's trial before Mr. Burden's
17 trial?

18 A. Not me personally, no.

19 Q. But you would have been his primary assistant for that
20 trial; correct?

21 A. Yes.

22 Q. And you observed part of that trial; correct?

23 A. I believe I was there with you. Wasn't I?

24 THE APPLICANT: (Nods head.)

25 THE WITNESS: Yes.

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1 BY MR. MORRISSEY:

2 Q. And you were still not aware of the second indictment
3 for child abuse until I informed you of it during the post
4 conviction relief phase?

5 A. That's exactly right. I wasn't aware of it until you
6 pointed it out.

7 MR. MORRISSEY: Thank you. That's all I have.

8 THE COURT: All right. Any questions of Ms. Snowden?

9 MS. WILLIAMS: Yes.

10 CROSS-EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Ms. Snowden, you've never observed Mr. Dukes to be
13 intoxicated when he was interacting with Mr. Burden; did
14 you?

15 A. No, I did not.

16 Q. And you never saw Mr. Dukes in prison; is that
17 correct?

18 A. That's correct.

19 Q. Not present at any arrest or anything of that nature?

20 A. That's correct.

21 Q. Okay. Tell me a little bit about your investigation
22 in this case, witnesses you may have spoken to. Just, can
23 you give me a quick summary of what you did for this case?

24 A. I mostly met with Mr. Burden. I didn't -- the
25 interviewing of witnesses and that, that was Mr. Dukes. I

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1 don't even know if we called witnesses. I'm not sure that
2 we even did.

3 Q. And what kind of things would you talk with Mr. Burden
4 about when you met with him?

5 A. Well, mostly just status updates. I would get the
6 preliminary information about his case and he'd tell me
7 what happened. And then I would write everything down and
8 I would take it back and I would report to Mr. Dukes and
9 exchange information and keep the case files current and
10 transmit information from the solicitor's office to him.

11 I was more of a liaison with the solicitor's office
12 and Mr. Dukes and the jail.

13 Q. So there was a file in this case; right? He had a
14 file somewhere on Mr. Burden; is that right?

15 A. Oh, yes. Oh, yes. There was a file.

16 Q. Okay.

17 A. Just, where is it?

18 Q. And you would take notes, you would pass those notes
19 along to Mr. Dukes?

20 A. Oh, yes.

21 Q. And would y'all have discussions about the case --

22 A. Yes.

23 Q. -- during that --

24 A. Yes, we did.

25 Q. And you had regular discussions with him, would you

CHARLENE SNOWDEN - CROSS

1 say?

2 A. Yes.

3 Q. On a weekly or bi-weekly basis up to the trial?

4 A. Yes, yes.

5 Q. Were there any conversations between Mr. Dukes and
6 Mr. Burden that you would not have been privy to?

7 A. Absolutely. Mr. Dukes would often go to the jail
8 without my knowledge or assistance or my presence at all.

9 Q. Okay. And how much time would you normally spend with
10 Mr. Dukes in preparation for a case like this? Would
11 y'all meet the weekend before the trial and spend a lot of
12 time?

13 A. Oh no. No, no, no.

14 Q. It really wasn't unusual that you didn't do trial
15 preparation the weekend before or whatever?

16 A. Mr. Dukes had his own way of practicing and performing
17 a trial that really, it was almost intuition with him. So
18 it would be very difficult to say how much time he did
19 prepare because his preparation was always in his head.
20 He rarely produced documentation. He -- it was
21 instinctive with him which is what made him such a great
22 attorney.

23 Q. And do you know how long he maintained his work with
24 the public defender's office? Do you know what years?

25 A. Oh gosh. I -- no, I don't.

CHARLENE SNOWDEN - CROSS

1 Q. He was obviously still practicing in the public
2 defender's office in 2002; is that correct?

3 A. Well, he was with the office but he was no longer
4 practicing. He hadn't been practicing for close, almost a
5 year and a half, two years.

6 Q. At the time of this trial --

7 A. No.

8 Q. -- or the time he passed?

9 A. No, at the time of his passing.

10 Q. Okay. So he had maybe not been practicing since
11 probably 2005 or 2006 and he passed in 2007?

12 A. On a very limited basis, yes, he was very ill, very
13 ill at the end.

14 Q. And he was active up until that last couple of years,
15 would you say?

16 A. Yes. Oh, yes.

17 Q. Did you notice anything about his illness that seemed
18 to affect him in 2002?

19 A. The effects of alcoholism.

20 Q. But you didn't see him intoxicated with his client,
21 Mr. Burden, at any time or anything?

22 A. No.

23 MS. WILLIAMS: All right. I think that's all.

24 THE WITNESS: Thank you.

25 THE COURT: I've got a question. You said you noticed

1 the effects of alcoholism. Explain what you noticed in
2 2002.

3 THE WITNESS: Maybe his focus wasn't where it should
4 have been, a hundred and 10 percent. But to what degree I
5 couldn't, I couldn't state. Was he at 50 percent? Was he
6 at 100 percent? Because that's not how he practiced law.

7 So, it would be very difficult for me -- I know there
8 were personal issues personally in his life. And I know
9 that he had told me himself that he was drinking heavily.
10 And if that impairs your judgment, then that impairs --
11 you know, it's hard to say.

12 THE COURT: In 2002, you were still working with him
13 some on trials?

14 THE WITNESS: Oh, yes.

15 THE COURT: And he was, was still trying cases and
16 doing things in 2002?

17 THE WITNESS: Oh, yes.

18 THE COURT: In 2002, did you have any personal
19 concerns about his ability to represent anybody at that
20 time?

21 THE WITNESS: No.

22 THE COURT: Okay. Thank you, ma'am.

23 MR. MORRISSEY: Nothing further, Your Honor.

24 THE COURT: Thank you.

25 MR. MORRISSEY: Thank you, ma'am. I appreciate it.

WILLIAM DEAN BURDEN - DIRECT

1 THE COURT: I appreciate you coming in, Ms. Snowden.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Morrissey, your next witness.

4 MR. MORRISSEY: I'd like to call Mr. Burden.

5 THE COURT: Mr. Burden, if you'd please come forward,
6 please, sir.

7 THE APPLICANT: Yes, sir.

8 WILLIAM DEAN BURDEN, having been duly sworn, was
9 examined and testified as follows:

10 THE COURT: If you'd state your full name for the
11 record, please.

12 THE APPLICANT: My name's William Dean Burden.

13 THE COURT: Thank you, Mr. Burden.

14 DIRECT EXAMINATION

15 BY MR. MORRISSEY:

16 Q. Mr. Burden, what's your inmate number?

17 A. 288284.

18 Q. And when were you born?

19 A. January 17th, 1971.

20 Q. Are you currently at Turbeville?

21 A. Yes, sir.

22 Q. You filed a PCR; correct? Post conviction relief
23 petition?

24 A. Yes, sir.

25 Q. Who was your attorney at the trial?

WILLIAM DEAN BURDEN - DIRECT

1 A. Gene Dukes.

2 Q. What was your knowledge, right up until the day of
3 trial being at the courthouse, of what you were being
4 charged with?

5 A. Assault and battery with intent to kill.

6 Q. Were you aware at any point before arriving at the
7 courthouse for your trial that there was a second
8 indictment for child abuse?

9 A. No, sir; I wasn't.

10 Q. When was your first meeting with Mr. Dukes?

11 A. Mr. Dukes came to see me in about August of 2002.

12 Q. And what were the general details of that visit?

13 A. He came to see me as -- he had files, but he didn't
14 have my file. He had thought I was there for a DWI with
15 manslaughter also.

16 Q. So was there any substantive discussion of your case
17 at that time?

18 A. After he found out that I wasn't who he thought I was,
19 we started speaking about my case.

20 Q. Did you have any other meetings with Mr. Dukes prior
21 to trial?

22 A. No, other than the time he had allegedly -- was
23 arrested, but I didn't see him or speak with him.

24 Q. Okay. But you were aware through others that he was
25 at the jail?

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1 A. Yes.

2 MS. WILLIAMS: Your Honor, just to note an objection
3 to hearsay to that.

4 THE COURT: So noted on the record. Okay.

5 BY MR. MORRISSEY:

6 Q. Who were your subsequent trial preps with?

7 A. Ms. Snowden.

8 Q. And that was the lady who just testified?

9 A. Yes.

10 Q. Anyone else associated with Mr. Dukes you did any kind
11 of trial preparation with?

12 A. No, sir.

13 Q. All right. Through Ms. Snowden or to Mr. Dukes, did
14 you make any requests during trial preparation?

15 A. Yes. Actually I wrote his office and I requested my
16 motion to discovery prior to trial.

17 Q. Okay. When you say motion for discovery, what were
18 you looking for?

19 A. Basically any evidence that was going to be used
20 against me at trial so I could peruse for my own benefit.

21 Q. Were you ever given anything?

22 A. No, sir.

23 Q. Were you ever given any information of the witnesses
24 that would be testifying against you?

25 A. No, sir.

WILLIAM DEAN BURDEN - DIRECT

1 Q. Were you ever given any medical reports on Shyeem, the
2 victim in this case?

3 A. No, sir.

4 Q. So tell me how you came to be aware of the child abuse
5 indictment.

6 A. Trial had started and that's when they presented me
7 with that indictment. It was at trial.

8 Q. Okay. And any discussion with Mr. Dukes at that point
9 about having two indictments instead of one?

10 A. No.

11 Q. So just to be clear, at no time did Mr. Dukes ever
12 discuss with you or prepare you for the second indictment
13 of child abuse?

14 A. No, sir.

15 Q. Made no requests for any continuance on that second
16 indictment?

17 A. No, sir.

18 Q. Made no objections to it being presented, the second
19 indictment, on the eve of trial?

20 A. No, sir.

21 Q. Were there any efforts or attempts to discuss with you
22 and Mr. Dukes about negotiations during the trial?

23 A. While we were at trial he mentioned that he would look
24 into the feasibility of a plea but that was during the
25 trial. He said at that point in time it was looking good

WILLIAM DEAN BURDEN - DIRECT

1 so he'd leave that for later.

2 Q. Was there any follow up on any kind of negotiations?

3 A. Oh, no, sir.

4 Q. So were you aware of any continuing plea negotiations
5 while trial -- I'll break it into two parts -- when trial
6 began?

7 A. Prior to the trial beginning?

8 Q. Yes.

9 A. Yes. They offered me a plea of 15 years.

10 Q. Was it your understanding that that was on the assault
11 and battery charge? On both? Or what?

12 A. No, sir. Just simply on the assault and battery.

13 Q. So as far as you were aware, you were never even
14 presented with any kind of negotiation on the two
15 indictments?

16 A. No, sir.

17 Q. All right. You've heard some testimony today about
18 Mr. Dukes and he might have been drinking at times. Do
19 you have any observations on whether or not Mr. Dukes was
20 drinking during your trial?

21 A. Well, at one point when they had recessed Mr. Dukes
22 was gone for an extended period of time and they was
23 looking for him and when he came back to the table he had
24 smelled of alcohol.

25 Q. All right. So to be clear, during the trial at one

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1 point Mr. Dukes came back from a recess and you could
2 smell alcohol on his breath?

3 A. Yes.

4 Q. All right. So in summary here, in going over your
5 petition and your testimony today, you've alleged
6 Mr. Dukes offered ineffective assistance of counsel to you
7 during the trial; isn't that correct?

8 A. Yes.

9 Q. In support of that, you believe that very little
10 preparation was done for your trial; correct?

11 A. Yes.

12 Q. You had requests for discovery that were ignored;
13 correct?

14 A. Yes, sir.

15 Q. You received no information of the trial that was --
16 of the case that was going to be presented against you as
17 far as other evidence or witnesses?

18 A. No, sir.

19 Q. All right. There's some issues that you've raised
20 with me about failure to -- Mr. Dukes' failure to object
21 to various points in the trial. I'll be submitting those
22 to the Court and they've already been submitted in paper
23 but, are there any other -- well, strike that.

24 As further evidence of supporting your claim of
25 ineffective counsel, you believe you were given no notice

WILLIAM DEAN BURDEN - CROSS

1 or opportunity to prepare any due process at all for the
2 second indictment of child abuse; correct?

3 A. Correct.

4 Q. And you were informed that there were negotiations
5 still going into trial, but you were never given any
6 update or status other than the fact Mr. Dukes said he
7 would be negotiating?

8 A. Yes.

9 Q. All right. And it was your statement of interest to
10 Mr. Dukes that there be some negotiations; correct?

11 A. Yes, it was.

12 Q. And during the course of the trial, coming back from a
13 recess, that you smelled alcohol on his breath?

14 A. Yes, sir.

15 Q. All right. Thank you, Mr. Burden. That's all I have
16 for you.

17 THE COURT: Ms. Williams?

18 CROSS-EXAMINATION

19 BY MS. WILLIAMS:

20 Q. All right. Mr. Burden, you understood that the
21 assault and battery with intent to kill indictment, that
22 that did involve Shyeem; is that correct?

23 A. Yes, ma'am.

24 Q. And the child abuse charge also involved Shyeem; is
25 that correct?

WILLIAM DEAN BURDEN - CROSS

1 A. That's correct.

2 Q. You've heard Ms. Snowden's testimony that she was
3 meeting with folks there on a weekly or bi-weekly basis.
4 Would that be accurate?

5 A. Yes.

6 Q. And what did you talk with Ms. Snowden about?

7 A. The one time I had spoke with Ms. Snowden she
8 presented me with a plea bargain for assault and battery
9 intent to kill.

10 Q. And that was the 15-year offer you had referenced
11 earlier?

12 A. Yes, ma'am.

13 Q. And did you accept that offer?

14 A. No, ma'am, I didn't.

15 Q. Did you talk to Ms. Snowden about any evidence? Your
16 version of facts? Anything of that nature?

17 A. No, we didn't. She simply brought me the plea and
18 after I declined it, she had other people to deal with.

19 Q. And you testified at your trial; is that correct?

20 A. Yes, I did.

21 Q. And you had the opportunity to tell your version of
22 the story?

23 A. Yes.

24 Q. Regarding the events regarding your son, Shyeem; is
25 that correct?

WILLIAM DEAN BURDEN - CROSS

1 A. Correct.

2 Q. And it was your decision to testify at trial?

3 A. My attorney's decision. He told me.

4 Q. He made you testify?

5 A. Oh, no, ma'am. He didn't make me, but he told me he
6 would want me to testify.

7 Q. Okay. And did you want to testify?

8 A. Yes. After he told me, yes.

9 Q. So you discussed that with him as to what you would
10 do?

11 A. No, ma'am. He basically told me at trial as we were
12 at the table that he was going to put me on the stand and
13 then I just went along with what he decided to do.

14 Q. You agreed with him that that was a good idea?

15 A. I just felt that he was the attorney. And he told me
16 that he felt I should get on the stand. So I went with my
17 attorney.

18 Q. And did you ever speak to him during any recesses,
19 during any breaks whatsoever?

20 A. Yes.

21 Q. And tell me about this recess when he was gone. Do
22 you know what day that was on?

23 A. It was possibly the third day of my trial which would
24 have been the 24th.

25 Q. And when you spoke to him during recesses, what kind

WILLIAM DEAN BURDEN - REDIRECT

1 of conversations were you having?

2 A. Just about what was going on at trial.

3 Q. What kind of things were you talking about? Just how
4 was trial going? What the evidence was? Why did you --

5 A. Well, like I said, one discussion when we spoke he was
6 speaking about the trial looking good and that he would
7 leave open the possibility of discussing a plea bargain.

8 Q. Okay. And did you encourage him to find a plea for
9 you?

10 A. Yes, actually I did.

11 Q. Okay. So you wanted a plea in this case?

12 A. While we were at trial and he was speaking about it,
13 yes, ma'am, I was interested in a plea.

14 Q. Okay. But you're not aware of any plea offers that
15 were made other than the one you turned down?

16 A. Exactly.

17 Q. All right. I think that's all. Thank you.

18 THE COURT: Okay. Anything on redirect?

19 REDIRECT EXAMINATION

20 BY MR. MORRISSEY:

21 Q. Just to be clear. It's your testimony that you had
22 the one meeting with Mr. Dukes and that there was only one
23 meeting with Ms. Snowden pretrial?

24 A. Yes.

25 Q. So two meetings?

1 A. Uh-huh.

2 Q. One meeting being when Mr. Dukes came with the wrong
3 file; correct?

4 A. Correct.

5 Q. And the meeting with Ms. Snowden was, you were
6 presented with the pleading but no other substantive
7 discussion on the case?

8 A. Yes.

9 MR. MORRISSEY: Thank you. That's all I have.

10 THE COURT: Anything on recross? Ms. Williams?

11 RECROSS-EXAMINATION

12 BY MS. WILLIAMS:

13 Q. So when I asked you about Ms. Snowden meeting on a
14 weekly or a bi-weekly basis, she wasn't meeting with you?

15 A. No, ma'am. She was meeting with the entire
16 population, all of his clients.

17 Q. So when she was testifying -- you think you didn't
18 really meet with her as often as what she was talking
19 about?

20 A. Well, actually when you asked her the question, I was
21 thinking that you were meaning the entire population
22 because her and I only met on one occasion.

23 MS. WILLIAMS: All right.

24 THE COURT: All right. Thank you, sir. You may step
25 down. Mr. Morrissey, your next witness.

STEVE C DAVIS - DIRECT

1 MR. MORRISSEY: Your Honor, no other witnesses for the
2 Petitioner. (Conferring with Applicant.)

3 Your Honor, Petitioner would like to call Mr. Davis.

4 THE COURT: Okay. All right. Mr. Davis.

5 STEVE C. DAVIS, having been duly sworn, was examined
6 and testified as follows:

7 THE COURT: Your witness.

8 DIRECT EXAMINATION

9 BY MR. MORRISSEY:

10 Q. Mr. Davis, it's my understanding that you wanted to
11 testify, had some things to say on behalf --

12 A. Well, first of all, I can't direct your in-court
13 inquiry, but I share this with you. If you pay attention
14 to the indictment issue you talked about, it would support
15 his position because one of the indictments was convened
16 by the grand jury on January the 22nd, 2002.

17 And the other was convened by the grand jury on
18 October the 21st, 2002. And unless my memory serve me
19 wrong, I think we tried the case in October.

20 Q. On October 21st?

21 A. That's right.

22 Q. So if October 21st is the start of trial then the
23 second indictment is presented on the day of --

24 A. That's correct. And the reason that's important
25 because if you look through the records, I had some issues

STEVE C DAVIS - DIRECT

1 with the indictment. I failed in reference to my oral
2 argument because I believe that the indictment was
3 insufficient in reference to my client.

4 Q. Right.

5 A. Okay. In the relationship to this matter, I don't
6 know anything specific about all -- you need to talk with
7 Mr. Dukes and drinking and all this issue, but there were
8 many instances in the course of this trial I was trying to
9 defend two people.

10 Q. And I thank you for that, but how about giving us some
11 further detail?

12 A. Well, take the statement that this young man gave.
13 There was a detective in this case that had a history,
14 Marshall. I wouldn't believe anything that man said if he
15 put his hand on 20 Bibles at one time, to be honest with
16 you.

17 MS. WILLIAMS: Your Honor, I'm trying to think of the
18 correct phraseology of how to word this objection to the
19 testimony, the line of testimony we're going down.

20 I think Mr. Davis can function as a fact witness but
21 pursuant to McKnight, I believe that his opinions --

22 THE WITNESS: I withdraw that.

23 MS. WILLIAMS: -- on the ultimate issue cannot be
24 admitted as testimony at a post conviction relief.

25 THE WITNESS: I withdraw that. I said as much.

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1 THE COURT: I understand. I will sustain your
2 objection. If you will --

3 THE WITNESS: I'll refrain from that, Judge, but I
4 will say this --

5 THE COURT: Yes, sir.

6 THE WITNESS: -- the instance in relationship to a
7 statement this young man gave, there was no Jackson V.
8 Denno hearing in reference to that, okay, which I thought
9 was inappropriate.

10 MS. WILLIAMS: Your Honor, I would just make the same
11 objection at this point.

12 THE WITNESS: Well, I can't say nothing.

13 BY MR. MORRISSEY:

14 Q. Well, I'll ask you this way.

15 A. Yeah.

16 Q. You were defense counsel for a co-defendant while
17 Mr. Burden's trial was going on?

18 A. That's correct.

19 Q. So you were able to observe the course of the trial?

20 A. Oh, yes, I did.

21 Q. And your belief is that you were functioning as an
22 attorney for both defendants at some point; is that
23 correct?

24 A. That's correct.

25 Q. That is implying that Mr. Dukes was not functioning

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1 fully as --

2 A. He had some moments.

3 MS. WILLIAMS: Your Honor, again, I'm going to make
4 the same objection.

5 THE COURT: I'm going -- I note your objection and I'm
6 going to let you tell us about the moments.

7 THE WITNESS: Yeah, Judge. I went and looked
8 through. I had some moments. The one I just talked
9 about, the Jackson-Denno statement that was allowed. We
10 did this, not in camera. I did it in camera in reference
11 to my client but he didn't do a request in camera in
12 reference to his statement.

13 There were instances --

14 MS. WILLIAMS: Again, Your Honor, I'm so sorry, but
15 any time you're saying what he should have done you're
16 going --

17 THE WITNESS: I didn't say should have. I just said
18 it wasn't done.

19 MS. WILLIAMS: It's the same thing.

20 THE COURT: I understand and I note your objection on
21 the record. I think what you're saying is you did your
22 Jackson V. Denno hearing in camera.

23 THE WITNESS: Yes, that's correct. That's what I did.

24 THE COURT: He did not.

25 THE WITNESS: Did not.

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1 THE COURT: Okay.

2 BY MR. MORRISSEY:

3 Q. So is there a kind of a list of what the Judge
4 referred to as moments that you considered?

5 A. I'll tell you another moment. There were instances
6 where hearsay that I objected to that really were more
7 critical to Mr. Burden here than to my client. I looked
8 at that last night and saw that, okay, where he allowed
9 things in that he shouldn't --

10 MS. WILLIAMS: Your Honor --

11 THE WITNESS: Well --

12 MS. WILLIAMS: -- I still feel like I have to protect
13 the record by continuing to make the objection --

14 THE WITNESS: Let me find that.

15 MS. WILLIAMS: -- every single time it's being brought
16 up. If he wants to comment on what he believes Mr. Dukes
17 did wrong, that's not admissible in this hearing. If he
18 wants tell us what he observed --

19 THE WITNESS: Well, that's an observation.

20 MR. MORRISSEY: Yeah. If you could --

21 THE WITNESS: Well, I'm saying --

22 THE COURT: Just wait a second. Wait a second.

23 Okay. Let's just -- okay.

24 Now as I understand it, Mr. Davis, the only thing I
25 want you to comment on --

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1 THE WITNESS: Okay, Judge.

2 THE COURT: -- if you made an objection and you felt
3 he should have made an objection --

4 THE WITNESS: That's correct. That's correct.

5 THE COURT: -- and he didn't make an objection --

6 THE WITNESS: Okay.

7 THE COURT: -- you can say that.

8 MS. WILLIAMS: Actually that is why I'm objecting. He
9 can't say what he thinks Mr. Dukes should have done. That
10 is commenting on the ultimate issue in this case.
11 Pursuant to McKnight, that is not admissible testimony in
12 a PCR.

13 THE COURT: I understand. I'm not saying that
14 Mr. Dukes should have objected to it. I'm saying that he
15 made the objection and Mr. Dukes didn't make the
16 objection. I just wanted to point it out.

17 MS. WILLIAMS: That's fine.

18 THE COURT: That's all I wanted to point out. If he's
19 got any specific areas, he can do that.

20 BY MR. MORRISSEY:

21 Q. If I can try to focus the questions on that. If you
22 could, state moments in the trial to your knowledge where
23 you made an objection and Mr. Dukes did not make a similar
24 objection.

25 I'm not asking you to dig through every page of the

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1 transcript, but what you recall.

2 A. Well --

3 THE COURT: You mentioned -- well, I will -- you
4 mentioned that you objected to hearsay.

5 THE WITNESS: Yeah, he did.

6 THE COURT: And he did not join in your objection.

7 THE WITNESS: No, he did not.

8 THE COURT: Okay. That's fine.

9 THE WITNESS: And I found myself making the majority
10 of the objections in the matter, you know.

11 I would be remiss to say that there weren't
12 opportunities where, you know, he did sufficiently. But a
13 review of it all, okay, there were many instances he did
14 not.

15 BY MR. MORRISSEY:

16 Q. And the Court has a copy of the transcript as well.

17 A. That's correct. He can look at for himself.

18 Q. Where we can look and see your objection --

19 A. That's correct.

20 Q. -- that in review of the transcript --

21 A. That's correct.

22 Q. -- we would find it?

23 A. It speaks for itself. It's the record.

24 Q. All right. Are there any other issues in relation to
25 the trial where you made an observation where you

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1 performed some task on behalf of Mr. Burden that Mr. Dukes
2 did not?

3 A. Well, you -- pay attention to my redirect of him in
4 relationship to Mr. Dukes' direct examination. I think
5 there's a difference to some degree.

6 Q. Okay.

7 A. If that makes sense.

8 Q. Do you have any other observations of --

9 A. What I mean by that is instances where I actually
10 brought in demonstrations of a relationship that were
11 positive in relationship to Mr. Burden. The lack of
12 criminality from DSS or involvement from DSS on the part
13 of this young man.

14 The record is -- have all kind of instances about
15 DSS. But when you look specifically at my examination of
16 him, he was able to say on the record, and the record will
17 speak in relationship of avoidance in reference to him
18 being intertwined with DSS in those instances.

19 Q. And that's primarily in the record and the Court can
20 see the record as well --

21 A. Again --

22 Q. -- of your reference back to the 1998 issues?

23 A. All over, yeah.

24 Q. To your knowledge, was any objection made, any request
25 for continuance made relative to the second indictment,

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1 the child abuse indictment?

2 A. You know, I don't even recall an argument in that
3 regard. But the record -- I'll clearly outline that
4 Mr. Davis argued very strongly that the indictment was
5 insufficient to put my client on notice on what she was
6 charged with.

7 Now, if this is the same record I don't see no
8 reference in there.

9 Q. The record is silent on the issue --

10 A. That's correct.

11 Q. -- of the second indictment?

12 A. That's correct.

13 Q. And you agree from the record that that indictment was
14 presented on October 21?

15 A. Well, I put it on the record the grand jury produced
16 the indictment.

17 Q. It's in the record and the Court has a copy of the
18 transcript.

19 A. Yeah.

20 Q. Any other observations?

21 A. If you look in reference to the battered child
22 syndrome that came up.

23 THE COURT: At the very first of the case.

24 THE WITNESS: Yeah. There's peer reference how

25 Mr. Dukes, Gene Dukes inter-played with that in reference

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1 to how I inter-played with that. That would be critical
2 especially for the second indictment.

3 BY MR. MORRISSEY:

4 Q. Being that the second indictment is child abuse?

5 A. Thank you.

6 Q. Any other observations that you would make on the
7 trial?

8 A. Well, this is a little bit -- well, I heard his
9 testimony about when he made the decision to take the
10 witness stand.

11 You know, that's a point in time when there should be
12 a stoppage in the trial. Client should be set aside with
13 the lawyer, come back in the courtroom and then there
14 should be a colloquy, not only with the client but with
15 the Court, that that is his decision to testify or not.

16 He had a previous drug conviction. And we argued
17 about that for impeachment purposes. Now, my client
18 didn't have any record. Why is Mr. Davis arguing about
19 this man's conviction for possession of cocaine? That
20 shouldn't have been me because my client had no criminal
21 record in that regard. That's another observation.

22 Q. So these are just observations of instances --

23 A. Yeah.

24 Q. -- where there were things that might have happened
25 that you observed they did not happen?

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1 A. Yes. I had to step over him.

2 Q. You were here earlier listening to testimony from
3 Mr. Burden that he could smell alcohol on Mr. Dukes'
4 breath during the trial. Did you ever --

5 A. I'm not going to go there. I was too intent in my
6 trial to smell anything.

7 Q. Okay.

8 A. I had a young prosecutor. She was zealous.

9 Q. When you say zealous --

10 A. Well, she was doing her job. I was a prosecutor for
11 10 years. I have all the respect for Ms. Murphy. I would
12 have done the same thing.

13 Q. Just as a catchall. Is there anything else you
14 consider relevant to Mr. Burden's PCR application?

15 A. No, it just brought back a lot of memories last night,
16 it just did.

17 MR. MORRISSEY: Thank you, sir.

18 THE COURT: Ms. Williams?

19 CROSS-EXAMINATION

20 BY MS. WILLIAMS:

21 Q. Would it be fair to say you felt pretty strongly about
22 Ms. Gadsen's case; is that correct?

23 A. I sure did.

24 Q. You were definitely a zealous advocate for her;
25 weren't you?

STEVE C DAVIS - CROSS

1 A. Any time I step into this courtroom, you can be very.
2 assured I'm a zealous fellow.

3 Q. And it shows in reading this.

4 A. Yeah.

5 Q. You moved for a severance at the beginning of this
6 trial; is that correct?

7 A. I think I did --

8 Q. You --

9 A. -- you know, but she said no.

10 Q. And would it be fair that a lot of the things that
11 you're talking about in differences, some of those
12 differences in trial strategies and differences in the way
13 you approach witnesses, those were the concerns you had in
14 making that severance motion; is that right?

15 A. Yeah. We were tried together. And so any
16 deficiencies on the part of Mr. Dukes fell on me, too.

17 Q. Because you were trying to represent your client;
18 correct?

19 A. Because the jury wanted to paint them together and say
20 they were partners in crime and so both of them needed to
21 go down.

22 Q. And was the setout of this courtroom, was it a defense
23 table where y'all were sitting at the same table? How was
24 that set up?

25 A. We were on the same side. That's correct.

1 Q. And you never noticed any smell of alcohol --

2 A. No, I never smelled any alcohol on Mr. Dukes. You
3 know, my daddy used to drink. So I -- alcohol is natural
4 to me. I ain't even -- you could be drunk as a skunk and
5 I probably won't smell alcohol, to be honest with you.

6 MS. WILLIAMS: Thank you, Mr. Davis.

7 THE COURT: Anything on redirect?

8 MR. MORRISSEY: No, Your Honor.

9 THE COURT: Thank you, Mr. Davis.

10 THE WITNESS: Judge, I'm excused?

11 THE COURT: Yes, sir. Thank you, sir. Do you have
12 any other witnesses?

13 MR. MORRISSEY: No other witnesses, Your Honor, just
14 some statements.

15 MS. WILLIAMS: Go ahead. Do that. That's fine. He
16 can go ahead and make the statement. He's got some legal
17 arguments. I think that's what he was talking about.

18 THE COURT: Do I have a copy of the amended one?

19 MR. MORRISSEY: You should have, Your Honor. But I
20 have another one if you --

21 THE COURT: If you'll hand that up, if you don't mind.

22 MS. WILLIAMS: But I do have a witness after he's
23 through.

24 MR. MORRISSEY: This is just a summary.

25 THE COURT: Oh, okay.

1 MR. MORRISSEY: You do have it, Your Honor?

2 THE COURT: Yeah.

3 MR. MORRISSEY: All right. I'll give you -- I have
4 multiple.

5 THE COURT: Mine looks like this. I prefer yours.
6 Okay. Thanks. Okay. Yes, sir?

7 MR. MORRISSEY: Your Honor, my client in his petition
8 made some reference to failure of Mr. Dukes to make
9 objections at various points in the trial.

10 This section of my supplemental or addendum identifies
11 page-line designations where such notes were made and what
12 the failure to object was.

13 THE COURT: All right, sir.

14 MR. MORRISSEY: You can review those. They stand on
15 their own. Different statements. Briefly on point number
16 C., Two-C., on page two.

17 THE COURT: Yes, sir.

18 MR. MORRISSEY: Judge Goodstein was giving an
19 instruction at the end of the first day. The jury had
20 just been selected and they were being discharged for the
21 night. Her comment was along the line of discussion,
22 talking about don't deliberate, don't talk with other
23 people.

24 And her quote is: Now after you have heard all the
25 evidence in the case and you've heard the arguments of

1 counsel and my charge on the case, then you'll be prepared
2 to discuss or deliberate this matter. I promise you that
3 there will be no doubt in your minds when that time has
4 come.

5 When I first read that comment I had the same
6 impression that my client had when he read it, that it was
7 some kind of inference that when it comes time to
8 deliberate, your -- there will be no doubts.

9 Rereading the argument it could also be argued that
10 Judge Goodstein is simply saying that when it comes time
11 to deliberate, I will make it very clear to you and at
12 that point you will know it and you can start.

13 But the issue is that in my first reading of it and
14 Mr. Burden's first reading of it, we read it a different
15 way.

16 And there should have been some objection or some
17 further instruction as to the Judge not entering into the
18 area of the jurors.

19 The other two sections stand on their -- or three
20 sections stand on their own, Your Honor.

21 THE COURT: All right. Thank you, sir.

22 MR. MORRISSEY: That's all I have at this point.

23 THE COURT: Okay. Ms. Williams?

24 MS. WILLIAMS: Your Honor, the State's going call
25 Ms. Murphy, Ms. Maite Murphy.

MAITE MURPHY - DIRECT

1 MAITE MURPHY, having been duly sworn, was examined and
2 testified as follows:

3 THE COURT: Please be seated and state your full name
4 for the record, please, ma'am.

5 THE WITNESS: Maite Murphy. It's M-A-I-T-E.

6 DIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Ms. Murphy, can you just tell me briefly your legal
9 experience? And where you're at now? And where you were
10 at the time of this trial?

11 A. At time of this trial, I was at the solicitor's
12 office. I practiced at the solicitor's office for
13 approximately seven or eight years. I'm in private
14 practice now, and I'm also the chief magistrate of
15 Dorchester County.

16 Q. And you were involved in the prosecution of
17 Mr. Burden's case as well as Ms. Gadsen's case; is that
18 correct?

19 A. Yes. Yes, ma'am.

20 Q. And would it be fair to say in your -- excuse me. Let
21 me rephrase that. In your experience as a solicitor, did
22 you work with Mr. Dukes on a regular basis?

23 A. Absolutely.

24 Q. And can you just tell me in general about his
25 caseload, his presence at the courthouse, those types of

MAITE MURPHY - DIRECT

1 things?

2 A. Mr. Dukes was an excellent trial attorney. He was, as
3 Ms. Snowden testified, he was one of those old country
4 attorneys that people just liked. And he was an excellent
5 trial attorney.

6 As far as his presence is concerned, he was always
7 there. We would have a very good relationship with our
8 public defenders during the time and we met on a regular
9 basis. Prior to the terms of court and during court, we
10 would bring clients over from the jail for them to meet
11 with and he was always available and a good trial
12 attorney.

13 Q. And how long -- when did you leave the solicitor's
14 office?

15 A. I left in 2005.

16 Q. In 2005, was Mr. Dukes still active as a public
17 defender; do you recall?

18 A. I -- it's been awhile. I think he was. I don't know
19 if he was involved as much as he was earlier, but I think
20 he was still there.

21 Q. But at the time of this trial, was his practice in any
22 way diminished to your recollection?

23 A. No, at the time of this trial he was fine.

24 Q. And the solicitor's office at that time, was there an
25 open-file policy?

MAITE MURPHY - DIRECT

1 A. Yes. We had an open-file policy. And I do recall
2 specifically in this case because we did obtain further
3 discovery upon investigation of the medical injuries, the
4 prior medical history of the victim in this case, that
5 Mr. Dukes and I did discuss it and I did supplement the
6 discovery on a regular basis with Mr. Dukes.

7 Q. Can you tell me -- Mr. Burden has raised an issue with
8 the second indictment. And can you tell me a little bit
9 about how that came about?

10 A. The second indictment, I know that we discussed it
11 with Mr. Dukes prior to going to trial. There had been a
12 previous plea offer that was withdrawn when it was
13 declined.

14 And as far as the timing of it was concerned, my best
15 recollection is that we did have a lot of experts coming
16 to testify at the trial and we were trying to time it
17 right. But certainly it was not as if it was a surprise.
18 It dealt with the same elements of the previous
19 discovery. It wasn't for any new charge but the same
20 course of conduct which was the assault and battery with
21 intent to kill charge, but the child abuse indictment of
22 course had an element to it.

23 Q. And you mentioned a plea offer. Was that accurate,
24 the plea offer for 15 years to assault and battery with
25 intent to kill?

MAITE MURPHY - DIRECT

1 A. As best I can recall. I can't tell you for sure that
2 that was how much in advance it was.

3 Q. And you don't recall any plea offers made during the
4 course of the trial or anything additional?

5 A. No, I don't recall any during the course of the trial.

6 Q. All right. And you said you did discuss with
7 Mr. Dukes that this indictment would be coming; is that
8 correct?

9 A. Yes, ma'am.

10 Q. And that was before the trial. Do you have any idea
11 how far in advance that might have been?

12 A. This case was somewhat unusual in that we had a lot
13 going on before the trial that we normally wouldn't have.
14 I know that we deposed one of the medical experts that
15 wasn't going to be present for the trial.

16 So Mr. Dukes and I discussed this case quite a bit.
17 So, I can't give you a specific time frame, but I know it
18 was something that he was made aware of.

19 Q. And the deposition, y'all took that on videotape. He
20 was involved with that?

21 A. Yes, ma'am.

22 Q. Okay. Tell me about, a little bit about the physical
23 layout of this courtroom. Would you have been in close
24 proximity to Mr. Dukes during the course of the trial?

25 A. The tables are set aside, somewhat similar to how they

MAITE MURPHY - DIRECT

1 are in this room.

2 Q. And that's probably, what, maybe five or six feet
3 apart?

4 A. Right.

5 Q. And would you have had contact with him and maybe
6 closer contact than that in passing?

7 A. Sure. Mr. Dukes tended to move around the courtroom
8 quite a bit when he tried a case. And he would come up
9 and talk to witnesses and whatnot.

10 Q. At any time during the trial, did you detect an odor
11 of alcohol about him?

12 A. No, I did not.

13 Q. Did he exhibit any signs that to you would indicate
14 intoxication?

15 A. No.

16 Q. Are you aware of any times when Mr. Burden may have
17 been brought over to the courthouse in order to meet with
18 his attorney or any recollections?

19 A. Not specifically. I know that that was our standard
20 practice during terms of court, that we would bring
21 defendants over especially when their case was coming up
22 for trial soon. We generally would do that, but I don't
23 recall specifically.

24 Q. And -- Your Honor, just begging your indulgence.

25 THE COURT: Yes, ma'am. Take your time.

MAITE MURPHY - CROSS

1 (Pause.)

2 MS. WILLIAMS: I believe I've touched on the points I
3 need to. Thank you.

4 THE COURT: Thank you, ma'am. Mr. Morrissey?

5 MR. MORRISSEY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. MORRISSEY:

8 Q. Ma'am, you indicated that documents, medical history
9 evidence did come in during the course of preparation for
10 this trial; correct?

11 A. Right.

12 Q. You had an open-file policy?

13 A. Right.

14 Q. Mr. Dukes had access to that material at any time?

15 A. He did.

16 Q. And to your knowledge, you provided him with some
17 documents in this file; correct?

18 A. Yes.

19 Q. Can you give me any sense of volume? How much?

20 A. I know that there was a history from the Medical
21 University from the prior femoral breaks and the blinding
22 in the right eye and those types of documentation. So
23 everything we had, I know we turned over.

24 Q. They were a few inches thick?

25 A. Probably. I would assume so.

MAITE MURPHY - CROSS

1 Q. All right. As I understand it, you have a
2 recollection of one prior plea offer being presented to
3 Mr. Burden and that would have been for the ABHAN;
4 correct?

5 A. Right.

6 Q. You don't have any recollection of any pleas being
7 offered including the second indictment of child abuse;
8 correct?

9 A. Right.

10 Q. And you don't recall any attempts by Mr. Dukes to try
11 to negotiate any plea once the trial would have begun?

12 A. It would have been my position not to plead a case
13 after a trial started unless I thought it was going south.

14 Q. Separate from your policy, your belief of what
15 procedure you would have done if presented with it, your
16 testimony would be Mr. Dukes never presented you with an
17 opening for negotiations after you had started the trial?

18 A. I don't recall whether he did or not.

19 Q. And Mr. Burden was sitting closer to Mr. Dukes than
20 you were during the trial; is that right?

21 A. Sure.

22 Q. Can you help me out with the timing on the second
23 indictment? On the -- what's page 864 in the record, the
24 indictment says at a court of general sessions convened on
25 October 21, 2002, the grand jury of Dorchester County

MAITE MURPHY - REDIRECT

1 actually returned by the grand jury; correct?

2 A. Well, it would have been an exact copy of it.

3 Q. As far as it actually making -- this document making
4 its path through the grand jury with the date on the
5 indictment saying October 21, 2002, that document didn't
6 exist until October 21, 2002; correct?

7 A. I would have prepared the document itself prior to
8 that. The date that it's just true billed, it would have
9 been on the 17th.

10 Maybe I'm not following your question.

11 Q. Maybe I'm misunderstanding the process.

12 But if the document is dated, the grand jury takes a
13 certain action on October 21, 2002, I understand you can
14 prepare drafts that get submitted through the chain, get
15 to the grand jury, they look at it and then the date
16 appears on the document after they have decided on that
17 date.

18 What I'm saying is, if the indictment says that the
19 court of general sessions convened on October 21, 2002,
20 and then produces this indictment, this document does not
21 exist prior to October 21, 2002. Separate from drafts,
22 the actual indictment is not -- this document doesn't get
23 presented until the date that it says it exists.

24 A. Well, it's not true billed until that date.

25 Q. Okay. That's -- I'm sorry. That's convoluted.

MAITE MURPHY - CROSS

1 presented a count of, and it continues.

2 Have you found the page I'm looking at?

3 A. I have a copy of the indictment.

4 Q. All right. That does say October 21; correct?

5 A. Yes, sir.

6 Q. All right. Was the grand jury meeting the same
7 morning as this trial was beginning?

8 A. They must have been. Is that the day it was true
9 billed?

10 Q. Yes.

11 A. It was actually true billed on --

12 THE COURT: 17th.

13 THE WITNESS: -- the 17th it looks like.

14 BY MR. MORRISSEY:

15 Q. So was the grand jury -- what's the significance of
16 putting that on, October 21, 2002, at the top of the
17 indictment that's page 864 of the record?

18 A. I don't recall specifically.

19 Q. All right. Well, you agree, with that date on it,
20 this document would not have been available for Mr. Dukes
21 until October 21, 2002?

22 A. No. I wouldn't agree with that. He may have had a
23 copy of the indictment that was going to be presented and
24 it was just not true billed yet.

25 Q. So either he had a draft but he didn't have the one

1 That's what I was trying to get at. Thank you. That's
2 all I have.

3 REDIRECT EXAMINATION

4 BY MS. WILLIAMS:

5 Q. I think I can ask a question that might clarify that.
6 Would the grand jury usually meet before the term of
7 court?

8 A. They typically would meet the Thursday before the term
9 of court.

10 Q. And so that would be -- Mr. Dukes would get a copy?
11 You would typically give attorneys a copy of the
12 indictment before they met?

13 A. Right.

14 Q. And were there some boxes there at the courthouse,
15 attorneys have boxes where you put things in there?

16 A. I wouldn't personally put them in there. I don't know
17 if the staff would or not.

18 MS. WILLIAMS: All right. Thanks.

19 THE COURT: Any follow up on that question?

20 MR. MORRISSEY: No, Your Honor.

21 THE COURT: All right. Thank you, Ms. Murphy. We
22 appreciate it. Next witness, Ms. Williams?

23 MS. WILLIAMS: There's nothing further from the State,
24 Your Honor.

25 THE COURT: All right.

1 MS. WILLIAMS: Unless you care to hear arguments or we
2 can just put those in written form. That's fine, too.

3 THE COURT: Unless y'all -- I think I know what the
4 arguments are. I will -- I have been provided a copy of
5 the transcript. I will review the transcript and review
6 your addendum and the points that you pointed out,
7 Mr. Morrissey. And then I'll get back to you all with my
8 decision. Okay.

9 MR. MORRISSEY: Thank you.

10 MS. WILLIAMS: Thank you.

11 THE COURT: Thank you all very much. Thank you,
12 Mr. Burden.

13 END OF CASE: 12:15 P.M.

14 * * * *

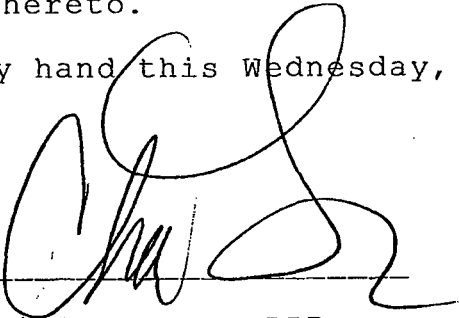
15 CERTIFICATE OF REPORTER

16 I, Cheri L. Young, Registered Professional Reporter,
17 and Official Court Reporter for the State of South
18 Carolina, do hereby certify that the foregoing transcript
19 of proceedings heard on Tuesday, December 7, 2010, in
20 Orangeburg, South Carolina, was reported by me using
21 machine shorthand and realtime computer-aided translation
22 and is a true, accurate and complete transcript of the
23 proceedings had and evidence introduced in the hearing of
24 the matter.

25 I do further certify that I am neither of kin, counsel

1 nor interest to any party hereto.

2 I have hereunto set my hand this Wednesday, the 4th
3 day of April, 2012.

4 
5 _____
6 Cheri L. Young, RPR
7 Official Court Reporter
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The Supreme Court of South Carolina

In the Matter of
Gene W. Dukes,

Deceased.

ORDER

Pursuant to Rule 31, RLDE, of Rule 413, SCACR, Disciplinary Counsel seeks an order appointing an attorney to take action as appropriate to protect the interests of Mr. Dukes and the interests of Mr. Dukes' clients.

IT IS ORDERED that Bruce A. Berlinsky, Esquire, is hereby appointed to assume responsibility for Mr. Dukes' client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Mr. Dukes may have maintained. Mr. Berlinsky shall take action as required by Rule 31, RLDE, to protect the interests of Mr. Dukes' clients and may make disbursements from Mr. Dukes' trust, escrow, and/or operating account(s) as are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of Gene W. Dukes, Esquire, shall serve as notice to the bank or other financial institution

that Bruce A. Berlinsky, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Bruce A. Berlinsky, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Dukes' mail and the authority to direct that Mr. Dukes' mail be delivered to Mr. Berlinsky's office.

s/ Costa M. Pleicones J.
FOR THE COURT

Columbia, South Carolina

August 31, 2007

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2006-CP-18-0403

William D. Burden, #288284,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED COPY
2012 JAN -9 PM 4:48
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 14, 2006. An evidentiary hearing was convened on December 7, 2010. The Applicant was present at the hearing and was represented by Patrick Morrissey, Esquire. The Applicant testified on his own behalf; also testifying were trial counsel's investigator Charlene Snowden, co-defendant's attorney Steve Davis and assistant solicitor Maite Murphy. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

This Court had before it the records of the Dorchester County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Applicant was indicted at the January 2002 term of the Grand Jury for Dorchester County for Assault and Battery with Intent to Kill (2002-GS-18-0006). The late Gene

[Signature]

Dukes, Esquire, represented him¹. On October 29, 2002, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty as charged. He was sentenced by the Honorable Diane S. Goodstein to confinement for a period of twenty (20) years.

The Applicant filed a timely Notice of Appeal and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Burden, Op. No. 2005-UP-251 (S.C. Ct. App. filed April 7, 2005).

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
 - a. "Trial strategy was deficiencies (sic) and prejudice."
 - b. "Counsel withheld Brady material, filed no motion to suppress evidence, made no objections to hearsay testimony."
 - c. "Judge's errors in her ruling."
 - d. "No investigation by my attorney, obtain no expert in my case."

At the PCR hearing, Applicant added allegations claiming he was never advised a second indictment involving child abuse was being brought against him, counsel only met with him one time prior to trial, he wanted to plead during trial but was unable to take a plea deal that the State had revoked since proceeding to trial and that he smelled alcohol on trial counsel during one break in the trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony

¹ Gene Dukes, Esq., died on August 18, 2007.

accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, supra. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine

confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Attorney's Alleged Intoxication During Trial

At the PCR hearing, several people testified including two witnesses for the Applicant and one for the State. The first to be called by the Applicant was Charlene Snowden, who was trial counsel Gene Dukes' ("counsel") private investigator who had worked exclusively for counsel, as she did in this case. Snowden testified she was not involved behind the scenes in Mr. Dukes' negotiations with the Solicitor's office, but in her extensive working with counsel, she believed he was one of the finest attorneys she had ever met. Snowden said that during counsel's meetings with Applicant, counsel would give Applicant status updates, discuss Applicant's version of the facts leading to the charges in preparation for trial and periodically pass along various information he had received from the solicitor's office. Additionally, she stated that although she was aware that counsel had a history of drinking, she did not see him intoxicated during the representation of Applicant and went on to say during Applicant's trial in 2002, she had no concerns about counsel's ability to represent his clients effectively. Applicant testified that he had concerns that counsel was intoxicated during the trial and alleged that at one point during a recess, he was unable to locate counsel and when counsel returned to the courtroom, Applicant could smell alcohol on him. Finally, Steve Davis, who was representing a co-defendant at this same trial, testified he sat at the same table as counsel throughout the course of this trial and did not smell alcohol on him at any time.

In regard to this allegation, while Applicant claims that he remembers suspicious behavior from counsel and that he smelled alcohol on counsel during the trial, I find this allegation to be without merit. There has been nothing produced by Applicant to prove counsel's intoxication other

than his own self-serving testimony that I find to be not credible. Additionally, Applicant has not produced any additional evidence to substantiate this claim, such as opposing counsel, jury members, family members or other courtroom personnel that may have noted signs of intoxication during the trial. Additionally, Counsel's long-time investigator, who readily admitted she was well aware of counsel's longtime struggle with alcoholism, testified that at no point during Applicant's representation did she see counsel intoxicated and even went on to note that she had no concern about counsel's ability to effectively represent Applicant during the time of this trial. After a thorough review of the transcript, I find there is no sign that counsel was less than competent during the course of this trial. Therefore, I find Applicant's testimony regarding counsel's alleged intoxication to be self-serving and not credible. Applicant has failed to carry his burden in proving this allegation and any alleged prejudice resulting from such.

Failure to Consult Applicant

Applicant has also alleged that counsel was ineffective for failing to properly consult with Applicant about his case prior to the start of trial, including reviewing the discovery file with Applicant. Applicant testified that he requested a motion for discovery but was never given anything by counsel and did not get the chance to review the materials contained in the discovery file before the start of trial. Assistant Solicitor Murphy testified that she always had a good relationship with the public defender's office and dealt with counsel fairly often during her roughly seven or eight years in the Solicitor's office. Murphy went on to articulate that the solicitor's office had an "open file" policy where opposing counsel could view the discovery materials at any time in preparation for trial. Murphy went on to mention that, not only had counsel come to view the file several times before trial, but she and counsel also discussed the discovery file extensively during the time leading up to

the trial, including extra medical discovery that she had received closer to start of trial.

I find that Applicant has failed to carry his burden in proving that counsel was ineffective in this regard. While counsel is not available to testify on this matter, based on the evidence adduced at the hearing and the record in this matter, it is clear that counsel did fully review the discovery materials and share such evidence with Applicant in preparation for trial. Further, Applicant has failed to prove how he was prejudiced by any alleged failure of counsel to consult or meet with Applicant. *See Harris v. State*, 377 S.C. 66, 75 - 76, 659 S.E.2d 140, 145 (2008) (Applicant failed to carry burden where merely speculative that counsel's alleged deficient performance was prejudicial). Therefore, I find Applicant's allegation to be without merit

Plea Offer

Applicant alleges he asked counsel during his trial to enter into plea negotiations with the State, which counsel said he would look into. According to Applicant's testimony, in the beginning the State offered a plea deal for fifteen (15) years imprisonment for ABWIK, which he turned down; on the third day of trial during a recess, he spoke with counsel about accepting that plea offer, but by that time, the State had revoked that offer and counsel was unaware of any other offers made by the State. Murphy stated that the plea offer initially offered to Applicant was withdrawn once Applicant declined to take it and it was not again re-offered to him after that.

I find that while Applicant has made clear his desire to now accept the plea offer that was originally offered to him, he has failed to show that advise by counsel in this regard prior to trial was unreasonable, or that his ability to determine whether to proceed to trial or enter a plea was overborne by counsel in some way. In fact, Applicant conceded that he did voluntarily and knowingly decline the first original offer, at which time the solicitor's office withdrew it and opted

not to make a new plea offer after that point. See Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (A defendant has no constitutional right to plea bargain.) The solicitor decided to end plea negotiations to proceed to trial in this matter once Applicant made the ~~choice~~ ^{Choice} to decline the first plea offer, a decision which lies within the solicitor's discretion. Therefore, Applicant has failed to set forth any evidence that would prove counsel was ineffective in this regard.

Further, Applicant has failed to prove how he was prejudiced by counsel's alleged deficiency in plea negotiations. Applicant in fact received a fair trial. He was allowed to present evidence and to confront and cross-examine the witnesses against him. Pursuant to Strickland v. Washington, *supra*, 466 U.S. at 694, the proper analysis of prejudice not whether a lesser sentence could have been secured but rather whether counsel's alleged error renders a conviction unreliable. In Hill v. Lockhart, 474 U.S. 52 (1985), the Supreme Court found that an attorney's deficiency results in prejudice where a defendant is induced to forego his right to a jury trial and accept a guilty plea. In contrast, where a defendant is not deprived of substantive or procedural rights, the result of the proceeding is not unreliable. See for example Lockhart v. Fretwell, 506 U.S. 364 (1993); Williams v. Jones, 571 F.3d 1086, 1104 (10th Cir. 2009) ("Absent a loss of a legal entitlement, the defendant can claim no prejudice.") Because a defendant is not entitled to a beneficial plea bargain, Applicant suffered no loss. Whether Applicant pled guilty or was found guilty by a jury following a fair trial, the result of the proceeding was reliable. For this reason, I find that Applicant has failed to demonstrate prejudice such that the outcome of the proceeding would have been different but for Counsel's alleged failure to ascertain beneficial plea offers after the start of trial.

Failure to Advise Applicant of Additional Indictment for Child Abuse

Applicant's final contention raised at the PCR hearing is that counsel was ineffective in

failing to advise Applicant about or otherwise object to the introduction of a second indictment which was raised at trial. Applicant alleges he had no notice of a second indictment charging him with child abuse prior to the start of trial. Counsel's private investigator, Snowden, also testified that she was unaware of a second indictment based on her involvement in the case, but that had she known of it, she would have advised Applicant of such prior to the start of trial. Davis, counsel for Applicant's co-defendant, testified that his client was faced with the same indictment issue during the start of trial and although he did make an objection, he was unsuccessful in quashing the indictment. Conversely, Assistant Solicitor Murphy testified that she had discussed the second indictment in depth with counsel prior to the start of trial and said that because it arose out of the same course of conduct as the first indictment, it was not a surprise to Applicant.

I find no deficient performance in this regard. While there is conflicting testimony regarding Applicant's actual knowledge of the indictment prior to the start of trial, it appears that counsel was fully aware of such an indictment and was given sufficient notice by the State to prepare a trial strategy to defend against that indictment. Further, Applicant has clearly failed to present prejudice in this regard. Counsel for Applicant's co-defendant, when faced with this same issue, made the proper objection only to have the trial court deny it and allow the indictment in. Therefore, any alleged deficiency in performance on counsel's part in failing to object to the second indictment did not result in prejudice to Applicant.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20th day of Dec., 2000.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(1), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

William Dean Burden,

Appellant.

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2005-UP-251
Submitted April 1, 2005 – Filed April 7, 2005

APPEAL DISMISSED

Assistant Appellate Defender Robert M. Pachak, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, and
Assistant Deputy Attorney General Salley W. Elliott,

all of Columbia; and Solicitor Robert Douglas Robbins, of Summerville, for Respondent.

PER CURIAM: William Dean Burden appeals from his convictions for assault and battery with intent to kill and child abuse, arguing the trial court erred in allowing the State to introduce the victim's prior injuries to establish the present injuries were the result of child abuse. Burden's counsel attached a petition to be relieved, stating he reviewed the record and concluded the appeal lacks merit. Burden filed a separate pro se brief. After a thorough review of the record, counsel's brief, and Burden's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

HEARN, C.J. and KITTREDGE and WILLIAMS, JJ., concur.

¹ We decide this case without oral arguments pursuant to Rule 215, SCACR.