

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

S.C. Supreme Court

ILA MICHELLE CARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001293

APPENDIX

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STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203

D.W.

- REDIRECT EXAMINATION BY MS. WHITE

496

1 IT.

2 THE COURT: HOW LONG IS LENGTHY? FIFTEEN MINUTES?
3 THIRTY MINUTES?

4 MS. WHITE: THE TESTIMONY IS GOING TO BE SIMILAR TO
5 D.W.

6 THE COURT: LET'S TAKE A SHORT BREAK, FIVE TO TEN
7 MINUTES, AND WE'LL GET YOU BACK OUT HERE AND PROCEED.
8 PLEASE DO NOT DISCUSS THE CASE DURING THE BREAK. THANK YOU.

9 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:13 P.M.)

10 THE COURT: ALL RIGHT. BEFORE ANYONE EXITS THE
11 COURTROOM, I'M NOT GOING TO PERMIT ANY CHILDREN IN THE
12 COURTROOM EXCEPT ANY CHILD WHO IS PREPARING TO TESTIFY. AND
13 I'M GOING TO ASK THE BAILIFFS AND THE SHERIFF'S OFFICE TO
14 ASSIST ME IN THAT REGARD. NO CHILDREN IN THIS COURTROOM
15 ABSENT A CHILD PREPARING TO TESTIFY. WE'RE IN RECESS.

16 (WHEREUPON COURT STOOD AT RECESS)

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

LA MICHELE CARTER,)

DEFENDANT.)

2001-GS-04-765, 1203

TRANSCRIPT OF RECORD

VOLUME III

JUNE 25 - 28, 2001
ANDERSON, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN KITTREDGE, JUDGE

APPEARANCES:

DRUANNE WHITE, ESQUIRE
SOLICITOR FOR TENTH JUDICIAL CIRCUIT
ATTORNEY FOR STATE

ROBERT GAMBLE, ESQUIRE
PUBLIC DEFENDER
ATTORNEY FOR DEFENDANT

RENEE H. TOLLISON
CIRCUIT COURT REPORTER

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1 VOLUME III

2 THE COURT: BRING THE JURY.

3 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:30 P.M.)

4 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE'RE
5 READY TO PROCEED.

6 CALL YOUR NEXT WITNESS, SOLICITOR.

7 MS. WHITE: THE STATE CALLS LEE WHITLOCK.

8 L.W.

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MS. WHITE:

11 Q. YOU GO BY L.W.?

12 A. YES, MA'AM.

13 Q. NOW, L.W, I WANT YOU TO TALK ALL THE WAY TO THIS BACK
14 WALL, ALL RIGHT, SO THE JURORS CAN HEAR YOU. HOW OLD ARE
15 YOU?

16 A. I'M FOURTEEN.

17 Q. AND WHERE DO YOU LIVE IN RELATION TO WHERE Minor
18 LIVED WHEN SHE WAS ALIVE?

19 A. ON THE LEFT-HAND SIDE.

20 MR. GAMBLE: I CAN'T HEAR HIM.

21 Q. OKAY. YOU'RE GOING TO HAVE TO SPEAK UP SO EVERYBODY
22 CAN HEAR YOU?

23 A. I LIVE ON THE LEFT-HAND SIDE OF WHERE SHE LIVES.

24 Q. SO YOU'RE RIGHT NEXT DOOR TO THE LEFT -- AS YOU LOOK AT
25 THE HOUSE, AT Minor HOUSE, ARE YOU TO THE RIGHT OR THE

1 LEFT? IF YOU'RE LOOKING AT THE HOUSE?

2 A. THE LEFT.

3 Q. NOW, WHILE Minor AND J.C. AND J.W. AND D.W.

4 LIVED IN THE HOUSE NEXT DOOR TO YOU, ABOUT HOW OFTEN WOULD
5 YOU BE OVER AT THEIR HOUSE?

6 A. ALMOST EVERY DAY.

7 Q. AND USUALLY WHEN YOU WENT OVER THERE DURING THE DAY,
8 WHICH ADULT WAS HOME?

9 A. MICHELE.

10 Q. WHILE YOU WERE OVER THERE, DID YOU SEE Minor

11 A. YES, MA'AM.

12 Q. NOW, ARE YOU FAMILIAR WITH HER APPETITE?

13 A. YES, MA'AM.

14 Q. DID YOU EVER HEAR HER ASK FOR FOOD OR WATER OR ANYTHING
15 LIKE THAT?

16 A. YES, MA'AM.

17 Q. WHAT WOULD HAPPEN WHEN ALL OF YOU WOULD GET SNACKS?

18 A. WE WOULD GET SNACKS AND SHE WOULDN'T.

19 Q. AND HOW MUCH DID YOU SEE HER EAT WHEN YOU WOULD SEE HER
20 EAT?

21 A. VERY LITTLE.

22 Q. ARE YOU FAMILIAR WITH WHERE SHE WOULD EAT WHEN THE REST
23 OF THE FAMILY WOULD EAT?

24 A. YES, MA'AM.

25 Q. WHERE DID YOU SEE HER EAT?

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L.W. - DIRECT EXAMINATION BY MS. WHITE

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1 A. IN THE MIDDLE OF THE KITCHEN FLOOR ON A CHAIR.

2 Q. AND DO YOU KNOW WHAT SHE WOULD EAT? DID YOU EVER SEE
3 THAT?

4 A. LEFTOVER FOOD.

5 Q. DO YOU KNOW WHAT WOULD HAPPEN WHEN SHE WOULD TAKE A
6 BITE? HOW LONG SHE WOULD HAVE TO EAT?

7 A. MICHELE WOULD COUNT TO EITHER FIVE OR TEN. AND THEN IF
8 SHE DIDN'T HAVE IT CHEWED, SHE'D GET BEAT.

9 Q. YOU SAID IF SHE DIDN'T HAVE IT CHEWED, SHE'D GET BEAT.
10 LET'S TALK ABOUT THAT FOR A MINUTE. WHERE WOULD SHE BE --
11 WHERE WOULD THEY STRIKE HER?

12 A. ALMOST ANYWHERE THEY COULD HIT HER.

13 Q. NOW, LET'S TALK -- START AT THE TOP OF HER BODY. DID
14 YOU EVER SEE ANYTHING ON THE HEAD AREA?

15 A. SOME BRUISES AND SCARS.

16 Q. ALL RIGHT. I MEAN, DID YOU EVER SEE THEM HIT HER ON
17 THE HEAD AREA?

18 A. YES, MA'AM.

19 Q. AND HOW HARD WOULD Minor BE HIT ON THE HEAD?

20 A. AS HARD AS THEY COULD HIT HER.

21 Q. AND DID YOU EVER SEE HER HIT ANYWHERE ELSE ON HER BODY?

22 A. ARMS, CHEST, BACK, LEGS AND OTHER PARTS.

23 Q. I CAN'T HEAR YOU, L.W..

24 A. THE OTHER -- THE GENITAL AREA.

25 Q. OKAY. THEY HIT HER IN THE GENITAL AREA? WHAT WOULD

1 THEY HIT HER WITH IN THE GENITAL AREA?

2 A. BELTS, SPOONS AND, I THINK, BROOM HANDLES.

3 Q. ALL RIGHT. YOU SAID THAT THEY WOULD STRIKE HER ON THE
4 HEAD AND THE REST OF HER BODY. AND I BELIEVE YOU TOLD US
5 SOME THINGS THAT THEY WOULD STRIKE HER WITH IN THE GENITAL
6 AREA. WHERE -- WHAT ELSE WOULD THEY STRIKE HER WITH, OR WA
7 IT THOSE THINGS ON THE HEAD AND THE REST OF THE BODY?

8 A. I DON'T KNOW WHAT YOU WOULD CALL IT. IT'S THE WALL
9 PANEL STUFF.

10 Q. OKAY. ARE YOU TALKING ABOUT THE WALL PROTECTOR THINGS
11 YOU PUT ON THE CORNER OF YOUR WALLS?

12 A. YES, MA'AM.

13 Q. AND WHAT WOULD THEY DO WITH THAT?

14 A. THEY WOULD JUST HOLD HER SKIN BACK AND HIT HER WITH IT

15 Q. DID YOU EVER SEE ANY MARKS ON HER AFTER THAT?

16 A. YES, MA'AM.

17 Q. I'M SHOWING YOU STATE'S EXHIBIT 36. WHAT DID THE MARKS
18 LOOK LIKE? DID THEY LOOK ANYTHING LIKE THAT?

19 A. YES, MA'AM.

20 Q. STATE'S EXHIBIT 36.

21 (WHEREUPON STATE'S EXHIBIT 36 WAS PUBLISHED TO THE
22 JURY)

23 Q. NOW, SHE HAD SOME INJURIES TO HER CHEST AND STOMACH
24 AREA. I'M SHOWING YOU 41 AND 42. RIGHT IN HERE. THAT'S
25 HER BELLY BUTTON. DO YOU KNOW -- WHAT TYPES OF THINGS DID

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L.W. - DIRECT EXAMINATION BY MS. WHITE

501

1 YOU SEE DONE TO HER ABDOMINAL AREA THAT MIGHT HAVE CAUSED
2 THAT?

3 A. IF I'M NOT MISTAKEN, THAT COULD HAVE BEEN DONE WITH,
4 LIKE, A CAR CIGARETTE LIGHTER.

5 Q. WHAT DO YOU MEAN A CAR CIGARETTE LIGHTER?

6 A. THE CIRCULAR PART WHERE IT RECEIVES THE HEAT IN IT.

7 Q. DID YOU EVER SEE ANYTHING DONE REGARDING HER HAIR?

8 A. NOT BESIDES THAT IT WAS CUT.

9 Q. IT WAS CUT?

10 A. YES, MA'AM.

11 Q. WHAT, IF ANYTHING, DID YOU EVER SEE DONE WITH ICE?

12 A. THEY WOULD HOLD ICE TO HER SKIN AND THEN WAIT ABOUT
13 FIVE SECONDS AND THEN PEEL IT BACK.

14 Q. THEY WOULD PUT ICE TO HER SKIN AND THEN PEEL WHAT BACK?

15 A. HER SKIN.

16 Q. ARE YOU FAMILIAR WITH STATE'S EXHIBIT 11, A HARNESS?

17 A. YES, MA'AM. THAT'S THE HARNESS THAT THEY STRAPPED HER
18 TO THE DOORS WITH.

19 Q. WHAT DO YOU MEAN THEY WOULD STRAP HER TO THE DOORS WITH
20 IT?

21 A. SO SHE WOULDN'T BE ABLE TO GO ANYWHERE ELSE.

22 Q. DO YOU KNOW WHERE SHE -- DID YOU EVER SPEND THE NIGHT
23 OVER THERE?

24 A. ONE TIME.

25 Q. WERE YOU EVER OVER THERE AT NIGHT?

- 1 A. YEAH. I WOULD STAY THERE TILL IT GOT NIGHTTIME, AND
2 THEN I WOULD GO BACK HOME.
- 3 Q. DID YOU EVER SEE Minor IN A BATHROOM THERE?
- 4 A. YES, MA'AM.
- 5 Q. WHAT BATHROOM?
- 6 A. IT'S THE ONE CLOSEST TO THE BACK DOOR.
- 7 Q. AND DO YOU KNOW WHY SHE'D BE IN THE BATHROOM?
- 8 A. NOT REALLY.
- 9 Q. WOULD SHE BE PLAYING IN THERE OR NOT?
- 10 A. NO, MA'AM.
- 11 Q. HOW DID YOU KNOW SHE WASN'T PLAYING IN THERE?
- 12 A. BECAUSE SHE COULDN'T MOVE AROUND TO PLAY.
- 13 Q. WHAT WOULD HAPPEN IF Minor HAD AN ACCIDENT WHEN SHE
14 WENT TO THE BATHROOM?
- 15 A. SHE WOULD GET A WHIPPING, AND THEY WOULDN'T CHANGE THE
16 DIAPER.
- 17 Q. WHAT DO YOU MEAN BY THEY WOULDN'T CHANGE THE DIAPER?
- 18 A. THEY'D LEAVE IT ON HER FOR ABOUT A WEEK.
- 19 Q. HOW DID IT SMELL?
- 20 A. BAD.
- 21 Q. NOW, DID YOU EVER SEE Minor PUNISHED BY EXERCISE?
- 22 A. THEY MADE HER RUN AROUND THE HOUSE ONCE ABOUT EVERY
23 DAY.
- 24 Q. WHAT DO YOU MEAN THEY'D MAKE HER RUN AROUND THE HOUSE
25 ABOUT EVERY DAY? HOW LONG WOULD SHE HAVE TO RUN WHEN SHE'D

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L.W. - DIRECT EXAMINATION BY MS. WHITE

- 1 HAVE TO RUN AROUND THE HOUSE?
- 2 A. ABOUT THREE OR FOUR HOURS.
- 3 Q. WHAT WOULD HAPPEN IF SHE SLOWED DOWN?
- 4 A. THEY'D GET BEHIND HER AND PUSH HER TO MAKE HER RUN
- 5 FASTER.
- 6 Q. DID SHE EVER SAY SHE WAS THIRSTY WHEN SHE WOULD BE
- 7 RUNNING LIKE THAT?
- 8 A. YES, MA'AM.
- 9 Q. DID SHE GET ANYTHING TO DRINK?
- 10 A. NO, MA'AM.
- 11 Q. DID DEREK OR MICHELE EVER HIRE YOU TO CONDUCT A BOOT
- 12 CAMP?
- 13 A. YES, MA'AM.
- 14 Q. AND WHAT DID YOU END UP DOING?
- 15 A. I MADE THEM THINK THAT I WAS DOING THE BOOT CAMP, BUT I
- 16 WAS REALLY GIVING HER STUFF THAT SHE WANTED AND STUFF LIKE
- 17 THAT.
- 18 Q. NOW, YOU DON'T LIVE IN COLUMBIA, DO YOU? YOU LIVE NEXT
- 19 DOOR?
- 20 A. YES, MA'AM.
- 21 Q. DID YOU EVER SEE DEREK AND MICHELE PLAY CATCH?
- 22 A. WITH Minor
- 23 Q. OR FETCH, I SHOULD SAY. FETCH?
- 24 A. YES, MA'AM.
- 25 Q. WILL YOU DESCRIBE FOR THE JURY WHAT YOU WOULD SEE WHEN

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L.W.

- DIRECT EXAMINATION BY MS. WHITE

5

1 YOU WOULD SEE FETCH?

2 A. SHE WOULD SHOW OFF TO THE NEIGHBORS AND SAY, WATCH THE
3 DOG CATCH THE BALL, OR WHATEVER. AND THEY WOULD THROW THE
4 BALL AND TELL HER TO GO FETCH.

5 Q. TELL Minor TO GO FETCH?

6 A. YES, MA'AM.

7 Q. WOULD Minor GO FETCH THE BALL?

8 A. YES, MA'AM.

9 Q. AND WHEN SHE BROUGHT IT BACK, WHAT WOULD HAPPEN?

10 A. THEY'D WHIP HER, AND THEN THEY'D THROW IT AGAIN.

11 Q. AND WHAT WOULD THEY SAY WHEN THEY WERE HAVING HER PLAY
12 FETCH?

13 A. WATCH THE DOG GO CATCH THE BALL.

14 Q. WAS Minor ALLOWED TO PLAY FOOTBALL OR JUMP ON THE
15 TRAMPOLINE OR ANYTHING LIKE THAT WITH YOU ALL?

16 A. NO, MA'AM.

17 Q. TO YOUR KNOWLEDGE -- YOU WERE LIVING NEXT DOOR; IS THAT
18 RIGHT?

19 A. YES, MA'AM.

20 Q. TO YOUR KNOWLEDGE, DID YOU OR ANYBODY ELSE KNOCK
21 Minor TEETH OUT WHILE Y'ALL WERE PLAYING FOOTBALL?

22 A. NO, MA'AM.

23 Q. HOW OFTEN WAS Minor ALLOWED TO JUMP ON A
24 TRAMPOLINE?

25 A. NEVER.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

505

1 Q. YOU'VE GOT A TRAMPOLINE IN YOUR BACK YARD; IS THAT
2 RIGHT?

3 A. YES, MA'AM.

4 Q. DID YOU EVER SEE Minor GET INTO THE REFRIGERATOR?

5 A. YES, MA'AM. SHE SNUCK INTO IT.

6 Q. WHAT WOULD HAPPEN IF SHE TRIED TO GET INTO THE FRIDGE?

7 A. IF SHE WAS CAUGHT, SHE WOULD GET A BEATING. AND IF SHE
8 WASN'T, NOTHING.

9 Q. YOU SAID THAT Minor WOULD HAVE A DIRTY DIAPER AND
10 IT WOULD BE LEFT ON FOR A WHILE. BEFORE SHE COULD COME BACK
11 INSIDE, HOW WOULD SHE BE CLEANED OFF?

12 A. SHE WASN'T.

13 Q. WELL, WHEN SHE FINALLY WAS, HOW WAS SHE?

14 A. SHE'D BE HOSED DOWN.

15 Q. WHAT ABOUT WHEN IT WAS COLD OUTSIDE? WHAT WOULD
16 HAPPEN?

17 A. YOU MEAN WOULD SHE STILL BE OUT THERE? YES, MA'AM.

18 Q. THE DAY THAT Minor WENT INTO THE HOSPITAL,
19 GREENVILLE HOSPITAL, AND THEN DIED, WAS SHE JUMPING ON YOUR
20 TRAMPOLINE THAT DAY?

21 A. NO, MA'AM.

22 Q. DID YOU SEE HER THAT MORNING?

23 A. NO, MA'AM.

24 Q. NO FURTHER QUESTIONS.

25 CROSS EXAMINATION BY MR. GAMBLE:

- 1 Q. ARE YOU STILL FRIENDS WITH D.W.
- 2 A. YES, SIR.
- 3 Q. Y'ALL GO TO LAKESIDE TOGETHER?
- 4 A. YES, SIR.
- 5 Q. ARE YOU IN THE SAME CLASS?
- 6 A. NO, SIR.
- 7 Q. BUT YOU BUDDY AROUND TOGETHER?
- 8 A. YES, SIR.
- 9 Q. AND WERE YOU IN HERE WHEN HE TESTIFIED?
- 10 A. YES, SIR.
- 11 Q. NOW, WITH REGARD TO THAT CHEST INJURY, YOU SAY THAT'S A
- 12 CAR CIGARETTE LIGHTER. DID YOU SEE A CAR CIGARETTE LIGHTER
- 13 GO ON HER CHEST?
- 14 A. I SAID IT COULD HAVE BEEN. I'M NOT ---
- 15 Q. DID YOU SEE THE CAR CIGARETTE LIGHTER ON HER CHEST?
- 16 A. YES, SIR. YES, SIR, ONCE.
- 17 Q. HUH?
- 18 A. ONCE.
- 19 Q. WHERE?
- 20 A. ON HER CHEST.
- 21 Q. WHERE WAS SHE WHEN YOU SAW IT?
- 22 A. SHE WAS INSIDE THE HOUSE.
- 23 Q. INSIDE?
- 24 A. YES, SIR.
- 25 Q. IN THE HOUSE?

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

507

1 A. YES, SIR.

2 Q. AND HOW DID THIS CAR CIGARETTE LIGHTER GET ON HER
3 CHEST?

4 A. THEY WOULD BRING IT IN FROM THE CAR.

5 Q. OH. THEY'D GO OUT TO THE CAR AND PUNCH IT IN THE VAN?

6 A. YES, SIR.

7 Q. WHO DID THAT?

8 A. MICHELE.

9 Q. AND THEN BRING IT FROM THE VAN INTO THE HOUSE?

10 A. YES, SIR.

11 Q. AND WAS THIS THE KIND THAT HAD THE LITTLE RING ON THE
12 TOP TO PROTECT IT FROM BURNING PEOPLE, SIR?

13 A. WHERE YOU HOLD IT AT?

14 Q. RIGHT.

15 A. YES, SIR.

16 Q. NO. ON THE FIRE END?

17 A. OH. NO.

18 Q. WHAT YEAR VAN WAS THAT? DO YOU KNOW?

19 A. NO, SIR.

20 Q. OKAY. AND WHAT TIME WAS THAT? WAS J.C. ALREADY BORN?

21 LET'S TRY IT THAT WAY.

22 A. YES, SIR.

23 Q. J.C. WAS ALREADY BORN?

24 A. YES, SIR.

25 Q. HOW OLD WOULD YOU THINK J.C. WAS?

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

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1 A. I DIDN'T KNOW HOW OLD HE WAS.

2 Q. WHAT TIME OF THE DAY OR NIGHT WAS IT?

3 A. AROUND THREE IN THE DAYTIME.

4 Q. THREE IN THE DAYTIME?

5 A. YEAH.

6 Q. SUMMER OR THE FALL?

7 A. I'M NOT SURE WHEN THAT WAS. SUMMER, IT COULD HAVE
8 BEEN.

9 Q. WERE YOU IN SCHOOL THEN?

10 A. YES, SIR.

11 Q. SO YOU WERE GOING TO LAKESIDE AT THAT TIME WHEN YOU SA
12 YOU SAW THIS CAR CIGARETTE LIGHTER BEING BROUGHT INTO THE
13 HOUSE AND BURNING HER?

14 A. I WASN'T IN SCHOOL THOUGH.

15 Q. WELL, THEN IT WAS THE SUMMERTIME?

16 A. YES, SIR.

17 Q. SO WOULD YOU SAY JUNE OR JULY?

18 A. YES, SIR.

19 Q. NOW, YOU TOLD THE SOLICITOR THAT YOU SAW THAT SHE HAD
20 HAD A HAIRCUT?

21 A. YES, SIR.

22 Q. BUT YOU DIDN'T SEE ANY CLUMPS OF HAIR OUT, JUST THE
23 HAIRCUT; IS THAT RIGHT?

24 A. DO YOU MEAN LIKE CROOKED HAIRCUT?

25 Q. YEAH.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

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- 1 A. YES, SIR.
- 2 Q. A CROOKED HAIRCUT?
- 3 A. YES, SIR.
- 4 Q. BUT THAT'S ALL?
- 5 A. THAT'S ALL.
- 6 Q. WHAT WERE YOU DOING OVER THERE AND WHY WAS THIS ICE PUT
- 7 ON HER SKIN?
- 8 A. TO PEEL THE SKIN OFF.
- 9 Q. HUH?
- 10 A. TO PEEL THE SKIN OFF OF HER.
- 11 Q. WHAT HAD SHE DONE?
- 12 A. SOMETHING THEY DIDN'T WANT HER TO DO.
- 13 Q. WHAT?
- 14 A. I THINK THAT DAY SHE HAD SLOWED DOWN RUNNING.
- 15 Q. WHERE WAS SHE RUNNING?
- 16 A. INSIDE THE HOUSE.
- 17 Q. WHERE INSIDE THE HOUSE?
- 18 A. AROUND THE KITCHEN TABLE.
- 19 Q. WHAT WERE YOU DOING THERE?
- 20 A. I WAS DOWN THERE WITH D.W. PLAYING A VIDEO GAME.
- 21 Q. YOU AND WHO?
- 22 A. ME AND D.W.
- 23 Q. WHERE EXACTLY WAS THE ICE PUT ON HER SKIN WHERE IT WAS
- 24 PEELED OFF?
- 25 A. SOMETIMES IT WAS ON HER -- SORT OF RIGHT HERE ABOVE THE

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

1 CHEST. I MEAN, BELOW THE CHEST.

2 Q. ON HER STOMACH?

3 A. YEAH. YES, SIR.

4 Q. TO TAKE THE SKIN OFF?

5 A. YES, SIR.

6 Q. MAKE IT BLEED?

7 A. YES, SIR.

8 Q. YOU SAW THE BLOOD?

9 A. YES, SIR.

10 Q. AND THAT WAS WHAT TIME OF YEAR? SUMMER OR RIGHT BEFORE
11 SHE WENT TO THE HOSPITAL?

12 A. BEFORE SHE WENT TO THE HOSPITAL.

13 Q. RIGHT BEFORE?

14 A. NOT RIGHT BEFORE, BUT IT WAS BEFORE.

15 Q. A WEEK OR TWO?

16 A. PROBABLY TWO OR THREE WEEKS.

17 Q. TWO WEEKS OR THREE WEEKS?

18 A. YES, SIR.

19 Q. HOW MANY TIMES DID YOU SEE THIS DONE?

20 A. TWO OR THREE.

21 Q. RIGHT AROUND THE SAME TIME EACH TIME?

22 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

23 Q. SIR?

24 A. YES, SIR.

25 Q. I CAN'T HEAR YOU WHEN YOU NOD YOUR HEAD. I'M SORRY.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

511

1 A. YES, SIR.

2 Q. WAS IT RIGHT AROUND THE SAME TIME WHEN THIS WAS DONE
3 ALL TOGETHER?

4 A. YES, SIR.

5 Q. AND IT WAS DONE TWO OR THREE WEEKS BEFORE THE HOSPITAL,
6 YOU SAY?

7 A. YES, SIR.

8 Q. AND TWO OR THREE TIMES?

9 A. YES, SIR.

10 Q. AND EACH TIME BROUGHT BLOOD?

11 A. YES, SIR.

12 Q. NOW, SHE HAD ANOTHER LITTLE HARNESS WITH A PICTURE OF
13 SCOOPY-DOO ON IT, TOO, DIDN'T SHE?

14 A. I NEVER SAW THAT ONE.

15 Q. YOU ONLY SAW THE BLUE ONE?

16 A. YES, SIR.

17 Q. AND SHE WOULD BE WEARING IT WITH ALL THESE DIRTY PULL-
18 UPS ON AND EVERYTHING?

19 A. YES, SIR.

20 Q. OKAY. YOU ONLY SPENT THE NIGHT THERE THE ONE TIME?

21 A. YES, SIR.

22 Q. HOW DID YOU HAPPEN TO SEE Minor IN THE BATHROOM IN
23 THE BACK ROOM? WHAT WERE YOU DOING BACK THERE?

24 A. I OPENED THE DOOR TO SEE WHO WAS IN THERE BECAUSE I HAD
25 TO USE IT. USE THE RESTROOM.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

- 1 Q. THAT'S THE RESTROOM FOR THE MASTER BATH?
- 2 A. NO, SIR.
- 3 Q. HUH?
- 4 A. NO, SIR. YEAH, IT IS.
- 5 Q. HUH?
- 6 A. YES, IT IS.
- 7 Q. ISN'T THE OTHER BATHROOM WHERE D.W. AND J.W. USUALLY
- 8 WENT?
- 9 A. YES, SIR.
- 10 Q. ISN'T THAT WHERE -- IT WAS CLOSEST TO WHERE, WHEN YOU
- 11 SPENT THE NIGHT WITH THEM, YOU STAYED THERE IN THAT
- 12 BATHROOM?
- 13 A. YES, SIR.
- 14 Q. AND WHEN YOU WENT BACK TO THIS BATHROOM, DID YOU UNLOCK
- 15 THE DOOR TO GET INTO IT?
- 16 A. IT WASN'T LOCKED.
- 17 Q. IT WAS JUST OPEN?
- 18 A. NO. THE DOOR WAS CLOSED, BUT IT WASN'T LOCKED.
- 19 Q. DID YOU SEE ANY LOCKS ON IT?
- 20 A. NO, SIR.
- 21 Q. WERE THERE LIGHTS ON IN THE NURSERY AND/OR THE MASTER
- 22 BATHROOM --. MASTER BEDROOM?
- 23 A. NO, SIR.
- 24 Q. NO LIGHTS ON?
- 25 A. NO, SIR.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

513

- 1 Q. AND THE DOOR WAS UNLOCKED?
- 2 A. YES, SIR.
- 3 Q. AND Minor WAS JUST SITTING IN THE FLOOR?
- 4 A. NO. SHE WAS STANDING AT THE TIME.
- 5 Q. HUH?
- 6 A. SHE WAS STANDING AT THE TIME.
- 7 Q. WAS THERE ANY LIKE GATE OR PARTITION OR ANYTHING IN
- 8 THERE?
- 9 A. YEAH. A LITTLE WHITE GATE.
- 10 Q. WHERE WAS IT?
- 11 A. IT WAS LIKE PUT NEAR THE TOILET.
- 12 Q. NEAR THE WHAT?
- 13 A. NEAR THE TOILET TO KEEP HER FROM GOING TO DRINK OUT OF
- 14 IT.
- 15 Q. OH. SHE WASN'T TIED DOWN IN THERE, WAS SHE?
- 16 A. YES, SIR.
- 17 Q. WHAT WITH?
- 18 A. THE HARNESS.
- 19 Q. WHERE WAS IT ATTACHED TO?
- 20 A. TO A CABINET UP UNDER THE SINK.
- 21 Q. TO A CABINET UNDER THE SINK?
- 22 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 23 Q. WHEN WAS THIS?
- 24 A. I DON'T KNOW THE EXACT TIME.
- 25 Q. WAS J.C. ALIVE?

- 1 A. YES, SIR.
- 2 Q. WAS HE IN HIS LITTLE BED OVER THERE IN THE BEDROOM?
- 3 A. YES, SIR.
- 4 Q. DID YOU GO THROUGH HIS BEDROOM TO GET TO THE BATHROOM?
- 5 A. NO, SIR.
- 6 Q. YOU WENT THROUGH THE MASTER BEDROOM?
- 7 A. NO, SIR.
- 8 Q. HUH?
- 9 A. NO, SIR.
- 10 Q. WELL, HOW DID YOU GET TO THE BATHROOM?
- 11 A. THE BATHROOM THAT I WENT TO WAS IN THE -- WAS NEAR THE
- 12 BEDROOM WHERE D.W. SLEPT.
- 13 Q. OH. AND THAT'S WHERE Minor WAS?
- 14 A. YES, SIR.
- 15 Q. COME DOWN HERE AND SHOW ME SOMETHING.
- 16 (WHEREUPON WITNESS STEPPED DOWN FROM THE WITNESS STAND
- 17 Q. NOW, WHERE D.W. SLEPT WAS CLOSEST TO WHERE THE WASHER
- 18 AND DRYER AND THE KITCHEN WAS, WASN'T IT?
- 19 A. YES, SIR.
- 20 Q. AND YOU'RE TALKING ABOUT THIS BATHROOM HERE?
- 21 A. YES, SIR.
- 22 Q. THAT'S WHERE Minor WAS?
- 23 A. YES, SIR.
- 24 Q. SO SHE WASN'T IN THIS ONE DOWN HERE?
- 25 A. SHE WAS IN THERE ONCE.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

515

1 Q. OH, YOU SAW HER TWICE; RIGHT?

2 A. I DON'T UNDERSTAND.

3 Q. YOU SAY SHE WAS IN THIS BATHROOM ONCE AND THIS BATHROOM
4 ONCE?

5 A. YEAH. DIFFERENT TIMES.

6 Q. OKAY. THANK YOU. GO BACK UP THERE.

7 (WHEREUPON WITNESS STEPPED BACK UP TO THE WITNESS
8 STAND)

9 Q. SO YOU SAW HER IN THE BATHROOM -- OF ALL THE TIMES YOU
10 WERE THERE, SHE WAS IN THE BATHROOM ONLY TWICE?

11 A. NO, SIR. SHE WAS IN THE BATHROOM MORE TIMES THAN THAT.

12 Q. BUT YOU ONLY SAW HER TWICE?

13 A. I ONLY SAW HER IN THAT BATHROOM ONCE. BUT IN THE OTHER
14 ONE, SHE WAS IN IT THE MOST TIMES.

15 Q. WHAT OTHER ONE?

16 A. THE ONE NEAR D.W. BEDROOM.

17 Q. NEAR D.W. BEDROOM?

18 A. YES, SIR.

19 Q. SHE WAS IN IT MOST OF THE TIME?

20 A. YES, SIR.

21 Q. WHAT WAS SHE DOING IN THERE?

22 A. THAT'S WHERE THEY WOULD KEEP HER AT NIGHT.

23 Q. IN THE ONE AT D.W. BEDROOM?

24 A. YES, SIR.

25 Q. OKAY. AND YOU KNOW THAT BECAUSE YOU SAW IT LOTS OF

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

1 TIMES?

2 A. YES, SIR.

3 Q. AND SHE WAS ATTACHED TO WHAT IN THERE?

4 A. THE BLUE HARNESS AND THE CABINET.

5 Q. HUH?

6 A. THE CABINET, TOO.

7 Q. HOW WAS IT ATTACHED TO THE CABINET?

8 A. IT WAS TIED TO IT.

9 Q. TIED TO IT? AND THIS WAS AFTER J.C. WAS ALIVE THAT

10 WAS A BABY?

11 A. YES, SIR.

12 Q. ALL RIGHT. YOU SAY THAT WHEN SHE HAD AN ACCIDENT,

13 BATHROOM ACCIDENT, THEY WOULDN'T CHANGE THE DIAPER. THEY

14 WOULD LEAVE IT ON A WEEK?

15 A. YES, SIR.

16 Q. HOW DO YOU KNOW IT WOULD BE ON A WEEK?

17 A. BECAUSE THE SAME DIAPER WOULD BE ON HER FOR A WEEK.

18 SEEN IT.

19 Q. HOW DO YOU KNOW IT WAS THE SAME DIAPER?

20 A. I DON'T KNOW. JUST THE WAY IT LOOKED. IT LOOKED REA

21 OLD.

22 Q. WELL, WASN'T IT -- BY A WEEK, WASN'T IT HANGING DOWN

23 ABOUT HER KNEES?

24 A. NO. SHE HAD TO HOLD IT UP.

25 Q. SHE WENT AROUND HOLDING HER DIAPER UP?

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

517

- 1 A. YES, SIR.
- 2 Q. FOR A WEEK?
- 3 A. SOMETIMES SHE WOULD DROP IT THOUGH.
- 4 Q. YOU SAY THEY MADE HER RUN AROUND FOR THREE OR FOUR
- 5 HOURS?
- 6 A. YES, SIR.
- 7 Q. EVERY DAY?
- 8 A. YES, SIR.
- 9 Q. AROUND AND AROUND THE KITCHEN TABLE OR OUTSIDE OR
- 10 WHERE?
- 11 A. AROUND OUTSIDE OF THE TRAILER.
- 12 Q. I CAN'T HEAR YOU.
- 13 A. IT WAS OUTSIDE AROUND THE TRAILER.
- 14 Q. FOR THREE OR FOUR HOURS, THEY'D MAKE HER RUN AROUND THE
- 15 TRAILER?
- 16 A. YES, SIR.
- 17 Q. WHAT HAPPENED IF SHE SLOWED DOWN?
- 18 A. THEY'D GET BEHIND HER AND PUSH HER.
- 19 Q. WHO IS THEY?
- 20 A. IT WAS MICHELE MOST OF THE TIMES. BUT EVERY SO OFTEN
- 21 DEREK WOULD DO IT.
- 22 Q. WAS THIS DURING THE DAY?
- 23 A. YES, SIR.
- 24 Q. WOULD IT BE ON THE WEEKEND?
- 25 A. EVERY DAY.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

5

- 1 Q. EVERY DAY?
- 2 A. YES, SIR.
- 3 Q. AND DEREK WAS HOME EVERY DAY?
- 4 A. NOT EVERY DAY.
- 5 Q. DEREK WAS THERE A LOT OF DAYS?
- 6 A. NO, SIR.
- 7 Q. BUT HE WAS IN ON THIS DURING THE DAYTIME?
- 8 A. SOMETIMES.
- 9 Q. VERY OFTEN? A LOT OF TIMES?
- 10 A. NO.
- 11 Q. ALL RIGHT. WHO HIRED YOU FOR THIS BOOT CAMP?
- 12 A. BOTH MICHELE AND DEREK.
- 13 Q. WHO PAID YOU?
- 14 A. THEY DIDN'T ACTUALLY PAY ME.
- 15 Q. HUH?
- 16 A. THEY DIDN'T PAY ME.
- 17 Q. THEY DIDN'T GIVE YOU ANY MONEY?
- 18 A. NO, SIR.
- 19 Q. WHO TALKED TO YOU ABOUT IT FIRST?
- 20 A. FIRST, MICHELE TALKED TO ME ABOUT IT.
- 21 Q. AND THEN WHO TALKED TO YOU ABOUT IT SECOND?
- 22 A. DEREK.
- 23 Q. WHAT DID MICHELE TELL YOU?
- 24 A. SHE JUST ASKED ME IF I WOULD DO A BOOT CAMP ON
- 25 Minor

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

519

- 1 Q. HOW DID YOU KNOW WHAT A BOOT CAMP WAS?
- 2 A. I'VE WATCHED SHOWS ABOUT THEM ON T.V.
- 3 Q. WHAT DID YOU DO?
- 4 A. WELL, I MADE -- I MADE HER LIKE JOG AROUND THE BACK OF
- 5 THE HOUSE WHERE THEY WERE. AND THEN WHENEVER WE REACHED
- 6 WHERE THEY COULDN'T SEE, I'D LET HER START WALKING IF SHE
- 7 WANTED TO.
- 8 Q. THEY WERE SITTING AROUND BACK?
- 9 A. YES, SIR.
- 10 Q. DO YOU HAVE ANY KNOWLEDGE OF HOW HER TEETH GOT OUT?
- 11 A. NO, SIR.
- 12 Q. DID YOU EVER FALL ON HER PLAYING FOOTBALL?
- 13 A. NO, SIR.
- 14 Q. AREN'T YOU WHAT THEY CALL THE BIG BOY NEXT DOOR?
- 15 A. YES, SIR.
- 16 Q. YOU'RE BIG FOR YOUR AGE, AREN'T YOU?
- 17 A. YES, SIR.
- 18 Q. NOW, ON SATURDAY, THE 14TH OF OCTOBER, SATURDAY
- 19 MORNING, YOU WEREN'T AT HOME, WERE YOU? THE DAY SHE WENT TO
- 20 THE HOSPITAL?
- 21 A. NO, SIR.
- 22 Q. HUH?
- 23 A. NO, SIR.
- 24 Q. YOUR FOLKS WEREN'T HOME, WERE THEY?
- 25 A. I DON'T KNOW.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

521

- 1 Q. WHERE WERE YOU?
- 2 A. I WAS AT SCHOOL.
- 3 Q. ON SATURDAY?
- 4 A. OH. I MEAN -- NO. I WAS -- I FORGET WHERE I WAS.
- 5 Q. BUT YOU KNOW YOU WEREN'T THERE ON THE DAY THAT SHE WENT
- 6 TO THE HOSPITAL?
- 7 A. YES, SIR.
- 8 Q. SO HOW DO YOU KNOW NOBODY JUMPED ON YOUR TRAMPOLINE?
- 9 A. BECAUSE WE HAD ONE BIG DOG THAT'S ALWAYS LOOSE THAT I
- 10 DON'T THINK ANYBODY WOULD TRY TO GO BACK THERE.
- 11 Q. HE'S LOOSE?
- 12 A. YES, SIR. BUT THERE'S A FENCE AROUND THE HOUSE.
- 13 Q. D.W. AND J.W. JUMPED ON YOUR TRAMPOLINE A LOT, DIDN'T
- 14 THEY?
- 15 A. YES, SIR.
- 16 Q. THEY PLAYED WITH YOUR DOG A LOT, DIDN'T THEY?
- 17 A. ONLY WHEN I WAS OUT THERE.
- 18 Q. AND THEY LIVED NEXT DOOR TO YOU?
- 19 A. YES, SIR.
- 20 Q. YOU EVER SEE THEM PET YOUR DOG?
- 21 A. NOT A LOT.
- 22 Q. YOU'VE SEEN THEM PET YOUR DOG, HAVEN'T YOU?
- 23 A. YEAH, ABOUT ONCE.
- 24 Q. AND THE DOG DIDN'T BIT THEM, DID IT?
- 25 A. IT TRIED TO ONCE.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

521

- 1 Q. BUT YOU WEREN'T THERE?
- 2 A. WHENEVER THAT HAPPENED?
- 3 Q. ON SATURDAY, THE 14TH OF OCTOBER ---
- 4 A. YES, SIR.
- 5 Q. --- YOU WEREN'T AT YOUR HOUSE?
- 6 A. NO, SIR.
- 7 Q. WERE YOU?
- 8 A. NO, I WASN'T.
- 9 Q. SO YOU DON'T KNOW IF ANYBODY JUMPED ON YOUR TRAMPOLINE
- 10 OR NOT, DO YOU?
- 11 A. NO, SIR.
- 12 Q. YOU TALKED ABOUT Minor GETTING INTO THE
- 13 REFRIGERATOR. SHE WENT INTO IT EVERY SO OFTEN, DIDN'T SHE?
- 14 A. SHE TRIED TO.
- 15 Q. DID YOU EVER SEE HER EATING POPCORN?
- 16 A. ONCE.
- 17 Q. HUH?
- 18 A. ONCE.
- 19 Q. WHERE DID YOU SEE THAT?
- 20 A. IN THE KITCHEN.
- 21 Q. THEY WERE -- SHE AND D.W. AND J.W. WERE GOING AT IT
- 22 EATING POPCORN, WEREN'T THEY?
- 23 A. NO, SIR.
- 24 Q. HUH?
- 25 A. NO, SIR.

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

5

1 Q. WHO WAS?

2 A. D.W. AND J.W. HAD LEFT SOME POPCORN IN A BOWL ON A
3 KITCHEN COUNTER. AND WHENEVER THEY LEFT THE ROOM, SHE GOT
4 INTO IT.

5 Q. HOW OFTEN WERE YOU IN THE CARTER HOUSE?

6 A. EVERY DAY.

7 Q. HOW LONG?

8 A. ABOUT ALL DAY.

9 Q. WELL, SCHOOL STARTED IN AUGUST, DIDN'T IT?

10 A. WELL, I MEAN ALL DAY WHENEVER I GOT OUT.

11 Q. YOU GOT OUT OF SCHOOL AT THREE THIRTY?

12 A. YES, SIR.

13 Q. DID YOU RIDE THE BUS, OR HOW DID YOU GET HOME?

14 A. CAR.

15 Q. WHO TOOK YOU HOME?

16 A. MY DAD.

17 Q. TOOK YOU STRAIGHT OUT TO [REDACTED] [REDACTED]?

18 A. YES, SIR.

19 Q. AND DID HE STAY HOME?

20 A. MY DAD?

21 Q. YEAH.

22 A. YES, SIR.

23 Q. WHAT SHIFT DID HE WORK, OR DID HE WORK?

24 A. HE DIDN'T WORK.

25 Q. DID YOUR MOTHER WORK?

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L.W. - CROSS EXAMINATION BY MR. GAMBLE

523

- 1 A. NO, SIR.
- 2 Q. NOBODY WORKS IN YOUR HOUSE?
- 3 A. NO, SIR.
- 4 Q. HOW MANY TIMES DID YOU SEE Minor BURNED WITH A CAR
- 5 CIGARETTE LIGHTER? MORE THAN ONCE?
- 6 A. NO, SIR.
- 7 Q. HUH?
- 8 A. JUST ONCE.
- 9 Q. JUST ONCE?
- 10 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 11 Q. DID YOU EVER SEE D.W. OR J.W. IN THE SUMMER GET UNDER
- 12 THE HOSE, TOO?
- 13 A. ONLY WHEN THEY WERE PLAYING, BUT MICHELE WOULDN'T DO
- 14 IT.
- 15 Q. HUH?
- 16 A. MICHELE WASN'T THE ONE SPRAYING THEM. THEY WOULD ---
- 17 Q. I DIDN'T HEAR YOU. WHAT DID YOU SAY?
- 18 A. I SAID MICHELE WASN'T THE ONE SPRAYING THEM. THEY
- 19 WOULD JUST PLAY AROUND WITH THE HOSE.
- 20 Q. WOULD Minor PLAY WITH THE HOSE THEN, TOO?
- 21 A. NO, SIR.
- 22 Q. WHERE WAS SHE?
- 23 A. EITHER RUNNING AROUND THE HOUSE OR DOING WHATEVER
- 24 MICHELE TOLD HER TO.
- 25 Q. DOING THIS THREE OR FOUR-HOUR RUN AROUND THE HOUSE:

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
L.W. - REDIRECT EXAMINATION BY MS. WHITE

1 EVERY DAY?

2 A. YES, SIR.

3 Q. WHEN D.W. AND J.W. WERE PLAYING, SHE WAS DOING THREE
4 AND FOUR HOURS RUNNING EVERY DAY?

5 A. YES, SIR.

6 Q. EXCUSE ME A MINUTE.

7 THE COURT: YES, SIR.

8 MR. GAMBLE: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ANY REDIRECT?

10 MS. WHITE: JUST A FEW.

11 REDIRECT EXAMINATION BY MS. WHITE:

12 Q. L.W., WHEN YOU WOULD SEE HER IN THE OTHER BATHROOM, YOU
13 SAID THERE WERE NO LOCKS ON THAT DOOR; IS THAT RIGHT?

14 A. THAT'S RIGHT.

15 Q. ON THE OTHER DOOR?

16 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

17 Q. AND WOULD SHE -- WAS ANYBODY STANDING THERE MAKING HER
18 STAY IN THE BATHROOM, OR WOULD SHE JUST STAY IN THE BATHROOM
19 WHEN YOU SAW HER IN THAT BATHROOM?

20 A. SHE WOULD STAY.

21 Q. NO FURTHER QUESTIONS.

22 THE COURT: ALL RIGHT. THANK YOU, SIR.

23 NEXT WITNESS.

24 MS. WHITE: MAY THE WITNESS BE EXCUSED, YOUR HONOR

25 MR. GAMBLE: NO OBJECTION.

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TERESA DENARDO - DIRECT EXAMINATION BY MS. WHITE

525

1 THE COURT: WITHOUT OBJECTION.

2 MS. WHITE: THE STATE CALLS TERESA DENARDO.

3 **TERESA DENARDO,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY MS. WHITE:

6 Q. MS. DENARDO, WHAT IS YOUR OCCUPATION?

7 A. I WORK AT WINN-DIXIE. A BOOKKEEPER.

8 Q. AND WHERE DO YOU LIVE IN RELATION TO WHERE THE CARTER
9 FAMILY LIVED?

10 A. ON THE RIGHT-HAND SIDE.

11 Q. NOW, DID YOU KNOW MICHELE CARTER?

12 A. YES, MA'AM.

13 Q. AND DID YOU EVER TALK TO MICHELE ABOUT HOW SHE FELT
14 ABOUT Minor

15 A. THE FIRST TIME I MET HER.

16 Q. AND WHAT HAPPENED?

17 A. I HAD WALKED OVER TO INTRODUCE MYSELF. THEY HAD LIVED
18 THERE MAYBE ABOUT A WEEK. AND SHE WAS JUST TALKING ABOUT
19 HOW SHE WAS GLAD SHE WAS PREGNANT WITH A BOY BECAUSE SHE
20 COULDN'T STAND LITTLE GIRLS.

21 Q. DID SHE DISCUSS AT ANY TIME WHERE Minor WOULD
22 SLEEP?

23 A. SHE HAD TOLD ME THEY HAD BURNED HER BED BECAUSE SHE
24 WOULD CONSTANTLY WET HER BED AND MESS IT UP. SO THEY BURNED
25 IT. AND SHE HAD LIKE A LITTLE -- ONE OF THOSE LITTLE -- IT

1 LOOKS KIND OF LIKE A MATTRESS. IT'S A CHAIR, AND IT FOLDS
2 OUT. AND SHE SAID SHE WOULD SLEEP IN THE HALLWAY.

3 Q. WHEN SHE WAS TELLING YOU THIS, DID SHE DISCUSS
4 Minor PERSONALITY?

5 A. SHE SAID SHE WAS JUST MEAN AND HATEFUL AND JUST, YOU
6 KNOW, WOULDN'T GO TO THE BATHROOM.

7 Q. AND WHERE WAS Minor WHEN SHE WAS TELLING YOU THIS?
8 A. SITTING RIGHT BESIDE HER ON THE COUCH.

9 Q. IN THE SUMMER OF 2000 -- WELL, LET'S BACK UP. IN THE
10 YEAR 2000, WHAT, IF ANYTHING, DID YOU EVER SEE Minor
11 DOING OUT IN THE YARD?

12 A. JUST KIND OF STANDING THERE. SHE WOULD JUST STAND
13 THERE. SHE WASN'T PLAYING. SHE WOULD BE STANDING NEAR
14 TREES AND JUST KIND OF STANDING THERE.

15 Q. AND DID YOU EVER SEE HER TOWARD THE END DOING ANYTHING
16 BESIDES STAND THERE?

17 A. YES. SHE WOULD JUST PACE BACK AND FORTH. KIND OF LIKE
18 A ROBOT, JUST, YOU KNOW ...

19 Q. HOW LONG WOULD THIS LAST?

20 A. I WOULD JUST SEE HER LIKE ON MY WAY TO WORK OR -- I
21 DON'T KNOW EXACTLY HOW LONG.

22 Q. AND SHE WOULD BE PACING IN THE YARD?

23 A. YES.

24 Q. DID YOU EVER NOTICE WHAT SHE WAS WEARING WHEN SHE WOULD
25 BE OUT IN THE YARD EITHER STANDING STILL OR PACING?

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TERESA DENARDO - DIRECT EXAMINATION BY MS. WHITE

527

- 1 A. USUALLY JUST THE DIAPER.
- 2 Q. AND WHEN YOU WOULD SEE THE DIAPER, HOW WOULD IT LOOK?
- 3 A. IT WAS SAGGING, YOU KNOW, REALLY BAD. IT JUST LOOKED
- 4 LIKE IT WAS REALLY DIRTY.
- 5 Q. DID YOU ASK MICHELE ABOUT THIS?
- 6 A. WE DID QUESTION, BUT SHE JUST SAID IT WAS MEDICAL
- 7 PROBLEMS. AND THE DOCTOR HAD TOLD THEM JUST TO IGNORE WHAT
- 8 SHE DOES. AND YOU KNOW ...
- 9 Q. SO DID YOU THINK THIS WAS DUE TO SOME KIND OF MEDICAL
- 10 PROBLEMS ---
- 11 A. RIGHT.
- 12 Q. --- THAT MADE HER ---
- 13 A. RIGHT. WE JUST THOUGHT, YOU KNOW, SHE HAD MEDICAL
- 14 PROBLEMS AND THAT'S JUST WHAT SHE DID.
- 15 Q. NOW, IN THE SUMMER OF 2000, DID YOU EVER SEE Minor
- 16 OUT IN THE YARD WHEN Y'ALL WERE CLEARING -- OR DEREK WAS
- 17 CLEARING THE BACK YARD?
- 18 A. YES, MA'AM.
- 19 Q. IF YOU'LL JUST KIND OF START AT THE BEGINNING AND TELL
- 20 THE JURY WHAT YOU REMEMBER SEEING.
- 21 A. MY HUSBAND, HE WAS OUTSIDE CLEARING OUT OUR BACK YARD.
- 22 AND I HAD WALKED OUTSIDE. AND MY HUSBAND WAS CUTTING GRASS,
- 23 AND HE HAD STOPPED TO TAKE A BREAK. AND I ASKED HIM WHY
- 24 Minor YOU KNOW, WAS JUST STANDING AT THE BACK SIDE OF
- 25 HER TRAILER.

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TERESA DENARDO - DIRECT EXAMINATION BY MS. WHITE

5

1 Q. OKAY. WAIT A MINUTE, NOW. WHEN YOU SAID SHE WAS JUST
2 STANDING THERE, I MEAN, WAS SHE, YOU KNOW, PLAYING WITH
3 SOMETHING OR WHAT?

4 A. NO. SHE WOULD JUST STAND THERE JUST LIKE A LITTLE
5 STATUE. SHE WOULD JUST STAND THERE.

6 Q. SHOW THE JURY HOW SHE WOULD JUST STAND THERE.

7 A. JUST IF THIS WAS LIKE THE BACK SIDE OF HER TRAILER,
8 (WITNESS STANDING) SHE WOULD JUST BE STANDING. JUST
9 STANDING AND NOT LOOKING AROUND. JUST STANDING THERE.

10 Q. AND WHEN YOU SAW HER STANDING THERE, WAS IT HOT OR WAS
11 IT COLD OUTSIDE?

12 A. IT WAS VERY HOT. MIDDLE OF SUMMER.

13 Q. AND HOW LONG DID SHE STAND THERE THAT DAY AT THE
14 TRAILER?

15 A. FROM THE TIME I GOT OUTSIDE, PROBABLY I'D SAY AT LEAST
16 THREE OR FOUR HOURS.

17 Q. AND DID YOU QUESTION MICHELE ABOUT WHY Minor WAS
18 STANDING MOTIONLESS IN THE HEAT?

19 A. YES. AND SHE SAID THE DOCTOR HAD TOLD THEM TO IGNORE
20 HER. SHE WAS TIRED OF CLEANING UP HER MESS IN THE HOUSE.
21 AND THEY TOLD HER THEN TO IGNORE HER. AND I GUESS THAT WAS
22 HER WAY OF IGNORING HER, JUST PUTTING HER OUTSIDE.

23 Q. NOW, AGAIN, AT THE TIME, DID YOU THINK THAT THIS WAS
24 SOME KIND OF MEDICAL CONDITION OR SOMETHING THAT Minor
25 HAD?

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
TERESA DENARDO - DIRECT EXAMINATION BY MS. WHITE

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1 A. WELL, I HAD ALREADY SUSPECTED SOMETHING WAS GOING ON,
2 BUT I WASN'T FOR SURE BECAUSE THEY KEPT EXPLAINING IT AS
3 MEDICAL PROBLEMS.

4 Q. ALL RIGHT. THAT TIME THAT SHE WAS OUT ON THE -- THE
5 TIME THAT YOU TALKED ABOUT IN THE SUMMER WHEN IT WAS SO HOT,
6 WHAT, IF ANYTHING, DID YOU NOTICE FLYING AROUND Minor

7 A. SHE HAD THOSE YELLOW JACKETS AND FLIES. ALL SORTS OF,
8 YOU KNOW, FLIES AND BEES.

9 Q. AND WHAT DID HER DIAPER LOOK LIKE?

10 A. IT WAS REALLY NASTY. IT HUNG, YOU KNOW, PROBABLY TO
11 HER KNEES.

12 Q. DID YOU EVER SEE Minor MOVE?

13 A. THAT DAY, NO.

14 Q. AT THE END OF ALL OF THAT, HOW DID -- IF SHE DID, HOW
15 DID MICHELE CARTER CLEAN Minor OFF?

16 A. WELL, IT WAS GETTING DARK. SO EVERYBODY -- WE HAD
17 STOPPED CLEANING THE YARD, AND MICHELE AND I WERE SITTING IN
18 CHAIRS. DEREK HAD COME OVER, AND MY HUSBAND HAD COME OVER.
19 AND MICHELE SAID, WELL, IT'S TIME TO GO HOSE OFF THE DOG
20 NOW.

21 Q. SHE SAID IT'S TIME TO HOSE OFF WHAT?

22 A. THE DOG.

23 Q. AND WHAT DID SHE DO?

24 A. WHAT DID SHE DO?

25 Q. WHAT DID MICHELE DO? MICHELE CARTER.

1 A. SHE JUST SAT THERE AND JUST WAS KIND OF, YOU KNOW,
2 JOKING ABOUT IT.

3 Q. DID SHE HOSE HER OFF?

4 A. I DON'T KNOW. WE WENT INSIDE.

5 Q. FROM THE TIME THAT YOU KNEW MICHELE CARTER AND DEREK
6 CARTER, DID YOU EVER KNOW MICHELE CARTER TO BE DOMINATED BY
7 DEREK CARTER?

8 A. NO.

9 Q. IF ANYONE WAS THE DOMINANT ONE IN THE RELATIONSHIP,
10 WHICH ONE WAS IT?

11 A. MICHELE.

12 Q. DID SHE EVER COMPLAIN TO YOU ABOUT ANY ABUSE AT DEREK'
13 HANDS OR ---

14 A. NO, NEVER.

15 Q. DID MICHELE CARTER EVER TELL YOU WHETHER OR NOT SHE WA
16 TAKING Minor TO DOCTORS AND TRYING TO GET HER TREATED
17 FOR THIS?

18 A. SHE HAD TOLD ME THAT SHE HAD TAKEN HER TO DR. MADDOX,
19 BUT SHE DIDN'T REALLY SAY. SHE JUST TOLD ME, YOU KNOW, IF
20 YOU WANT TO CALL D.S.S. YOU CAN CALL THE DOCTOR. YOU KNOW,
21 THEY'LL TELL YOU THE SAME THING THAT I'M TELLING YOU.

22 Q. NOW, IN FEBRUARY OR MARCH TIME PERIOD, RIGHT AFTER
23 J.C. WAS BORN, DID YOU SEE Minor

24 A. YES, MA'AM.

25 Q. WHERE DID YOU SEE HER?

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TERESA DENARDO - DIRECT EXAMINATION BY MS. WHITE

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1 A. THEY WERE GETTING OUT OF THE VAN. I DON'T KNOW IF THEY
2 HAD JUST COME BACK FROM PICKING UP THE CHILDREN FROM SCHOOL.
3 BUT THEY WERE GETTING OUT OF THE VAN. AND I HAD WALKED OVER
4 AND WAS GOING TO SEE THE BABY BECAUSE I HADN'T SAW HIM YET.
5 AND Minor WAS ABOUT TO STEP OUT OF THE VAN.

6 Q. WHAT HAPPENED WHEN YOU GOT OVER TO THE VAN?

7 A. SHE KIND OF JUST FLINCHED AND KIND OF STEPPED BACK AND
8 LOOKED LIKE SHE WAS ABOUT TO CRY.

9 Q. AND DESCRIBE HOW Minor LOOKED.

10 A. SHE HAD SORES AROUND HER MOUTH. HER HAIR WAS MATTED
11 AND JUST REALLY BAD LOOKING, AND SHE WAS PALE.

12 Q. DID YOU NOTICE ANYTHING ABOUT HER NOSE?

13 A. SHE HAD LIKE A SCAR OR MAYBE A SORE ACROSS THE BRIDGE
14 OF HER NOSE.

15 Q. NOW, WHEN THEY FIRST MOVE IN, WAS HER APPEARANCE LIKE
16 THIS, OR WAS IT DIFFERENT?

17 A. SHE WAS A LOT DIFFERENT WHEN THEY FIRST MOVED IN. SHE
18 WOULD COME OVER EVERY DAY PLAYING WITH MY LITTLE BOY WHEN
19 THEY FIRST COME -- YOU KNOW, MOVED IN. SHE WAS NORMAL, YOU
20 KNOW, HEALTHY LOOKING.

21 Q. WHAT, IF ANYTHING, DID MICHELE CARTER EVER MENTION TO
22 YOU ABOUT BOOT CAMP?

23 A. SHE HAD COME OVER ONE DAY AND ASKED US IF WE WOULD
24 WATCH THEIR TRAILER BECAUSE THEY HAD TO GO PICK UP Minor
25 FROM BOOT CAMP.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
TERESA DENARDO - DIRECT EXAMINATION BY MS. WHITE

5

1 Q. IN WHERE?

2 A. COLUMBIA.

3 Q. AFTER SHE SAID THIS ABOUT Minor -- THIS WAS A FOUR
4 YEAR-OLD CHILD?

5 A. YES, MA'AM.

6 Q. AFTER SHE SAID THIS ABOUT Minor BEING IN BOOT CAMP
7 HOW FREQUENTLY DID YOU SEE Minor AFTER THAT?

8 A. HARDLY EVER.

9 Q. DID YOU KNOW WHERE SHE WAS?

10 A. NO, NOT AT THE TIME.

11 Q. DID YOU TALK TO -- HOW OFTEN DID YOU SEE MICHELE CARTER
12 BEING NICE TO Minor

13 A. NEVER.

14 Q. HOW OFTEN DID YOU SEE Minor JUMPING ON THE
15 TRAMPOLINE OR PLAYING FOOTBALL OR SOMETHING LIKE THAT?

16 A. I NEVER SAW HER PLAYING.

17 Q. I'M HANDING YOU STATE'S EXHIBIT 7. DO YOU RECOGNIZE
18 THOSE?

19 A. YES, MA'AM.

20 Q. WHAT ARE THOSE?

21 A. THESE ARE THE LOCKS THAT WERE ON THE SMALL BATHROOM ON
22 EACH SIDE OF BOTH DOORS.

23 Q. AND WHERE DID YOU GET THESE?

24 A. FROM THE TRAILER AFTER THEY HAD -- AFTER THE FAMILY HAD
25 CLEANED IT OUT.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
TERESA DENARDO - CROSS EXAMINATION BY MR. GAMBLE

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1 Q. IS YOUR HUSBAND IN CHARGE OF REPAIRS OF THE TRAILERS?

2 A. YES, MA'AM.

3 Q. AND WERE THESE REMOVED BY YOU ALL FROM THE BATHROOM
4 DOOR?

5 A. MY HUSBAND; YES, MA'AM.

6 Q. HAVE THEY BEEN CHANGED OR ALTERED IN ANY MANNER SINCE
7 THEY WERE REMOVED?

8 A. NO, MA'AM.

9 Q. DID Y'ALL GIVE THEM TO LAW ENFORCEMENT? YOU, IN
10 PARTICULAR, GIVE THEM TO LAW ENFORCEMENT?

11 A. YES, MA'AM.

12 Q. I ASK THAT STATE'S EXHIBIT 7 BE ADMITTED.

13 MR. GAMBLE: NO OBJECTION NOW, YOUR HONOR.

14 THE COURT: WITHOUT OBJECTION.

15 (LOCKS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT 7)

16 MS. WHITE: NO FURTHER QUESTIONS.

17 MR. GAMBLE: I'LL BE WITH YOU IN A MINUTE, YOUR
18 HONOR. I NEED TO REVIEW SOMETHING.

19 THE COURT: VERY GOOD, SIR.

20 (PAUSE WHILE MR. GAMBLE REVIEWED DOCUMENT)

21 CROSS EXAMINATION BY MR. GAMBLE:

22 Q. YOU INDICATED THAT YOU WOULD SEE THE CHILD OUT IN THE
23 YARD WHEN YOU WOULD GO TO WORK. WHERE DO YOU WORK?

24 A. AT WINN-DIXIE.

25 Q. CAMPBELL AND DIXIE?

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
TERESA DENARDO - CROSS EXAMINATION BY MR. GAMBLE

5:

- 1 A. WINN-DIXIE.
- 2 Q. OH. WINN-DIXIE?
- 3 A. YES, SIR.
- 4 Q. WHICH ONE?
- 5 A. THE ONE ON 28. THE NEW ONE.
- 6 Q. THE BIG ONE OUT THERE NEAR THE BANK?
- 7 A. YES, SIR.
- 8 Q. WHAT ARE YOUR HOURS?
- 9 A. IT VARIES. USUALLY IT WAS EVENING HOURS. USUALLY IT
- 10 WAS EVENING HOURS MAYBE THREE OR FOUR DAYS A WEEK.
- 11 Q. FROM -- WHAT'S THE SHIFT?
- 12 A. USUALLY FOUR TILL ELEVEN.
- 13 Q. FOUR TILL ELEVEN?
- 14 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 15 Q. AND SOMETIMES MORNING HOURS?
- 16 A. VERY RARELY. BUT SOMETIMES.
- 17 Q. YOU INDICATED TO -- IS DENNIS YOUR HUSBAND?
- 18 A. YES, SIR.
- 19 Q. OKAY. WERE YOU PRESENT WHEN HE MADE A STATEMENT TO AN
- 20 OFFICER?
- 21 A. WAS I PRESENT WHEN HE MADE A STATEMENT? I BELIEVE I
- 22 WAS.
- 23 Q. AND HOW OFTEN DID Minor COME OVER AND PLAY WITH
- 24 YOUR -- WITH AARON?
- 25 A. WHEN THEY FIRST MOVED IN, IT WAS PROBABLY DAILY.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
TERESA DENARDO - CROSS EXAMINATION BY MR. GAMBLE

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- 1 Q. OKAY. • AND WHEN DID THAT STOP?
- 2 A. PROBABLY WHEN IT GOT COLD. AND THE CHILDREN STOPPED
- 3 COMING OUT TO PLAY AND THEY STAYED INSIDE.
- 4 Q. WHEN THEY TOLD YOU THEY WERE GOING TO HAVE Minor AT
- 5 A BOOT CAMP, DID, IN FACT, THEY LEAVE THE TRAILER?
- 6 A. YES, SIR.
- 7 Q. DID, IN FACT, THEY STAY GONE LONG ENOUGH TO GO TO
- 8 COLUMBIA AND BACK?
- 9 A. PROBABLY, I GUESS, FOR THE WEEKEND.
- 10 Q. THEY WERE GONE ALL WEEKEND?
- 11 A. AS FAR AS I KNOW, YES.
- 12 Q. THE BOYS WEREN'T THERE EITHER?
- 13 A. NOT THAT I KNOW OF.
- 14 Q. OKAY. NOW, WHEN Minor WAS STANDING, AS YOU
- 15 INDICATED, FACING THE TRAILER, WAS SHE STRAPPED TO IT IN ANY
- 16 WAY?
- 17 A. NO, SIR. SHE WAS JUST STANDING THERE.
- 18 Q. AND DID YOU SEE ANYONE BRING HER OUT AND PLACE HER
- 19 THERE?
- 20 A. NO. SHE WAS ALREADY THERE WHEN I WENT OUTSIDE.
- 21 Q. AND WHEN SHE WAS OUT THERE, SHE WAS JUST STANDING, AS
- 22 YOU INDICATED, FACING THE TRAILER?
- 23 A. YES, SIR.
- 24 Q. DID YOU EVER SEE ANYONE HIT HER?
- 25 A. NO, SIR.

1 Q. WHEN SHE WAS PACING OUT IN THE YARD, AS YOU INDICATED,
2 WAS SHE WALKING AROUND THE TRAILER?

3 A. NO. SHE WAS JUST IN HER BACK YARD WALKING. THEY HAVE
4 A BURN PILE. AND SHE WAS WALKING BACK FROM THE TRAILER BACK
5 AND FORTH.

6 Q. TO THE BURN PILE?

7 A. YES, SIR.

8 Q. ALL RIGHT. NOW, LET ME ASK YOU THIS. DID YOU EVER SEE
9 HER RUNNING THREE AND FOUR HOURS A DAY AROUND AND AROUND THE
10 TRAILER AND BEING FORCED TO DO SO BY MICHELE AND/OR DEREK?

11 A. NO, SIR, I NEVER WITNESSED THAT.

12 Q. AND YOU CAN SEE THEIR TRAILER FROM YOUR HOME, CAN'T
13 YOU?

14 A. IF WE'RE OUTSIDE.

15 Q. YOU CAN'T SEE IT INSIDE?

16 A. NO, SIR, UNLESS WE LOOK OUT THE BACK DOOR. AND WE
17 STILL CAN'T SEE DIRECTLY, YOU KNOW, RIGHT AROUND THEIR
18 TRAILER.

19 Q. WELL, YOU CAN SEE THE SIDE OF THE TRAILER ---

20 A. NO, SIR.

21 Q. --- OR THE BACK OF THE TRAILER?

22 A. NO, SIR.

23 Q. DID YOU EVER LOOK OUT OVER THERE? JUST GLANCE OUT OVER
24 THERE?

25 A. NO, SIR. NOT UNLESS I WAS OUTSIDE.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
TERESA DENARDO - CROSS EXAMINATION BY MR. GAMBLE

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1 Q. DO YOU GO OUT OFTEN?

2 A. YES, SIR. WE USED TO.

3 Q. IN THE SUMMER?

4 A. YES, SIR.

5 Q. WELL, ALL SUMMER LONG, DID YOU EVER SEE Minor

6 HAVING TO RUN THREE AND FOUR HOURS AROUND AND AROUND THAT
7 TRAILER?

8 A. NO, SIR.

9 Q. DID YOU EVER SEE -- DO YOU KNOW THE WHITLOCK YOUNG MAN?

10 A. YES, SIR.

11 Q. THAT LIVES ON THE OTHER SIDE?

12 A. YES, SIR.

13 Q. DID YOU EVER SEE HIM HAVING HER TROT AROUND AND AROUND?

14 A. NO, SIR.

15 Q. DID YOU EVER SEE HIM OVER THERE PLAYING WITH THOSE
16 BOYS?

17 A. HE WAS OVER THERE ALL THE TIME.

18 Q. HE WAS?

19 A. YES, SIR.

20 Q. OUTSIDE?

21 A. THEY WERE INSIDE PLAYING VIDEO GAMES AND OUTSIDE
22 PLAYING FOOTBALL.

23 Q. DID YOU SEE Minor OUT THERE?

24 A. NOT WITH THEM PLAYING, NO.

25 Q. WOULD SHE BE OUT THERE?

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
TERESA DENARDO - CROSS EXAMINATION BY MR. GAMBLE

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- 1 A. WHEN THEY WERE PLAYING, NO.
- 2 Q. SHE WOULDN'T BE OUTSIDE?
- 3 A. NOT WHEN THEY WERE PLAYING, NO.
- 4 Q. OKAY. WHEN WOULD THEY BE PLAYING? WHAT DAYS? WHEN
- 5 SCHOOL WAS OUT?
- 6 A. IN THE EVENINGS RIGHT AFTER SCHOOL.
- 7 Q. OKAY. IF YOU WENT TO WORK IN THE EVENING AROUND FOUR,
- 8 THEY HAD JUST GOT HOME AT THREE THIRTY?
- 9 A. THAT'S WHAT I'M SAYING. I DIDN'T WORK EVERY DAY.
- 10 Q. UH-HUH.
- 11 A. SOMETIMES IT'S TWO OR THREE TIMES A WEEK. AND THEN
- 12 SOMETIMES I WORKED FOUR TIMES A WEEK.
- 13 Q. YEAH. SO YOU MISSED A LOT OF TIME SEEING WHAT WAS
- 14 GOING ON OUTSIDE?
- 15 A. RIGHT.
- 16 Q. I MEAN, ON A WEEKLY BASIS?
- 17 A. RIGHT, YEAH.
- 18 Q. THANK YOU, MA'AM.
- 19 THE COURT: ANY REDIRECT?
- 20 MS. WHITE: MAY THE WITNESS BE EXCUSED?
- 21 MR. GAMBLE: NO OBJECTION.
- 22 THE COURT: YES, MA'AM. THANK YOU, MA'AM.
- 23 MS. WHITE: THE STATE CALLS KALESHA LEWIS.
- 24 KALESHA SHANAE LEWIS,
- 25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MS. WHITE:

2 Q. KALESHA, SPELL YOUR FIRST NAME, TOO, PLEASE, FOR THE
3 RECORD.

4 A. K-A-L-E-S-H-A.

5 Q. AND WHERE DID YOU LIVE IN RELATION TO WHERE THE CARTERS
6 LIVED?

7 A. MAYBE A HOUSE ----

8 MR. GAMBLE: I CAN'T HEAR.

9 A. MAYBE A STREET OR TWO.

10 THE COURT: JUST KEEP YOUR VOICE UP, PLEASE, MA'AM.

11 Q. OKAY. A STREET OR TWO AWAY?

12 A. YES.

13 Q. NOW, ON AUGUST 23RD OF LAST YEAR, DID YOU HAVE YOUR MOM
14 CALL THE SHERIFF'S DEPARTMENT?

15 A. I WENT IN AND TOLD HER.

16 Q. YOU WANT TO LOOK AT THE INCIDENT REPORT? (HANDING
17 DOCUMENT TO WITNESS) DID YOU TALK TO YOUR MOM AND HAVE HER
18 CALL THE SHERIFF'S DEPARTMENT? DID Y'ALL CALL THE SHERIFF'S
19 DEPARTMENT?

20 A. YES, MA'AM.

21 Q. AND WILL YOU PLEASE TELL THE JURY WHAT YOU SAW THAT
22 MADE YOU WANT TO CALL THE SHERIFF'S DEPARTMENT?

23 A. I SAW HER TIED TO A STUMP.

24 Q. OKAY. YOU SAW WHO TIED TO A STUMP?

25 A. Minor

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KALESHA SHANAE LEWIS - DIRECT EXAMINATION BY MS. WHITE

5

1 Q. NOW, KALESHA, YOU'RE GOING TO HAVE TO SPEAK UP. WE
2 CAN'T HEAR A THING YOU'RE SAYING. OKAY? WHAT WERE YOU
3 DOING WHEN YOU SAW HER TIED TO A STUMP?

4 A. RIDING MY BIKE.

5 Q. AND HOW WAS SHE TIED TO A STUMP?

6 A. BY A ROPE OR A CHAIN OR SOMETHING.

7 Q. AND WAS SHE IN THE SHADE, OR WAS SHE NOT IN THE SHADE

8 A. IT WAS NOT SHADY.

9 Q. WHAT WAS SHE WEARING?

10 A. JUST A DIAPER OR A PULL-UP.

11 Q. AND HOW DID THE DIAPER LOOK?

12 A. LIKE FULL.

13 Q. AND WERE THERE ANY LEAVES BURNING IN THE YARD OR
14 ANYTHING LIKE THAT?

15 A. NO, MA'AM.

16 Q. AND WAS THAT THE ONLY TIME THAT YOU SAW HER TIED TO A
17 STUMP?

18 A. IT WAS THE NEXT DAY THAT I WENT OUT THERE.

19 Q. AND WHAT WERE YOU DOING THIS TIME?

20 A. RIDING MY BIKE.

21 Q. AND WHAT DID YOU SEE THIS DAY?

22 A. HER TIED TO A STUMP AND MARCHING.

23 Q. TIED TO A STUMP AND MARCHING?

24 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

25 Q. HOW WAS SHE MARCHING?

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
KALESHA SHANAE LEWIS - CROSS EXAMINATION BY MR. GAMBLE

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- 1 A. PROBABLY FACED TO THE WOODS AND TREES.
- 2 Q. WHAT I'M GETTING AT IS IN PLACE OR MARCHING LIKE
- 3 PACING?
- 4 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 5 Q. IN PLACE? WHAT WAS SHE WEARING?
- 6 A. JUST THE DIAPER.
- 7 Q. AND HOW DID THAT DIAPER LOOK?
- 8 A. IT LOOKED RIPPED.
- 9 Q. NOW, IS THAT THE DAY -- WHEN YOU CAME HOME, WHAT DID
- 10 YOU TELL YOUR MOTHER? DID YOU TELL YOUR MOTHER ABOUT THAT?
- 11 A. YES, MA'AM.
- 12 Q. AND DID YOU AND YOUR MOTHER CALL ANYBODY?
- 13 A. SHE CALLED.
- 14 Q. CALLED THE SHERIFF'S DEPARTMENT?
- 15 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 16 Q. AND DID YOU GO DOWN TO SHOW THE SHERIFF'S DEPARTMENT
- 17 WHERE TO GO?
- 18 A. IT WAS LATER THAT NIGHT THEY CAME.
- 19 Q. DO YOU KNOW WHAT HAPPENED WITH THAT?
- 20 A. NO, MA'AM.
- 21 Q. NO FURTHER QUESTIONS.
- 22 CROSS EXAMINATION BY MR. GAMBLE:
- 23 Q. DID YOU TALK WITH THE OFFICER THAT CAME OUT TO [REDACTED]
- 24 [REDACTED] [REDACTED]?
- 25 A. YES, SIR. YES, SIR.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
KALESHA SHANAE LEWIS - CROSS EXAMINATION BY MR. GAMBLE

5

1 Q. YOU DID?

2 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

3 Q. AND WERE YOU AT [REDACTED]?

4 A. I WAS AT THE CORNER. I WAS AT THE CORNER OF THE
5 STREET.

6 Q. ALL RIGHT. AND I THINK YOU SAID YOU WERE RIDING YOUR
7 BIKE; IS THAT CORRECT?

8 A. IT WAS LATER THAT NIGHT WHEN THEY CAME.

9 Q. HUH?

10 A. IT WAS LATER THAT NIGHT WHEN THEY CAME. AND I HAD
11 ALREADY PUT MY BIKE UP.

12 Q. BUT YOU SAW THIS RIDING YOUR BIKE?

13 A. EARLIER IN THE DAY.

14 Q. AND YOU DIDN'T SEE ANY SMOKE OR ANY BRUSH BURNING, DI
15 YOU?

16 A. THEY WERE BURNING LEAVES OVER THERE.

17 Q. HUH?

18 A. THEY WERE BURNING LEAVES EARLIER THAT DAY.

19 Q. THEY WERE BURNING LEAVES?

20 A. YES, SIR.

21 Q. WHERE WERE THEY BURNING THEM?

22 A. I GUESS, WHEREVER SHE WAS MARCHING. IT WAS WHEREVER
23 SHE WAS MARCHING.

24 Q. SHE WAS WATCHING THEM BURNING LEAVES?

25 A. WHEREVER SHE WAS MARCHING.

1 Q. WHEN SHE WAS MARCHING, THEY WERE BURNING LEAVES AND
2 TRASH?

3 A. IT WAS LEAVES. IT WAS LEAVES, I GUESS.

4 Q. PRETTY GOOD FLAME GOING, WAS THERE?

5 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

6 Q. ABOUT THAT HIGH? THREE FEET HIGH?

7 A. NO.

8 Q. HOW HIGH?

9 A. MAYBE. IT'S ABOVE PROBABLY THREE FEET. BUT A GOOD BIT
10 OF THE FLAMES WERE GOING TOWARD HER.

11 Q. I CAN'T HEAR YOU.

12 A. IT WAS ABOVE THREE FEET, BUT MOST OF THE FLAMES WERE
13 GOING TOWARD HER.

14 Q. GOING TOWARD HER?

15 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

16 Q. THE FLAMES WERE?

17 A. THE SMOKE.

18 Q. THE SMOKE?

19 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

20 Q. AND DID YOU SEE TWO ADULT PEOPLE OUT THERE?

21 A. ON THE BACK PORCH.

22 Q. HUH?

23 A. ON THE BACK PORCH, I GUESS.

24 Q. WERE THEY DRAGGING STUFF AND PUTTING IT ON THIS?

25 A. YES, SIR.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
KALESHA SHANAE LEWIS - CROSS EXAMINATION BY MR. GAMBLE

5

1 Q. AND YOU HAD BEEN BY THERE EARLIER?

2 A. YES, SIR.

3 Q. DID YOU SEE THEM DRAGGING STUFF AND PUTTING ON THE
4 FIRE?

5 A. NO, SIR.

6 Q. HAD THEY STARTED THE FIRE WHEN YOU WERE THERE EARLIER?

7 A. NO, SIR.

8 Q. DID YOU SEE THE LITTLE GIRL EARLIER?

9 A. YES, SIR.

10 Q. WAS SHE STILL AT THE STUMP?

11 A. YES, SIR. YES, SIR.

12 Q. ALL RIGHT. HOW LONG WAS THAT BETWEEN THE TIMES YOU
13 FIRST SAW HER AND THE SECOND STOP?

14 A. I DON'T KNOW. I DON'T KNOW.

15 Q. YOU DON'T KNOW?

16 A. (SHOOK HEAD SIDE TO SIDE IN THE NEGATIVE)

17 Q. HOW OLD ARE YOU?

18 A. THIRTEEN.

19 Q. SEVENTEEN?

20 A. THIRTEEN.

21 Q. THIRTEEN?

22 A. YES, SIR.

23 Q. DO YOU KNOW THE CARTER BOYS?

24 A. YES, SIR.

25 Q. DO YOU GO TO LAKESIDE?

- 1 A. YES, SIR.
- 2 Q. DO YOU KNOW L.W. ?
- 3 A. YES, SIR. YES, SIR.
- 4 Q. IS HE A FRIEND OF YOURS?
- 5 A. YES, SIR.
- 6 Q. DO Y'ALL TALK?
- 7 A. YES, SIR.
- 8 Q. BUT AN OFFICER DID COME OUT, TO YOUR KNOWLEDGE; IS THAT
- 9 RIGHT?
- 10 A. YES, SIR.
- 11 Q. AND HE DID TALK WITH THE CARTERS?
- 12 A. I DON'T KNOW IF HE TALKED TO THEM.
- 13 Q. BUT YOU SHOWED THEM WHERE THEY WERE?
- 14 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 15 Q. RIGHT?
- 16 A. YES, SIR.
- 17 Q. AND YOU TOLD THEM WHAT YOU SAW?
- 18 A. YES, SIR.
- 19 Q. DID YOU TELL THEM YOU SAW THE FIRE BURNING?
- 20 A. YES, SIR.
- 21 Q. OKAY. SO DID YOU SEE THE OTHER TWO BOYS OUT? THE
- 22 CARTER BOYS?
- 23 A. NO, SIR.
- 24 Q. DID YOU SEE A LITTLE BABY OUT THERE?
- 25 A. BESIDES Minor (SHOOK HEAD SIDE TO SIDE IN THE

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
KALESHA SHANAE LEWIS - REDIRECT EXAMINATION BY MS. WHITE

5

1 NEGATIVE)

2 Q. HOW FAR IS THIS STUMP FROM THE ROAD WHERE YOU WERE
3 RIDING YOUR BICYCLE? GIVE ME A GUESS. LOOK AROUND IN HER
4 AND YOU'RE ON YOUR BICYCLE ON THE ROAD. NOW, WHERE WAS TH
5 STUMP?

6 A. TO THE EXIT -- MAYBE TO THAT DOOR.

7 Q. TO THE EXIT DOOR?

8 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

9 Q. AND THIS WAS WHAT TIME OF DAY THAT YOU WERE RIDING?

10 A. IT WAS DAYTIME. LIKE THREE O'CLOCK. IT WAS AROUND
11 THREE O'CLOCK DAYTIME.

12 Q. OKAY. AND YOU SAW THAT THE DIAPER WAS FULL AND DIRTY
13 FROM THERE TO THE BACK DOOR? FROM THAT DISTANCE?

14 A. YES, SIR.

15 Q. OKAY. THANK YOU.

16 REDIRECT EXAMINATION BY MS. WHITE:

17 Q. KALESHA, YOU SAID THAT YOU SAW HER MORE THAN ONE TIME
18 HOW MANY TIMES WERE LEAVES BEING BURNED OUT OF THE TIMES Y
19 SAW HER?

20 A. JUST ONCE.

21 Q. OKAY. AND THAT WAS THE LAST TIME?

22 A. RIGHT.

23 Q. SO ONLY ONE TIME WERE LEAVES BEING BURNED?

24 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

25 Q. AFTER YOU MADE THE INCIDENT REPORT TO THE POLICE AND

STATE v. ILA MICHELE CARTER 2001-GS-04-763, 1203
C.M. - DIRECT EXAMINATION BY MS. WHITE

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1 TALKED TO THE POLICE ABOUT WHAT YOU SAW, DID THEY EVER COME
2 BACK AND TELL YOU ANYTHING? OR DO YOU KNOW WHAT HAPPENED?

3 A. I DON'T.

4 Q. NO FURTHER QUESTIONS.

5 MR. GAMBLE: NO QUESTIONS.

6 THE COURT: THANK YOU, KALESHA. YOU MAY STEP DOWN.

7 MS. WHITE: MAY THE WITNESS BE EXCUSED?

8 MR. GAMBLE: NO OBJECTION.

9 THE COURT: WITHOUT OBJECTION. THANK YOU, MA'AM.

10 MS. WHITE: THE STATE CALLS CHASE MARTIN.

11 C.M.

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MS. WHITE:

14 Q. C.M. , I WANT YOU TO TURN THIS WAY SO THESE PEOPLE CAN
15 HEAR YOU. HOW OLD ARE YOU?

16 A. ELEVEN YEARS OLD.

17 Q. AND WHERE DO YOU LIVE? IF YOU LOOK AT Minor
18 HOUSE, WHERE SHE LIVED, WHERE ARE YOU?

19 A. I LIVE TWO HOUSES ABOVE HER.

20 Q. AND DO YOU KNOW HER BROTHERS, J.W. AND D.W.

21 A. YES.

22 Q. DID YOU USED TO PLAY WITH THEM WHEN THEY LIVED IN THAT
23 NEIGHBORHOOD?

24 A. YES.

25 Q. HOW OFTEN WOULD YOU SEE J.W. AND D.W.

- 1 A. EVERY DAY.
- 2 Q. AND WHERE WAS THAT?
- 3 A. AT MY HOUSE OR AT THEIR HOUSE.
- 4 Q. WERE YOU -- WERE THEY AT YOUR HOUSE MORE, OR WERE YOU
- 5 AT THEIR HOUSE MORE?
- 6 A. THEY WERE AT MY HOUSE MORE.
- 7 Q. AND DID YOU EVER SEE Minor
- 8 A. YES.
- 9 Q. HOW OFTEN DID YOU SEE HER?
- 10 A. EVERY DAY.
- 11 Q. NOW, DURING THE TIME THAT YOU KNEW THEM, DID YOU EVER
- 12 KNOW Minor TO JUMP ON THE TRAMPOLINE WITH Y'ALL?
- 13 A. NO, MA'AM.
- 14 Q. PLAY FOOTBALL WITH Y'ALL?
- 15 A. NO, MA'AM.
- 16 Q. WHAT WOULD SHE DO WHEN SHE WAS OUT IN THE YARD?
- 17 A. SHE WOULD STAND.
- 18 Q. STAND THERE?
- 19 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 20 Q. DID YOU EVER NOTICE WHAT KIND OF DIAPER SHE HAD?
- 21 A. (SHOOK HEAD SIDE TO SIDE IN THE NEGATIVE)
- 22 Q. WHAT WOULD SHE DO WHILE SHE WAS STANDING THERE?
- 23 A. SHE WOULD JUST -- SHE WOULD BE TIED TO A TREE
- 24 SOMETIMES. AND SOMETIMES SHE WOULD JUST MARCH IN PLACE.
- 25 Q. AT ANY TIME, DID YOU PLAY FOOTBALL -- OR DO YOU KNOW

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C.M. - CROSS EXAMINATION BY MR. GAMBLE

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1 ANYBODY WHO PLAYED FOOTBALL AND KNOCKED HER TEETH OUT?

2 A. NO, MA'AM.

3 Q. HAVE YOU EVER SEEN DEREK AND MICHELE PLAY FETCH?

4 A. YES.

5 Q. DESCRIBE FOR THE JURY WHAT YOU REMEMBER SEEING.

6 A. I SEEN MICHELE THROW THE BALL AND MAKE HER RUN AND GET
7 IT.

8 Q. MAKE WHO RUN GET IT?

9 A. MAKE Minor RUN AND GET IT.

10 Q. AND WHAT WOULD HAPPEN WHEN STEPHANIE WOULD BRING IT
11 BACK?

12 A. SHE WOULD THROW IT AGAIN.

13 Q. HOW WAS Minor ACTING WHEN SHE HAD TO CHASE THE
14 BALL?

15 A. SHE WAS CRYING.

16 Q. DO YOU KNOW HOW THEY WOULD CLEAN Minor OFF WHEN SHE
17 WAS OUTSIDE?

18 A. I SAW HER BEING SPRAYED WITH A HOSEPIPE.

19 Q. DID YOU SEE Minor AS MUCH AS YOU SAW THE BOYS OR
20 NOT?

21 A. NO, MA'AM.

22 Q. NO FURTHER QUESTIONS.

23 CROSS EXAMINATION BY MR. GAMBLE:

24 Q. YOU'RE IN J.W. CLASS?

25 A. NO, SIR.

1 Q. HE GOES TO SCHOOL WITH YOU, THOUGH, DOESN'T HE?

2 A. NO, SIR.

3 Q. I MEAN DID?

4 A. NO. YEAH, YEAH, HE DID.

5 Q. HE DID?

6 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

7 Q. BACK WHEN THEY LIVED ON THAT SAME STREET WITH YOU, THE
8 ALL WENT TO SCHOOL WITH YOU, DIDN'T THEY?

9 A. YES, SIR.

10 Q. OKAY. NOW, D.W. AND J.W. WERE AT YOUR HOUSE MOST OF
11 THE DAY EVERY -- ALMOST EVERY DAY?

12 A. YES.

13 Q. ON THE TRAMPOLINE?

14 A. YES.

15 Q. AND L.W. WASN'T WITH THEM?

16 A. YES.

17 Q. L.W. WAS WITH THEM?

18 A. (NO RESPONSE)

19 Q. DO YOU KNOW L.W.?

20 A. YES.

21 Q. WHERE DOES HE LIVE?

22 A. HE LIVES RIGHT BELOW ME, RIGHT BESIDE ME ON THE LEFT.

23 Q. OKAY. WOULD HE BE WITH THEM OR NOT BE WITH THEM?

24 A. SOMETIMES HE WOULD BE WITH ME. YES.

25 Q. SOMETIMES HE WAS WITH YOU?

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C.M. - CROSS EXAMINATION BY MR. GAMBLE

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- 1 A. UH-HUH. YES.
- 2 Q. AND SOMETIMES HE WOULD BE WITH D.W. AND J.W.
- 3 A. YEAH. .
- 4 Q. BUT HE WASN'T WITH EITHER ONE OF YOU EVERY DAY?
- 5 A. NO. NO.
- 6 Q. AND YOU SAY THAT Minor WAS TIED TO A TREE. WOULD
- 7 THAT BE IN A HARNESS OF SOME KIND?
- 8 A. YES.
- 9 Q. DO YOU KNOW WHAT COLOR IT WAS?
- 10 A. BLUE.
- 11 Q. LIGHT BLUE?
- 12 A. YES, SIR.
- 13 Q. AND HOW LONG -- SHE WASN'T TIED UP LIKE AROUND THE TREE
- 14 TIGHT, WAS SHE?
- 15 A. I JUST SAW A GLANCE. SHE WAS AROUND A STUMP.
- 16 Q. AROUND A STUMP?
- 17 A. YES, SIR.
- 18 Q. HOW OFTEN DID YOU SEE THIS? HOW MANY TIMES?
- 19 A. TWO.
- 20 Q. TWO TIMES?
- 21 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 22 Q. AND WHERE WERE D.W. AND J.W. WHEN YOU SAW THIS?
- 23 A. THEY WERE IN THE BACK YARD.
- 24 Q. WHERE WERE MR. AND MS. CARTER WHEN YOU SAW THIS?
- 25 A. IN THE HOUSE. IN THE HOUSE.

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C.M.

- CROSS EXAMINATION BY MR. GAMBLE

- 1 Q. YOU ASSUME THAT BECAUSE YOU DIDN'T SEE THEM OUTSIDE?
- 2 A. YES, SIR.
- 3 Q. OR DID YOU GO INTO THE HOUSE?
- 4 A. I WENT INTO THE HOUSE. I WENT INTO THE HOUSE.
- 5 Q. AND WERE BOTH MR. AND MS. CARTER IN THE HOUSE?
- 6 A. YES.
- 7 Q. HE WAS THERE AND SHE WAS THERE?
- 8 A. HE WAS THERE AND SHE WAS THERE.
- 9 Q. AND WAS THE BABY, J.C. THERE?
- 10 A. YES.
- 11 Q. SO THIS WAS AFTER FEBRUARY. WAS IT HOT?
- 12 A. NO.
- 13 Q. WAS IT WARM?
- 14 A. IT WAS COLD.
- 15 Q. COLD?
- 16 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 17 Q. YOU SAY YOU SAW Minor BEING SPRAYED WITH THE HOSE
- 18 A. YES.
- 19 Q. WHEN WAS THAT?
- 20 A. IT WAS ABOUT -- IN ABOUT SEPTEMBER. SHE WAS OUTSIDE
- 21 GOING UP AND DOWN.
- 22 Q. HUH?
- 23 A. SHE WAS OUTSIDE GOING UP AND DOWN ABOUT IN SEPTEMBER.
- 24 Q. YOU KNOW THIS BECAUSE SCHOOL HAD ALREADY STARTED?
- 25 A. YES.

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C.M. - CROSS EXAMINATION BY MR. GAMBLE

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- 1 Q. HUH?
- 2 A. YES.
- 3 Q. SO IT WAS A WARM DAY?
- 4 A. NO.
- 5 Q. IT WAS A COLD DAY IN SEPTEMBER?
- 6 A. I DON'T KNOW.
- 7 Q. YOU DON'T KNOW WHAT KIND OF DAY IT WAS IN SEPTEMBER, DO
- 8 YOU?
- 9 A. (SHOOK HEAD SIDE TO SIDE IN THE NEGATIVE)
- 10 Q. WHAT DID Minor DO WHEN SHE WAS BEING SPRAYED OFF
- 11 WITH THE HOSE?
- 12 A. SHE WAS GOING UP AND DOWN LIKE SQUATS OR SOMETHING.
- 13 Q. SQUATTING UP AND DOWN?
- 14 A. YES.
- 15 Q. ALL RIGHT. SO BACK ON THIS NOW. YOU SAID THAT LYNN --
- 16 L.W., RATHER, WAS AT YOUR HOUSE MORE THAN HE WAS AT D.W. AND
- 17 J.W. HOUSE?
- 18 A. YES.
- 19 Q. BECAUSE YOU HAD A TRAMPOLINE?
- 20 A. NO.
- 21 Q. HE WAS YOUR BUDDY?
- 22 A. HE WAS BOTH OF OURS.
- 23 Q. OKAY. BUT HE WAS AT YOUR HOUSE MORE THAN THEIRS?
- 24 A. YES.
- 25 Q. OKAY. THANK YOU.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203**KIMBERLY MICHELLE DICKERSON - DIRECT EXAMINATION BY MS. WHITE**

1 MS. WHITE: MAY THE WITNESS BE EXCUSED?

2 MR. GAMBLE: NO OBJECTION.

3 THE COURT: THANK YOU.

4 MS. WHITE: THE STATE CALLS KIM DICKERSON.

5 **KIMBERLY MICHELE DICKERSON,**

6 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

7 DIRECT EXAMINATION BY MS. WHITE:

8 Q. MS. DICKERSON, WHAT'S YOUR OCCUPATION?

9 A. I'M AN OFFICE MANAGER AT JACKIE PERRY INSURANCE AGENC

10 Q. AND WHERE DO YOU LIVE?

11 A. I LIVE ONE HOUSE BETWEEN THE CARTERS. THE WHITLOCKS
12 ARE RIGHT HERE, AND THEN I'M RIGHT HERE.

13 Q. AND WHAT ARE YOUR WORK HOURS NORMALLY?

14 A. I WORK FROM EIGHT THIRTY TO FIVE THIRTY MONDAY THROUG
15 FRIDAY.

16 Q. NOW, IS YOUR SON THE ONE THAT JUST TESTIFIED? CHASE?

17 A. YES, IT IS.

18 Q. HOW LONG DID YOU LIVE -- OR WERE YOU ALREADY LIVING I
19 YOUR HOUSE WHEN Minor AND ALL THEM MOVED IN?

20 A. YES. I'VE BEEN LIVING THERE FOR ABOUT EIGHT YEARS.

21 Q. AND IN THE WHOLE TIME THAT YOU LIVED THERE, HOW OFTEN
22 DID YOU SEE Minor

23 A. I ONLY SAW Minor MAYBE FOUR OR FIVE TIMES.

24 Q. AND HOW OFTEN DID YOU SEE D.W. AND J.W.

25 A. D.W. AND J.W. WERE AT MY HOUSE JUST ABOUT EVERY DAY

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KIMBERLY MICHELLE DICKERSON - DIRECT EXAMINATION BY MS. WHITE

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1 EXCEPT THE WEEKENDS. THEY WERE AT THEIR FATHER'S. THAT WAS
2 LIKE EVERY OTHER WEEKEND. AND THEY PROBABLY STARTED PLAYING
3 AT MY HOUSE PROBABLY AROUND LIKE MAY OF LAST YEAR.

4 Q. MAY OF 2000?

5 A. YES.

6 Q. DID YOU EVER SEE THE CARTER FAMILY IN VEHICLES COMING
7 AND GOING?

8 A. YES.

9 Q. AND HOW OFTEN WOULD THE ENTIRE FAMILY BE IN THE VEHICLE
10 COMING AND GOING EXCEPT FOR Minor

11 A. WELL, MICHELE PICKED UP THE KIDS FROM SCHOOL. BUT I
12 WAS AT WORK WHEN THAT WAS GOING ON. BUT SOMETIMES, LIKE
13 WHEN THEY'D GO TO GET HOTDOGS, I WOULD SEE THE FAMILY IN THE
14 CAR. AND FOR INSTANCE, ONE NIGHT THEY CAME HOME FROM A BOY
15 SCOUT MEETING, AND Minor WASN'T IN THE CAR. D.W. WASN'T
16 EITHER. BUT I SAW D.W. AT THE HOUSE.

17 Q. IN THE FALL OF 2000 -- WELL, LET'S BACK UP A MINUTE.
18 DID YOU SEE THE BOYS IN THE NEIGHBORHOOD JUMPING ON THE
19 TRAMPOLINE, PLAYING FOOTBALL AND DOING VARIOUS THINGS LIKE
20 THAT?

21 A. YES. THE KIDS ALWAYS DID THAT.

22 Q. AND HOW OFTEN WOULD YOU SEE Minor DOING ANY OF
23 THAT?

24 A. Minor I NEVER SAW HER OUT OF THE YARD EVER. N
25 ONE TIME.

1 Q. NOW, THE FALL OF 2000, DID YOU GO TO HER RESIDENCE?

2 A. YES. I WALKED DOWN THERE A COUPLE OF TIMES TO TALK
3 WITH MICHELE ABOUT STARTING TO PICK MY FIVE-YEAR-OLD UP FROM
4 SCHOOL BECAUSE I DIDN'T HAVE ANYONE TO PICK HIM UP FROM
5 SCHOOL. SO IT WAS PROBABLY AROUND LIKE AUGUST OR SEPTEMBER
6 SHE HAD STARTED PICKING DRAKE UP FROM SCHOOL.

7 Q. AND WHEN YOU WENT BACK DOWN THERE IN THE FALL OF 2000,
8 DID YOU SEE Minor

9 A. YES, I SAW Minor SHE -- THERE WAS A DIRT HILL IN
10 THE FRONT YARD, AND SHE WAS OUT THERE. AND SHE WAS STANDING
11 THERE. AND I PULLED UP IN THE CAR BECAUSE I WAS GOING TO
12 TELL MY KIDS WE HAD TO GO SOMEWHERE. AND SHE LOOKED UP AT
13 ME, AND SHE WAS CROSS-EYED. AND SHE WAS GOING BACK AND
14 FORTH LIKE THIS. AND IT WAS REAL SAD LOOKING. AND I LOOKED
15 AT HER. AND SHE WAS REAL PALE, AND HER NOSE LOOKED LIKE IT
16 WAS BLEEDING. AND I THOUGHT SHE HAD HAD CANCER AND MAYBE
17 BEEN GETTING CHEMOTHERAPY BECAUSE HER HAIR HAD THIS REAL
18 FRIED LOOK TO IT LIKE A PERSON THAT HAD BEEN GETTING CHEMO.
19 BUT I DIDN'T SAY ANYTHING. AND THE KIDS GOT INTO THE CAR.
20 AND I ASKED THE KIDS WHAT WAS WRONG. AND THEY TOLD ME THAT
21 SHE WAS SICK. AND I SAID, WELL, WHAT'S WRONG WITH HER NOSE.
22 AND ---

23 MR. GAMBLE: OBJECTION TO WHAT THE KIDS TOLD HER,
24 YOUR HONOR.

25 THE COURT: SUSTAINED.

1 Q. AT ANY RATE, DID YOU THINK THAT THERE WAS SOME KIND OF
2 SICKNESS INVOLVED?

3 A. YES. I THOUGHT SHE HAD CANCER.

4 Q. ALL RIGHT. AND DID YOU SEE HER AGAIN? WELL, DURING
5 THAT TIME, DID ANYTHING HAPPEN IN REGARD TO DRINK?

6 A. WHAT DO YOU MEAN?

7 Q. DRINKING? GETTING A DRINK?

8 A. OH. PROBABLY WITHIN THE NEXT WEEK, I WENT DOWN THERE
9 AGAIN. AND Minor LOOKED AT ME AND SAID, I'M THIRSTY.

10 AND ---

11 Q. WAIT. WHERE WAS SHE?

12 A. SHE WAS STANDING OUT IN THE YARD AGAIN. THE SAME
13 PLACE. AND MICHELE WAS OUT THERE BECAUSE I WAS TALKING TO
14 MICHELE. AND MICHELE SAID THAT SHE ALWAYS SAID THAT AND
15 THAT SHE HAD TO RESTRICT HER FROM DRINKING BECAUSE OF HER
16 BATHROOM PROBLEM.

17 Q. SO DID MICHELE GIVE HER A DRINK?

18 A. NO.

19 Q. DID SHE COME OUT WITH MICHELE, OR WAS SHE ALREADY OUT
20 THERE WHEN MICHELE CAME OUT?

21 A. MICHELE WAS SWEEPING OFF HER FRONT PORCH, AND Minor
22 WAS ON THE DIRT PILE.

23 Q. WAS Minor PLAYING OR STANDING, SITTING? WHAT?

24 A. SHE WAS DOING -- SHE WAS KIND OF JUST ROCKING BACK AND
25 FORTH. SHE DID HAVE A LITTLE BICYCLE OUT THERE. BUT SHE

1 THIS DIRT HILL?

2 A. UH-HUH.

3 Q. IS THE DIRT HILL IN THE FRONT OF THE HOUSE?

4 A. IT WAS. IT'S NOT ANYMORE. SOMEONE HAS REMOVED IT.

5 Q. WAS IT JUST A PILE OF TOPSOIL?

6 A. NO. IT WAS JUST A PILE OF DIRT. I DON'T KNOW IF THEY
7 WERE GOING TO LEVEL THE GROUND OUT AND PLANT SOME GRASS OR
8 SOMETHING. IT JUST LOOKED LIKE RED DIRT TO ME.

9 Q. THIS IS WHAT'S CALLED STATE'S EXHIBIT 18.

10 A. YEAH, THAT'S THE DIRT HILL.

11 Q. IS THIS OVER TO THE LEFT -- RIGHT OF THE PICTURE IS THE
12 PILE OF DIRT?

13 A. UH-HUH.

14 Q. AND SO SHE WAS STANDING THERE IN THE SHADE OF THAT TREE
15 THAT WAS OVER THE DIRT PILE ---

16 A. UH-HUH.

17 Q. --- WHEN YOU SAW HER? DO YOU KNOW WHEN THAT WAS?

18 A. IT WAS RIGHT AFTER SCHOOL HAD STARTED. SO IT HAD TO BE
19 ABOUT SEPTEMBER.

20 Q. AUGUST OR SEPTEMBER? SCHOOL STARTS IN AUGUST NOW,
21 DOESN'T IT?

22 A. YEAH. I SAID ABOUT WHEN IT STARTED. I DIDN'T SAY
23 EXACTLY WHEN IT STARTED. ABOUT AFTER IT HAD STARTED. I
24 KNOW IT WAS FOOTBALL SEASON FOR MY LITTLE BOY. SO IT HAD TO
25 BE WITHIN SEPTEMBER AND OCTOBER.

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KIMBERLY MICHELLE DICKERSON - CROSS EXAMINATION BY MR. GAMBLE

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1 Q. NOW, YOU DIDN'T ALLOW YOUR BOY TO PLAY WITH L.W.

2 [REDACTED] DID YOU?

3 A. FOR A LITTLE WHILE.

4 Q. WHEN DID YOU STOP LETTING HIM?

5 A. WHEN THEY HAD AN ACCIDENT. THERE WAS A ROPE TIED
6 BETWEEN TWO TREES. AND MY LITTLE BOY WAS ON A DIRT BIKE,
7 AND IT CAUGHT HIM RIGHT HERE.

8 Q. LEE HAD PUT THAT ROPE UP ACROSS THE TWO TREES?

9 A. UH-HUH.

10 Q. AND YOU HAD HIM ON HOUSE ARREST, I BELIEVE, DIDN'T YOU?

11 A. NO, I DIDN'T.

12 Q. DID SOMEBODY?

13 A. I DON'T RECALL IF SOMEONE HAD HIM ON HOUSE ARREST OR
14 NOT.

15 Q. WHEN DID YOU STOP YOUR SON -- CHASE? IS THAT IT?

16 A. UH-HUH.

17 Q. WHEN DID YOU STOP CHASE FROM PLAYING WITH L.W?

18 A. WHEN THAT INCIDENT HAPPENED.

19 Q. WHEN WAS THAT INCIDENT?

20 A. I DON'T RECALL.

21 Q. WHEN WAS IT IN RELATION TO SCHOOL STARTING?

22 A. I DON'T RECALL. IT WAS THE YEAR BEFORE. IT WASN'T
23 THEN. IT WAS THE YEAR BEFORE.

24 Q. IT WAS '99?

25 A. NOT IN '99, BUT THE '99-2000 SCHOOL YEAR. IT WASN'T

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KIMBERLY MICHELLE DICKERSON - CROSS EXAMINATION BY MR. GAMBLE

1 WHEN IT HAD JUST STARTED.

2 Q. OKAY. WOULD IT HAVE BEEN THE SPRING?

3 A. MAYBE THE SPRING. IT COULD HAVE BEEN THE SUMMER. I
4 DON'T RECALL THE EXACT DATE.

5 Q. SO FROM THE SPRING ON, LEE WAS NOT ALLOWED TO PLAY WI
6 CHASE?

7 A. NO.

8 Q. IS THAT CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND SO L.W., D.W. AND J.W. WERE AT YOUR HOUSE ALMOST
11 EVERY DAY, WEREN'T THEY?

12 A. THERE WAS A SHORT TIME PERIOD WHERE LEE WASN'T ALLOWED
13 AT MY HOUSE. BUT HE CAME AND APOLOGIZED FOR WHAT HE DID AT
14 WAS ALLOWED TO COME TO MY HOUSE AGAIN.

15 Q. OKAY. SO ALL WAS FORGIVEN, AND THEN HE STARTED COMING
16 TO YOUR HOUSE?

17 A. YES, SIR.

18 Q. AND WEREN'T THEY THERE EVERY AFTERNOON JUST ABOUT?

19 A. JUST ABOUT EVERY AFTERNOON. THE BOYS -- MOST OF THE
20 BOYS ALWAYS PLAYED AT MY HOUSE BECAUSE I HAVE TWO BOYS.

21 Q. AND THEY DIDN'T GO UP TO THE CARTERS' HOUSE VERY MUCH,
22 DID THEY?

23 A. WELL, THEY HAD STARTED GOING TO THE CARTERS' HOUSE
24 BECAUSE THEY HAD SOME NINTENDO THEY WERE PLAYING. AND MY
25 YOUNGEST SON PLAYED WITH J.W. A LOT. THEY WERE BEST

1 FRIENDS.

2 Q. OKAY. DID YOU NOTICE WHAT Minor WAS WEARING WHEN
3 YOU SAW HER ON THESE TWO OCCASIONS?

4 A. SHE HAD ON SOME JOGGING PANTS THE TIME I SAW HER. SHE
5 HAD ON SOME LITTLE PINK TENNIS SHOES AND SOME JOGGING PANTS,
6 AND SHE HAD ON A SHIRT. AND ONE OF THE DAYS, SHE HAD ON A
7 RED HAT. I DON'T KNOW WHY. IT WAS A STOCKING CAP THAT COME
8 TO HERE (INDICATING BOTTOM OF EARS).

9 Q. YOU DIDN'T SEE HER JUST STANDING OUT THERE IN A DIAPER?

10 A. NO, I DIDN'T.

11 Q. ALL RIGHT. THANK YOU.

12 MS. WHITE: NO FURTHER QUESTIONS.

13 THE COURT: THANK YOU, MS. DICKERSON. YOU MAY STEP
14 DOWN.

15 MR. GAMBLE: NO OBJECTION.

16 THE COURT: YOU'RE FREE TO GO WITHOUT OBJECTION.
17 HOW MANY MORE WITNESSES DO YOU HAVE?

18 MS. WHITE: YOUR HONOR, MAY WE APPROACH?

19 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD,
20 IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE
21 JURY BETWEEN THE COURT AND BOTH COUNSEL)

22 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO
23 BREAK FOR THE EVENING AT THIS TIME. I THINK THERE ARE
24 APPROXIMATELY TWO MORE WITNESSES FROM THE STATE. SO WE
25 SHOULD BE ABLE TO CONCLUDE THAT SOMETIME MIDMORNING

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5

1 TOMORROW. WE'RE GOING TO START AT NINE THIRTY IN THE
2 MORNING INSTEAD OF NINE LIKE WE DID THE LAST COUPLE OF DAYS
3 TODAY ANYWAY. NINE THIRTY IN THE MORNING.

4 SAME INSTRUCTION I'VE GIVEN YOU THROUGHOUT. DO NOT
5 DISCUSS THE CASE AMONG YOURSELVES OR WITH ANYONE ELSE. DO
6 NOT EXPOSE YOURSELF TO ANY COVERAGE ABOUT THIS CASE IN THE
7 MEDIA. AGAIN, BE VERY SENSITIVE TO THAT AND CONSCIOUS OF
8 YOUR OATH IN THAT REGARD.

9 HOPE YOU HAVE A PLEASANT EVENING. I'LL SEE YOU
10 TOMORROW MORNING AT NINE THIRTY.

11 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:55 P.M.)

12 THE COURT: FOR THOSE IN THE COURTROOM, I REQUIRE
13 THAT YOU ONCE AGAIN WAIT UNTIL THE JURY HAS BEEN EXCUSED
14 FROM THE COURTHOUSE. YOU'LL RECEIVE WORD MOMENTARILY FROM
15 BAILIFF OR DEPUTY. AT THAT POINT, YOU'LL BE FREE TO GO.
16 THANK YOU.

17 (WHEREUPON COURT STOOD AT RECESS)

18 JUNE 28, 2001

19 THE COURT: BRING THE JURY, PLEASE.

20 MS. WHITE: YOUR HONOR, BEFORE THE JURY -- WELL, I
21 CAN DO IT IN FRONT OF THE JURY. BUT APPARENTLY, I NEGLECTED
22 TO ASK THAT STATE'S EXHIBIT 1, WHICH IS THE MIRANDA WAIVER,
23 BE ADMITTED. AND I WOULD ASK THAT THAT BE ADMITTED AT THIS
24 TIME. THIS IS THE FIRST MIRANDA WAIVER.

25 THE COURT: ANY OBJECTION?

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KIMBERLY MICHELLE DICKERSON - CROSS EXAMINATION BY MR. GAMBLE

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1 MR. GAMBLE: NO, YOUR HONOR. I'VE ALREADY USED IT
2 AND FLASHED IT AROUND. I WOULDN'T EVEN BE ABLE TO OBJECT TO
3 THAT.

4 THE COURT: ALL RIGHT. SO ADMITTED.

5 (MIRANDA WAIVER ADMITTED INTO EVIDENCE AS STATE'S
6 EXHIBIT 1)

7 MS. WHITE: YOUR HONOR, MAY WE APPROACH?

8 THE COURT: YES, MA'AM.

9 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD,
10 OUT OF THE PRESENCE OF THE JURY BETWEEN THE COURT AND BOTH
11 COUNSEL)

12 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:32 A.M.)

13 THE COURT: GOOD MORNING; LADIES AND GENTLEMEN.
14 WE'RE GOING TO HEAR, I BELIEVE, PERHAPS JUST ONE MORE
15 WITNESS. IT SHOULDN'T TAKE LONG THIS MORNING FOR THE STATE
16 TO COMPLETE ITS CASE. SO IN VERY SHORT ORDER, I'LL BE AT A
17 POINT WHERE I'LL HAVE TO EXCUSE YOU BECAUSE UNDER THE LAW AT
18 THE END OF THE STATE'S PRESENTATION, I MUST TAKE UP CERTAIN
19 LEGAL ISSUES. AND THE LAW REQUIRES THAT I DO SO OUTSIDE
20 YOUR PRESENCE. SO IN JUST A LITTLE BIT, WE'LL BE TAKING
21 ANOTHER BREAK TO GIVE ME A CHANCE TO ADDRESS ALL THOSE LEGAL
22 ISSUES THAT I'M REQUIRED TO DO. AND THEN WE'LL RESUME AFTER
23 THAT.

24 YOU MAY CALL YOUR NEXT WITNESS, SOLICITOR.

25 MS. WHITE: THE STATE CALLS AMANDA SIMMONS.

1 AMANDA FAITH SIMMONS,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MS. WHITE:

4 Q. AGENT SIMMONS, WHAT'S YOUR OCCUPATION?

5 A. I'M A SPECIAL AGENT WITH THE STATE LAW ENFORCEMENT
6 DIVISION.

7 Q. IS THAT OTHERWISE KNOWN AS SLED?

8 A. CORRECT.

9 Q. AND WHAT'S YOUR EDUCATIONAL BACKGROUND?

10 A. I HAVE A BACHELOR OF SCIENCE DEGREE.

11 Q. AND WHAT IS YOUR EXPERIENCE IN THE AREA OF COMPUTER
12 ANALYSIS?

13 A. FOR THE PAST FOUR YEARS, I'VE BEEN A SPECIAL AGENT WITH
14 THE STATE LAW ENFORCEMENT DIVISION. AND IN 1998, JANUARY OF
15 1998, I STARTED DOING COMPUTER FORENSICS SINCE THEN IN THAT
16 SPECIFIC FIELD.

17 Q. AND HAVE YOU TESTIFIED BEFORE AS A FORENSIC COMPUTER
18 ANALYST?

19 A. I HAVE NOT TESTIFIED AS A FORENSIC ANALYST, BUT I HAVE
20 TESTIFIED IN OTHER CASES AS AN EXPERT.

21 Q. WHAT IS YOUR TRAINING IN THE AREA OF FORENSIC COMPUTER
22 ANALYSIS?

23 A. I ATTENDED THE INTERNET INVESTIGATIONS THROUGH SEARCH,
24 INCORPORATED, A COMPANY OUT OF CALIFORNIA THAT WE BROUGHT TO
25 SOUTH CAROLINA. I'VE ATTENDED COMPUTER INVESTIGATIONS

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AMANDA FAITH SIMMONS - DIRECT EXAMINATION BY MS. WHITE

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1 THROUGH SEARCH, INCORPORATED, INTERNET CRIMES AGAINST
2 CHILDREN THROUGH THE ATTORNEY GENERAL'S OFFICE, BASIC DATA
3 RECOVERY THROUGH THE NATIONAL WHITE COLLAR CRIME CENTER,
4 COMPUTER CRIMES THROUGH THE U.S. ATTORNEY'S OFFICE. ENCASE,
5 THE SPECIALIZED SOFTWARE THAT WE USE TO DO ANALYSIS, I'VE
6 ATTENDED THEIR INTERMEDIATE TRAINING. AND THEN, ALSO, A
7 TRAINING THROUGH THE HIGH TECHNOLOGY CRIME INVESTIGATORS
8 ASSOCIATION.

9 Q. AND DO YOU ALL HAVE AN INTERNAL TRAINING PROGRAM AT
10 SLED?

11 A. YES, MA'AM, WE DO.

12 Q. WHAT IS THAT?

13 A. BASICALLY, WHAT WE DO IS WE HAVE SEVERAL AGENTS THAT
14 WORK IN A SPECIFIC FIELD. AND WE RECEIVE TRAINING IN THAT
15 SPECIFIC FIELD TO CONDUCT THE ANALYSIS ON COMPUTERS.

16 MS. WHITE: YOUR HONOR, I'D ASK THAT THE WITNESS BE
17 RECOGNIZED AS AN EXPERT IN FORENSIC COMPUTER ANALYSIS.

18 MR. GAMBLE: NO OBJECTION, YOUR HONOR.

19 THE COURT: WITHOUT OBJECTION. YOU MAY PROCEED.

20 Q. AGENT SIMMONS, I'M HANDING YOU STATE'S EXHIBIT 62 FOR
21 IDENTIFICATION. DO YOU RECOGNIZE THAT?

22 A. YES, MA'AM, I DO.

23 Q. AND DID YOU RECEIVE THAT FROM THE SHERIFF'S DEPARTMENT?

24 DID YOUR AGENCY RECEIVE THAT FROM THE SHERIFF'S DEPARTMENT?

25 A. YES, MA'AM. INVESTIGATOR JOHN CARPENTER MET WITH ME,

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1 AND I RECEIVED THIS FLOPPY DISKETTE. AS YOU'LL NOTE,
2 THERE'S A NUMBER 3 ON IT, AND THEN, ALSO, MY INITIALS 'A'
3 'S'.

4 Q. AND WHAT WAS THE PURPOSE OF LOOKING AT THIS DISK?

5 A. THE REQUEST MADE BY INVESTIGATOR CARPENTER WAS TO
6 CONDUCT A FORENSIC ANALYSIS ON A COMPUTER HARD DRIVE,
7 SEVERAL FLOPPIES AND SEVERAL COMPACT DISKS.

8 Q. AND DID YOU PERFORM AN -- SOME TYPE OF -- WHAT DO YOU
9 CALL IT? A TEST? IS THAT WHAT YOU CALL IT? OR REVIEW?
10 DON'T KNOW WHAT YOU CALL IT.

11 A. BASICALLY, WHAT WE DO IS WE UTILIZE A SPECIAL TYPE OF
12 SOFTWARE. IT'S CALLED ENCASE. IT'S SPECIFICALLY DEVELOPE
13 FOR THE PURPOSE OF A COMPUTER ANALYSIS. WE ACQUIRED THIS
14 A COPY. WE WORK OFF A COPY. ONCE WE ACQUIRE A FORENSIC
15 COPY OF THIS, WE WORK OFF THE COPY. AND WE'RE ABLE TO
16 RECOVER, UNDELETE, UNFORMAT ANY TYPE OF DATA THAT WOULD HA
17 BEEN ON THIS DISK.

18 Q. AND WERE YOU GIVEN -- OR DID YOU AND INVESTIGATOR
19 CARPENTER GET TOGETHER AND HAVE CERTAIN WORDS -- IF YOU'LL
20 JUST KIND OF DESCRIBE FOR THE JURY WHAT YOU DID TO TRY TO
21 RECOVER DATA FROM THIS DISK.

22 A. BASICALLY, INVESTIGATOR CARPENTER PROVIDED CERTAIN
23 THINGS THAT HE WAS POSSIBLY LOOKING FOR. SEARCH PHRASES,
24 WORDS, TEXT. AND AS A RESULT OF THAT -- I MADE A COPY OF
25 THIS ALONG WITH THE HARD DRIVE OUT OF THE COMPUTER AND

1 SEVERAL OTHER DISKS. AS A RESULT OF THAT, I WAS ABLE TO
2 FIND SPECIFIC TEXT CONTAINED ON THIS FLOPPY DISKETTE FROM MY
3 FORENSIC COPY THAT WAS NAMED DIARY DOT T.X.T.

4 Q. I'M HANDING YOU STATE'S EXHIBIT 64. DID YOU PRINT OUT
5 WHAT YOU FOUND WHEN YOU GOT THE HIT ON THIS DISK?

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

7 Q. AND I'M HANDING YOU STATE'S EXHIBIT 64 FOR
8 IDENTIFICATION. WHAT IS THAT?

9 A. THAT'S THE TEXT THAT WAS LOCATED WITHIN THE DIARY DOT
10 TEXT FILE.

11 Q. ALL RIGHT. HOW MANY ENTRIES WERE ON THIS DISK THAT YOU
12 GO THE HIT ON?

13 A. OKAY. THE SPECIFIC FILE HERE, DIARY DOT TEXT, HAD
14 SEVERAL DATES ON IT THAT IT WAS BASICALLY CREATED, WRITTEN
15 TO AGAIN, AND THEN ACCESSED. CONTAINED ON THIS FLOPPY
16 DISKETTE, THERE WERE OTHER FILES CONTAINED ON IT THAT DID
17 NOT APPEAR TO BE PERTINENT TO THIS CASE.

18 Q. WHAT ABOUT THE DIARY HIT? TELL THE JURY WHEN THOSE
19 WERE CREATED AND WHAT DATES.

20 A. OKAY. BASICALLY, THE DIARY DOT TEXT FILE, WHICH IS A
21 SPECIFIC FILE -- WOULD BE THIS TEXT HERE -- INDICATED THAT
22 IT WAS CREATED ON 6/7/2000 AT TWO FIFTY-SIX THIRTY-EIGHT
23 P.M. ON -- THE NEXT DATE WOULD HAVE BEEN 6/9/2000 AT EIGHT
24 FIFTY FIFTY-EIGHT P.M. AND THEN THE LAST ACCESS DATE WOULD
25 HAVE BEEN 11/20/2000. THOSE SPECIFIC DATES CORRELATED TO

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1 THAT SPECIFIC FILE WHICH ALSO CORRELATES TO THE DATES IN
2 THIS TEXT.

3 Q. NOW, IF YOU HEARD THAT THE DISK WAS RECOVERED FROM THE
4 HOUSE AND THAT SOMEONE WAS TRYING TO LOOK FOR FINANCIAL
5 DATA, AND SO FORTH, TO HELP THE DEFENDANT WITH SOME
6 FINANCIAL MATTERS AND THAT THEY RAN ACROSS THIS DIARY WHILE
7 THEY WERE GOING THROUGH THE DISK, WOULD THAT ACCOUNT FOR THE
8 OTHER ENTRY THAT YOU FOUND LATER?

9 A. IT WOULD ACCOUNT FOR THE DATE 11/20/2000 THAT INDICATES
10 ON THAT DISK AS WITH THE OTHER SPECIFIC FILES ON THAT DISK
11 THAT WERE ACCESSED, ALSO.

12 Q. NOW, WAS THERE ANY OTHER -- BESIDES THE JUNE 7TH AND
13 THE JUNE 9TH, WAS THERE ANY OTHER DATE THAT THAT DISK WAS
14 ACCESSED AND THIS DIARY WAS ACCESSED OTHER THAN IN NOVEMBER

15 A. THIS SPECIFIC FILE WAS ONLY ACCESSED AT THOSE THREE
16 POINTS.

17 Q. AND IS THAT A FAIR AND ACCURATE COPY OF THE WORDS THAT
18 YOU FOUND IN THIS DIARY?

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

20 Q. HAS IT BEEN CHANGED OR ALTERED IN ANY MANNER SINCE YOU
21 ANALYZED THAT DISK?

22 A. NO, MA'AM.

23 MS. WHITE: I'D ASK THAT STATE'S EXHIBIT 64 BE
24 ADMITTED.

25 MR. GAMBLE: NO OBJECTION.

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1 THE COURT: WITHOUT OBJECTION.

2 (DIARY ENTRIES ADMITTED INTO EVIDENCE AS STATE'S
3 EXHIBIT 64)

4 Q. MA'AM, IF YOU'LL PLEASE PUBLISH TO THE JURY THE DATES
5 AND WHAT YOU FOUND.

6 A. I'VE GOT A PRINTOUT OF THE SPECIFIC DATES HIGHLIGHTING
7 THAT. COULD THAT BE ADDED?

8 Q. I'M SORRY?

9 A. I'VE GOT A PRINTOUT OF THE SPECIFIC DATES THAT
10 CORRELATES WITH THIS. IS THAT SOMETHING THAT COULD BE
11 ADDED?

12 Q. YOU WANT ME TO ADD THAT AS PART OF THE EXHIBIT, YOU
13 MEAN? LET ME ...

14 YOUR HONOR, I'D ASK THAT. OKAY. LET'S ATTACH -- WELL,
15 WE'VE ALREADY ADMITTED THAT. LET'S MARK THIS FOR 65.

16 (COMPUTER DATES PRINTOUT MARKED FOR IDENTIFICATION AS
17 STATE'S EXHIBIT 65)

18 Q. I'M HANDING YOU STATE'S EXHIBIT 65 FOR IDENTIFICATION.
19 WHAT IS THAT?

20 A. THAT'S THE TIME DATES THAT CORRELATE WITH THE DIARY DOT
21 TEXT FILE THAT WAS FOUND.

22 Q. AND ARE THOSE FAIR AND ACCURATE REPRESENTATIONS OF THE
23 TIMES AND DATES THAT YOU FOUND ON THIS COMPUTER?

24 A. YES, THEY ARE.

25 Q. HAVE THEY BEEN CHANGED OR ALTERED IN ANY MANNER?

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1 A. NO, MA'AM, THEY HAVE NOT.

2 MS. WHITE: I ASK THAT STATE'S EXHIBIT 65 BE
3 ADMITTED.

4 (PAUSE WHILE MR. GAMBLE REVIEWED DOCUMENT)

5 MR. GAMBLE: NO OBJECTION, AFTER SOMEBODY EXPLAINS
6 TO ME.

7 (COMPUTER DATES PRINTOUT ADMITTED INTO EVIDENCE AS
8 STATE'S EXHIBIT 65)

9 Q. ALL RIGHT. I'M HANDING YOU 64 AND 65. IF YOU'LL
10 PLEASE PUBLISH TO THE JURY WHAT THOSE SHOW.

11 A. "JUNE 7TH, 2000. TODAY HAS BEEN A DAY JUST LIKE ANY
12 OTHER. Minor IS A PAIN. I LOVE DEREK TO DEATH, BUT SHE
13 GETS ON MY NERVES. I REALLY WISH THAT SHE WAS NOT HERE.
14 DO NOT KNOW HOW MUCH MORE OF HER I CAN TAKE. IT IS CAUSING
15 PROBLEMS BETWEEN US BECAUSE I CANNOT DEAL WITH HER. SHE IS
16 ALL OF MY PROBLEMS. I DO MY BEST NOT" MISSPELLED TO O-T
17 "LET IT COME BETWEEN US, BUT IT IS SO HARD. SHE IS ALMOST
18 ON MY VERY UNLIKEABLE" MISSPELLED AGAIN "LIST. RIGHT NOW
19 DO NOT LIKE THIS CHILD AT ALL."

20 "JUNE 9TH, 2000. TODAY IS NO DIFFERENT FROM ANY OTHER
21 DAY. I GUESS THAT SHE IS ALWAYS GOING TO BE IN THE WAY.
22 IS NOT THAT SHE IS IN THE WAY. IT IS JUST THAT SHE UPSETS
23 EVERYONE SO MUCH."

24 Q. NO FURTHER QUESTIONS.

25 CROSS EXAMINATION BY MR. GAMBLE:

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1 Q. YOU DON'T KNOW WHO WROTE THAT, DO YOU?

2 A. NO, SIR.

3 Q. IT'S NOT IDENTIFIED AS ANYONE'S DIARY?

4 A. NO, SIR.

5 Q. IT'S ADMITTED AS A DIARY, PUT IN BY SOMEONE?

6 A. IT WAS ENTERED ONTO THAT FLOPPY DISKETTE. I CANNOT SAY
7 THAT ANYONE SPECIFICALLY WROTE THAT.

8 Q. ONLY THAT SOMEONE WHO GOT TO THAT COMPUTER WROTE IT?

9 A. THAT'S CORRECT.

10 Q. ALL RIGHT. THANK YOU, MA'AM.

11 REDIRECT EXAMINATION BY MS. WHITE:

12 Q. AND THAT WAS THE COMPUTER FROM HER RESIDENCE; IS THAT
13 CORRECT?

14 A. THE FLOPPY DISKETTE THAT WAS BROUGHT TO ME FROM JOHN
15 CARPENTER AND, AS I UNDERSTAND IT, FROM THE RESIDENCE.

16 THE COURT: ALL RIGHT. THANK YOU, AGENT SIMMONS.
17 APPRECIATE IT, MA'AM.

18 MS. WHITE: MAY THE WITNESS BE EXCUSED, YOUR HONOR?

19 MR. GAMBLE: NO OBJECTION.

20 THE COURT: WITHOUT OBJECTION.

21 MS. WHITE: THE STATE RESTS.

22 THE COURT: LADIES AND GENTLEMEN, THAT CONCLUDES ALL
23 THE EVIDENCE TO BE PRESENTED BY THE STATE. AS I MENTIONED A
24 FEW MOMENTS AGO, I MUST TAKE UP CERTAIN LEGAL ISSUES. I'M
25 GOING TO ASK YOU TO PLEASE RETIRE TO THE JURY ROOM. DO NOT

1 DISCUSS THE CASE. IT WILL PROBABLY TAKE ABOUT TWENTY
2 MINUTES FOR THIS PROCESS. IF IT'S GOING TO BE ANY LONGER,
3 I'LL SEND WORD THROUGH DR. GRAHAM TO SORT OF GIVE YOU A
4 HEADS-UP TO WHERE WE ARE. THANK YOU.

5 (WHEREUPON THE JURY EXITED THE COURTROOM AT 9:44 A.M.)

6 THE COURT: ALL RIGHT. THE JURY HAS BEEN EXCUSED.
7 I'LL BE GLAD TO HEAR IF THERE ARE ANY MOTIONS FROM DEFENDANT
8 AT THIS TIME.

9 MR. GAMBLE: WE MOVE FOR A DIRECTED VERDICT, YOUR
10 HONOR, AT THIS TIME ON THE GROUNDS -- ON THE CHARGE OF
11 HOMICIDE BY CHILD ABUSE IN THAT THERE'S INSUFFICIENT
12 EVIDENCE TO SHOW THAT MY CLIENT STRUCK THE FATAL BLOW, WHICH
13 WAS THE LAST BLOW, THAT CAUSED THE DEATH OF THE CHILD, AND
14 ESPECIALLY IN VIEW OF THE FACT THAT DEREK CARTER HAS PLED
15 GUILTY TO THE CRIME ALREADY.

16 THE COURT: VIEWING THE EVIDENCE IN A LIGHT MOST
17 FAVORABLE TO THE STATE, AS I'M CONSTRAINED TO DO AT THIS
18 STAGE OF THE PROCEEDINGS, I FIND THAT A JURY QUESTION IS
19 PRESENTED. THERE'S CERTAINLY SUFFICIENT EVIDENCE TO PRESENT
20 THAT CHARGE TO THE JURY. THE MOTION IS RESPECTFULLY DENIED.

21 ARE THERE ANY OTHER MOTIONS AT THIS TIME, SIR?

22 MR. GAMBLE: YOUR HONOR, I HAVE CONSULTED WITH MY
23 CLIENT WITH REGARD TO HER FIFTH AMENDMENT RIGHTS NOT TO
24 TESTIFY OR TO TESTIFY. AS I INFORMED THE COURT YESTERDAY,
25 IT'S MY OPINION THAT SHE SHOULD. I DON'T WANT MY OPINION TO

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1 OVERRIDE HER CHOICE, THOUGH. I WOULD ASK THE COURT TO
2 INQUIRE AS TO MY CLIENT'S UNDERSTANDING OF THE FIFTH
3 AMENDMENT RIGHTS TO TESTIFY AND WHETHER SHE WISHES TO OR NOT
4 WITHOUT MY INTERFERENCE IN THAT MATTER.

5 THE COURT: VERY GOOD, SIR. AS A MATTER OF COURSE,
6 I DO THAT. AND I'LL BE GLAD TO DO SO AT THIS TIME.

7 MR. GAMBLE: THANK YOU, YOUR HONOR.

8 THE COURT: MS. CARTER, I'M GOING TO ASK IF YOU
9 WOULD PLEASE STAND. RAISE YOUR RIGHT HAND.

10 **ILA MICHELE CARTER,**

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT:

13 THE COURT: ARE YOU ILA -- STAY STANDING. ARE YOU
14 ILA MICHELE CARTER?

15 DEFENDANT CARTER: YES, SIR.

16 THE COURT: AND HOW OLD ARE YOU, MA'AM?

17 DEFENDANT CARTER: I'M THIRTY-ONE.

18 THE COURT: AND HOW FAR DID YOU GO IN SCHOOL?

19 DEFENDANT CARTER: TWELFTH GRADE.

20 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY DRUG,
21 ALCOHOL OR MEDICINE AT THIS TIME?

22 DEFENDANT CARTER: YES, SIR.

23 THE COURT: WHICH OF THOSE?

24 DEFENDANT CARTER: I'M ON MEDICATION.

25 THE COURT: AND WHAT MEDICATION DO YOU TAKE, MA'AM?

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1 DEFENDANT CARTER: ELAVIL AND -- I FORGOT THE NAME C
2 THE OTHER ONE.

3 THE COURT: WHY DO YOU TAKE THAT MEDICINE, MA'AM?

4 DEFENDANT CARTER: THE MENTAL HEALTH HAS PUT ME ON I

5 THE COURT: OKAY. SO IT'S BEEN PRESCRIBED?

6 DEFENDANT CARTER: UH-HUH.

7 THE COURT: DOES THE MEDICINE HELP YOU, MA'AM?

8 DEFENDANT CARTER: A LITTLE BIT.

9 THE COURT: OKAY. DOES YOUR SITUATION OR THE
10 MEDICINE YOU TAKE, HAS IT IN ANY WAY PREVENTED YOU FROM
11 SPEAKING WITH YOUR ATTORNEY ABOUT THE ISSUES IN THIS CASE?

12 DEFENDANT CARTER: NO, SIR.

13 THE COURT: HAVE YOU BEEN ABLE TO COMMUNICATE
14 EFFECTIVELY WITH YOUR ATTORNEY, MR. GAMBLE?

15 DEFENDANT CARTER: YES, SIR.

16 THE COURT: NOW, MS. CARTER, WHAT I WANT TO EXPLAIN
17 TO YOU -- IT'S SOMETHING YOU MAY BE VERY FAMILIAR WITH BASE
18 ON WHAT MR. GAMBLE HAS JUST STATED. AS THE ACCUSED IN THIS
19 CASE, YOU HAVE AN ABSOLUTE RIGHT TO TESTIFY IF YOU WANT TO.
20 BY THE SAME TOKEN, YOU HAVE AN ABSOLUTE RIGHT, UNDER THE
21 LAW, NOT TO TESTIFY. THE FIFTH AMENDMENT TO THE UNITED
22 STATES CONSTITUTION, AS WELL AS A SIMILAR PROVISION IN THE
23 STATE CONSTITUTION, PROVIDES THAT NO PERSON SHALL BE
24 COMPELLED, FORCED, TO TESTIFY AGAINST HERSELF IN A CRIMINAL
25 CASE. THIS CONSTITUTIONAL PRIVILEGE AND PROTECTION MEANS

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1 THAT UNDER NO CIRCUMSTANCES CAN YOU BE FORCED OR REQUIRED TO
2 TESTIFY IN THIS CASE. DO YOU UNDERSTAND THAT PRIVILEGE THAT
3 YOU HAVE TO REMAIN SILENT?

4 DEFENDANT CARTER: YES, SIR.

5 THE COURT: AND MA'AM, IF YOU CHOOSE TO EXERCISE
6 THAT RIGHT AND REMAIN SILENT AND NOT TESTIFY, I WOULD
7 INSTRUCT THE JURY THAT THE EXERCISE OF YOUR CONSTITUTIONAL
8 PRIVILEGE CAN IN NO WAY BE HELD AGAINST YOU OR EVEN
9 DISCUSSED IN THE JURY ROOM. DO YOU UNDERSTAND THAT?

10 DEFENDANT CARTER: YES, SIR.

11 THE COURT: THIS CONSTITUTIONAL PRIVILEGE IS
12 GENERALLY REFERRED TO AS A PERSONAL PRIVILEGE. BY THAT,
13 MA'AM, I MEAN THAT ULTIMATELY IT IS YOUR DECISION AS TO
14 WHETHER TO TESTIFY OR NOT TESTIFY. YOU MAY CERTAINLY
15 CONSULT WITH YOUR FINE ATTORNEY OR OTHERS IN WHOM YOU HAVE
16 TRUST AND CONFIDENCE. AND THEY MAY PROVIDE COUNSEL AND
17 ADVICE. BUT ULTIMATELY, THE DECISION MUST BE YOURS AND
18 YOURS ALONE. DO YOU FULLY UNDERSTAND THAT?

19 DEFENDANT CARTER: YES, SIR.

20 THE COURT: TO THIS POINT, MA'AM, DO YOU BELIEVE
21 THAT ANYONE HAS TRIED TO FORCE YOU TO MAKE A DECISION
22 AGAINST YOUR WILL?

23 DEFENDANT CARTER: NO, SIR.

24 THE COURT: I WANT TO KNOW FROM THE STATE IF THERE
25 ARE ANY -- ANY PRIOR RECORD, ANYTHING THAT WOULD BE

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1 ADMISSIBLE UNDER RULE 609 THAT WE CAN CLEAR THE RECORD ON
2 NOW.

3 MS. WHITE: NO, SIR.

4 THE COURT: OKAY. NOW, MS. CARTER, IF YOU CHOOSE
5 TESTIFY, YOU WOULD ASSUME THE ROLE OF A WITNESS JUST AS AN
6 OTHER WITNESS WOULD BE. THERE ARE NO SPECIAL RULES OR
7 ADDITIONAL PROTECTIONS TO A DEFENDANT ONCE A DEFENDANT
8 CHOOSES TO TESTIFY. SO YOU WOULD BE SUBJECT TO THE SAME
9 RULES OF EXAMINATION OR CROSS EXAMINATION AS ANY OTHER
10 WITNESS WOULD BE. DO YOU UNDERSTAND THAT?

11 DEFENDANT CARTER: YES, SIR.

12 THE COURT: DO YOU FULLY UNDERSTAND THAT YOU HAVE
13 THE RIGHT TO TESTIFY?

14 DEFENDANT CARTER: YES, SIR.

15 THE COURT: DO YOU ALSO UNDERSTAND YOU HAVE THE
16 RIGHT NOT TO TESTIFY?

17 DEFENDANT CARTER: YES, SIR.

18 THE COURT: AND IN THAT REGARD, DO YOU UNDERSTAND
19 THAT IT'S ULTIMATELY YOUR DECISION, AND YOUR DECISION ALONE
20 ON THAT ISSUE OF TESTIFYING OR NOT TESTIFYING?

21 DEFENDANT CARTER: YES, SIR.

22 THE COURT: HAVE YOU UNDERSTOOD THE QUESTIONS THAT
23 HAVE ASKED YOU?

24 DEFENDANT CARTER: YES, SIR.

25 THE COURT: HAVE YOU ANSWERED THOSE QUESTIONS

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1 TRUTHFULLY?

2 DEFENDANT CARTER: YES, SIR.

3 THE COURT: MR. GAMBLE, IF YOU HAVE ANY ADDITIONAL
4 QUESTIONS YOU'D LIKE ME TO POSE TO MS. CARTER, I'LL BE GLAD
5 TO DO SO AT THIS TIME, SIR.

6 MR. GAMBLE: NO, YOUR HONOR.

7 THE COURT: WHAT I'D LIKE TO DO IS TAKE A BREAK.

8 MR. GAMBLE: YES, SIR.

9 THE COURT: I KNOW Y'ALL TALKED ABOUT THIS AT
10 LENGTH. BUT I WANT TO GIVE ADDITIONAL TIME. LET'S SAY TEN
11 MINUTES. I'LL CHECK WITH YOU. IF YOU NEED ADDITIONAL TIME,
12 MR. GAMBLE, EITHER YOU OR MS. CARTER, I'M GOING TO GRANT
13 THAT. AND I'LL GIVE YOU WHATEVER TIME YOU REASONABLY NEED
14 TO DISCUSS THIS ISSUE FURTHER. AND THEN WHEN Y'ALL ARE
15 PREPARED TO PROCEED, I'LL BE PREPARED TO DO SO AS WELL.

16 MR. GAMBLE: THANK YOU.

17 THE COURT: WE'LL BE IN RECESS FOR TEN MINUTES, AND
18 WE'LL REVISIT THE ISSUE AT THAT TIME. THANK YOU.

19 MR. GAMBLE: THANK YOU, YOUR HONOR.

20 (WHEREUPON COURT STOOD AT RECESS)

21 THE COURT: WE'RE BACK ON THE RECORD. MR. GAMBLE,
22 HAVE YOU HAD ENOUGH TIME TO DISCUSS THE ISSUE OF THE
23 DEFENDANT'S PROPOSED TESTIMONY WITH HER?

24 MR. GAMBLE: I HAVE.

25 THE COURT: MS. CARTER, DO YOU LIKEWISE AGREE YOU'VE

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1 HAD SUFFICIENT TIME TO DISCUSS THIS ISSUE WITH YOUR
2 ATTORNEY?

3 DEFENDANT CARTER: YES, SIR.

4 THE COURT: AND WILL THERE BE A DEFENSE?

5 MR. GAMBLE: YES, SIR.

6 THE COURT: BRING THE JURY.

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:18
8 A.M.)

9 THE COURT: LADIES AND GENTLEMEN, WE'RE READY TO
10 PROCEED.

11 MR. GAMBLE, YOU MAY PROCEED, SIR.

12 MR. GAMBLE: THANK YOU, YOUR HONOR. CALL ILA MICHELE
13 CARTER.

14 **ILA MICHELE CARTER,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. GAMBLE:

17 Q. YOUR NAME, PLEASE, MA'AM?

18 A. ILA MICHELE CARTER.

19 Q. A LITTLE BIT LOUDER.

20 A. ILA MICHELE CARTER.

21 Q. HOW OLD ARE YOU?

22 A. THIRTY-ONE.

23 Q. HOW FAR DID YOU GO IN SCHOOL?

24 A. TWELFTH GRADE.

25 Q. DID YOU FINISH?

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- 1 A. YES, SIR.
- 2 Q. ALL RIGHT. WHERE DID YOU GO TO SCHOOL?
- 3 A. MCDUFFIE HIGH SCHOOL.
- 4 Q. HOW MANY CHILDREN DO YOU HAVE?
- 5 A. I HAVE FOUR.
- 6 Q. WHAT ARE THEIR NAMES?
- 7 A. D.W. , J.W.
- 8 Minor , J.C.
- 9 Q. HOW MANY TIMES YOU BEEN MARRIED?
- 10 A. TWICE.
- 11 Q. WHAT WAS THE NAME OF YOUR SECOND HUSBAND?
- 12 A. DEREK SHANE CARTER.
- 13 Q. WHEN DID YOU MEET HIM?
- 14 A. MAY 2ND OF '99.
- 15 Q. WHERE DID YOU MEET HIM?
- 16 A. AT A PARK. A PARK RECREATION AREA. LAKE.
- 17 Q. AND WHEN DID YOU MARRY HIM?
- 18 A. JUNE 2ND OF '99.
- 19 Q. WHEN DID YOU LEARN THAT YOU WERE PREGNANT?
- 20 A. JUNE THE 6TH, I BELIEVE.
- 21 Q. YOU MARRIED JUNE THE 2ND, AND YOU LEARNED YOU WERE
- 22 PREGNANT JUNE THE 6TH?
- 23 A. YES, SIR.
- 24 Q. WHERE DID YOU LIVE IN 1999?
- 25 A. ON [REDACTED] [REDACTED] [REDACTED]

1 Q. DID YOU HAVE A HOUSE THERE?

2 A. YES, SIR.

3 Q. WHEN DID YOU MOVE FROM THAT HOUSE?

4 A. ABOUT SEPTEMBER OF 1999.

5 Q. WHY DID YOU MOVE FROM THAT HOUSE?

6 A. DEREK WANTED ME TO STAY HOME WITH THE CHILDREN. AND I
7 WAS HAVING SOME COMPLICATIONS WITH MY PREGNANCY, SO I TOOK
8 LEAVE FROM WORK. AND WE COULDN'T AFFORD OUR HOME ANYMORE.

9 Q. WHERE WERE YOU WORKING?

10 A. ALLIED SIGNAL.

11 Q. WHAT WERE YOU DOING AT ALLIED SIGNAL?

12 A. AT THAT TIME, I WAS WORKING IN MULTILAYER.

13 Q. IN WHAT?

14 A. MULTILAYER.

15 Q. MULTILAYER?

16 A. UH-HUH.

17 Q. OKAY. WHERE DID YOU MOVE FROM [REDACTED] [REDACTED]?

18 A. TO [REDACTED].

19 Q. [REDACTED]?

20 A. UH-HUH.

21 Q. AND ALL THE CHILDREN LIVED WITH YOU? D.W. J.W. AND

22 Minor ---

23 A. YES, SIR.

24 Q. --- AT [REDACTED]?

25 A. UH-HUH.

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- 1 Q. HOW LONG DID YOU LIVE AT [REDACTED]?
- 2 A. JUST A COUPLE OF MONTHS.
- 3 Q. AND THEN WHERE DID YOU MOVE TO?
- 4 A. WE MOVED TO [REDACTED] [REDACTED].
- 5 Q. [REDACTED] [REDACTED]?
- 6 A. YES, SIR.
- 7 Q. AND THAT'S THE TRAILER, THE MOBILE HOME, THAT'S BEEN
- 8 MENTIONED HERE TODAY ---
- 9 A. YES, SIR.
- 10 Q. --- AND THIS WEEK? AND HOW MANY BEDROOMS DID THIS
- 11 MOBILE HOME AT [REDACTED] [REDACTED] HAVE?
- 12 A. THREE BEDROOMS.
- 13 Q. WHERE DID EVERYONE SLEEP IN THAT MOBILE HOME?
- 14 A. WE SLEPT IN THE BIG BEDROOM, AND J.W. D.W. AND
- 15 Minor SLEPT IN THE FAR BACK BEDROOM.
- 16 Q. WHO SLEPT IN THE MIDDLE BEDROOM?
- 17 A. NO ONE AT THAT TIME BECAUSE WE WERE REDOING IT.
- 18 Q. WHAT WERE YOU DOING TO IT?
- 19 A. IT HAD BRIGHT BLUE WALLS ON IT. AND SO WE WERE
- 20 WALLPAPERING IT. AND WE RAN OUT OF WALLPAPER AND HAD TO
- 21 TAKE THAT DOWN TO PUT UP WHAT IS THERE NOW.
- 22 Q. WHEN DID YOU DELIVER?
- 23 A. [REDACTED] [REDACTED]. [REDACTED] THE [REDACTED] OF 2000.
- 24 Q. WHAT WAS YOUR BABY'S NAME?
- 25 A. J.C.

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1 Q. SO NOW THERE -- IN THE MOBILE HOME, THERE ARE FOUR OF
2 YOU LIVING -- FOUR CHILDREN?

3 A. YES, SIR.

4 Q. AND YOU AND DEREK?

5 A. YES, SIR.

6 Q. WERE YOU PRIMARILY RESPONSIBLE -- YOU WERE PRIMARILY
7 RESPONSIBLE, FOR THE CARE OF WHOM?

8 A. THE KIDS, THE HOUSEHOLD.

9 Q. DID DEREK ASSIST?

10 A. YES. HE WORKED.

11 Q. DID DEREK ASSIST YOU WITH THE CHILDREN?

12 A. YES, WHEN HE GOT HOME FROM WORK.

13 Q. WHEN DID HE GET HOME FROM WORK?

14 A. IT VARIED. DIFFERENT TIMES.

15 Q. WHAT COULD YOU COUNT ON GENERALLY?

16 A. WELL, HE WORKED DIFFERENT SHIFTS AT DIFFERENT POINTS I
17 TIMES. SO ...

18 Q. PLASTIC OMNIUM IS WHERE HE WORKED?

19 A. YES, SIR.

20 Q. DO THEY WORK SWING SHIFTS?

21 A. THEY -- I BELIEVE THEY DID. NOT SWING SHIFTS. BUT
22 LIKE A TWELVE-HOUR WEEKEND SHIFT.

23 Q. I'M SORRY?

24 A. HE WORKED ONE TIME A TWELVE-HOUR WEEKEND SHIFT, THEN
25 SECOND SHIFT, THEN FIRST SHIFT.

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- 1 Q. A TWELVE-HOUR WEEKEND SHIFT?
- 2 A. UH-HUH.
- 3 Q. WOULD THAT PUT HIM AT HOME ---
- 4 A. DURING THE WEEK.
- 5 Q. --- DURING THE WEEK?
- 6 A. YES, SIR.
- 7 Q. HOW LONG DID HE DO THAT?
- 8 A. I COULDN'T HONESTLY SAY. PROBABLY A MONTH OR TWO.
- 9 Q. HOW WAS YOUR LIFE WITH DEREK?
- 10 A. IT WAS FINE.
- 11 Q. DID YOU EVER HAVE ANY DIFFICULTY WITH HIM?
- 12 A. YES, SIR.
- 13 Q. WHAT WAS THAT DIFFICULTY?
- 14 A. WHEN HE WOULD DRINK LIQUOR.
- 15 Q. HOW OFTEN WOULD HE DRINK LIQUOR?
- 16 A. IT VARIED. SOMETIMES, YOU KNOW, AT FIRST IT WAS
- 17 SPORADIC. AND THEN AS TIME WENT ON, IT GOT MORE.
- 18 Q. I DIDN'T HEAR YOU.
- 19 A. AT FIRST IT WAS SPORADIC. AND THEN AS TIME WENT ON, IT
- 20 WAS MORE.
- 21 Q. WHEN IT START TO GET TO BE MORE?
- 22 A. PROBABLY RIGHT BEFORE THE BABY WAS BORN OR RIGHT AFTER.
- 23 Q. FEBRUARY OF 2000?
- 24 A. YES, SIR.
- 25 Q. AND HOW OFTEN WOULD HE GET DRUNK ON LIQUOR AFTER THAT?

- 1 A. AT LEAST TWO -- AT LEAST TWO TIMES A WEEK.
- 2 Q. HOW DID THIS SHOW ITSELF? WHAT HAPPENED WHEN HE GOT
- 3 DRUNK?
- 4 A. HE COULDN'T HANDLE HIS LIQUOR.
- 5 Q. WHAT DOES THAT MEAN? I DON'T UNDERSTAND.
- 6 A. HE WOULD JUST GET REAL AGITATED EASY. REAL -- HE WAS
- 7 JUST LIKE BELLIGERENT.
- 8 Q. BELLIGERENT?
- 9 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)
- 10 Q. WELL, BY BELLIGERENT, DO YOU MEAN HE WOULD FIGHT OR
- 11 HIT?
- 12 A. YES.
- 13 Q. WHO WOULD HE FIGHT OR HIT?
- 14 A. ME.
- 15 Q. HOW OFTEN DID HE HIT YOU?
- 16 A. LIKE I SAY, AT FIRST IT WAS SPORADIC. BUT THEN AS TIME
- 17 WENT ON, IT GOT TO BE ABOUT TWO TIMES A WEEK.
- 18 Q. DID YOU EVER CALL THE POLICE?
- 19 A. NO, SIR.
- 20 Q. WHY NOT?
- 21 A. BECAUSE I RAN A RISK IF I DID THAT OF HAVING MY
- 22 CHILDREN TAKEN AWAY.
- 23 Q. WHY DIDN'T YOU LEAVE?
- 24 A. AT THE TIME, I WAS PREGNANT. AND IT WAS HARD FOR ME TO
- 25 LEAVE AT THAT POINT IN TIME. THEN AFTERWARDS, I WAS

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1 PLANNING ON IT.

2 Q. AFTER YOU HAD J.C. AND YOU GOT OVER THE DELIVERY, WHY
3 DIDN'T YOU PACK UP AND LEAVE THEN?

4 A. FOR ONE, I HAD NO PLACE TO GO. I HAD NO JOB. NO TYPE
5 OF INCOME TO SUPPORT US.

6 Q. DID YOU HAVE ANY RELATIVES?

7 A. I HAVE A GRANDMOTHER.

8 Q. I BELIEVE WE HEARD A COUSIN OF YOURS THAT LIVED WITH
9 YOUR GRANDMOTHER?

10 A. YES, SIR.

11 Q. HOW MANY PEOPLE LIVE WITH YOUR GRANDMOTHER?

12 A. MY AUNT, MY COUSIN AND HER TWO CHILDREN.

13 Q. AND I BELIEVE THAT WAS ON EQUINOX MILL, A MILL HOUSE?

14 A. YES, SIR.

15 Q. COULD YOU STAY THERE WITH YOUR CHILDREN?

16 A. NOT WITH THAT MANY PEOPLE THERE. IT'S JUST A TWO-
17 BEDROOM HOME.

18 Q. DID YOU HAVE ANY OTHER RELATIVES YOU COULD HAVE GONE
19 TO?

20 A. NOT AROUND.

21 Q. NOW, WHEN DEREK WAS AT HOME, WHO TOOK CARE OF Minor
22 OR DISCIPLINED HER?

23 A. BOTH OF US.

24 Q. WHO BATHED HER?

25 A. BOTH OF US.

- 1 Q. DID YOU EVER KNOW THAT HE -- DID YOU EVER SEE DEREK DC
2 ANYTHING TOWARD Minor
- 3 A. HE WOULD PUNISH HER.
- 4 Q. HE WOULD PUNISH HER?
- 5 A. YES, SIR.
- 6 Q. FOR WHAT?
- 7 A. VARIOUS THINGS.
- 8 Q. HOW WOULD HE PUNISH HER?
- 9 A. HE WOULD POP HER.
- 10 Q. WITH WHAT?
- 11 A. HIS HAND. A BELT.
- 12 Q. DID YOU EVER TRY TO STOP HIM FROM DOING THAT?
- 13 A. YEAH.
- 14 Q. AND WHAT HAPPENED?
- 15 A. HE CONTINUED TO DO IT BECAUSE I HAD NO -- BECAUSE I WA:
16 NOT Minor BIOLOGICAL MOTHER. SO HE PUT IT TO ME THAT
17 I REALLY HAD NO RIGHT TO SAY ANYTHING.
- 18 Q. DID YOU EVER SEE -- DID YOU EVER BATHE Minor ?
- 19 A. YES, SIR.
- 20 Q. DID YOU EVER SEE THE BRUISES ON HER BODY?
- 21 A. YES, SIR.
- 22 Q. DID YOU DO ANYTHING ABOUT IT?
- 23 A. I SAID SOMETHING TO HIM ABOUT IT.
- 24 Q. WHAT DID YOU SAY?
- 25 A. I TOLD HIM THAT HE DID NOT NEED TO BE THAT ROUGH WITH

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1 HER.

2 Q. AND WHAT HAPPENED AFTER THAT?

3 A. WHEN HE WOULD START DRINKING, HE WOULD STILL DO IT.

4 Q. I'M SORRY?

5 A. WHEN HE WOULD START DRINKING, HE WOULD STILL DO IT.

6 Q. AND WHEN HE WAS DRINKING, WHAT WOULD HE DO TO YOU?

7 A. IF I GOT INVOLVED, I GOT HIT AS WELL.

8 Q. HOW WAS HIS DRINKING AFTER J.C. WAS BORN?

9 A. IT CONTINUED TO GET WORSE.

10 Q. EVEN THOUGH HE WAS DRINKING AND IT GOT WORSE, DID THAT
11 PROHIBIT HIM FROM GOING TO WORK?

12 A. NOT SOME DAYS BECAUSE HE WOULD CALL ME, AND I WOULD
13 PICK HIM UP AT THE BACK DOCK.

14 Q. I'M SORRY?

15 A. I WOULD PICK HIM UP AT THE BACK DOCK, SO NO ONE WOULD
16 KNOW THAT HE WAS GONE.

17 Q. YOU MEAN HE WOULD LEAVE AND NOT SIGN OUT?

18 A. YES, SIR.

19 Q. AND YOU PICKED HIM UP?

20 A. YES, SIR. NOT FROM THE EMPLOYEE ENTRANCE. FROM AROUND
21 BACK.

22 Q. AROUND BACK?

23 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

24 Q. DID YOU EVER DISCIPLINE Minor

25 A. YES, SIR.

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- 1 Q. WHAT INSTRUMENTS OR HOW DID YOU DO IT?
- 2 A. I USED MY HAND, A SPOON TO POP HER HAND.
- 3 Q. DID YOU EVER USE A BELT?
- 4 A. YES, SIR.
- 5 Q. DID YOU EVER USE THE BUCKLE END OF A BELT?
- 6 A. NO, SIR.
- 7 Q. DID -- TO YOUR KNOWLEDGE, DID DEREK EVER USE A BELT?
- 8 A. YES, SIR.
- 9 Q. DID HE EVER USE THE BUCKLE END?
- 10 A. YES, SIR.
- 11 Q. DID YOU EVER SEE HIM HIT HER ON HER VAGINA?
- 12 A. NO, SIR.
- 13 Q. DO YOU KNOW HOW RED AND RAW IT WAS?
- 14 A. YES, SIR.
- 15 Q. DO YOU KNOW HOW IT GOT THAT WAY?
- 16 A. FROM DIAPER RASH FROM THE PULL-UPS.
- 17 Q. DID YOU EVER LEAVE HER DIAPERS ON HER FOR A WEEK AT A
- 18 TIME?
- 19 A. NO, SIR. I DON'T BELIEVE IT WOULD HOLD IT.
- 20 Q. DID YOU MAKE HER RUN AROUND THE HOUSE FOR THREE OR FOUR
- 21 HOURS AT A TIME?
- 22 A. NO, SIR.
- 23 Q. DID YOU RUN AROUND THE HOUSE FOR THREE OR FOUR HOURS
- 24 A TIME?
- 25 A. NO, SIR.

- 1 Q. WERE YOU EVER INFORMED AS TO THE CAUSE OF THE DEATH OF
2 DEREK'S FIRST WIFE?
- 3 A. YES, SIR. YES, SIR.
- 4 Q. WHAT WAS THAT?
- 5 A. LUPUS.
- 6 Q. DID YOU EVER TAKE Minor TO THE DOCTOR?
- 7 A. YES, SIR.
- 8 Q. AND WERE YOU EVER MEDICALLY INFORMED OF ANY DIAGNOSIS
9 THAT SHE MIGHT HAVE HAD?
- 10 A. YES, SIR.
- 11 Q. WHAT WAS THAT?
- 12 A. AT ONE VISIT SHE HAD A COLD. AND THE ONE OTHER VISIT I
13 WAS AT DR. LEGARDA'S WHEN SHE SHOWED US THE POSITIVE TEST
14 FOR LUPUS.
- 15 Q. DR. LEGARDA?
- 16 A. YES, SIR.
- 17 Q. WHAT KIND OF DOCTOR IS DR. LEGARDA?
- 18 A. SHE'S A NEURO -- A PEDIATRIC NEUROLOGIST.
- 19 Q. HOW DID YOU HAPPEN TO GO TO DR. LEGARDA?
- 20 A. AFTER A FALL IN APRIL, SHE WAS TAKEN TO MEDICUS. AND
21 THEY REFERRED US TO DR. LEGARDA.
- 22 Q. LET'S GO TO THAT FALL IN APRIL. WHERE WERE THE
23 CHILDREN PLAYING, OR WHERE WERE THEY IN THE HOUSE IN APRIL
24 OF 2000?
- 25 A. IN THEIR BEDROOM.

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1 Q. I BELIEVE IT WAS THE 14TH OF APRIL?

2 A. I BELIEVE SO. I'M NOT SURE.

3 Q. AT ANY RATE, WHERE WERE YOU?

4 A. I WAS IN -- AT THE TIME OF THE FALL, I WAS IN OUR
5 BEDROOM.

6 Q. WHICH IS THE MASTER BEDROOM?

7 A. YES, SIR.

8 Q. THE RIGHT SIDE OF THE MOBILE HOME?

9 A. YES, SIR.

10 Q. LOOKING AT THE FRONT?

11 A. YES, SIR.

12 Q. AND THEY WERE IN THE VERY BACK OF THE LEFT SIDE OF THE
13 MOBILE HOME?

14 A. YES, SIR.

15 Q. WHERE WAS DEREK?

16 A. HE WAS SOMEWHERE FROM THE LIVING ROOM TOWARD THEIR
17 BEDROOM. SOMEWHERE IN THAT VICINITY.

18 Q. WAS HE SOBER OR DRUNK?

19 A. HE HAD BEEN DRINKING, BUT HE WASN'T DRUNK.

20 Q. WHAT HAD HE BEEN DRINKING?

21 A. I BELIEVE BEER.

22 Q. OKAY. WHAT DID YOU HEAR?

23 A. I HEARD A COMMOTION. AND I HEARD A THUMP, AND I HEARD
24 A COMMOTION.

25 Q. WHAT KIND OF COMMOTION?

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- 1 A. CHILDREN CRYING.
- 2 Q. WHAT DID YOU DO?
- 3 A. I CAME TOWARD THE SOUND OF THE NOISE.
- 4 Q. HUH?
- 5 A. I WENT TOWARD THE SOUND OF THE NOISE.
- 6 Q. AND WHAT DID YOU FIND?
- 7 A. DEREK WAS BACK THERE, AND THE CHILDREN WERE LAYING ON
- 8 THE FLOOR. THEY WERE GETTING UP AT THAT TIME.
- 9 Q. WHO WAS GETTING UP?
- 10 A. J.W. D.W. AND Minor
- 11 Q. ALL THREE OF THEM?
- 12 A. UH-HUH.
- 13 Q. AND WHAT DID YOU SEE?
- 14 A. D.W. GOT UP KIND OF WOOZY, AND SO DID Minor . AND
- 15 ME AND DEREK -- DEREK AND I BOTH WERE ASKING WHAT HAD
- 16 HAPPENED.
- 17 Q. AND?
- 18 A. AND WE WERE INFORMED THEY WAS JUMPING OFF THE TOP OF
- 19 THE BUNK ONTO A BEAN BAG, AND THE BEAN BAG SLIPPED.
- 20 Q. ALL RIGHT. DID YOU SEE Minor AT THAT TIME?
- 21 A. YES, SIR.
- 22 Q. DID YOU SEE ANYTHING WRONG WITH Minor
- 23 A. SHE WAS REAL DIZZY.
- 24 Q. DID YOU NOTICE HER EYES?
- 25 A. YES, SIR.

- 1 Q. WHAT ABOUT THEM?
- 2 A. ONE LOOKED LIKE IT WAS CROSSED.
- 3 Q. WHAT DID YOU AND DEREK -- WHAT DID YOU DO AT THAT TIME?
- 4 A. I TOLD DEREK THAT THEY NEEDED TO BE TAKEN TO THE
- 5 DOCTOR.
- 6 Q. AND DID YOU, IN FACT, CARRY THEM TO THE DOCTOR?
- 7 A. YES, SIR.
- 8 Q. WHERE DID YOU CARRY THEM?
- 9 A. DEREK TOOK THEM TO ANDERSON AREA MEDICAL CENTER
- 10 EMERGENCY ROOM.
- 11 Q. DEREK DID?
- 12 A. YES, SIR.
- 13 Q. WHERE WERE YOU?
- 14 A. I WAS AT HOME WITH THE OTHER TWO.
- 15 Q. YOU STAYED HOME WITH WHOM?
- 16 A. J.W. AND J.C.
- 17 Q. WHAT HAPPENED AT THE MEDICAL CENTER?
- 18 A. I HAD CALLED UP THERE TO TRY TO GET SOME INFORMATION.
- 19 AND THEY HAD TOLD DEREK TO CALL. AND SO HE CALLED, AND HE
- 20 SAID THAT -- I BELIEVE HE SAID D.W. AND Minor WAS IN
- 21 HAVING C.T.'S DONE OR M.R.I.'S. THEY WERE IN TESTING AT
- 22 THAT POINT IN TIME.
- 23 Q. AND DID THEY, IN FACT, STAY IN THE HOSPITAL OR COME
- 24 HOME?
- 25 A. YES, SIR.

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- 1 Q. BOTH D.W. AND Minor STAYED IN THE HOSPITAL?
- 2 A. YES, SIR.
- 3 Q. AND WHEN DID THEY COME HOME?
- 4 A. D.W. COME HOME THE NEXT MORNING, AND Minor COME
5 HOME THREE DAYS LATER, I BELIEVE.
- 6 Q. ALL RIGHT. AFTER THAT FALL, HOW DID Minor ACT
7 AROUND THE HOUSE?
- 8 A. SHE DIDN'T ACT LIKE HERSELF.
- 9 Q. WHAT DID SHE DO?
- 10 A. SHE WAS REAL DEFIANT AT TIMES. SHE -- TO ME, SHE DID
11 NOT ACT LIKE THE SAME CHILD BEFORE THE FALL.
- 12 Q. DID YOU GO BACK TO THE DOCTOR WITH HER?
- 13 A. YES, SIR.
- 14 Q. DID DEREK CARRY HER, OR DID YOU?
- 15 A. DEREK CARRIED TO HER FIRST APPOINTMENT BECAUSE I HAD AN
16 APPOINTMENT WITH THE BABY THAT DAY AS WELL. WE DIDN'T WANT
17 TO CANCEL HER APPOINTMENT OR HIS APPOINTMENT. SO ...
- 18 Q. WHAT DOCTOR DID YOU CARRY HER TO?
- 19 A. MEDICUS.
- 20 Q. HUH?
- 21 A. MEDICUS.
- 22 Q. MEDICUS?
- 23 A. YEAH.
- 24 Q. THAT'S THE EYE AND THROAT PEOPLE?
- 25 A. YES, SIR.

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1 Q. WAS HE ABLE TO SEE A DOCTOR THERE?

2 A. YES, SIR.

3 Q. DO YOU KNOW WHO THAT DOCTOR WAS?

4 A. I DON'T KNOW WHAT HIS NAME WAS.

5 Q. ALL RIGHT. WAS HE ABLE TO HAVE HER TREATED THERE?

6 A. HE WASN'T AT FIRST BECAUSE HE WOULD NOT ACCEPT OUR
7 INSURANCE.

8 Q. DID THAT DOCTOR REFER YOU TO ANY OTHER DOCTOR?

9 A. YES. DR. LEGARDA.

10 Q. DR. LEGARDA?

11 A. UH-HUH.

12 Q. WHAT KIND OF DOCTOR IS SHE?

13 A. SHE'S A PEDIATRIC NEUROLOGIST.

14 Q. WHERE IS SHE?

15 A. SHE'S IN SPARTANBURG.

16 Q. AND DID DEREK CARRY Minor THERE?

17 A. YES, SIR.

18 Q. DID YOU GO WITH HIM?

19 A. NOT THE FIRST VISIT.

20 Q. DID YOU GO WITH HIM ANY OTHER VISITS?

21 A. YES. THE SECOND VISIT AND THE THIRD ONE.

22 Q. WHEN WAS THE SECOND VISIT?

23 A. THE SECOND ONE WAS A COUPLE OF WEEKS AFTER THE FIRST
24 ONE.

25 Q. THE FIRST ONE WAS IN APRIL OF 2000?

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- 1 A. YEAH. APRIL ---
- 2 Q. APRIL OR MAY OF 2000?
- 3 A. YEAH. THE BEGINNING OF MAY.
- 4 Q. AND WHEN WAS THE THIRD VISIT TO DR. LEGARDA?
- 5 A. THAT WAS OCTOBER THE 11TH, I BELIEVE.
- 6 Q. AND Minor WENT INTO THE GREENVILLE MEMORIAL
- 7 HOSPITAL OCTOBER 14TH?
- 8 A. YES, SIR. THREE DAYS LATER.
- 9 Q. OKAY. ON OCTOBER 11TH, YOU HAD HER SEE DR. LEGARDA IN
- 10 SPARTANBURG?
- 11 A. YES, SIR.
- 12 Q. WHY DID YOU CARRY HER TO SEE DR. LEGARDA ON OCTOBER
- 13 11TH, 2000?
- 14 A. WHEN DEREK HAD FIRST TAKEN HER TO MEDICUS, SHE HAD A
- 15 SEIZURE IN THE OFFICE. I DIDN'T SEE THAT. AND SHE WAS
- 16 HAVING WHAT I CALLED SPELLS SINCE I DID NOT SEE THE SEIZURE
- 17 AND DEREK SAID THAT'S THE WAY SHE DONE IN DR. -- WELL AT
- 18 MEDICUS THAT DAY. AND I WAS CONCERNED WITH HER HAVING
- 19 SEIZURES.
- 20 Q. SO YOU CARRIED HER TO DR. LEGARDA?
- 21 A. YES, SIR.
- 22 Q. DID YOU HAVE ANY DIAGNOSIS FROM DR. LEGARDA?
- 23 A. NOT AT THAT TIME. SHE WAS TO HAVE TESTS RUN.
- 24 Q. DR. LEGARDA WAS GOING TO SEND YOU TO ANOTHER DOCTOR?
- 25 A. TWO OTHER DOCTORS.

- 1 Q. BUT YOU DIDN'T GET TO GO TO THEM?
- 2 A. NO.
- 3 Q. ALL RIGHT. ON OCTOBER 14TH, SATURDAY MORNING, 2000,
- 4 WHERE WERE YOU ON THAT MORNING?
- 5 A. MOSTLY IN THE KITCHEN.
- 6 Q. WHAT WERE YOU DOING?
- 7 A. I WAS PUTTING UP MEAT THAT I HAD GOT FROM THE GROCERY
- 8 STORE.
- 9 Q. WHEN DID YOU GO TO THE GROCERY STORE?
- 10 A. THAT THURSDAY.
- 11 Q. WHY WERE YOU JUST PUTTING UP MEAT ON THURSDAY?
- 12 A. THINGS HAPPENING. I NEVER GOT AROUND TO IT.
- 13 Q. WHAT DO YOU MEAN BY PUTTING UP MEAT?
- 14 A. I BUY THE FAMILY PACKS OF EVERYTHING, AND I HAVE TO
- 15 SEPARATE THEM AND PUT THEM IN THE FREEZER.
- 16 Q. OH. YOU WERE MAKING FREEZER PACKS?
- 17 A. YEAH.
- 18 Q. ALL RIGHT. WHERE WAS Minor
- 19 A. IN AND OUT.
- 20 Q. WHERE WAS D.W.
- 21 A. HE WAS IN AND OUT.
- 22 Q. WHERE WAS J.W.
- 23 A. IN AND OUT AS WELL.
- 24 Q. J.C.
- 25 A. WAS ASLEEP SOMETIMES.

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- 1 Q. DID Minor AND D.W. GO ANYWHERE TOGETHER THAT
2 MORNING?
3 A. YES.
4 Q. WHERE DID THEY GO?
5 A. THEY WENT TWO DOORS DOWN.
6 Q. WHAT DID THEY DO?
7 A. I BELIEVE THEY WERE JUMPING ON THE TRAMPOLINE.
8 Q. DID YOU ALLOW THEM TO JUMP ON IT?
9 A. NO.
10 Q. MA'AM?
11 A. NO, SIR.
12 Q. DID YOU ALLOW Minor TO JUMP ON THE TRAMPOLINE?
13 A. NO, SIR.
14 Q. DID YOU ALLOW YOUR CHILDREN TO JUMP ON THE TRAMPOLINE?
15 A. NO, SIR.
16 Q. YOU DIDN'T LIKE THAT?
17 A. WELL, THEY COULD. BUT THERE WAS NO ONE AT THAT HOUSE
18 THAT DAY.
19 Q. OH. YOU DIDN'T WANT THEM JUMPING WITH NO SUPERVISION?
20 A. YES, SIR.
21 Q. WHEN THEY CAME BACK IN, DID YOU ASK THEM WHERE THEY HAD
22 BEEN?
23 A. I WENT OUTSIDE AND SAW THEM.
24 Q. YOU SAW THEM?
25 A. UH-HUH.

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1 Q. DID YOU CALL FOR THEM?

2 A. I TOLD THEM TO COME HOME.

3 Q. ALL RIGHT. AND THEY CAME HOME. WHO WAS THERE JUMPING
4 ON THE TRAMPOLINE?

5 A. JUST D.W. Minor AND ANOTHER CHILD. I DON'T KNOW
6 WHO THE CHILD WAS.

7 Q. AND DID D.W. AND Minor COME BACK TO YOUR HOUSE?

8 A. YES, SIR.

9 Q. WHAT WERE YOU DOING THEN?

10 A. I WAS MAKING MEATLOAF.

11 Q. ALL RIGHT. DID YOU FEED Minor BREAKFAST OR LUNCH
12 THAT DAY?

13 A. SHE ATE KIND OF LIKE A BRUNCH.

14 Q. WHAT DID SHE HAVE?

15 A. SALMON PATTIES, MASHED POTATOES AND PEAS.

16 Q. ENGLISH PEAS?

17 A. UH-HUH.

18 Q. WHERE DID THAT COME FROM?

19 A. THE REFRIGERATOR.

20 Q. WAS THAT LEFTOVERS?

21 A. YES, SIR.

22 Q. DID ANYTHING HAPPEN TO Minor THAT DAY?

23 A. YES, SIR.

24 Q. WHAT?

25 A. SHE WAS HAVING THE SPELLS.

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- 1 Q. WHAT HAPPENED WHEN SHE HAD THE SPELLS?
- 2 A. SHE WOULD LOSE HER BALANCE AND GO TO THE FLOOR. AND
- 3 SHE WOULD TENSE UP. SHE WOULD BE STIFF AS A BOARD.
- 4 Q. DID YOU SEE HER FALL BEFORE?
- 5 A. YES, SIR.
- 6 Q. WHERE WERE YOU?
- 7 A. I WAS IN THE KITCHEN.
- 8 Q. WHERE WAS D.W.
- 9 A. I DON'T KNOW AT THAT TIME BECAUSE THEY WERE ALL IN AND
- 10 OUT. I CAN'T SAY FOR SURE.
- 11 Q. WHAT DID YOU DO WHEN SHE HAD THIS SPELL?
- 12 A. I WENT -- I ALWAYS WENT OVER TO HER.
- 13 Q. AND WHAT DID YOU DO?
- 14 A. WHEN SHE WAS HAVING THEM, THERE'S REALLY NOT MUCH YOU
- 15 CAN DO EXCEPT BE SURE SHE'S NOT ON THE COUCH TO FALL OFF OR
- 16 THE BED. BE SURE SHE CAN'T HURT HERSELF ANY FURTHER.
- 17 Q. DID YOU CALL DEREK?
- 18 A. YES, SIR.
- 19 Q. HOW MANY TIMES?
- 20 A. TWO OR THREE TIMES.
- 21 Q. DID HE EVER CALL YOU BACK?
- 22 A. YES, SIR.
- 23 Q. WHAT DID YOU DO AS A RESULT OF THAT CALL?
- 24 A. I CALLED THE PLANT TO GET HIM OFF WORK.
- 25 Q. HUH?

1 A. I CALLED THE PLANT TO GET HIM OFF WORK.

2 Q. DID YOU GET HIM OFF WORK?

3 A. UH-HUH.

4 Q. WHAT DID YOU DO THEN?

5 A. I WENT AND PICKED HIM UP. WELL, I FINISHED UP AT THE
6 HOUSE. AND I WENT AND PICKED HIM UP.

7 Q. HOW WAS Minor AT THAT TIME?

8 A. SHE WAS STILL HAVING SPELLS.

9 Q. WHAT DO YOU MEAN, STILL HAVING SPELLS?

10 A. SHE WAS -- SHE WOULD TENSE UP AND JUST BE VERY RIGID.

11 Q. WHO WENT WITH YOU TO PICK UP DEREK?

12 A. ME, Minor AND J.C.

13 Q. ALL RIGHT. YOU PICKED HIM UP AND BROUGHT HIM BACK TO

14 [REDACTED] ?

15 A. YES, SIR.

16 Q. AND HOW WAS Minor THEN?

17 A. THEN SHE WAS OVER HER SPELL.

18 Q. DID YOU HAVE HER IN A CAR SEAT?

19 A. NO. SHE WAS SITTING IN THE SEAT.

20 Q. ALL RIGHT. DID SHE SAY ANYTHING?

21 A. YEAH.

22 Q. WHAT DID SHE SAY?

23 A. SHE WAS THIRSTY.

24 Q. DID YOU GET HER ANYTHING TO DRINK?

25 A. YES, SIR.

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- 1 Q. WHAT, IF ANYTHING, DID Y'ALL DO THEN?
- 2 A. I BELIEVE HE CHECKED THE OIL TO THE VAN. I KNOW HE
- 3 CHECKED SOMETHING. I CAN'T BE FOR SURE WHAT HE CHECKED.
- 4 Q. WHY DID HE CHECK THAT?
- 5 A. BECAUSE EARLIER THAT MORNING IT HAD BEEN SMOKING, AND
- 6 IT HAD BEEN SQUEALING. AND WE ALSO GOT A RECALL FROM FORD
- 7 ON THE VAN.
- 8 Q. DID DEREK STAY THERE AT THE HOUSE?
- 9 A. FOR I'D SAY MAYBE TWENTY MINUTES.
- 10 Q. THEN WHAT HAPPENED?
- 11 A. AND THEN HIM AND Minor LEFT.
- 12 Q. WHEN DID YOU NEXT HEAR FROM HIM?
- 13 A. ABOUT FOUR HOURS LATER.
- 14 Q. DID HE CALL YOU?
- 15 A. YES, SIR.
- 16 Q. YOU DID NOT GO TO GREENVILLE OR -- DO YOU KNOW WHERE
- 17 DEREK WENT?
- 18 A. HE WAS GOING TO -- I FORGOT THE NAME OF THE TOWN. BUT
- 19 TOWARD GREENVILLE.
- 20 Q. YOU DIDN'T GO WITH HIM?
- 21 A. NO, SIR.
- 22 Q. WHY?
- 23 A. J.C. WAS TEETHING, AND HE WAS NOT BEING COOPERATIVE
- 24 THAT DAY.
- 25 Q. OKAY. AND Minor DIED AT THE HOSPITAL IN

- 1 GREENVILLE?
- 2 A. YES, SIR.
- 3 Q. OKAY. DID YOU EVER FEED Minor CAT FOOD?
- 4 A. NO, SIR.
- 5 Q. DID YOU EVER FEED HER A ROUND TIN OF ANY KIND ---
- 6 A. YES, SIR.
- 7 Q. --- THAT MIGHT LOOK LIKE CAT FOOD?
- 8 A. YES, SIR.
- 9 Q. WHAT DID YOU FEED HER?
- 10 A. POTTED MEAT.
- 11 Q. POTTED MEAT? DID YOU EAT IT, TOO?
- 12 A. I DON'T LIKE POTTED MEAT.
- 13 Q. DID SHE LIKE POTTED MEAT?
- 14 A. OH, YEAH.
- 15 Q. DID J.C. AND D.W. LIKE POTTED MEAT?
- 16 A. J.C. -- J.W. WOULD SAY IT LOOKED LIKE CAT FOOD.
- 17 Q. EXCUSE ME. J.W. SAID IT LOOKED LIKE CAT FOOD?
- 18 A. YEAH.
- 19 Q. WHEN Y'ALL ATE OUT, WHERE DID Minor -- WHERE WOULD
- 20 SHE BE WITH Y'ALL?
- 21 A. SHE WOULD BE UP WITH US. SHE WOULD BE IN THE BOOTH OR
- 22 IN THE BOOSTER SEAT.
- 23 Q. DID YOU EVER MAKE HER STAND BY THE TABLE?
- 24 A. NO, SIR.
- 25 Q. DID YOU EVER LOCK HER IN THE BATHROOM?

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1 A. NO, SIR. SHE LOCKED HERSELF IN THE BIG BATHROOM ONE
2 DAY.

3 Q. DID DEREK EVER LOCK HER IN?

4 A. NO, SIR.

5 Q. WHY DID YOU HAVE THOSE THREE LOCKS ON THE BATHROOM?

6 A. WE HAD TAKEN THE MEDICINE AND PUT IT INTO THAT SMALLER
7 BATHROOM BECAUSE SHE HAD GOTTEN INTO SOME BENADRYL. SO I
8 REMOVED THE MEDICINE FROM THE BIG BATHROOM AND PUT IT IN THE
9 LITTLE BATHROOM.

10 Q. THAT BLUE HARNESS, DID YOU EVER USE THAT WITH HER?

11 A. YES, SIR.

12 Q. WHY?

13 A. WHEN WE WOULD GO TO THE FAIR, THE MALL, WAL-MART.

14 Q. DID YOU EVER LOCK HER IN THE BATHROOM AND BOLT HER TO
15 THE FLOOR WITH IT?

16 A. SHE WAS NEVER LOCKED IN THE BATHROOM.

17 Q. DID YOU EVER -- DID DEREK EVER BOLT HER IN THE
18 BATHROOM?

19 A. SHE WAS NEVER LOCKED INTO THE BATHROOM.

20 Q. DID YOU EVER HOSE OFF THE CHILD?

21 A. UH-HUH. YES, SIR.

22 Q. WHEN?

23 A. WE HAD A BIG RED MUD PILE, A DIRT PILE, OUT IN THE
24 FRONT YARD. AND THEY WOULD GET RED MUD ALL OVER THEM, AND I
25 DID NOT WANT IT IN THE HOUSE.

1 Q. SO YOU HOSED THEM OFF?

2 A. YES, SIR.

3 Q. WOULD IT BE COLD OR HOT?

4 A. WE DID NOT HAVE A HOSE PIPE DURING THE WINTER MONTHS.
5 WE HAD JUST GOTTEN IT FOR THE GARDEN.

6 Q. HOW OFTEN DID YOU HOSE OFF THE CHILDREN?

7 A. IT'S ACCORDING ON WHEN THEY GOT ON THAT PILE.

8 Q. DID YOU EVER, IN BATHING Minor SEE THE ROUND SCARS
9 ON HER BACK?

10 A. YES, SIR.

11 Q. DO YOU KNOW HOW THEY GOT THERE?

12 A. I CAN'T SAY ONE HUNDRED PERCENT WHERE. BUT I DO KNOW
13 SEVERAL TIMES -- ONCE SHE HAD SLID DOWN THE CONCRETE BLOCKS,
14 AND IT SCRAPED HER STRAIGHT UP HER BACK.

15 Q. I'M TALKING ABOUT THE ROUND SCARS.

16 A. THAT I DON'T KNOW.

17 Q. WELL, WHILE YOU'RE AT THAT, WHERE WERE THE CONCRETE
18 BLOCKS THAT SHE SCRAPED HER BACK ON?

19 A. OUT BACK AT THE DECK WE WERE BUILDING. AROUND BACK WE
20 WERE BUILDING A DECK.

21 Q. WHAT WERE THOSE CONCRETE BLOCKS THERE FOR?

22 A. FOR BASICALLY ME AND DEREK TO GET UP AND DOWN ON
23 BECAUSE THEY WERE TOO WOBBLY FOR THEM TO BE UP AND DOWN ON.

24 Q. AND Minor FELL ON THOSE CONCRETE BLOCKS?

25 A. YES, SIR. SHE WAS TRYING TO COME UP THEM. AND I TOLD

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1 HER TO GO BACK DOWN BECAUSE SHE WOULDN'T BE ABLE TO GET FROM
2 THE BOTTOM -- I MEAN, THE TOP STEP OF THE CONCRETE BLOCKS UP
3 TO THE PORCH BECAUSE IT WAS A GREAT DISTANCE.

4 Q. DID YOU DYE Minor HAIR?

5 A. I PUT A RINSE ON IT.

6 Q. WHY DID YOU DO THAT?

7 A. DEREK HAD SPRAYED HER HAIR WITH SOME SUN-IN.

8 Q. SOME WHAT?

9 A. SUN-IN.

10 Q. WHAT IS SUN-IN?

11 A. IT COMES IN A SPRAY BOTTLE THAT YOU SPRAY. AND IT'S
12 SUPPOSED TO LIGHTEN YOUR HAIR. LIGHT STREAKS OR SOMETHING.
13 BLONDE STREAKS IN IT. AND IT DIDN'T QUITE TURN OUT THAT
14 WAY.

15 Q. WHAT DID IT TURN OUT?

16 A. IT KIND OF REMINDED YOU OF SOMETHING LIKE A
17 CHECKERBOARD OR A ZIGZAG THING. IT DIDN'T TURN OUT RIGHT.

18 Q. ALL RIGHT. HOW OFTEN DID YOU PUT A RINSE IN HER HAIR?

19 A. USUALLY THE RINSE LASTED FROM LIKE FOUR OR FIVE, SIX
20 SHAMPOOS.

21 Q. HOW MANY RINSES DID YOU DO?

22 A. IT COMES IN A BOTTLE ABOUT THAT BIG, AND I KNOW I STILL
23 HAD SOME.

24 Q. MY QUESTION WAS HOW MANY TIMES DID YOU DYE HER HAIR OR
25 RINSE IT?

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1 A. SEVERAL TIMES.

2 Q. OKAY.

3 A. SEVERAL TIMES.

4 Q. OKAY. DO YOU HAVE ANYTHING AGAINST RED-HEADED
5 CHILDREN?

6 A. NO. MY SON IS RED-HEADED.

7 Q. WHICH ONE IS RED-HEADED?

8 A. THE BABY.

9 Q. J.C. IS RED-HEADED?

10 A. YES, SIR.

11 Q. WHEN Minor LEFT TO GO TO GREENVILLE, DID SHE HAVE
12 CUT ON HER NOSE?

13 A. YES, SIR.

14 Q. HOW DID THAT HAPPEN?

15 A. SHE HAD A BAD RUNNY NOSE. AND I BELIEVE IT HAD
16 SOMETHING TO DO WITH THE ALLERGIES BECAUSE IT WASN'T LIKE
17 COLD-TYPE RUNNY NOSE.

18 Q. HOW DID IT GET CUT?

19 A. IT WASN'T CUT. IT WAS JUST RUBBED RAW.

20 Q. BLEEDING?

21 A. YEAH. SHE WOULD PICK AT IT.

22 Q. DID YOU OR DEREK EVER HIT Minor ON HER TOES WITH
23 ANY OBJECT?

24 A. NO, SIR.

25 Q. HOW DID HER TOES GET SO ---

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1 A. I WAS TOLD THAT IT WAS A BOARD OR A LEVEL.

2 Q. YOU WERE TOLD?

3 A. UH-HUH.

4 Q. WHO TOLD YOU THAT?

5 A. THE CHILDREN.

6 Q. DID DEREK EVER DISCIPLINE HER THAT WAY, OR DO YOU KNOW?

7 A. I NEVER SAW HIM.

8 Q. DID YOU EVER KNOW OF DEREK TO DISCIPLINE Minor WHEN
9 YOU WEREN'T ACTUALLY PRESENT? DID YOU EVER HEAR HIM
10 DISCIPLINE HER?

11 A. YES, SIR.

12 Q. WHERE WOULD HE BE?

13 A. HE WOULD DO IT SOMETIMES WHEN HE WAS GIVING HER A BATH.

14 Q. HUH? I CAN'T HEAR YOU.

15 A. HE WOULD DO IT SOMETIMES WHEN HE WAS GIVING HER A BATH.

16 Q. WHAT WOULD HE DO?

17 A. I DON'T KNOW. I JUST HEARD IT, SO I COULDN'T TELL YOU
18 EXACTLY WHAT HE DID.

19 Q. WHAT DID YOU HEAR?

20 A. I HEARD LOUD THUMPING NOISES.

21 Q. WHERE WOULD THEY BE WHEN YOU WOULD HEAR THAT?

22 A. SHE WOULD BE IN THE BATHROOM IN THE BATHTUB, AND HE WAS
23 IN THE BATHROOM WITH HER.

24 Q. DID SHE CRY?

25 A. YES, SIR.

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6

1 Q. DID YOU HEAR THAT?

2 A. YES, SIR.

3 Q. DID YOU DO ANYTHING?

4 A. I TOLD HIM I WOULD DO IT.

5 Q. YOU TOLD HIM YOU WOULD DO WHAT?

6 A. GIVE HER A BATH.

7 Q. DID HE EVER DO THIS WHEN HE WAS DRINKING?

8 A. YES, SIR.

9 Q. WHAT DID YOU DO ABOUT THAT?

10 A. I WOULD GO IN AND FINISH THE BATH.

11 Q. WHAT WOULD BE -- WHAT WOULD Minor BE DOING WHEN
12 THIS WOULD HAPPEN?

13 A. CRYING.

14 Q. DID YOU EVER SEE ANY MARKS ON HER?

15 A. YES, SIR.

16 Q. REDNESS?

17 A. YES, SIR.

18 Q. WHY DIDN'T YOU REPORT THAT TO THE DEPARTMENT OF SOCIAL
19 SERVICES OR LAW ENFORCEMENT?

20 A. BECAUSE I'D RUN A RISK OF LOSING ALL OF THEM.

21 Q. HUH?

22 A. I'D RUN A RISK OF LOSING ALL MY CHILDREN.

23 Q. WHY IS THAT?

24 A. BECAUSE THERE WERE STIPULATIONS IN OUR CUSTODY PAPERS
25 ABOUT HAVING DRINKING AROUND THE CHILDREN.

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1 Q. YOU ALREADY SAID YOU HAD NO PLACE TO GO; IS THAT
2 CORRECT?

3 A. YES, SIR.

4 Q. IN THE LATTER PART OF Minor LIFE, WHERE DID SHE
5 SLEEP?

6 A. SOMETIMES SHE'D SLEEP IN THE BOYS' ROOM. SOMETIMES SHE
7 WOULD SLEEP WITH US. SOMETIMES SHE WOULD SLEEP IN THE
8 BEDROOM FLOOR.

9 Q. IN THE WHAT?

10 A. IN THE BEDROOM FLOOR.

11 Q. WHERE WOULD SHE SLEEP WITH THE BOYS?

12 A. IN THE -- SHE HAD A MAT, A MATTRESS, THAT SHE SLEPT ON
13 IN THE FLOOR.

14 Q. IS THAT ONE OF THOSE MATS LIKE YOU CARRY TO DAYCARE?

15 A. NO. IT WAS A BABY BED MATTRESS. IT WENT ON HER
16 TODDLER BED.

17 Q. WHERE WAS IT AFTER SHE DIED?

18 A. THE MATTRESS? WE JUST SLID IT UNDER THE BED. THAT'S
19 WHERE WE -- THAT'S WHERE IT WAS KEPT.

20 Q. I MEAN, DID YOU KEEP IT AFTER SHE DIED?

21 A. YES, SIR.

22 Q. WHERE WAS IT?

23 A. UNDER THE BED.

24 Q. DID SHE HAVE ANY CLOTHES?

25 A. YES, SIR.

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1 Q. WHERE DID YOU KEEP THOSE?

2 A. IN HER WHITE CHEST OF DRAWERS OR IN THE CLOSET.

3 Q. DID YOU KEEP THEM AFTER SHE DIED?

4 A. YES, SIR.

5 Q. WHERE WERE THEY?

6 A. IN THE CLOSET AND IN THE CHEST OF DRAWERS.

7 Q. DO YOU KNOW -- WERE YOU THERE WHEN THE POLICE SEARCHED
8 YOUR HOUSE?

9 A. YES, SIR.

10 Q. DID THEY ASK YOU WHERE HER CLOTHES WERE OR ANYTHING?

11 A. NO, SIR.

12 Q. DID YOU SEE THEM LOOKING FOR ANY?

13 A. NOT ACTUALLY LOOKING FOR CLOTHES IN PARTICULAR, NO,
14 SIR.

15 Q. WELL, WHILE WE'RE AT IT, LET'S GO TO THAT. ON OCTOBER
16 25TH, 2000, DID YOU HAVE AN OCCASION TO GO TO THE ANDERSON
17 COUNTY LAW ENFORCEMENT CENTER?

18 A. YES, SIR.

19 Q. WHAT TIME DID YOU GO THERE?

20 A. THE 25TH, I BELIEVE WE GOT THERE AT NINE OR NINE
21 THIRTY.

22 Q. WHO WENT THERE?

23 A. ME AND DEREK.

24 Q. TOGETHER?

25 A. YES, SIR.

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- 1 Q. WHY DID YOU GO THERE?
- 2 A. WE WERE ASKED IF WE COULD COME UP THERE.
- 3 Q. WHO ASKED YOU TO GO THERE?
- 4 A. JOHN CARPENTER PHONED US.
- 5 Q. HE PHONED YOU?
- 6 A. UH-HUH.
- 7 Q. HAD HE ALREADY TALKED WITH YOU?
- 8 A. YES, SIR.
- 9 Q. SO YOU KNEW WHO HE WAS?
- 10 A. YES, SIR.
- 11 Q. WHEN YOU GOT THERE, WHAT HAPPENED?
- 12 A. I DONE FORGOT WHAT FLOOR WE WENT ON, BUT THEY TOLD US
- 13 WHAT FLOOR TO COME ON, AND WE WENT THERE. AND WE WAS
- 14 SITTING OUT IN THE LOBBY. THEN I BELIEVE IT WAS JOHN
- 15 CARPENTER -- I'M NOT SURE -- CAME AND ASKED DEREK TO COME
- 16 BACK. AND THEN HE LATER COME AND GOT ME.
- 17 Q. AND WHAT DID YOU DO WHEN THEY TOOK YOU BACK TO WHEREVER
- 18 THEY TOOK YOU TO?
- 19 A. HE GAVE US THE QUESTIONNAIRE.
- 20 Q. DID YOU FILL IT OUT?
- 21 A. YES, SIR.
- 22 Q. DID YOU FILL IT OUT AS BEST YOU COULD?
- 23 A. YES, SIR.
- 24 Q. DID YOU ANSWER ALL THE QUESTIONS?
- 25 A. YES, SIR.

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6

1 Q. DID YOU ANSWER THEM AS TRUTHFULLY AS YOU COULD?

2 A. YES, SIR.

3 Q. HOW LONG WERE YOU FILLING OUT THIS QUESTIONNAIRE?

4 A. I'M NOT REAL -- I DIDN'T HAVE A WATCH ON. I'M NOT RE
5 SURE WHAT TIME I FINISHED UP.

6 Q. WHEN YOU FINISHED THAT, WHAT HAPPENED?

7 A. THEN I WAS TOLD TO WAIT OUT IN THE LOBBY AGAIN.

8 Q. AND DID YOU?

9 A. YES, SIR.

10 Q. HOW LONG WERE YOU OUT IN THE LOBBY?

11 A. I WAITED -- IT WASN'T A VERY LONG AMOUNT OF TIME. AN
12 I ASKED IF I COULD PLEASE GO DOWN AND SMOKE. AND THE LADY
13 THERE AT THE DESK TOLD ME I COULD.

14 Q. ALL RIGHT. AFTER YOU SMOKED, WHAT HAPPENED?

15 A. I COME BACK UP.

16 Q. AND YOU JUST SAT THERE?

17 A. YES, SIR.

18 Q. HOW LONG WERE YOU SITTING THERE?

19 A. I REALLY COULDN'T TELL YOU EXACTLY LIKE HOW MANY
20 MINUTES.

21 Q. WHO DID YOU TALK WITH NEXT?

22 A. STILL WITH THE LADY AT THE LITTLE DESK BEHIND THE
23 WINDOW.

24 Q. OKAY. WHAT INVESTIGATORS, IF ANY, DID YOU TALK WITH
25 NEXT?

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- 1 A. I TALKED TO JOHN CARPENTER.
- 2 Q. AGAIN?
- 3 A. YES, SIR.
- 4 Q. HOW LONG DID YOU TALK TO HIM?
- 5 A. IT WAS JUST A COUPLE OF SECONDS AT THAT TIME. I WAS
- 6 DOWN SMOKING.
- 7 Q. OH, OKAY. DID ANYONE INTERVIEW YOU LATER?
- 8 A. YES, SIR.
- 9 Q. WHO WAS THAT?
- 10 A. I BELIEVE IT WAS JEAN SUTTON AT FIRST.
- 11 Q. OFFICER SUTTON SITTING OVER HERE IN THE GRAY?
- 12 A. YES, SIR.
- 13 Q. AND WAS THAT AROUND SIX O'CLOCK THAT NIGHT?
- 14 A. I COULDN'T REALLY SAY EXACTLY WHAT TIME IT WAS. BUT
- 15 YES, SIR, IT WAS LATER ON.
- 16 Q. SO YOU HAD BEEN AT THE LAW ENFORCEMENT CENTER SINCE
- 17 NINE O'CLOCK THAT MORNING?
- 18 A. NINE OR NINE THIRTY; YES, SIR. SOMEWHERE IN THAT TIME.
- 19 Q. WHY DID YOU STAY THERE?
- 20 A. BECAUSE I HAD ASKED -- I WAS GOING TO LEAVE ONE TIME TO
- 21 GO GET MY CHILDREN. BUT I WAS INFORMED THAT SOMEONE HAD
- 22 ALREADY PICKED MY CHILDREN UP. AND THEY WERE BRINGING THEM
- 23 TO WHERE I WAS AT, IS WHAT THE LADY TOLD ME.
- 24 Q. BUT YOU DON'T KNOW WHO OR ANYTHING ABOUT IT?
- 25 A. NO. , SHE DID NOT TELL ME WHO WAS GOING TO PICK THEM

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1 UP.

2 Q. NOW, OFFICER SUTTON ADVISED YOU OF CERTAIN RIGHTS,
3 DIDN'T SHE?

4 A. YES, SIR.

5 Q. AND DO YOU REMEMBER THOSE?

6 A. YES, SIR.

7 Q. DID ONE OF THOSE SAY THAT YOU HAD A RIGHT TO AN
8 ATTORNEY?

9 A. YES, SIR.

10 Q. AND DID ANOTHER ONE SAY THAT IF YOU COULDN'T AFFORD A
11 ATTORNEY, ONE WOULD BE PROVIDED FOR YOU?

12 A. YES, SIR.

13 Q. DID YOU STOP THIS INTERVIEW AT ANY TIME?

14 A. YES, SIR.

15 Q. HOW DID YOU STOP IT?

16 A. I TOLD THEM I WOULD RATHER SPEAK TO AN ATTORNEY.

17 Q. AND THEY DIDN'T SPEAK TO YOU ANY MORE AFTER THAT?

18 A. NO, SIR, NOT UNTIL WE GOT TO THE HOUSE.

19 Q. ALL RIGHT.

20 A. WELL, THEY SAID THEY WANTED TO SEARCH THE VAN AND ALL
21 FIRST.

22 Q. THEY WANTED TO SEARCH THE VAN?

23 A. YES, SIR.

24 Q. DID YOU LET THEM?

25 A. YES, SIR.

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1 Q. HOW LONG DID THAT TAKE?

2 A. I DIDN'T HAVE A WATCH ON, SO I DON'T REALLY KNOW HOW
3 LONG. THEY HAD TO PULL IT AROUND BACK BECAUSE THEY COULDN'T
4 GET THE FRONT LIGHTS TO COME ON.

5 Q. SO YOU STAYED THERE STILL AT THE LAW ENFORCEMENT CENTER
6 WHILE THEY SEARCHED THAT VAN?

7 A. YES, SIR.

8 Q. AND DID YOU EVER GET TO YOUR HOUSE ON [REDACTED] [REDACTED]?

9 A. YES, SIR.

10 Q. HOW DID YOU GET THERE?

11 A. I DROVE.

12 Q. YOUR VAN?

13 A. YES, SIR.

14 Q. THE OFFICER TESTIFIED IT WAS AROUND TEN O'CLOCK AT
15 NIGHT WHEN YOU GOT THERE. WAS THAT ABOUT RIGHT?

16 A. YEAH.

17 Q. ALL RIGHT. AND HOW LONG WERE THEY AT YOUR HOUSE?

18 A. I GUESS IT WAS SOMETIME AFTER MIDNIGHT. MIDNIGHT OR
19 SOMEWHERE THEREABOUT. I'M NOT REAL SURE.

20 Q. DID YOU HAVE ANY DRUGS OR TAKE ANY DRUGS?

21 A. YES, SIR.

22 Q. WHAT DID YOU TAKE?

23 A. I HAD TAKEN SOME XANAXES AND SOME ANAPROX.

24 Q. WHY DID YOU TAKE XANAX?

25 A. TO CALM MY NERVES, MAYBE GET SOME SLEEP.

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1 Q. WHAT WAS WRONG WITH YOUR NERVES?

2 A. MY CHILD JUST DIED.

3 Q. WHERE WERE YOUR OTHER CHILDREN?

4 A. I DO NOT KNOW.

5 Q. DID YOU EVER ASK ABOUT YOUR CHILDREN?

6 A. YES, SIR.

7 Q. WHO DID YOU ASK ABOUT YOUR CHILDREN?

8 A. BEFORE WE LEFT THE SHERIFF'S DEPARTMENT, I KEPT ASKING
9 THAT LADY AT THE FRONT DESK. AND I ASKED THEM WAS SHE GOING
10 TO BRING THEM TO ME OR WHAT WAS GOING ON. AND THEN I LATER
11 ASKED, I BELIEVE IT WAS, JEAN. I CAN'T BE ONE HUNDRED
12 PERCENT SURE.

13 Q. DID YOU EVER ASK JOHN CARPENTER ABOUT YOUR CHILDREN?

14 A. LATER THAT NIGHT.

15 Q. WHEN LATER THAT NIGHT?

16 A. WHEN THEY HAD FINISHED DOING THEIR SEARCH.

17 Q. SO THEY HAD BEEN IN YOUR HOME SEARCHING THAT THREE-
18 BEDROOM MOBILE HOME FOR HOW MANY HOURS?

19 A. MAYBE THREE HOURS.

20 Q. IN ALL OF THAT TIME, AFTER YOU HAD ASKED FOR A LAWYER
21 DID ANYONE OFFER YOU -- ASK YOU IF YOU COULD AFFORD A
22 LAWYER?

23 A. NO, SIR.

24 Q. COULD YOU?

25 A. NO, SIR.

1 Q. DID YOU ASK OFFICER CARPENTER ABOUT YOUR CHILDREN?

2 A. YES, SIR.

3 Q. WHAT DID YOU ASK HIM?

4 A. I ASKED HIM WHERE THE CHILDREN WERE AND WHERE DEREK
5 WAS.

6 Q. AND DID HE TELL YOU ANYTHING?

7 A. HE TOLD ME THAT SINCE I DID NOT COOPERATE WITH THEM
8 THAT HE DIDN'T HAVE TO TELL ME ANY OF THAT INFORMATION UNTIL
9 I COOPERATED.

10 Q. AND DID HE GIVE YOU ANYTHING?

11 A. HE GAVE ME A CARD AND TOLD ME THAT I NEEDED TO CALL
12 THAT NUMBER TO SET UP AN APPOINTMENT.

13 Q. AND DID YOU?

14 A. YES, I DID. I DID THAT ALMOST IMMEDIATELY.

15 Q. SO ABOUT ONE THIRTY, I BELIEVE YOU TESTIFIED?

16 A. YES, SIR.

17 Q. SO YOU HAD BEEN IN THE COMPANY AND UNDER THE GUIDANCE
18 OF LAW ENFORCEMENT FROM NINE O'CLOCK THAT MORNING UNTIL ONE
19 THIRTY AT NIGHT?

20 A. YES, SIR.

21 Q. THEN THEY TOLD YOU TO COME BACK THE NEXT MORNING?

22 A. THEY TOLD ME TO CALL FOR AN APPOINTMENT.

23 Q. AND DID YOU CALL?

24 A. I CALLED THAT IMMEDIATELY BECAUSE I WANTED TO KNOW
25 ABOUT MY CHILDREN.

1 Q. WHY DID YOU CALL?

2 A. I WANTED TO KNOW ABOUT MY CHILDREN AS SOON AS POSSIBLE
3 SO I WAS LIKE, I WANTED TO BE THE FIRST ONE ON THE LIST OR
4 SOMETHING.

5 Q. WHAT WERE YOU THINKING WHEN YOU WENT INTO THE LAW
6 ENFORCEMENT CENTER AT TEN O'CLOCK IN THE MORNING, THE NEXT
7 DAY, OCTOBER 26TH?

8 A. I WANTED TO FIND OUT ABOUT MY KIDS.

9 Q. AND DID YOU?

10 A. YES, I DID.

11 Q. WHAT DID THEY TELL YOU?

12 A. THAT D.S.S. -- THEY WERE IN THE CUSTODY OF D.S.S.

13 Q. SO YOU WERE AGAIN READ THE MIRANDA RIGHTS AND TOLD YOU
14 HAVE A RIGHT TO A LAWYER, AND IF YOU COULDN'T AFFORD ONE,
15 ONE WOULD BE PROVIDED?

16 A. THEY HANDED ME THE PAPER TO SIGN.

17 Q. YOU UNDERSTOOD THAT?

18 A. YES, SIR.

19 Q. YOU WENT ON AND MADE A STATEMENT. WHY DID YOU DO THAT
20 A. TO TRY TO FIND OUT SOMETHING ABOUT MY CHILDREN.

21 Q. AND THEN YOU WERE ARRESTED?

22 A. YES, SIR.

23 Q. AND YOU'VE BEEN IN JAIL SINCE?

24 A. YES, SIR.

25 Q. DID -- AFTER J.C. WAS BORN, DID DEREK HAVE ANY

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1 DISCUSSIONS WITH YOU ABOUT WHO WAS TO DISCIPLINE Minor

2 A. THAT WAS, YOU KNOW -- THAT WAS KIND OF LIKE KNOWN FROM
3 THE MONTH AHEAD.

4 Q. WHAT WAS KNOWN?

5 A. THAT, YOU KNOW, I WOULD HAVE SOME SAY-SO, BUT I WAS NOT
6 THE BIOLOGICAL MOTHER.

7 Q. YOU WOULD HAVE SOME SAY-SO, BUT YOU WERE NOT THE
8 BIOLOGICAL MOTHER?

9 A. UH-HUH.

10 Q. HOW OFTEN WERE YOU TOLD THAT?

11 A. I KIND OF KNEW IT FROM THE FIRST GET-GO PART.

12 Q. FROM JUNE OF 1999?

13 A. YES, SIR.

14 Q. DID YOU EVER AT ANY TIME GO OUT TO THE VAN, PUNCH IN
15 THE CIGARETTE LIGHTER, LIGHT IT OR HEAT IT, BRING IT BACK
16 INTO THE HOUSE AND PUSH IT DOWN ON Minor CHEST?

17 A. NO, SIR.

18 Q. DID YOU EVER PICK HER UP AND SLING HER BY THE HAIR?

19 A. NO, SIR.

20 Q. DO YOU KNOW HOW HER HAIR GOT PULLED OUT?

21 A. YES, SIR.

22 Q. HOW? .

23 A. THERE WAS TWO OCCASIONS WHERE SHE HAD GOTTEN HER HAIR
24 HUNG UP IN A ROLL BRUSH. AND SHE TRIED TO GET IT OUT. SHE
25 WAS GOING TO COMB HER HAIR. BUT SHE GOT A ROLL BRUSH RATHER

1 THAN HER LITTLE -- SHE HAD A LITTLE KIT OF HER OWN WITH
2 LITTLE BRACELETS AND ALL IN IT. AND SHE PICKED UP THE ROLL
3 BRUSH AND GOT IT HUNG IN HER HAIR. AND I TRIED TO GET IT
4 OUT. AND WE EVENTUALLY ENDED UP HAVING TO CUT IT OUT.

5 Q. IS THAT ONE OF THOSE BRUSHES WITH ALL THOSE ---

6 A. YEAH. ' IT'S A ROUND BRUSH THAT YOU USE TO DRY YOUR HAI
7 WITH.

8 Q. WELL, I DON'T. BUT MY WIFE DOES.

9 A. YES, SIR.

10 Q. YOU ROLL YOUR HAIR IN IT ---

11 A. YES, SIR.

12 Q. --- AND PULL IT THROUGH OR SOMETHING LIKE THAT?

13 A. YES, SIR.

14 Q. WHOSE BRUSH WAS THAT?

15 A. MINE.

16 Q. DID YOU EVER MAKE HER STAND, AS PUNISHMENT, IN AN ICE
17 BUCKET?

18 A. NO, SIR.

19 Q. DID YOU EVER PUT HER IN AN ICE BUCKET?

20 A. NO, SIR, NOT PUT HER IN ONE.

21 Q. WHAT DO YOU MEAN?

22 A. HER ANKLES WOULD SWELL. AND I HAD ICE PACKS. BUT THI
23 BUSTED. SO I JUST GOT THE LITTLE THING I HAD FROM THE
24 HOSPITAL. IT WAS A LITTLE BROWN THING. AND I WOULD PUT HI
25 FEET IN THERE FOR LIKE FIVE MINUTES. THEN I'D PUT THEM

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1 ABOVE HER HEAD TO TRY TO TAKE AWAY THE SWELLING.

2 Q. WHY DID THEY SWELL?

3 A. WE HAD SHOWED DR. MADDOX WHERE SHE WAS WALKING OUT THAT
4 WAY OVER ON HER HEELS. I'M SORRY. ANKLES.

5 Q. DID YOU DESCRIBE WHAT THEY CALL SLEUTH FOOT OR SWAY-
6 FOOTED?

7 A. YES, SIR.

8 Q. HER FEET WERE SPREADING OUT THAT WAY?

9 A. YES, SIR.

10 Q. WELL, WHAT DID Y'ALL DO ABOUT THAT?

11 A. HE WAS GOING TO SET UP AN APPOINTMENT WITH ---

12 Q. I DON'T KNOW WHO HE IS.

13 A. OH, I'M SORRY. DR. MADDOX WAS GOING TO SET US UP WITH
14 AN ORTHOPAEDIC DOCTOR. AND DR. LEGARDA ALSO LOOKED AT HER
15 FEET.

16 Q. HUH?

17 A. DR. LEGARDA ALSO LOOKED AT HER FEET THAT WEDNESDAY AND
18 NOTICED SHE WAS WIDE BASED.

19 Q. DID YOU EVER STRAP Minor IN HER HARNESS AND TIE HER
20 OUTSIDE?

21 A. YES, SIR. ONE TIME.

22 Q. WHAT ONE TIME WAS THAT?

23 A. WE WERE BURNING SOME TREE STUMPS. WELL, THE ACTUAL
24 TREE.

25 Q. BURNING A TREE?

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1 A. UH-HUH.

2 Q. WHY DID YOU STRAP HER?

3 A. I HAD HER CONNECTED TO ME AT FIRST AND TRYING TO BURN
4 STUFF. WE HAD TWO PILES GOING TRYING TO BURN IT ALL UP AN
5 GET IT OUT OF THE WAY. SHE HAD GOTTEN BURNED ON ONE OF TH
6 LOGS OF THE TREE LIKE A WEEK BEFORE.

7 Q. SO WHAT DID YOU DO?

8 A. WE WERE TRYING TO HURRY UP AND GET THEM BURNED AND GE
9 THEM OUT OF THE WAY. AND SHE WAS ON ME. AND WHEN I WENT
10 RAKE SOME STUFF UP INTO THE PILE, I WAS CARRYING HER WITH
11 ME. AND SO I WENT IN THE HOUSE AND GOT A BLANKET AND SOME
12 TOYS. AND I PUT HER RIGHT THERE AT THE -- ABOUT -- THE FI
13 WAS HERE. TO ABOUT WHERE YOU'RE AT IS WHERE SHE WAS AT.
14 AND I PAINTED HER FINGERNAILS AND HER TOENAILS.

15 Q. DID ANYBODY COME OUT AND CHECK ON Y'ALL?

16 A. YES, SIR.

17 Q. WHO WAS THAT?

18 A. I THINK IT WAS THE SHERIFF'S DEPARTMENT.

19 Q. AND DID THEY TALK WITH YOU?

20 A. YES, SIR.

21 Q. AND WHAT DID YOU TELL THEM?

22 A. I WENT OUT AND SHOWED THEM. AND THEY JUST SAID, OKAY
23 THANK YOU. AND THEY WATCHED A LITTLE BIT OF THE SURVIVOR
24 WITH US.

25 Q. I'M SORRY?

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- 1 A. THEY WATCHED SOME OF SURVIVOR WITH US.
- 2 Q. SOME SURVIVOR?
- 3 A. YEAH. IT WAS THE LAST NIGHT OF SURVIVOR.
- 4 Q. OH. IS THAT SOMETHING ON TELEVISION?
- 5 A. YES, SIR.
- 6 Q. WHAT DID -- THEY DIDN'T ADVISE YOU TO DO ANYTHING?
- 7 A. NO, SIR. THEY LOOKED AT Minor FROM HEAD TO TOE.
- 8 Q. AND THAT WAS WHEN? DO YOU REMEMBER?
- 9 A. THE NIGHT -- THE LAST NIGHT OF SURVIVOR. I DON'T
- 10 REMEMBER WHAT DATE THAT WAS.
- 11 Q. OKAY. DID YOU HIRE OR GET THE BIG BOY NEXT DOOR TO DO
- 12 ANY BOOT CAMP TRAINING FOR HER?
- 13 A. I DIDN'T.
- 14 Q. DID ANYBODY IN YOUR HOUSEHOLD?
- 15 A. DEREK.
- 16 Q. HOW DO YOU KNOW?
- 17 A. I HAD OVERHEARD HIM AND L.W.
- 18 Q. WHO DID HE GET?
- 19 A. L.W..
- 20 Q. L.W.?
- 21 A. L.W.
- 22 Q. THAT BOY THAT TESTIFIED YESTERDAY?
- 23 A. YES, SIR.
- 24 Q. WHAT DID HE GET HIM TO DO?
- 25 A. I'M NOT REAL SURE. I WAS ON THE PHONE. I WASN'T

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- 1 REALLY PAYING ATTENTION TO THEIR CONVERSATION THAT NIGHT.
- 2 Q. WHAT, IF ANYTHING, DID YOU SEE L.W. DO?
- 3 A. HE WAS MAKING HER RUN.
- 4 Q. HE MADE HER RUN?
- 5 A. YES, SIR.
- 6 Q. DID YOU EVER STOP HIM?
- 7 A. I WENT OUT AND TOLD DEREK IT WASN'T FUNNY.
- 8 Q. WAS DEREK DRINKING THEN?
- 9 A. YES, SIR.
- 10 Q. WAS HE EVER VIOLENT TOWARD YOU? DEREK?
- 11 A. YES, SIR.
- 12 Q. HOW OFTEN?
- 13 A. WHEN HE WOULD DRINK LIQUOR.
- 14 Q. AND YOU SAID THAT GOT WORSE AND WORSE AS IT GOT OLDER?
- 15 A. YES, SIR.
- 16 Q. DID TERESA DENARDO LIVE NEAR YOU?
- 17 A. YES, SIR.
- 18 Q. DID SHE COME TO VISIT YOU OFTEN?
- 19 A. NO, SIR.
- 20 Q. HOW OFTEN DID SHE COME?
- 21 A. I BELIEVE SHE WAS AT THE HOUSE TWICE.
- 22 Q. MA'AM?
- 23 A. I BELIEVE SHE CAME TO THE HOUSE TWO TIMES.
- 24 Q. ON ONE OF THESE OCCASIONS, WERE YOU DISCIPLINING
- 25 Minor

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1 A. NO, SIR.

2 Q. DO YOU RECALL Minor EVER THROWING A CANDLE HOLDER
3 THROUGH THE WINDOW?

4 A. YES, SIR.

5 Q. WHAT DID YOU DO TO HER ABOUT THAT?

6 A. I WAS OUTSIDE WHEN THAT HAPPENED. AND ALL I HEARD WAS
7 THE BREAKING OF THE WINDOW. AND I WENT IN TO FIND OUT WHAT
8 HAD HAPPENED.

9 Q. WERE YOU THERE WITH -- WHO WAS THERE WITH YOU?

10 A. DEREK, Minor ME. I DON'T RECALL IF THE BOYS WERE
11 THERE OR NOT.

12 Q. WAS THERE ANY DISCIPLINE TAKEN FOR HER THROWING IT?

13 A. YES, SIR.

14 Q. WHAT?

15 A. DEREK SPANKED HER AND THEN TOLD HER SHE WAS NOT GOING
16 TO HAVE HER BIRTHDAY PARTY THAT WEEKEND.

17 Q. WHAT DID HE SPANK HER WITH?

18 A. I DON'T KNOW. I DON'T RECALL.

19 Q. HOW OFTEN DID DEREK SPANK Minor

20 A. I'D SAY AT LEAST ABOUT EVERY OTHER DAY.

21 Q. HOW OFTEN DID YOU DISCIPLINE HER?

22 A. ABOUT EVERY DAY.

23 Q. ABOUT EVERY DAY?

24 A. (NODDED HEAD UP AND DOWN IN THE AFFIRMATIVE)

25 Q. DID YOU EVER TELL TERESA DENARDO THAT THERE WAS A

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1 MEDICAL PROBLEM IS THE REASON YOU WERE LEAVING DIRTY DIAPERS
2 ON HER?

3 A. NO, SIR.

4 Q. DID YOU LEAVE DIRTY DIAPERS ON HER?

5 A. NO, SIR, NOT FOR NO AMOUNT OF TIME.

6 Q. DID YOU ALLOW HER TO COME INTO YOUR HOUSE AFTER SHE'D
7 HAD ON A PAIR OF DIAPERS FOR A WEEK?

8 A. I DON'T RECALL HER HAVING A DIAPER ON FOR A WEEK.

9 Q. IF SHE HAD THEM ON FOR A WEEK AND THEY WERE FULL, WOULD
10 YOU ALLOW HER IN YOUR HOUSE TO BE ON YOUR FURNITURE?

11 A. THERE'S NO WAY IT COULD HAVE STAYED ON HER FOR A WEEK.

12 Q. DID Y'ALL EVER SEND Minor TO ANYTHING IN COLUMBIA
13 CALLED BOOT CAMP?

14 A. NO, SIR.

15 Q. DID YOU HAVE ANY RELATIVES THAT LIVED IN COLUMBIA?

16 A. DEREK'S MOTHER LIVED THERE.

17 Q. HUH?

18 A. DEREK'S MOTHER LIVES THERE.

19 Q. DID YOU EVER TAKE Minor TO VISIT WITH HER
20 GRANDMOTHER, DEREK'S MOTHER?

21 A. YEAH. WE WOULD ALL GO ON SEVERAL OCCASIONS.

22 Q. HUH?

23 A. WE WOULD ALL GO ON SEVERAL OCCASIONS.

24 Q. DID YOU ASK ANYONE TO WATCH YOUR HOME WHILE YOU WERE
25 GONE TO COLUMBIA?

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1 A. YES, WE DID.

2 Q. DID YOU TELL THAT PERSON YOU WERE GOING TO PICK

3 Minor UP AT BOOT CAMP?

4 A. NO, SIR.

5 Q. WHAT DID YOU ASK THEM?

6 A. I JUST ASKED THEM WOULD THEY PLEASE KEEP AN EYE ON THE
7 HOUSE BECAUSE WE'D BE GONE A DAY OR SO.

8 Q. WHO DID YOU ASK THAT OF?

9 A. TERESA AND -- I DON'T RECALL HER HUSBAND'S NAME.
10 DENNIS.

11 Q. WHEN DID YOUR SON, D.W. -- WHAT DID YOUR SON, D.W. CALL
12 YOU WHEN HE LIVED WITH YOU?

13 A. MOTHER. WELL, MOM.

14 Q. HAVE YOU VISITED WITH HIM, OR HAS HE BEEN ABLE TO VISIT
15 WITH YOU SINCE OCTOBER THE 26TH?

16 A. NO, SIR.

17 Q. DID HE EVER CALL YOU MELISSA -- MICHELE?

18 A. NO, SIR.

19 Q. AND THE WHOLE TIME YOU LIVED WITH HIM, HE NEVER CALLED
20 YOU MICHELE?

21 A. NO, SIR.

22 Q. YOU HEARD HIM TESTIFY YESTERDAY?

23 A. YES, SIR.

24 Q. WHAT DID HE CALL YOU?

25 A. MICHELE.

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1 Q. AND HE LIVES WITH WHOM NOW?

2 A. HIS FATHER AND STEPMOTHER.

3 Q. AND J.W. LIVES THERE, TOO?

4 A. YES, SIR.

5 Q. WHERE IS J.C.

6 A. HE'S WITH DEREK'S MOTHER.

7 Q. IN COLUMBIA?

8 A. YES, SIR.

9 Q. ON THE 25TH DAY OF OCTOBER, 2000, DID YOU EVER HIT

10 Minor ON THE SIDE OF THE HEAD?

11 A. OCTOBER THE 25TH?

12 Q. I MEAN, OCTOBER 14TH? WHATEVER DAY SHE FELL.

13 A. NO, SIR.

14 Q. DID YOU EVER SEE HER FALL AGAINST ANYTHING?

15 A. YES, SIR.

16 Q. ON THAT DAY?

17 A. THAT DAY? I CAN'T SAY SPECIFICALLY IT WAS THAT DAY.

18 Q. WHAT DID YOU SEE HER FALL AGAINST?

19 A. THE CABINET, A CHAIR. JUST GENERAL THINGS. I KNOW :

20 FELL TWICE OUTSIDE THAT MORNING.

21 Q. DID YOU EVER LEARN THAT SHE FELL OFF A TRAMPOLINE?

22 A. I DIDN'T UNTIL, I BELIEVE IT WAS, DURING HER FUNERAL

23 Q. HUH?

24 A. I BELIEVE IT WAS DURING HER FUNERAL.

25 Q. DURING WHAT?

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- 1 A. HER FUNERAL.
- 2 Q. HOW DID YOU LEARN THAT?
- 3 A. D.W. HAD TOLD US.
- 4 Q. D.W. TOLD YOU THAT?
- 5 A. YES, SIR.
- 6 Q. AND DO YOU KNOW WHEN SHE FELL OFF THE TRAMPOLINE?
- 7 A. I DON'T KNOW IF HE TOLD US AN EXACT DATE OR ANYTHING.
- 8 Q. DID YOU KEEP A DIARY ON THE COMPUTER?
- 9 A. NO, SIR.
- 10 Q. DID YOU ENTER ANYTHING ON THE COMPUTER ON JUNE THE 7TH
- 11 AND JUNE THE 9TH, 2000?
- 12 A. I CAN'T SAY IF I DID OR NOT. I MEAN, I GOT ON IT JUST
- 13 ABOUT EVERY DAY.
- 14 Q. WHAT DID YOU DO ON IT?
- 15 A. VARIOUS THINGS. I'D GO ONLINE. I WOULD USE DIALPAD
- 16 DOT COM TO CALL LONG DISTANCE. JUST GENERAL THINGS.
- 17 Q. DID YOU GO ON IT AND RESEARCH MEDICAL ITEMS?
- 18 A. AT TIMES, YES.
- 19 Q. WHAT DID YOU RESEARCH WITH REGARD TO THAT?
- 20 A. PSEUDO TUMOR.
- 21 Q. A WHAT?
- 22 A. PSEUDO TUMOR.
- 23 Q. WHY DID YOU LOOK UP PSEUDO TUMOR?
- 24 A. THAT'S WHAT DR. LEGARDA HAD SAID Minor HAD.
- 25 Q. THAT Minor HAD A PSEUDO TUMOR?

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1 A. YES, SIR.

2 Q. AND YOU LOOKED THAT UP ON THE INTERNET?

3 A. YES, SIR.

4 Q. DID YOU LOOK UP ANYTHING ELSE?

5 A. I LOOKED UP THINGS ON LUPUS.

6 Q. WHY DID YOU LOOK UP THINGS ON LUPUS?

7 A. AT THE THIRD VISIT, I BELIEVE, OR SECOND, DR. LEGARDA
8 HAD SHOWED US ---

9 MS. WHITE: YOUR HONOR, I'M GOING TO OBJECT TO WHAT
10 DR. LEGARDA SAID. SHE'S PRACTICING RIGHT HERE IN SOUTH
11 CAROLINA.

12 THE COURT: SUSTAINED.

13 Q. ALL RIGHT. SO YOU LOOKED UP LUPUS?

14 A. YES, SIR.

15 Q. AND HAVE YOU BEEN INFORMED OF ANY DIAGNOSIS OF LUPUS?

16 A. YES, SIR.

17 MS. WHITE: OBJECTION. HEARSAY. THE WITNESS IS
18 AVAILABLE IF NECESSARY.

19 MR. GAMBLE: I'M ASKING ABOUT A MEDICAL STATEMENT C
20 CONDITION FROM A CHILD THAT SHE WAS IN THE HOME.

21 MS. WHITE: NO, SIR. THAT'S ---

22 MR. GAMBLE: AND FROM HER STATE OF MIND AS TO THE
23 UNDERSTANDING OF THAT.

24 THE COURT: I'M GOING TO PERMIT IT UNDER THE STATE
25 OF MIND EXCEPTION, NOT FOR THE TRUTH OF THE MATTER.

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1 MR. GAMBLE: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: SO I OVERRULE IT AND PERMIT IT FOR THAT
3 PURPOSE.

4 MR. GAMBLE: THANK YOU, YOUR HONOR.

5 THE COURT: STATE OF MIND EXCEPTION.

6 MR. GAMBLE: THANK YOU.

7 Q. YOU THEN WERE INFORMED THAT SHE HAD LUPUS?

8 A. YES, SIR.

9 Q. AND YOU WERE RESEARCHING THAT?

10 A. YES, SIR.

11 Q. THANK YOU. DID YOU EVER REFER TO Minor AS A DOG?

12 A. NO, SIR.

13 Q. OR A BITCH?

14 A. NO, SIR.

15 Q. WHAT KIND OF BIKE DID SHE HAVE, IF ANY?

16 A. A 1-2-3 BIKE.

17 Q. WHAT IS A 1-2-3 BIKE?

18 A. IT'S A BICYCLE THAT CAN GO THROUGH THE DIFFERENT STAGES
19 OF A CHILD LEARNING TO RIDE A BIKE. AND SHE HAD A BIG
20 WHEEL.

21 Q. IS THAT A PLASTIC ONE WITH A HANDLE ON THE BACK OF IT?

22 A. NO, IT DON'T HAVE A HANDLE ON IT.

23 Q. OKAY. DID IT HAVE TRAINING WHEELS?

24 A. YES, SIR.

25 Q. DID HERS HAVE TRAINING WHEELS?

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- 1 A. NO.
- 2 Q. WAS IT JUST -- HOW MANY WHEELS DID IT HAVE?
- 3 A. IT HAD TWO, BUT THEY WERE WIDE ENOUGH TO WHERE IT COU
- 4 STAY STABILIZED WITHOUT THE TRAINING WHEELS.
- 5 Q. FAT WHEELS?
- 6 A. UH-HUH.
- 7 Q. HOW WOULD SHE RIDE IT?
- 8 A. SHE WOULD STRADDLE IT AND RIDE IT.
- 9 Q. DID SHE PEDAL IT?
- 10 A. NO. SHE USED HER FEET TO MAKE IT GO AND STOP.
- 11 Q. PUSHED ON THE GROUND?
- 12 A. UH-HUH.
- 13 Q. DID YOU EVER GO VISIT YOUR GRANDMOTHER OVER ON EQUINOX
- 14 -- NO -- YEAH -- EQUINOX MILL?
- 15 A. YES, SIR.
- 16 Q. WAS YOUR COUSIN THERE?
- 17 A. I'M SURE SHE WAS.
- 18 Q. AND WHERE DID Minor STAY WHEN YOU WERE VISITING
- 19 WITH YOUR GRANDMOTHER ON THAT OCCASION?
- 20 A. VARIOUS PLACES. SHE WOULD BE IN THE FENCE, IN THE
- 21 HOUSE, ON THE FRONT PORCH, OUT IN THE DRIVEWAY.
- 22 Q. DID YOU EVER MAKE HER SIT ON THE FRONT PORCH?
- 23 A. YES, SIR.
- 24 Q. WHY?
- 25 A. BECAUSE WE WERE FIXING TO LEAVE, AND I DID NOT HAVE

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- 1 ANOTHER PULL-UP TO GO ON HER. AND I DIDN'T WANT HER TO MESS
2 UP. I HAD JUST STOPPED BY THERE TO FIX A BOTTLE FOR MY SON.
3 Q. HOW LONG WERE YOU THERE?
4 A. I CHANGED HIM, GRABBED THE BOTTLE AND LEFT. I STAYED
5 MAYBE FIVE OR TEN MINUTES.
6 Q. YOU WEREN'T THERE TWO HOURS?
7 A. NOT THAT DAY, NO.
8 Q. THAT DAY KIM WAGES WAS THERE? IS THAT THE TIME YOU
9 TALKED ABOUT?
10 A. YES, SIR.
11 Q. AND YOU MADE Minor SIT ON THE FRONT PORCH?
12 A. YES, SIR.
13 Q. WAS IT HOT? WHAT WAS THE WEATHER LIKE?
14 A. IT WAS SUMMERTIME.
15 Q. WAS IT HOT?
16 A. IT WAS SUMMERTIME, SO I'M PRETTY SURE IT WAS.
17 Q. DOES THAT PORCH HAVE A ROOF OVER IT?
18 A. YES, SIR.
19 Q. DID THE SUN -- HOW DID THE SUN SHINE ON THE PORCH?
20 A. I HONESTLY DON'T KNOW. I DON'T KNOW.
21 Q. DO YOU KNOW IF Minor WAS SITTING IN THE SUNSHINE OR
22 NOT?
23 A. I DON'T KNOW.
24 Q. AND YOU WERE THERE HOW LONG?
25 A. THAT TIME, TEN MINUTES. FIVE OR TEN MINUTES.

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6

1 SOMEWHERE IN THAT VICINITY.

2 Q. ALL RIGHT. WHO WAS Minor PRIMARY PHYSICIAN?

3 A. DR. -- I BELIEVE HIS NAME IS COTTINGIM.

4 Q. COTTINGIM?

5 A. YEAH. AND THEN DR. MADDOX.

6 Q. DR. MADDOX?

7 A. YEAH, SHE -- HE HAD SEEN HER ONE TIME.

8 Q. HOW OFTEN DID YOU CARRY HER TO DR. MADDOX?

9 A. ONE TIME.

10 Q. HOW OFTEN DID DEREK CARRY HER TO DR. ---

11 A. NO. WE WENT TWO TIMES.

12 Q. OKAY. AND THEN DID YOU GO TO -- DID YOU GO TO DR. --

13 YOU WENT TO MADDOX, ALSO?

14 A. NO, I WAS NOT THERE THAT DAY. I WAS AT DR. MADDOX'S

15 OFFICE.

16 Q. HOW MANY OTHER DOCTORS DID SHE SEE?

17 A. SHE SAW A BUNCH OF THEM IN THE HOSPITAL.

18 Q. ALL RIGHT.

19 EXCUSE ME JUST A MOMENT, YOUR HONOR.

20 THE COURT: TAKE YOUR TIME, SIR.

21 MR. GAMBLE: ANSWER ANY QUESTIONS MS. WHITE ASKS,

22 PLEASE.

23 THE COURT: SOLICITOR, WE'RE GOING TO TAKE A SHORT

24 BREAK.

25 WE'VE BEEN GOING ABOUT AN HOUR AND TEN MINUTES. AND

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1 WE'LL TAKE ABOUT A FIVE-MINUTE BREAK, LADIES AND GENTLEMEN.
2 DO NOT DISCUSS THE CASE. WE'LL GET YOU BACK OUT HERE, AND
3 WE'LL HAVE THE CROSS EXAMINATION. THANK YOU.

4 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:24 A.M.)

5 THE COURT: FIVE-MINUTE RECESS.

6 YOU'RE CERTAINLY WELCOME TO STEP DOWN AND TAKE A BREAK
7 YOURSELF.

8 WITNESS: THANK YOU.

9 (WHEREUPON COURT STOOD AT RECESS)

10 THE COURT: BRING THE JURY, PLEASE.

11 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:31
12 A.M.)

13 THE COURT: LADIES AND GENTLEMEN, WE'RE READY TO
14 PROCEED.

15 YOUR WITNESS.

16 CROSS EXAMINATION BY MS. WHITE:

17 Q. NOW, MA'AM, YOU JUST NOW TOLD THIS JURY THAT SHE WENT
18 TO SEVERAL DOCTORS; IS THAT CORRECT?

19 A. YES, MA'AM.

20 Q. DR. COTTINGIM -- ARE YOU AWARE THAT WE HAVE EVERY
21 MEDICAL RECORD THIS CHILD EVER WENT TO FROM THE DOCTOR OR A
22 HOSPITAL?

23 A. YES, MA'AM.

24 Q. NOW, WOULD YOU CARE TO TELL THIS JURY THE SECOND HALF
25 OF THAT? DID YOU OR DEREK, WHILE YOU ALL WERE MARRIED, EVER

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6

1 TAKE THIS CHILD TO DR. COTTINGIM?

2 A. NO, MA'AM.

3 Q. OH, SO THAT WAS ANGIE, ACTUALLY, WHEN SHE WAS ALIVE
4 THAT TOOK THE CHILD REGULARLY FOR RASHES, COLDS AND THAT
5 SORT OF THING; IS THAT RIGHT?

6 A. TO DR. COTTINGIM.

7 Q. NOW, FROM THE TIME ANGIE DIED TO THE TIME THAT

8 Minor WENT INTO THE HOSPITAL IN APRIL OF 2000, WHAT, I
9 ANY, DOCTORS, DID YOU ALL TAKE HER TO?

10 A. I TOOK HER TO THE EMERGENCY ROOM.

11 Q. IS THAT IT?

12 A. UP UNTIL THE FALL?

13 Q. UP UNTIL APRIL?

14 A. YES, MA'AM.

15 Q. NOW, YOU SAID THAT YOU TOOK HER TO DR. MADDOX; IS THAT
16 CORRECT?

17 A. YES, MA'AM.

18 Q. AND THAT WAS ONE TIME ON MAY 3RD AFTER THE HEAD
19 INCIDENT THAT INVOLVED THE APRIL HOSPITALIZATION; ISN'T THAT
20 RIGHT? WOULD YOU CARE TO LOOK AT THE RECORD?

21 A. YES, MA'AM. WE TOOK HER ONE TIME TO FILL OUT THE
22 PAPERWORK. HE DID NOT SEE HER THAT DAY. AND THEN HE SEEN
23 HER THE NEXT VISIT.

24 Q. AND I BELIEVE YOU TOLD THIS JURY THAT HE EXAMINED HER
25 WALKING. IN FACT, HE DIDN'T EXAMINE HER WALKING. YOU TOLD

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- 1 HIM THAT SHE WAS WALKING FUNNY; ISN'T THAT RIGHT?
- 2 A. HE EXAMINED HER.
- 3 Q. HE WORKS HERE IN ANDERSON, DOESN'T HE?
- 4 A. YES, MA'AM.
- 5 Q. DO YOU SEE HIM ANYWHERE?
- 6 A. NO, MA'AM.
- 7 Q. NOW, DR. LEGARDA -- YOU SAID THAT YOU TOOK HER TO DR.
- 8 LEGARDA; IS THAT RIGHT?
- 9 A. YES, MA'AM.
- 10 Q. ARE YOU AWARE THAT I'VE SPOKEN TO ALL OF THESE DOCTORS?
- 11 A. YES, MA'AM.
- 12 Q. AND YOU DIDN'T TELL THIS JURY, DID YOU, THAT SHE
- 13 EXAMINED Minor FEET RIGHT BEFORE THE OCTOBER
- 14 HOSPITALIZATION, DID YOU?
- 15 A. YEAH.
- 16 Q. YOU'RE TESTIFYING THAT SHE EXAMINED HER FEET?
- 17 A. YES.
- 18 Q. AND SHE WORKS HERE IN SOUTH CAROLINA, DOESN'T SHE?
- 19 A. YES, MA'AM.
- 20 Q. WHERE'S DR. LEGARDA?
- 21 A. I DON'T SEE HER.
- 22 Q. IS THERE ONE NEIGHBOR YOU CAN THINK OF WHO MIGHT BE
- 23 ABLE TO SAY THAT YOU TREATED THIS CHILD WITH ANY RESPECT OR
- 24 KINDNESS?
- 25 A. THE ONLY ONES I SPOKE TO WERE THE TWO ON THE SIDE.

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1 Q. HOW LONG DID YOU LIVE THERE?

2 A. FROM THANKSGIVING OF '99 UNTIL OCTOBER.

3 Q. NOW, LET'S TALK ABOUT THE APRIL HOSPITALIZATION.

4 Minor WAS HOSPITALIZED IN APRIL. AND ACCORDING TO YOU
5 TESTIMONY, AFTER THAT SHE HAD SEIZURES, SHE COULDN'T WALK
6 CORRECTLY AND HER EYES WERE CROSSED, AND SOMETHING WAS WRO
7 WITH HER HAIR; IS THAT CORRECT?

8 A. SOME OF THAT WAS BEFORE THAT.

9 Q. THAT'S PRETTY SEVERE DIFFICULTY, ISN'T IT?

10 A. YES, MA'AM.

11 Q. YOU CARE TO TELL THIS JURY HOW MANY TIMES YOU TOOK
12 Minor TO A DOCTOR IN THE SIX MONTHS THAT SHE WAS
13 SUFFERING FROM THESE SEVERE AILMENTS BETWEEN APRIL'S
14 HOSPITALIZATION AND THE OCTOBER HOSPITALIZATION?

15 A. THREE TIMES.

16 Q. DO YOU KNOW THAT -- YOUR SON J.C. WAS PRETTY HEALTHY
17 WASN'T HE?

18 A. YES, MA'AM.

19 Q. SO THIS CHILD THAT WAS SUFFERING SEIZURES, COULDN'T
20 WALK, WAS UNCOORDINATED AND HER EYES WERE CROSSED FOR SIX
21 MONTHS WENT TO THE DOCTOR THREE TIMES. DO YOU CARE TO TEL
22 THE JURY HOW MANY TIMES YOU TOOK J.C. TO THE DOCTOR DURIN
23 THAT TIME PERIOD?

24 A. I BELIEVE -- I CAN'T BE FOR SURE EXACTLY HOW MANY
25 TIMES.

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1 Q. DOES SEVEN SOUND ABOUT RIGHT?

2 A. PROBABLY.

3 Q. WELL, YOU ALL MUST HAVE BEEN PRETTY CONCERNED WITH ALL
4 THESE SERIOUS AILMENTS?

5 A. YES, MA'AM.

6 Q. BUT YOU TOOK J.C. TO THE DOCTOR FOR RUNNY NOSE, FEVER,
7 CRYING, COUGH?

8 A. YES, MA'AM.

9 Q. WHICH IS MORE SEVERE? DO YOU SAY COUGHING IS MORE
10 SEVERE THAN HAVING YOUR EYES CROSSED FOR SIX MONTHS?

11 A. NO, MA'AM.

12 Q. BUT YOU LOVED Minor DIDN'T YOU?

13 A. YES, MA'AM.

14 Q. YOU WERE CRAZY ABOUT Minor WEREN'T YOU?

15 A. YES, I LOVED HER.

16 Q. Minor HAD RED HAIR, DIDN'T SHE?

17 A. YES, MA'AM.

18 Q. HER MOTHER ANGIE'S HAIR WAS RED, TOO, WASN'T IT?

19 A. I'M NOT SURE.

20 Q. AND WHEN THIS FAMILY TRIED TO SEE Minor THEY WERE
21 TOLD IN NO UNCERTAIN TERMS THAT ANGIE'S NAME WAS NOT TO BE
22 MENTIONED BECAUSE YOU WERE NOW IN CONTROL OF HER AND YOU
23 WERE HER MOTHER; ISN'T THAT RIGHT?

24 A. NO, MA'AM.

25 Q. THEY WERE TOLD TO TAKE DOWN THE PICTURES SHE COULD SEE

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1 AND NOT TO MENTION HER NAME; ISN'T THAT TRUE?

2 A. NOT BY ME.

3 Q. BUT SHE HAD RED HAIR AND LOOKED JUST LIKE ANGIE, DIDN'
4 SHE?

5 A. HER AND J.C. LOOKED A LOT ALIKE.

6 Q. SO YOU TOOK CARE OF THAT. YOU CUT HER CURLY HAIR, AND
7 YOU DYED HER HAIR ---

8 A. NO, MA'AM.

9 Q. --- BECAUSE YOU DIDN'T WANT ANY REMINDERS OF ANGIE IN
10 YOUR HOME, DID YOU?

11 A. THAT'S NOT THE REASON.

12 Q. ANGIE DIED IN MARCH OF '99, DIDN'T SHE?

13 A. I'M NOT SURE WHAT THE DATE WAS.

14 Q. AND IN JUNE OF '99, YOU MARRIED DEREK CARTER?

15 A. YES, MA'AM.

16 Q. YOU HAD A BABY IN FEBRUARY OF 2000?

17 A. YES, MA'AM.

18 Q. A LITTLE PREMATURE, WASN'T HE?

19 A. NO, MA'AM.

20 Q. YOU DIDN'T WANT ANY REMINDERS OF ANGIE, AND Minor
21 WAS A GLARING REMINDER EVERY SINGLE DAY, WASN'T SHE?

22 A. NO, MA'AM.

23 Q. DO YOU REMEMBER A COMPUTER IN YOUR HOUSE THAT YOU ALL
24 OWNED?

25 A. YES, MA'AM.

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1 Q. DO YOU REMEMBER DURING THE DAY WHILE DEREK WAS AT WORK
2 PUTTING AN ENTRY ON YOUR COMPUTER IN A DIARY?

3 A. NO, MA'AM.

4 Q. REALLY? WHO -- CAN YOU TELL THIS JURY WHO HAD ACCESS
5 TO THAT COMPUTER AND WHO COULD HAVE GOTTEN IN THERE AND DONE
6 THESE COMPUTER ENTRIES?

7 A. EVERYONE HAD ACCESS TO OUR COMPUTER. EVERYONE IN THE
8 HOUSE AS WELL AS THE NEIGHBOR KIDS.

9 Q. AND SO WOULD IT, DO YOU THINK, HAVE BEEN D.W. OR YOUR
10 SIX-YEAR-OLD J.C. [SIC] WHO PUT, "I LOVE DEREK TO DEATH,
11 BUT SHE GETS ON MY NERVES. I REALLY WISH SHE WAS NOT HERE.
12 I DO NOT KNOW HOW MUCH MORE OF HER I CAN TAKE. IT'S CAUSING
13 PROBLEMS BETWEEN US BECAUSE I CANNOT DEAL WITH HER." WOULD
14 THAT HAVE BEEN J.C. YOUR BABY, OR WOULD IT HAVE BEEN
15 D.W. THE TWELVE-YEAR-OLD, OR WOULD IT HAVE BEEN J.W.
16 THE SIX-YEAR-OLD, WHO WOULD HAVE PUT THAT ON YOUR COMPUTER?
17 DO YOU MIND TELLING THE JURY WHICH ONE THAT WOULD HAVE BEEN?

18 A. I HAVE NO IDEA.

19 Q. HOW ABOUT, "SHE IS ALL MY PROBLEMS. I DO MY BEST NOT
20 TO LET IT COME BETWEEN US, BUT IT'S HARD. SHE'S ALMOST ON
21 MY VERY UNLIKEABLE LIST." WHO ELSE IN THAT FAMILY HAD AN
22 UNLIKEABLE LIST THEY WERE KEEPING?

23 A. NO ONE.

24 Q. "RIGHT NOW I DO NOT LIKE THIS CHILD AT ALL." VENTURE A
25 GUESS. WHICH ONE DO YOU THINK PUT IT ON THE COMPUTER IF IT

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1 WASN'T YOU?

2 A. I DON'T KNOW THAT IT WAS.

3 Q. NOW, YOU MENTIONED THAT DEREK WOULD GET DRUNK?

4 A. YES, MA'AM.

5 Q. I'M SORRY. DID YOU WATCH THE SAME VIDEO THAT THE RES
6 OF US WATCHED THE OTHER DAY?

7 A. YES, MA'AM.

8 Q. WHAT, IF ANY, INJURIES DID YOU SEE ON Minor UNTIL
9 THE STEPMOTHER CAME INTO THE PICTURE?

10 A. I WASN'T REALLY PAYING ATTENTION TO THAT PART.

11 Q. I SEE. NOW, DEREK WAS IN HER LIFE FROM THE TIME SHE
12 WAS BORN ON UNTIL ANGIE DIED; ISN'T THAT RIGHT?

13 A. YES, MA'AM.

14 Q. HUM. DID YOU SEE ANY INJURIES ON HER?

15 A. I WASN'T PAYING ATTENTION TO THAT PART.

16 Q. YOU WEREN'T PAYING ATTENTION?

17 A. NO, MA'AM.

18 Q. WELL, I THOUGHT YOU WERE SITTING RIGHT HERE. WEREN'T
19 YOU SITTING RIGHT HERE?

20 A. YES, MA'AM.

21 Q. CORRECT ME IF I'M WRONG. IS THAT NOT THE SCREEN RIGH
22 THERE?

23 A. YES, MA'AM.

24 Q. WELL, I'LL ASK YOU ONE MORE TIME. DID YOU SEE ANY
25 INJURIES ON Minor IN THE FIRST TWO YEARS OF HER LIFE?

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1 A. I WASN'T PAYING ATTENTION TO THAT.

2 Q. DON'T YOU THINK IT'S A LITTLE ODD THAT HER DEMEANOR
3 CHANGES ENTIRELY ONCE HE MARRIES YOU?

4 A. IT CHANGED AFTER THE FALL.

5 Q. AND WHO WAS RIDICULING Minor AS WE WATCHED THIS
6 VIDEO UP THERE?

7 A. THAT WASN'T THE WHOLE PICTURE.

8 Q. WELL, ALL THE TAPES ARE HERE. THEY'RE AVAILABLE. YOU
9 CAN INTRODUCE ANYTHING YOU WANT FROM THE WHOLE TAPES. YOU
10 NEVER FED HER THAT PIECE OF CAKE, DID YOU?

11 A. YES, MA'AM.

12 Q. WELL, WHY WASN'T IT ON THE REST OF THE VIDEO?

13 A. I HAVE NO CONTROL OVER IT.

14 Q. YOU TAPED THE WHOLE BIRTHDAY PARTY, AND THEN AFTER THE
15 TAPING STOPPED, YOU THEN FED HER A PIECE OF CAKE. IS THAT
16 WHAT YOU WANT THIS JURY TO BELIEVE?

17 A. NO, MA'AM.

18 Q. SO YOU SAT THERE WITH A CHILD AT A BIRTHDAY PARTY, PUT
19 HER IN A CHAIR, A LITTLE FOUR-YEAR-OLD, AND FED EVERYBODY
20 ELSE CAKE WHILE SHE CRANED HER NECK TO LOOK. AND THE ONLY
21 COMMENT YOU HAD FOR HER WAS, I GUESS YOU THINK YOU'RE NOT
22 GOING TO GET ANY. ISN'T THAT WHAT YOU SAID ON THE TAPE?

23 A. YES, MA'AM, THAT'S WHAT I SAID.

24 Q. SO YOU FED HER HER PIECE AFTER THE TAPE ENDED?

25 A. NO, MA'AM.

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6

1 Q. WHY IS IT THAT Minor APPEARANCE CHANGED SO MUCH
2 AFTER YOU BECAME INVOLVED IN THE PICTURE?

3 A. IT CHANGED AFTER THE FALL.

4 Q. AFTER THE FALL?

5 A. YES, MA'AM.

6 Q. ARE YOU STILL REFERRING TO THAT AS A FALL, MA'AM?

7 A. YES, MA'AM.

8 Q. WHY DID YOU TELL D.W. TO MAKE THAT UP?

9 A. I DIDN'T.

10 Q. WELL, AGAIN, I HAVE THE MEDICAL RECORDS. WOULD YOU
11 CARE TO LOOK AT THEM? WHY DID D.W. NOT HAVE ANY INJURIES
12 HIM?

13 A. THE DOCTOR EXAMINED HIM. I WASN'T THERE.

14 Q. AND THEY HOSPITALIZED HIM BECAUSE HE SAID, BECAUSE YO
15 TOLD HIM TO, THAT HE WAS DIZZY AND DIDN'T FEEL GOOD? AND
16 Minor HAD SERIOUS INJURIES; ISN'T THAT TRUE?

17 A. I DIDN'T TELL HIM THAT.

18 Q. HE HAD NO MARKS OR INJURIES ON HIM, DID HE?

19 A. YEAH.

20 Q. OH, HE DID?

21 A. YES, MA'AM.

22 Q. WHY DIDN'T THE DOCTOR NOTE THEM?

23 A. HE HAD A BUMP ON THE HEAD. I WASN'T THERE.

24 Q. IN FACT, YOU TOLD HIM TO SAY THAT, DIDN'T YOU?

25 A. NO, MA'AM.

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1 Q. THERE WAS NEVER A FALL, WAS THERE?

2 A. YES, MA'AM.

3 Q. DO YOU REMEMBER THE NURSE COMING IN AND TRYING TO ASK

4 Minor WHAT HAPPENED AND YOU WOULDN'T LET HER TALK?

5 A. NO, MA'AM.

6 Q. WELL, THIS PICTURE WAS TAKEN -- I HAND YOU 28. THAT

7 WAS TAKEN IN OCTOBER DURING THE SEARCH. DO YOU REMEMBER

8 TELLING THE SEARCH -- THE SOCIAL WORKER THAT YOU WERE VERY

9 CONCERNED AND WOULD TAKE THE BUNK BEDS DOWN SO THIS WOULDN'T

10 HAPPEN AGAIN?

11 A. THAT'S NOT THE SAME SET OF BUNK BEDS.

12 Q. OH, I SEE. WELL, WHO CARES IF IT'S A DIFFERENT SET OF

13 BUNK BEDS. PUT THEM BACK UP?

14 A. NO, NOT AT FIRST. NO, MA'AM. THEY WERE TAKEN DOWN.

15 Q. NOW, YOU SAID THAT DEREK TERRORIZED YOU; IS THAT RIGHT?

16 A. NO, MA'AM.

17 Q. AND YOU WERE AFRAID TO LEAVE?

18 A. NO, MA'AM, HE DIDN'T TERRORIZE ME.

19 Q. WHEN, IF EVER, DID YOU CALL SHERIFF TAYLOR OR ANY OF

20 THESE DEPUTIES TO REPORT THAT YOU WERE SCARED?

21 A. I DIDN'T CALL.

22 Q. WHY DIDN'T YOU EVER HAVE ANY INJURIES ON YOU? WE SAW

23 THE TAPES.

24 A. I DID.

25 Q. ARE YOU AWARE THAT THERE ARE LIKE FORTY SOMETHING HOURS

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1 OF TAPES IF YOU LOOK AT THEM ALL, AND WE'VE ALL REVIEWED
2 THEM?

3 A. YES, MA'AM.

4 Q. WHY DIDN'T YOU HAVE ANY MARKS OR INJURIES IN ANY OF
5 TAPES? THEY WERE TAKEN PRETTY REGULARLY, WEREN'T THEY?

6 A. I DON'T KNOW IF THEY WERE TAKEN REGULARLY.

7 Q. ARE YOU TRYING TO TELL THIS JURY THAT SAW THE VIDEO
8 OTHER DAY THAT HE IS THE DOMINANT ONE IN YOUR RELATIONSHI

9 A. I NEVER SAID HE WAS DOMINANT.

10 Q. HE IS NOT DOMINANT, IS HE?

11 A. I NEVER SAID HE WAS.

12 Q. IN FACT, YOU'RE NOT GOING TO BE PUSHED AROUND BY
13 ANYBODY, ARE YOU?

14 A. I DIDN'T SAY THAT.

15 Q. WHY DIDN'T YOU TELL THE POLICE ABOUT THIS DURING THE
16 INVESTIGATION?

17 A. BECAUSE IT WASN'T RELEVANT.

18 Q. I'M SORRY. I CAN'T HEAR YOU.

19 A. I SAID IT WASN'T RELEVANT.

20 Q. IT WASN'T RELEVANT?

21 A. YES.

22 Q. SO YOU DIDN'T THINK DURING THE INVESTIGATION -- WHEN
23 YOU FILLED OUT THE QUESTIONNAIRE YOU DIDN'T THINK IT WAS
24 RELEVANT THAT DEREK INFLECTED INJURIES ON HER? WOULD YOU
25 POINT OUT, PLEASE, IN YOUR NINE-PAGE QUESTIONNAIRE WHERE

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1 TOLD THE POLICE THAT DEREK HAD ASSAULTED Minor TAKE
2 YOUR TIME. .

3 A. I DON'T BELIEVE I DID.

4 Q. OH, YOU DIDN'T THINK IT WAS RELEVANT IN A POLICE
5 INVESTIGATION?

6 A. AT THAT TIME, I DID NOT KNOW THERE WAS LIKE A POLICE
7 INVESTIGATION GOING ON.

8 Q. HOW ABOUT IN THE APRIL HOSPITALIZATION? WHEN DID YOU
9 POINT OUT TO THE DOCTORS THAT HE WAS BEING ABUSIVE TO
10 Minor

11 A. I DIDN'T.

12 Q. YOU DIDN'T THINK THAT WAS RELEVANT WHEN THEY WERE
13 TRYING TO TREAT HER AND HER CROSSED EYES AND EVERYTHING
14 ELSE?

15 A. AT THAT TIME, THEY HAD FELL OFF THE BED. SO ...

16 Q. WELL, HOW ABOUT IN OCTOBER WHEN SHE WAS FIGHTING FOR
17 HER LIFE IN A COMA? DID YOU THINK IT WAS RELEVANT OR
18 IMPORTANT AT THAT TIME TO MENTION IT?

19 A. I DID NOT THINK THAT WAS NOT WHAT CAUSED THE INJURY.
20 SO ...

21 Q. ALL RIGHT. WELL, AS YOU WERE BEING QUESTIONED ABOUT
22 ABUSE -- HOW ABOUT THE FIRST DAY WHEN YOU TALKED TO
23 DETECTIVE SUTTON? WHEN, IF EVER, DID YOU MENTION THAT DEREK
24 BEAT YOU OR Minor TO DETECTIVE SUTTON?

25 A. I DON'T -- I DON'T BELIEVE I DID.

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1 Q. IT WAS SO UNRELEVANT (PHONICS)?

2 A. NO, MA'AM.

3 Q. OKAY. WELL, DID IT BECOME RELEVANT THE NEXT DAY ON T
4 26TH WHEN YOU WERE INTERVIEWED AGAIN BY DETECTIVE SUTTON?

5 A. I DON'T BELIEVE I DID SAY ANYTHING.

6 Q. OKAY. WELL, LET'S GO FINALLY TO YOUR WRITTEN STATEME
7 WHICH YOU SIGNED, CORRECTED AND GOT A COPY OF, STATE'S
8 EXHIBIT 3. IF YOU'LL JUST POINT OUT TO THE JURY IN THAT
9 SIX-PAGE STATEMENT -- IF YOU'LL JUST POINT OUT TO THE JURY
10 WHERE YOU TALKED ABOUT HOW DEREK DID THE ABUSE AND ABUSED
11 YOU AND YOU WERE AFRAID TO LEAVE.

12 A. I DIDN'T.

13 Q. YOU STILL DIDN'T FIND IT RELEVANT?

14 A. I WASN'T AFRAID TO LEAVE.

15 Q. DEREK WORKED PRETTY LONG HOURS, DIDN'T HE? SIXTY TO
16 EIGHTY HOURS A WEEK?

17 A. NOT ALWAYS.

18 Q. NOT ALWAYS? HE WORKED A LOT OF HOURS, THOUGH, DIDN'T
19 HE?

20 A. NOT REALLY.

21 Q. ISN'T IT TRUE THAT HE NEVER DRANK EXCESSIVELY?

22 A. YES, HE DID.

23 Q. THAT RARELY DID HE EVER DRINK AT ALL?

24 A. HE DRANK A GOOD BIT.

25 Q. OTHER PEOPLE SAW THAT, I GUESS?

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- 1 A. WE WERE ALWAYS AT HOME.
- 2 Q. OH, HE ALWAYS DRANK EXCESSIVELY AT HOME?
- 3 A. JUST LIQUOR AT HOME.
- 4 Q. SO NONE OF THE FAMILY SAW IT? NONE OF HIS FRIENDS SAW
- 5 IT? NONE OF THE NEIGHBORS SAW IT? IT WAS ALL RIGHT THERE
- 6 IN THE HOME?
- 7 A. NO. HE WOULD DRINK WHEN WE WOULD GO TO THEIR HOMES.
- 8 Q. OH, REALLY? WHO? CAN YOU GIVE ME ONE NAME OF ANYBODY
- 9 THAT SAW HIM DRINK EXCESSIVELY?
- 10 A. NOT EXCESSIVELY BECAUSE HE WOULD HAVE TO DRIVE BACK.
- 11 Q. I SEE. NOW, IN FACT, YOU DIDN'T LIKE FEEDING Minor
- 12 OR GIVING HER ANYTHING TO DRINK, DID YOU?
- 13 A. SHE FED HERSELF.
- 14 Q. AND THAT IS WHY SHE WAS SO MALNOURISHED AT THE AUTOPSY;
- 15 ISN'T THAT RIGHT?
- 16 A. NO, MA'AM.
- 17 Q. AND BASICALLY WHAT YOU FIGURED WAS IF YOU DIDN'T FEED
- 18 HER AND YOU DIDN'T GIVE HER ANYTHING TO DRINK, YOU WOULDN'T
- 19 HAVE BATHROOM PROBLEMS BECAUSE IF THERE'S NOTHING GOING IN,
- 20 THERE'S NOTHING GOING OUT, IS THERE?
- 21 A. SHE WAS FED AND GAVE SOMETHING TO DRINK.
- 22 Q. DID IT REALLY SURPRISE YOU THAT Minor HAD POTTY
- 23 PROBLEMS AT YOUR HOUSE BUT NO ONE ELSE'S WHEN SHE WAS AFRAID
- 24 TO GO TO THE BATHROOM?
- 25 A. THAT ONLY HAPPENED AFTER THE FALL.

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6

1 Q. WOULD IT BE SURPRISING IF, WHEN A CHILD GOES INTO A
2 BATHROOM THIS SIZE AND IS PUT IN A BLUE HARNESS AND CHAINED
3 TO AN EYE-BOLT IN THE FLOOR, IS THAT A BIG SURPRISE TO YOU
4 THAT THE CHILD MAY NOT WANT TO GO IN THE BATHROOM BECAUSE
5 THEY MAY END UP SPENDING NINETY PERCENT OF THEIR TIME IN
6 THERE?

7 A. THAT BATHROOM WAS NEVER USED FOR BATHROOM PURPOSES.

8 Q. WELL, WHY WAS THE DOOR MESSED UP?

9 A. WE HAD TRANSFERRED DOORS IN THE HOUSE.

10 Q. BUT, NOW, WAIT A MINUTE. YOU MENTIONED IN YOUR
11 QUESTIONNAIRE YOU MENTIONED THAT SHE HAD GOTTEN INJURIES C
12 HER BACK ---

13 A. YES, MA'AM.

14 Q. --- BECAUSE SHE TRIED TO SLIP OUT FROM UNDER THE DOOR
15 WHY DIDN'T SHE JUST OPEN THE DOOR?

16 A. BECAUSE WE SWAPPED THE LOCKS.

17 Q. WHAT?

18 A. DR. -- WHEN I HAD CALLED DR. MADDOX'S OFFICE, THE NURSE
19 HAD TOLD ME TO ---

20 Q. WHY DID YOU SWAP THE LOCKS IN THE BATHROOM IF YOU
21 WEREN'T LOCKING HER IN THE BATHROOM?

22 A. AFTER THE FALL, SHE WOULD GET UP THROUGH THE NIGHT AND
23 ---

24 Q. SHE GOT UP IN THE NIGHT AND TRIED TO EAT, DIDN'T SHE,
25 MA'AM?

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1 A. NO, MA'AM. WE SEEN HER OUTSIDE A COUPLE OF ---

2 Q. DO YOU DENY THAT YOU TOLD NEIGHBORS THAT SHE WOULD GET
3 UP IN THE NIGHT AND TRY TO EAT AND YOU LOCKED HER IN THE
4 BATHROOM BECAUSE OF THAT?

5 A. NO, MA'AM. SHE WAS NEVER LOCKED IN THE BATHROOM.

6 Q. WELL, WHY WEREN'T THERE LOCKS ANYWHERE ELSE?

7 A. THERE WERE LOCKS.

8 Q. WHY WAS THERE A HOLE OUTSIDE THE DOOR THEN?

9 A. I DON'T KNOW IF DEREK DID THAT.

10 Q. WOULD YOU CARE READING TO THE JURY IN YOUR SIGNED
11 STATEMENT, WHICH YOU GOT A COPY OF THE DAY THAT YOU SIGNED IT
12 -- WOULD YOU CARE TO TALK ABOUT WHAT YOU SAID THAT DAY ABOUT
13 CHAINING HER TO THE FLOOR IN THE BATHROOM? HOW ABOUT
14 STARTING RIGHT HERE? "WE WOULD PUT Minor IN THE HARNESS
15 AND CHAINED THE HARNESS TO THE FLOOR. SHE HAD FIGURED OUT
16 HOW TO UNTIE THE HARNESS FROM THE DOORKNOB. THAT'S WHY WE
17 USED IT AGAIN. SHE SLEPT IN THE FLOOR IN THE HALF-BATH OR
18 ON OUR BEDROOM FLOOR. SHE WOULD DRINK OUT OF THE TOILET.
19 SHE WOULD SAY SHE WAS THIRSTY. I WOULD POUR CLOROX IN THE
20 TOILET, BUT I DON'T THINK SHE GOT TO THE CLOROX." YOU WERE
21 SO DETERMINED THAT SHE DIDN'T HAVE A POTTY ACCIDENT, THAT
22 WHEN THIS POOR FOUR-YEAR-OLD CHILD WANTED A DRINK OF WATER
23 AND TRIED TO DRINK OUT OF THE TOILET, YOU MADE SURE SHE
24 COULDN'T EVEN DO THAT; ISN'T THAT TRUE?
25 A. SHE WASN'T DRINKING OUT OF THAT TOILET.

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6

1 Q. WHY WAS SHE DRINKING OUT OF THE TOILET AT ALL, MA'AM?

2 A. SHE HAD WENT IN THERE ONE TIME AND HAD PUT SOME TOYS
3 THE TOILET.

4 Q. WELL, WERE YOU TELLING THE TRUTH WHEN YOU WROTE THIS,
5 CORRECTED ALL SORTS OF ERRORS ALL THROUGH IT, AND THEN
6 SIGNED IT?

7 A. I DIDN'T WRITE THAT.

8 Q. LET'S TALK ABOUT THAT A MINUTE. ISN'T IT TRUE THE
9 FIRST DAY YOU CAME DOWN ON THE 25TH, THE INVESTIGATORS HAD
10 ALREADY GONE OUT TO THE SCHOOL AND TALKED TO YOUR CHILDREN;
11 ISN'T THAT RIGHT?

12 A. I DON'T KNOW.

13 Q. AND YOUR ONE MISCALCULATION IS YOU HAD CALLED THE
14 SCHOOL AND TOLD THE GUIDANCE COUNSELOR, DON'T LET ANYBODY
15 TALK TO J.C. [SIC]. SO YOU THOUGHT YOU WERE COVERED WITH
16 HIM, DIDN'T YOU?

17 A. I DIDN'T SAY THAT.

18 Q. BUT YOU DIDN'T KNOW THE LAW ALLOWED IN CHILD ABUSE
19 INVESTIGATIONS TO DO IT OVER A PARENT'S OBJECTION, DID YOU?

20 A. I NEVER CALLED THEM AND SAID THAT.

21 Q. SO WHEN THEY WENT OUT AND TALKED TO J.C. [SIC] THAT
22 DAY, YOU HADN'T PREPARED HIM TO LIKE YOU HAD D.W. DID YOU?

23 A. J.C. CAN'T TALK.

24 Q. J.C. CAN'T TALK?

25 A. NO, MA'AM.

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1 Q. MA'AM, YOU'RE TELLING THIS JURY THAT YOUR SIX-YEAR-OLD
2 SON -- DO YOU KNOW THAT EVERYBODY AT THIS TABLE HAS TALKED
3 TO J.C.

4 A. J.C. IS ONLY A YEAR OLD.

5 Q. J.W. YOUR SIX-YEAR-OLD?

6 A. YES, MA'AM.

7 Q. AND YOU KNEW THAT NOBODY WAS GOING TO TALK TO HIM
8 BECAUSE YOU CALLED THE SCHOOL, BUT YOU DIDN'T KNOW THE LAW
9 ALLOWED THAT, DID YOU?

10 A. I DIDN'T ASK THEM NOT TO HAVE LAW ENFORCEMENT TALK TO
11 THEM. NO, MA'AM, I DIDN'T.

12 Q. AND AFTER THAT THEY TOOK EMERGENCY PROTECTIVE CUSTODY
13 OF D.W. AND J.W. THEY TOLD YOU THAT ON THE AFTERNOON OF
14 THE 25TH. AS A MATTER OF FACT, THIS DETECTIVE RIGHT HERE
15 TOLD YOU THAT, DIDN'T SHE?

16 A. NO, MA'AM.

17 Q. YOU WANT THIS JURY TO BELIEVE THAT YOU WERE NEVER TOLD
18 YOUR CHILDREN WERE PUT IN PROTECTIVE CUSTODY BY THIS
19 WITNESS?

20 A. I WAS TOLD THEY WERE BRINGING THEM TO ME SO I WOULD NOT
21 HAVE TO GO TO THE SCHOOL AND PICK THEM UP.

22 Q. AND THEN WHEN YOU WERE TOLD THAT THEY HAD TALKED TO
23 YOUR CHILDREN, INCLUDING J.W. AND THAT DEREK HAD 'FESSED
24 UP ABOUT WHAT WAS HAPPENING IN THIS TORTURE CHAMBER OF A
25 HOUSE, THEN YOU SAID, I DON'T WANT TO TALK ANYMORE; IS THAT

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1 RIGHT?

2 A. NO, MA'AM.

3 Q. AND THEN LATER YOU INITIATED THE CONTACT WITH THE
4 SHERIFF'S DEPARTMENT. IN FACT, THE MIRANDA WARNING READS,
5 "IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR
6 YOU BEFORE ANY QUESTIONING IF YOU WISH." WHEN YOU ASKED F
7 AN ATTORNEY, THEY IMMEDIATELY STOPPED, DIDN'T THEY?

8 A. YES, MA'AM, AT THAT POINT.

9 Q. AND THEN YOU REINITIATED?

10 A. NO. HE TOLD ME TO FIND OUT ABOUT MY CHILDREN, YES,
11 MA'AM.

12 Q. ISN'T IT TRUE, MA'AM, THAT YOU CAME TO HIM AND SAID,
13 WANT TO TALK NOW, AFTER THE SEARCH. HE GAVE YOU A CARD AN
14 TOLD YOU IF YOU WANTED TO TALK TO CALL THE NEXT MORNING, A
15 YOU CAME BACK AND DECIDED TO TALK WITHOUT AN ATTORNEY WHEN
16 YOU WAIVED YOUR RIGHTS THE SECOND TIME AND SIGNED THAT YOU
17 DID NOT WANT ONE?

18 A. NO, MA'AM, THAT'S NOT HOW IT WENT.

19 Q. WELL, MA'AM, IT'S ALL IN THE PAPERWORK.

20 A. NO, MA'AM, NOT THE CONVERSATION ISN'T.

21 Q. YOU SAID THAT YOU THOUGHT THAT Minor HAD LUPUS?

22 A. YES, MA'AM.

23 Q. AND THAT'S BECAUSE YOU ALL WEREN'T TELLING THE DOCTOR
24 THE CORRECT HISTORY AS TO WHAT WAS WRONG WITH CHILD, WERE
25 YOU?

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1 A. NO, MA'AM, THAT'S NOT TRUE.

2 Q. YOU WEREN'T TELLING THEM ABOUT HITTING HER IN THE HEAD?

3 A. I NEVER HIT HER IN THE HEAD.

4 Q. YOU WEREN'T TELLING THEM ABOUT THE ASSAULTS ON HER
5 VAGINAL AREA?

6 A. I DID NOT KNOW THAT HAD HAPPENED.

7 Q. YOU WEREN'T TELLING THEM ABOUT PULLING OUT THE HAIR?

8 A. THAT WAS FROM A ROLL BRUSH. YES, WE DID.

9 Q. YOU WEREN'T TELLING THEM ABOUT ANY OF THE TRUE HISTORY,
10 WERE YOU?

11 A. YES, WE DID.

12 Q. HOW WERE HER TEETH KNOCKED OUT?

13 A. ONE OF THEM ON THE KITCHEN TABLE. AND THE OTHER TIME
14 WHEN SHE RAN INTO A FOOTBALL GAME. SHE WASN'T PLAYING
15 FOOTBALL.

16 Q. SHE RAN INTO A FOOTBALL GAME? AND WHO WERE THE
17 CHILDREN THAT WERE INVOLVED IN THAT?

18 A. SOME -- I DON'T KNOW ALL THE KIDS FROM THE NEIGHBORHOOD
19 BECAUSE THIS HAPPENED LIKE WHEN WE FIRST MOVED THERE.

20 Q. ARE THEY HERE? ANY OF THOSE CHILDREN?

21 A. I DON'T SEE THEM.

22 Q. NO? WELL, I NOTICED IN THE DOCTOR'S REPORT SHE WAS
23 NEVER TAKEN TO THE DOCTOR FOR THAT. A FOUR-YEAR-OLD HAVING
24 HER FRONT TEETH KNOCKED OUT IN A VIOLENT GAME. WHY WAS
25 THAT?

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1 A. BECAUSE IT'S TEETH, AND THE DOCTOR CAN'T DO ANYTHING
2 ABOUT TEETH.

3 Q. BUT THEY CAN DO SOMETHING ABOUT THE COUGH ON J.C.

4 A. YES, MA'AM.

5 Q. NOW, WHEN YOU TOOK Minor INTO THE HOSPITAL IN
6 APRIL, YOU ALL FIRST TOLD THE DOCTORS THAT THE CHILDREN HAD
7 HEADS; ISN'T THAT TRUE? AND THAT'S WHY THEY ADMITTED DREW

8 A. NO, MA'AM. I WAS NOT THERE.

9 Q. BUT THEN WHEN THE DOCTORS SAID, WAIT A MINUTE, SHE
10 WOULDN'T HAVE THIS KIND OF INJURY WITH THAT, THAT'S WHEN YOU
11 ALL KIND OF CHANGED YOUR STORY TO, OH, OKAY. WELL, SHE WAS
12 JUMPING TO A BEAN BAG, AND IT SLID OUT AND HIT THE HEAD.
13 ISN'T THAT THE WAY IT REALLY HAPPENED, MS. CARTER?

14 A. I WASN'T THERE AT THE FIRST. I DON'T KNOW WHAT GOT
15 TOLD. I DON'T KNOW.

16 Q. JUST LIKE IN OCTOBER WHEN YOU WERE CONFRONTED WITH AN
17 INJURY, YOU TELL A STORY ---

18 A. NO, MA'AM.

19 Q. --- ABOUT HOW THE INJURY OCCURRED?

20 A. IF IT WAS ASKED, YES.

21 Q. WELL, I'M JUST CURIOUS. WHEN YOU ALL WENT INTO THE
22 HOSPITAL IN GREENVILLE AND YOUR DAUGHTER WAS FIGHTING FOR
23 HER LIFE, AND YOU KNEW THERE WAS SOME KIND OF HEAD INJURY
24 HER FROM A FALL, YOU NEVER MENTIONED THAT TO THE DOCTORS,
25 DID YOU?

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1 A. I WASN'T THERE AT THAT TIME.

2 Q. IN FACT, WE NEVER HEARD ANYTHING ABOUT A FALL UNTIL
3 AFTER THE AUTOPSY WHEN A SUBDURAL HEMATOMA WAS FOUND, AND
4 THEN YOU HAD THIS MEMORY OF HER FALLING; ISN'T THAT RIGHT?

5 A. NO, MA'AM.

6 Q. WELL, WOULD YOU CARE TO LOOK THROUGH THE GREENVILLE
7 RECORDS AND SHOW ONE TIME IN THE ENTIRE RECORDS WHERE YOU OR
8 YOUR HUSBAND MENTIONED THAT SHE FELL?

9 A. WE DIDN'T KNOW SHE HAD FELL AT THE TIME.

10 Q. IT'S CALLED ADAPTING YOUR TESTIMONY TO THE FACTS AS
11 THEY EVOLVE, ISN'T IT, MA'AM?

12 A. I'M NOT SURE WHAT YOU MEAN BY THAT.

13 Q. WHY DID Minor BEHAVIOR CHANGE SO MUCH, EVEN
14 BEFORE HER HEAD INJURY, ON THIS VIDEO?

15 A. I DON'T BELIEVE HER ATTITUDE OR BEHAVIOR CHANGED ALL
16 THAT MUCH UNTIL REALLY AFTER THE HEAD INJURY.

17 Q. SO YOU DIDN'T NOTICE IN OCTOBER OF '99 WHEN SHE STOOD
18 THERE WITH NO EXPRESSION ON HER FACE IN THE SCHOOL PARKING
19 LOT AND URINATED ON HERSELF AS YOU RIDICULED HER WITH
20 INJURIES ALL OVER HER FACE, YOU DIDN'T NOTICE THE CHANGE IN
21 BEHAVIOR THERE?

22 A. THAT WASN'T INJURIES.

23 Q. DID YOU NOTICE A DIFFERENCE IN HER BEHAVIOR FROM HER
24 FIRST PUMPKIN COSTUME TO THE SECOND ONE WHEN YOU CAME IN THE
25 PICTURE AS SHE STOOD THERE WITH NO EXPRESSION AS SHE HAD TWO

1 NEEDLES POKED THROUGH HER EARS WHILE YOU SAT THERE AND TOLD
2 HER, YOU'RE GOING TO CRY -- DID YOU NOTICE ANY DIFFERENCE
3 EXPRESSION THERE?

4 A. NO, MA'AM.

5 Q. AND YOU'RE TRYING TO TELL THIS JURY THE LAST TIME WE
6 SEE HER ON THE TAPE, WHICH IS APRIL, ABOUT FOUR DAYS BEFORE
7 SHE GOES INTO THE HOSPITAL FOR THE FIRST ONE -- YOU'RE
8 TRYING TO TELL THIS JURY THAT THAT'S A CHILD WHO'S GOING TO
9 GO JUMP ON TRAMPOLINES AND RUN AND PLAY FOOTBALL?

10 A. SHE WASN'T PLAYING FOOTBALL.

11 Q. DID YOU SEE HER ON THE VIDEO AS SHE SAT AT THAT
12 BIRTHDAY PARTY WHILE EVERYBODY ELSE SANG AND DID PRESENTS
13 AND FINALLY HAD THE NERVE TO TURN HER HEAD ONE TIME? DID
14 YOU MISS THAT, MA'AM?

15 A. I DON'T RECALL EXACTLY WHAT HAPPENED.

16 Q. BUT SHE WAS JUST A BALL OF FIRE AT THAT POINT, WASN'T
17 SHE?

18 A. SHE PLAYED A LOT; YES, MA'AM.

19 Q. IF SHE HIT HER HEAD ON A TRAMPOLINE AND GOT A SUBDURAL
20 HEMATOMA, HOW DID SHE GET HOME?

21 A. I DON'T KNOW THAT SHE DID HIT HER HEAD. THAT'S WHAT
22 SON TOLD ME.

23 Q. WELL, IF SHE FELL OUTSIDE AND GOT A SUBDURAL HEMATOMA
24 YOU'VE HEARD THAT'S TREMENDOUS FORCE. IMMEDIATE EFFECT.
25 DID YOU EVER CARRY HER HOME OR DID ANYBODY ELSE?

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1 A. NO, MA'AM. I DID NOT KNOW SHE HAD FELL OFF.

2 Q. DO YOU WANT TO JUST GO AHEAD AND ADMIT TO THE JURY
3 WHATEVER HAPPENED THAT MORNING, OR DO I NEED TO KEEP ON
4 DOING THIS?

5 A. I'VE ALREADY SAID WHAT HAPPENED.

6 Q. AND YOU'RE THE ONLY ONE THAT DOES KNOW WHAT HAPPENED
7 THAT MORNING, DON'T YOU?

8 A. NO, MA'AM.

9 Q. NOW, WHEN SHE STARTED HAVING THIS CONTINUOUS SEIZURE
10 THAT YOU TALKED ABOUT, YOU, OF COURSE, IMMEDIATELY PICKED UP
11 THE PHONE AND CALLED 9-1-1 BECAUSE YOU HAD NOTHING TO HIDE?

12 A. WE HAD TALKED TO DR. LEGARDA ABOUT THAT ON WEDNESDAY.

13 Q. NO, MA'AM. I'M TALKING ABOUT THE DAY THAT SHE DIED
14 WHEN SHE STARTED CONVULSING, AS YOU DESCRIBE IT, IN A
15 CONTINUOUS CONVULSION, AT THAT POINT, WHEN DID YOU PICK UP
16 THE PHONE AND CALL 9-1-1?

17 A. I DIDN'T.

18 Q. BECAUSE YOU HAD TO HAVE TIME TO THINK ABOUT THE STORY;
19 ISN'T THAT RIGHT?

20 A. NO, MA'AM.

21 Q. AND YOU'RE STILL NOT WILLING TO TELL THE TRUTH ABOUT
22 WHAT HAPPENED THAT DAY IN YOUR HOUSE, ARE YOU?

23 A. I TOLD IT.

24 Q. WELL, WHILE THE CHILD WAS CONVULSING, YOU CALLED
25 DEREK'S WORK HOW MANY TIMES?

1 A. SEVERAL TIMES.

2 Q. THIS WAS KIND OF DEJA VU FOR HIM, WASN'T IT, BECAUSE
3 BACK ON APRIL 14TH WITH THE ANDERSON ONE, HE WAS WORKING ALL
4 DAY THAT DAY, TOO, WHEN THIS HAPPENED, WASN'T HE, MA'AM?

5 A. NO, MA'AM.

6 Q. DID YOU NOT HEAR THE PERSON COME IN ---

7 A. YES, MA'AM.

8 Q. --- WHO TESTIFIED FROM THE WORK RECORDS?

9 A. YES, MA'AM.

10 Q. THAT'S AN ERROR IN HIS WORK RECORDS?

11 A. DEREK WOULD LEAVE WORK QUITE OFTEN WITHOUT CLOCKING
12 OUT.

13 Q. WELL, WHY DID YOU BOTHER CALLING? THE CHILD IS
14 CONVULSING. WHY DIDN'T YOU JUST RACE DOWN THERE AND SAY,
15 MEET ME AT THE BACK? HE DOESN'T HAVE TO CHECK OUT. HE DOES
16 THAT ALL THE TIME.

17 A. WE HAD ALREADY SPOKE TO DR. LEGARDA ABOUT IT. AND SHE
18 DIDN'T SEEM TO BE CONCERNED WITH IT.

19 Q. MA'AM, I'M SORRY. BUT YOU SAID THE CHILD THAT DAY WAS
20 CONVULSING AND HAVING A CONTINUOUS -- HOW COULD YOU TALK TO
21 DR. LEGARDA? DID YOU CALL HER THAT DAY?

22 A. WE TOOK HER WEDNESDAY AND TOLD HER ABOUT IT. THAT'S
23 THE REASON WHY SHE WENT ON WEDNESDAY.

24 Q. DID YOU MENTION ANYTHING ABOUT CONTINUOUS CONVULSIONS
25 TO DR. LEGARDA, MA'AM?

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- 1 A. YES. WE TOLD HER ABOUT THE SPELLS SHE HAD HAD.
- 2 Q. NO. YOU TOLD HER SHE HAD A SPELL; ISN'T THAT RIGHT?
- 3 A. YES. SHE HAD SPELLS JUST ABOUT EVERY DAY. THAT'S WHAT
- 4 WE CALLED THEM. WE DID NOT KNOW WHETHER IT WAS SEIZURES OR
- 5 WHAT.
- 6 Q. SO OF COURSE, BEING AS CLOSE AS YOU ARE TO ANDERSON
- 7 HOSPITAL, YOU IMMEDIATELY PUT HER IN THE CAR. OH, WAIT A
- 8 MINUTE. NO, YOU DIDN'T. YOU WENT TO THE MILL, DIDN'T YOU,
- 9 TO PICK UP -- YEAH, THAT'S RIGHT. AND THEN OF COURSE, AFTER
- 10 YOU GOT DEREK, YOU RACED TO THE HOSPITAL. OH, WAIT A
- 11 MINUTE. NO, YOU DIDN'T. YOU WENT BACK BY THE HOUSE, DIDN'T
- 12 YOU?
- 13 A. YES, MA'AM.
- 14 Q. OKAY. AND THEN AFTER YOU WENT BY THE HOUSE, Y'ALL
- 15 LOOKED AT THE OIL A LITTLE WHILE?
- 16 A. I DIDN'T.
- 17 Q. YOU CAN'T BE TOO CAREFUL ABOUT CAR PROBLEMS AT A TIME
- 18 LIKE THAT, CAN YOU?
- 19 A. AT THE TIME, SHE WAS OKAY.
- 20 Q. AND YOU GAVE YOUR WRITTEN STATEMENT TO THE POLICE,
- 21 DIDN'T YOU?
- 22 A. YES, MA'AM.
- 23 Q. DO YOU RECALL TELLING THEM THAT SHE WAS IN CONTINUOUS
- 24 -- HOLD ON ONE MINUTE. IT'S KIND OF HARD TO KEEP YOUR
- 25 STORIES STRAIGHT WHEN YOU'VE TOLD SO MANY, ISN'T IT, MS.

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1 CARTER?

2 A. BUT CONTINUOUS WASN'T LIKE CONSTANTLY GOING.

3 Q. ON THE WAY HOME YOU DECIDED TO TELL A LIE ABOUT TAKIN
4 THE VAN TO GET IT FIXED; IS THAT RIGHT?

5 A. THAT'S WHAT THEY SAID DEREK SAID.

6 Q. NO, MA'AM. IS THAT IN YOUR STATEMENT? WOULD YOU CAR
7 TO LOOK AT IT?

8 A. SHE TOLD ME THAT'S WHAT DEREK HAD SAID.

9 Q. I'M ASKING IS THIS WHAT IS IN YOUR WRITTEN STATEMENT.
10 "ON THE WAY HOME, WE DECIDED TO TELL A LIE ABOUT THE VAN T
11 GET IT FIXED." IS THAT OR IS THAT NOT IN YOUR WRITTEN
12 STATEMENT?

13 A. IT'S IN THERE.

14 Q. "WE FIGURED IF THEY KNEW DEREK WAS AT WORK,
15 AUTOMATICALLY I DONE SOMETHING BECAUSE THAT'S THE WAY IT
16 ALWAYS HAPPENED."

17 A. YES, MA'AM. THAT'S WHAT THEY SAID DEREK SAID.

18 Q. "WE CONTINUED TELLING THE LIE UNTIL NOW."

19 A. THAT'S WHAT THEY SAID DEREK SAID.

20 Q. OH, I'M SORRY. WILL YOU PLEASE TELL THE JURY WHERE I
21 SAYS IN HER THAT THAT'S WHAT DEREK SAID?

22 A. SHE WROTE IT FOR ME. SHE WOULD LEAVE THE ROOM AND CO
23 BACK AND SAY THAT THEY HAD JUST ASKED DEREK.

24 Q. I SEE. DEREK WASN'T THERE, MA'AM, WHEN YOU GAVE THIS
25 WRITTEN STATEMENT. ARE YOU AWARE OF THAT? HE WAS IN JAIL

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1 A. I DID NOT KNOW HE WAS. THEY ACTED AS IF HE WAS.

2 Q. HOW ABOUT THIS ONE? "BY THE TIME I PICKED UP DEREK, I
3 KNEW Minor WAS IN SERIOUS TROUBLE." DO YOU REMEMBER
4 WRITING THAT?

5 A. YES, MA'AM. I DIDN'T WRITE THAT. BUT YES, MA'AM, I DO
6 REMEMBER IT BEING IN THERE.

7 Q. BUT WAIT A MINUTE. YOU JUST TOLD THE JURY SHE WAS OKAY
8 AFTER YOU PICKED UP DEREK. WHICH ONE IS IT, MA'AM? YOU
9 WERE LYING THAT DAY OR YOU LIED TODAY?

10 A. I WAS TALKING ABOUT IT WAS NOT A CONTINUOUS SPELL. IT
11 WAS SEVERAL SPELLS.

12 Q. IT GETS CONFUSING, DOESN'T IT?

13 A. NO, MA'AM.

14 Q. SO ANYWAY, YOU DECIDE TO GO TO THE GREENVILLE HOSPITAL
15 BECAUSE YOU KNOW THE PEOPLE IN THE ANDERSON HOSPITAL ARE
16 ALREADY SUSPICIOUS FROM THE FIRST TIME AROUND; IS THAT
17 RIGHT?

18 A. I DIDN'T KNOW.

19 Q. AND YOU DELIBERATELY HAD DEREK TAKE HER BECAUSE YOU
20 DIDN'T WANT TO ANSWER ANY QUESTIONS ABOUT IT. HE COULD JUST
21 SAY, I DON'T KNOW. I WASN'T THERE.

22 Q. NO, MA'AM.

23 Q. I BELIEVE YOU WENT BACK TO THE VAN STORY AGAIN THIS
24 MORNING. DO YOU HAVE A REPAIR BILL FOR YOUR VAN?

25 A. IT DID NOT GET REPAIRED THAT DAY.

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1 Q. WELL, DO YOU HAVE A REPAIR BILL FROM WHEN IT DID?

2 A. IT DIDN'T.

3 Q. IT DIDN'T? BUT YOU DROVE THE VAN DOWN FOR QUESTIONIN
4 TO THE POLICE STATION. REMEMBER?

5 A. YES, MA'AM.

6 Q. AND YOU TOLD THE JURY THAT YOU AGREED TO HAVE YOUR VA
7 SEARCHED. THEY HAD A SEARCH WARRANT; ISN'T THAT RIGHT?

8 A. YES, MA'AM.

9 Q. AND YOU SAID THAT YOU PUT THE LOCKS ON THE BATHROOM
10 DOOR BECAUSE THE MEDICINE WAS IN THERE. WELL, THIS DOESN'
11 HAVE A MEDICINE CHEST, THOUGH, DOES IT?

12 A. WHAT, THE BATHROOM?

13 Q. THERE IS NO MEDICINE CHEST?

14 A. THERE'S TWO IN THERE.

15 Q. ARE YOU AWARE I'VE BEEN TO THE SCENE?

16 A. YES, MA'AM.

17 Q. AND TO MAKE SURE THAT NOBODY GETS INTO THE MEDICINE
18 CHEST, YOU PUT THREE LOCKS ON THIS DOOR AND THREE LOCKS ON
19 THIS ONE; ISN'T THAT RIGHT?

20 A. NO, MA'AM. THERE WERE THREE ON ONE AND TWO ON ANOTHE

21 Q. JUST OUT OF CURIOSITY, WHY DO YOU SUPPOSE THAT THE
22 DAMAGE IN THE BATHROOM TO THE DOOR WAS NOT TO THE DOOR
23 LEADING TO YOUR BEDROOM, BUT THE ONE THAT LEAD HER AWAY FR
24 YOUR BEDROOM?

25 A. THAT DOOR WAS IN THE BOYS' ROOM.

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1 Q. TOWARD THE NURSERY. SHE KNEW SHE COULDN'T ESCAPE GOING
2 TO YOUR ROOM, COULD SHE?

3 A. SHE WAS NOWHERE TO ESCAPE FROM. SHE WAS NOT IN THE
4 BATHROOM.

5 Q. AND THE THIRD LOCK WAS ADDED ON THE BOTTOM WHEN SHE
6 PUSHED THROUGH, AS YOU SAID IN YOUR QUESTIONNAIRE, WHEN SHE
7 PUSHED UNDER THE DOOR AND FINALLY ESCAPED. AND THAT'S WHEN
8 YOU ALL ADDED THE THIRD LOCKS, THE CHAIN AND THE BOLT, JUST
9 AS YOU SAID IN YOUR WRITTEN STATEMENT; ISN'T THAT TRUE?

10 A. NO, MA'AM.

11 Q. WHY ELSE WOULD SHE HAVE PUSHED OUT FROM UNDER THE DOOR?

12 A. SHE DIDN'T FROM THE BATHROOM -- FROM THE BEDROOM.

13 Q. WELL, THEN WHY DID YOU SAY THAT IN YOUR QUESTIONNAIRE?

14 A. I DID NOT SAY SHE PUSHED OUT OF THE BATHROOM.

15 Q. IT GETS CONFUSING, DOESN'T IT?

16 A. NO, MA'AM.

17 MS. WHITE: YOUR HONOR, MAY I HAVE THE WITNESS STEP
18 DOWN?

19 THE COURT: YES, MA'AM.

20 (WHEREUPON WITNESS STEPPED DOWN FROM THE WITNESS STAND)

21 Q. IF YOU'LL DEMONSTRATE FOR THIS JURY HOW YOU HAD THIS
22 FOUR-YEAR-OLD CHILD STAND IN THE BUCKET OF ICE.

23 A. THIS IS NOT THE BUCKET.

24 Q. OH, THAT WASN'T THE BUCKET?

25 A. UH-UH.

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1 Q. WELL, WHILE WE'RE DOWN HERE, IF YOU'LL DEMONSTRATE FO
2 THIS JURY HOW SHE GOT SCARS ALL OVER HER CHEST AND BACK FR
3 RUNNING INTO ONE OF THESE HEATERS.

4 A. THOSE ARE NOT THE HEATER.

5 Q. OH, THESE ARE THE HEATERS?

6 A. NO.

7 Q. WELL, WHERE DID THE HEATER GO?

8 A. THIS IS THE ONLY ONES WE HAD.

9 Q. WELL, THESE ARE THE ONLY HEATERS THAT WERE IN THE
10 HOUSE.

11 A. YES, MA'AM.

12 Q. SO WHERE'S THE HEATER SHE RAN INTO?

13 A. DEREK SAID HE PUT IT ON THE BACK PORCH.

14 Q. HE PUT IT ON THE BACK PORCH?

15 A. YES, MA'AM.

16 Q. WHY DON'T YOU JUST DEMONSTRATE ON ONE OF THESE HEATER:
17 HOW EXACTLY THIS CHILD RAN INTO THE HEATER AND -- SEVERAL
18 TIMES LIKE THAT. IT MUST HAVE BEEN A REAL TUMBLE.

19 A. I WASN'T IN THERE.

20 Q. YOU WEREN'T IN THERE EITHER? OKAY. SO YOU NEVER
21 REALLY WITNESSED ANY OF THESE, DID YOU? GO AHEAD AND STEP
22 BACK UP.

23 (WHEREUPON WITNESS STEPPED BACK UP TO THE WITNESS
24 STAND)

25 Q. IT MUST HAVE CREATED QUITE A COMMOTION, THOUGH, WHEN

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1 SHE TUMBLED INTO IT? WAS IT LOUD?

2 A. I DID NOT SEE IT, SO I DON'T KNOW.

3 Q. AND WHAT PART OF THAT HEATER HAD PERFECTLY ROUND PARTS
4 ON IT THAT SHE FELL INTO MULTIPLE TIMES?

5 A. I WASN'T IN THERE, SO I DON'T KNOW.

6 Q. YOU ARE NEVER THERE WHEN SOMETHING HAPPENS, ARE YOU,
7 MS. CARTER?

8 A. YES, MA'AM.

9 Q. BUT YET DEREK WORKED SIXTY TO EIGHT HOURS A WEEK?

10 A. NO, MA'AM.

11 Q. DIDN'T HE?

12 A. I'M SORRY. I DIDN'T HEAR YOU.

13 Q. I SAID, BUT DEREK WORKED SIXTY TO EIGHTY HOURS A WEEK.
14 HE WAS THERE ---

15 A. HE DIDN'T WORK THAT MANY HOURS.

16 Q. WHEN YOU WENT DOWN TO THE LAW ENFORCEMENT CENTER ON THE
17 25TH AFTER YOU DID YOUR QUESTIONNAIRE, YOU WERE TOLD TO GO
18 GET LUNCH AND YOU CHOSE NOT TO; ISN'T THAT RIGHT?

19 A. HE ASKED IF WE WANTED ANYTHING. I TOLD HIM NO, THAT I
20 WOULD JUST STAY THERE.

21 Q. BUT YOU CHOSE TO STAY THERE OF YOUR OWN VOLITION. YOU
22 COULD HAVE GONE IF YOU WANTED TO?

23 A. TO GET SOMETHING TO EAT AND THEN COME BACK, HE SAID.

24 Q. NOW, YOU HAD J.C. AT YOUR BROTHER'S HOUSE OR
25 SOMETHING, DIDN'T YOU? THE BABY? THE OTHER TWO WERE IN

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1 SCHOOL?

2 A. NO, MA'AM.

3 Q. WHERE WAS HE?

4 A. HE WAS IN SANDY SPRINGS.

5 Q. OKAY. HOW EXACTLY WOULD THE SHERIFF'S DEPARTMENT, IN
6 PARTICULAR JAMI BROTHERS, HAVE KNOWN WHERE TO GO GET J.C.
7 THAT DAY IF SHE HADN'T TOLD YOU THEY WERE TAKING EMERGENCY
8 PROTECTIVE CUSTODY AND YOU TOLD HER WHERE HE WAS?

9 A. SHE SAID THEY WERE BRINGING THEM TO ME, SO THEY WOULD
10 GO GET THEM.

11 Q. THERE'S NO WAY SHE WOULD HAVE KNOWN WHERE J.C. WAS,
12 WOULD SHE?

13 A. NO, MA'AM. YES, MA'AM. I HAD TOLD JOHN CARPENTER THAT
14 WE HAD TO TAKE HIM TO SANDY SPRING FIRST.

15 Q. D.W. THE ONE THAT TESTIFIED YESTERDAY, HOW IS HE
16 RELATED TO DEREK?

17 A. DEREK IS HIS STEPFATHER.

18 Q. SO BEFORE YOU ALL GOT MARRIED OR DATED OR WHATEVER
19 WHENEVER THAT WAS, HAD HE KNOWN DEREK?

20 A. NO, MA'AM.

21 Q. NO? BUT HE IS RELATED TO YOU. YOU'RE HIS MOTHER;
22 RIGHT?

23 A. YES, MA'AM.

24 Q. ALL THESE HURT FEET AND VAGINAL AREA PROBLEMS AND ALL
25 -- OF COURSE, WHEN HER TOES WERE ALL MESSED UP LIKE THAT,

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1 YOU ALL IMMEDIATELY TOOK HER TO A DOCTOR OR WHAT THAT I
2 DON' T HAVE A RECORD OF?

3 A. NO, MA'AM.

4 Q. NO? YOU SAID THAT Minor NEVER HAD A DIAPER ON FOR
5 A WEEK?

6 A. NO, MA'AM.

7 Q. PROBABLY JUST SMELLED LIKE IT. THAT'S WHY THE KID SAID
8 SHE' D HAD IT ON FOR A WEEK; IS THAT IT?

9 A. ANYTIME YOU MESS WITH A DIAPER, IT WOULD SMELL.

10 Q. BUT IF YOU DON'T FEED A CHILD OR GIVE THEM ANYTHING TO
11 DRINK, YOU CAN KEEP A DIAPER ON A LITTLE LONGER, CAN' T YOU?

12 A. NO, MA'AM. THEY WON'T HOLD THAT MUCH.

13 Q. HOW DO YOU KNOW?

14 A. BECAUSE I'VE SPRAYED HER OFF WHERE SHE HAD HER PULL-UP
15 ON, AND IT WAS PRETTY WET.

16 Q. DO YOU REMEMBER IN THE VIDEO SCENE AS YOU FILMED

17 Minor "THIS IS Minor THIS IS THE CHILD THAT DON'T
18 EXIST." DO YOU REMEMBER THAT?

19 A. THAT WASN'T THE WHOLE CONVERSATION.

20 Q. WELL, MA'AM, ALL THE TAPES ARE AVAILABLE. IF YOU CARE
21 TO INTRODUCE ANYTHING ELSE, THEY'RE AVAILABLE IF YOU THINK
22 IT'S BEEN TAKEN OUT OF CONTEXT.

23 DO YOU REMEMBER SAYING, "THERE'S MISS Minor AGAIN."

24 THIS IS AS SHE URINATED ON HERSELF IN THE PARKING LOT, I

25 BELIEVE. "SHE'S SCARED TO TALK. WE FINALLY GOT THROUGH TO

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1 HER. IT MIGHT BE BEST ... " -- "WE FINALLY GOT THROUGH TO
2 HER. IT MIGHT BE BEST IF SHE JUST BARELY LIVES AND
3 BREATHE."

4 A. THAT WASN'T THE WHOLE CONVERSATION.

5 Q. THE CHILD THAT DOESN'T EXIST.

6 I'M GOING TO GIVE YOU ONE MORE OPPORTUNITY TO LOOK AT
7 THESE JURORS. PLEASE TELL US ALL HOW YOU KILLED Minor
8 CARTER.

9 A. I DIDN'T.

10 Q. PLEASE TELL US WHAT YOU DID TO INFLECT THAT SUBDURAL
11 HEMATOMA.

12 A. I DIDN'T.

13 Q. I'VE GOT NO FURTHER QUESTIONS.

14 THE COURT: REDIRECT?

15 MR. GAMBLE: NO, YOUR HONOR.

16 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.

17 MR. GAMBLE: THE DEFENSE RESTS, YOUR HONOR.

18 THE COURT: THE DEFENSE RESTS. WILL THERE BE ANY
19 REPLY, OR DO YOU NEED TIME TO CONSIDER THAT ISSUE,
20 SOLICITOR?

21 MS. WHITE: I DON'T THINK WE NEED ANY REPLY, YOUR
22 HONOR.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THAT
24 WILL CONCLUDE ALL OF THE EVIDENCE IN THE CASE. ALL THAT
25 REMAINS NOW ARE THE FINAL ARGUMENTS AND MY CHARGE TO YOU C

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1 THE LAW. THERE ARE VARIOUS LEGAL ISSUES THAT I HAVE TO
2 ADDRESS WITH THE ATTORNEYS IN ADDITION TO WORKING WITH THEM
3 IN PREPARING THE CHARGE THAT WILL BE GIVEN TO YOU. THAT
4 TAKES A GOOD BIT OF TIME. SO I'M GOING TO GIVE YOU AN
5 EXTENDED LUNCH BREAK. SO WHEN YOU COME BACK, HOPEFULLY,
6 WE'LL BE IN A POSITION TO START AT THAT TIME.

7 I'M GOING TO ASK YOU TO BE BACK IN YOUR JURY ROOM AT
8 TWO O'CLOCK. BE BACK IN YOUR JURY ROOM AT TWO O'CLOCK. DO
9 NOT, OF COURSE, DISCUSS THE CASE AMONG YOURSELVES OR WITH
10 ANYONE ELSE. AND AS I HAVE INSTRUCTED THROUGHOUT, DO NOT
11 EXPOSE YOURSELF TO ANY MEDIA COVERAGE ABOUT THE CASE. SEE
12 YOU BACK AT TWO O'CLOCK, AND WE'LL PROCEED AT THAT TIME.
13 THANK YOU.

14 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:12 P.M.)

15 THE COURT: THE JURY HAS BEEN EXCUSED. SAME
16 PROCEDURE WE'VE USED FROM THE BEGINNING OF THE TRIAL. WE'LL
17 REMAIN IN THE COURTROOM, THOSE IN THE AUDIENCE. YOU'LL
18 RECEIVE WORD ONCE THE JURY HAS EXITED THE COURTHOUSE FROM A
19 BAILIFF OR DEPUTY. AT THAT POINT, YOU'LL BE FREE TO LEAVE.
20 THANK YOU FOR YOUR UNDERSTANDING.

21 AT THIS TIME, I'D LIKE TO GIVE AN OPPORTUNITY TO PUT
22 ANY ADDITIONAL MOTIONS ON THE RECORD.

23 MR. GAMBLE: RENEW THE SAME MOTION I MADE AT THE
24 CLOSE OF THE STATE'S CASE, YOUR HONOR. SAME GROUNDS.

25 THE COURT: VERY GOOD, SIR. SAME RULING.

1 COUNSEL, WHAT I'D LIKE TO DO IS MEET WITH THE ATTORNEY.
2 AT ONE THIRTY, DISCUSS THE CHARGE, THE FORM OF THE VERDICT.
3 IF YOU HAVE ANY REQUESTS FOR CHARGE, I'LL BE GLAD TO EITHER
4 RECEIVE THEM NOW OR DISCUSS THEM AT THAT POINT WITH YOU. I
5 KNOW THERE'S SEVERAL ISSUES INVOLVING THE CHARGE THAT WE
6 NEED TO REVIEW IN ADVANCE OF THE JURY'S RETURN. I THINK IF
7 WE MEET AT ONE THIRTY, WE CAN ACCOMPLISH THAT. WE WILL THEN
8 GO ON THE RECORD AND DISCUSS WHAT WAS HELD AND TRANSPIRED AT
9 THE CHARGE CONFERENCE. ANY OBJECTIONS OR EXCEPTIONS WILL BE
10 PLACED ON THE RECORD. NO ONE'S RIGHTS WILL BE PREJUDICED AS
11 A RESULT OF THE CHARGE CONFERENCE. AND ALL THAT WILL BE
12 FULLY PLACED ON THE RECORD PRIOR TO ARGUMENT AND CHARGE. IS
13 THAT SATISFACTORY WITH THE STATE?

14 MS. WHITE: YES, SIR. I DON'T THINK WE'RE GOING TO
15 HAVE ANY REQUESTS TO CHARGE, YOUR HONOR, OTHER THAN THE
16 STATUTES.

17 THE COURT: IS THAT A SATISFACTORY WAY TO PROCEED
18 FOR THE DEFENDANT?

19 MR. GAMBLE: PERFECTLY, YOUR HONOR.

20 THE COURT: I DO WANT COUNSEL TO BE THINKING ABOUT
21 THE CHARGE IN TERMS OF THE JURY'S CONSIDERATION OF THE
22 STATEMENT AND THE VOLUNTARINESS OF IT GIVEN THE LEGAL ISSUE
23 THAT'S GENERALLY A MATTER OF LAW THAT'S SURFACED AND HOW TO
24 PRESENT THAT AS A FACTUAL DISPUTE FOR THE JURY'S RESOLUTION
25 AND THEIR ULTIMATE CONSIDERATION OF THE OCTOBER 26TH

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1 STATEMENT.

2 I'D ALSO ASK THE ATTORNEYS TO BE CONSIDERING THE BEST
3 WAY TO CHARGE THE JURY ON THEIR CONSIDERATION OF THE TWO
4 SEPARATE INDICTMENTS. FOR EXAMPLE, THE INDICTMENT THAT
5 CHARGES HOMICIDE BY CHILD ABUSE, IT'S MY INITIAL THOUGHT
6 THAT I WOULD SPECIFICALLY INSTRUCT THE JURY THAT THEY MAY
7 NOT, FOR PURPOSES OF THE HOMICIDE BY CHILD ABUSE, CONSIDER
8 ANY INJURY, IF THEY FIND SUCH, WHICH WOULD NOT CAUSE OR LEAD
9 TO THE CAUSE OF DEATH. I WANT TO BE VERY CLEAR TO THE JURY
10 THAT THE CHARGES ARE SEPARATE AND THE VARIETY OF INJURIES
11 ALLEGED BY THE STATE CANNOT BE LUMPED TOGETHER. AND THOSE
12 WHICH CANNOT LEAD TO DEATH CANNOT BE GIVEN THE JURY'S
13 CONSIDERATION IN THE HOMICIDE INDICTMENT. THOSE ARE JUST
14 SOME THOUGHTS I'VE BEEN PONDERING. AND I'D LIKE THE BENEFIT
15 OF COUNSEL'S SUGGESTIONS IN THAT REGARD.

16 MS. WHITE: YOUR HONOR, I THINK THE OTHER THING
17 WE'RE GOING TO HAVE TO DO -- THERE ARE DIFFERENT SENTENCES.
18 I'VE GOT THE CHARGE. UNDER BOTH STATUTES THERE ARE
19 DIFFERENT SENTENCES DEPENDING ON WHICH STATUTE. SO I
20 BELIEVE WE'RE GOING TO HAVE TO BREAK THE SENTENCING SHEET
21 DOWN SO THAT WE KNOW WHETHER THEY GO WITH THE FIRST PART OR
22 THE SECOND PART IN BOTH STATUTES.

23 THE COURT: I'VE PREPARED A VERDICT FORM. CHARGE
24 ONE, INFLECTING OR ALLOWING INFLECTION OF GREAT BODILY
25 INJURY. WE, THE JURY, FIND THE DEFENDANT GUILTY OF

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1 INFLECTING GREAT BODILY INJURY UPON A CHILD. NUMBER TWO,
2 GUILTY OF ALLOWING ANOTHER PERSON TO INFLECT GREAT BODILY
3 INJURY UPON A CHILD. AND NOT GUILTY. THAT DOVETAILS THE
4 STATUTORY LANGUAGE WHICH TRIGGERS THE VARIOUS SENTENCING
5 SCHEMES. I DID THE SAME THING IN THE HOMICIDE BY CHILD
6 ABUSE. DIRECTLY CAUSING THE DEATH OF A CHILD UNDER THE AG
7 OF ELEVEN, ET CETERA, OR GUILTY OF KNOWINGLY AIDING OR
8 ABETTING ANOTHER PERSON. AND I'LL BE GLAD FOR COUNSEL TO
9 REVIEW THAT. BUT I'M -- THOSE ARE ISSUES I THINK WE NEED
10 DISCUSS. AND I'D RATHER ERR ON THE SIDE OF CAUTION AND ME
11 AND NOT HAVE A LOT OF CONTESTED ISSUES. BUT JUST IN CASE
12 THERE IS, GIVE US TIME TO DO SO. I'LL SEE COUNSEL AT ONE
13 THIRTY. THANK YOU VERY MUCH. WE'RE IN RECESS.

14 (WHEREUPON COURT STOOD AT RECESS)

15 THE COURT: IS THE STATE READY TO PROCEED?

16 MS. WHITE: THE STATE'S READY.

17 THE COURT: IS THE DEFENDANT READY TO PROCEED?

18 MR. GAMBLE: THE DEFENDANT IS READY, YOUR HONOR.

19 THE COURT: I WANT THE RECORD TO REFLECT WE HAD A
20 CHARGE CONFERENCE. WE HAVE REVIEWED AND AGREED UPON THE
21 FORM OF THE VERDICT. WE HAVE REVIEWED THE CHARGE. AND I
22 BELIEVE WE'RE IN AGREEMENT AS TO THE CHARGE. BUT OF COURSE
23 I'LL GIVE AN OPPORTUNITY AT THE CONCLUSION BEFORE
24 COMMENCEMENT OF DELIBERATION FOR EACH SIDE TO NOTE ANY
25 OBJECTIONS OR EXCEPTIONS.

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1 AND I WILL NOTIFY THE JURY JUST APPROXIMATELY HOW LONG
2 COUNSEL INTENDS TO ARGUE. I HAVE FOUND THAT JURIES LIKE TO
3 HAVE A HEADS-UP ON WHAT'S EXPECTED IN TERMS OF LENGTH OF
4 ARGUMENT AS WELL AS LENGTH OF THE CHARGE.

5 BRING THE JURY, PLEASE.

6 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:03 P.M.)

7 THE COURT: LADIES AND GENTLEMEN, WE'RE NOW READY TO
8 PROCEED TO THE FINAL STAGE, THAT BEING THE ARGUMENTS OF THE
9 ATTORNEYS AND MY CHARGE TO YOU ON THE LAW. HERE'S THE
10 FORMAT WE'LL FOLLOW. THE STATE THROUGH SOLICITOR WHITE WILL
11 OPEN ON THE LAW. THEN WE'LL HEAR THE ARGUMENT AND ONLY
12 ARGUMENT FROM THE DEFENDANT BY MR. GAMBLE. AFTER THAT, THE
13 LAW PROVIDES THAT THE STATE HAS AN OPPORTUNITY TO CLOSE IN
14 FINAL ARGUMENTS. SO WE'LL HEAR A FIRST ARGUMENT FROM
15 SOLICITOR WHITE AND A FINAL ARGUMENT FROM SOLICITOR WHITE.
16 AND IN BETWEEN WE'LL HEAR THE ARGUMENT OF MR. GAMBLE ON
17 BEHALF OF THE DEFENDANT.

18 IN SPEAKING WITH THE ATTORNEYS, I ANTICIPATE THE
19 ARGUMENTS WILL BE SOMEWHERE IN THE NEIGHBORHOOD OF ABOUT
20 THIRTY MINUTES, TWENTY TO THIRTY MINUTES TOTAL. MY CHARGE
21 ON THE LAW WILL BE ABOUT TWENTY MINUTES. SO I'M HOPEFUL
22 THAT MAYBE AN HOUR FROM NOW, MAYBE AN HOUR AND FIFTEEN OR
23 TWENTY MINUTES, THAT PROCESS WILL ALL BE CONCLUDED AND
24 YOU'LL BE BACK IN THE JURY ROOM BEGINNING YOUR
25 DELIBERATIONS.

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CLOSING ARGUMENTS - MS. WHITE

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1 IF AFTER AN ARGUMENT OR BOTH ARGUMENTS, WE NEED TO TAK
2 A BREAK, WE'LL CERTAINLY DO SO. AND I'LL CHECK WITH YOU AT
3 THAT TIME. THANK YOU FOR YOUR KIND PATIENCE AND
4 ATTENTIVENESS.

5 SOLICITOR, YOU MAY OPEN.

6 MS. WHITE: AT THIS TIME I'D LIKE TO THANK YOU FOR
7 YOUR CLOSE ATTENTION THROUGHOUT THE WEEK, AND CERTAINLY THE
8 VICTIM'S FAMILY WOULD ALSO LIKE TO THANK YOU.

9 I'M GOING TO TALK TO YOU FOR A FEW MINUTES ABOUT THE
10 LAW IN THIS CASE. THEN I'LL SIT DOWN, AS THE JUDGE SAID,
11 AND THE DEFENSE ATTORNEY WILL TALK TO YOU. THEN I'LL BE
12 BACK TO TALK TO YOU ABOUT THE FACTS. SO LET'S FIRST TALK
13 ABOUT THE LAW.

14 THE STATE HAS THE BURDEN OF PROOF IN THIS CASE AS IN
15 EVERY CRIMINAL CASE. AND THE BURDEN OF PROOF IS BEYOND A
16 REASONABLE DOUBT. AND I'D LIKE TO EMPHASIZE ONE WORD.
17 REASONABLE. IT IS NOT ALL. IT IS NOT ONE HUNDRED PERCENT.
18 IT IS BEYONDA REASONABLE DOUBT. IN OTHER WORDS, IS IT
19 REASONABLE TO BELIEVE THAT THIS DEFENDANT COMMITTED HOMICIDE
20 BY CHILD ABUSE AND GREAT BODILY INJURY TO A CHILD? COMMON
21 SENSE IS WHAT YOU NEED TO USE. A LOT OF YOU HAVE CHILDREN,
22 NIECES, NEPHEWS, NEIGHBORHOOD KIDS. WHATEVER. YOU'VE BEEN
23 AROUND THEM. YOU SEE WHAT THEY DO. USE YOUR COMMON SENSE.
24 AND AGAIN, THE KEY IS WHEN YOU GET TO THE POINT WHERE YOU
25 VOTE, IS IT REASONABLE TO BELIEVE THAT THIS DEFENDANT

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CLOSING ARGUMENTS - MS. WHITE

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1 COMMITTED THESE CRIMES?

2 THE DEFENDANT IS CHARGED WITH TWO COUNTS. NOW, LET'S
3 START WITH THE HOMICIDE BY CHILD ABUSE. EVERY CRIME IN
4 SOUTH CAROLINA IS -- CONSISTS OF SEVERAL DIFFERENT ELEMENTS.
5 THE STATE MUST PROVE EACH ELEMENT BEYOND A REASONABLE DOUBT.
6 SO LET'S START WITH THE ELEMENTS OF HOMICIDE BY CHILD ABUSE.
7 THE STATE HAS GOT TO PROVE THAT THE DEFENDANT CAUSED THE
8 DEATH OF A CHILD UNDER ELEVEN WHILE COMMITTING -- I'M JUST
9 GOING TO PUT -- CHILD ABUSE -- AND THIS IS IMPORTANT -- OR
10 NEGLECT, AND THE DEATH OCCURS UNDER CIRCUMSTANCES
11 MANIFESTING EXTREME INDIFFERENCE, EXTREME INDIFFERENCE, TO
12 HUMAN LIFE. THOSE ARE THE ELEMENTS THAT THE STATE MUST
13 PROVE. SO IF YOU FIND THAT IT IS REASONABLE TO BELIEVE THAT
14 THE DEFENDANT CAUSED THE DEATH OF A CHILD UNDER THE AGE OF
15 ELEVEN WHILE COMMITTING CHILD ABUSE OR NEGLECT UNDER
16 CIRCUMSTANCES MANIFESTING EXTREME INDIFFERENCE TO HUMAN
17 LIFE, THEN THE DEFENDANT WOULD BE GUILTY OF HOMICIDE BY
18 CHILD ABUSE.

19 NOW, LET'S DEFINE A FEW OF THESE THINGS. AND THIS IS
20 SIMPLY THE STATUTE THAT I'M READING. THE JUDGE IS GOING TO
21 READ YOU THE SAME STATUTE. "CHILD ABUSE OR NEGLECT," -- AND
22 THIS IS VERY IMPORTANT -- "MEANS AN ACT OR OMISSION," AN ACT
23 OR OMISSION, "BY ANY PERSON WHICH CAUSES HARM TO THE CHILD'S
24 PHYSICAL HEALTH OR WELFARE." IN OTHER WORDS, IF SOMEONE
25 LIVES WITH ANOTHER PERSON AND THEY SEE THIS OTHER PERSON

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CLOSING ARGUMENTS - MS. WHITE

6

1 COMMITTING ABUSE ON A CHILD REPEATEDLY AND THEY DO NOTHING
2 ABOUT IT, THEN THAT WOULD BE CONSIDERED AN OMISSION BY A
3 PERSON WHICH CAUSES HARM TO THE CHILD'S PHYSICAL HEALTH OR
4 WELFARE. SO JUST REMEMBER, THE IMPORTANT THING HERE, ACT (C
5 OMISSION.

6 HARM. "HARM TO A CHILD'S HEALTH OR WELFARE OCCURS WHEN
7 A PERSON INFLECTS OR ALLOWS TO BE INFLECTED UP ON THE CHILD
8 PHYSICAL INJURY INCLUDING INJURIES SUSTAINED AS A RESULT OF
9 ACCEPTED CORPORAL PUNISHMENT." SO AGAIN, THAT'S WHAT WE'RE
10 LOOKING AT ON THE HOMICIDE BY CHILD ABUSE.

11 NOW, YOU'RE GOING TO HAVE A CHOICE. I'M GOING TO SHOW
12 YOU THE CHOICE. YOU'LL HAVE -- THIS WILL BE YOUR SENTENCING
13 SHEET. THE FOREMAN WILL SIGN THE FIRST CHARGE. IT SAYS,
14 "INFLECTION OR ALLOWING INFLECTION OF GREAT BODILY HARM."
15 THE SECOND ONE IS HOMICIDE BY CHILD ABUSE. WE'RE TALKING
16 ABOUT THE SECOND ONE HERE. "WE, THE JURY, FIND THE
17 DEFENDANT GUILTY OF DIRECTLY CAUSING THE DEATH OF A CHILD
18 UNDER THE AGE OF ELEVEN WHILE COMMITTING ABUSE OR NEGLECT,
19 AND THE DEATH OCCURRED UNDER CIRCUMSTANCES MANIFESTING
20 EXTREME INDIFFERENCE TO HUMAN LIFE." IF YOU FIND EITHER SHE
21 STRUCK THE FATAL BLOW OR HER NEGLECT ALLOWED THAT BLOW TO BE
22 STRUCK, THEN SHE WOULD BE GUILTY OF THIS PORTION.

23 NOW, THERE IS A SECOND CHOICE UNDER THE HOMICIDE BY
24 CHILD ABUSE. AND CERTAINLY, THE STATE STRONGLY MAINTAINS
25 THE FIRST ONE APPLIES TO HER BECAUSE SHE STRUCK THE FATAL

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CLOSING ARGUMENTS - MS. WHITE

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1 BLOW. AND CERTAINLY, IF SHE DIDN'T, HER NEGLIGENCE CAUSED THE
2 FATAL BLOW BECAUSE SHE WAS NEGLIGENCEFUL.

3 BUT THE SECOND PART IS YOU'RE, "GUILTY OF KNOWINGLY
4 AIDING OR ABETTING ANOTHER PERSON TO COMMIT CHILD ABUSE OR
5 NEGLIGENCE, AND THE CHILD ABUSE OR NEGLIGENCE RESULTED IN THE
6 DEATH OF A CHILD UNDER THE AGE OF ELEVEN." IT'S CALLED A
7 LESSER PORTION OF THE STATUTE. BUT AGAIN, SHE IS CERTAINLY
8 GUILTY OF COMMITTING THE ABUSE OR NEGLIGENCE THAT CAUSED THE
9 INJURY. MORE THAN ONE PERSON CAN BE GUILTY OF THE SAME
10 DEATH OF A CHILD. THE PERSON WHO ALLOWS IT TO HAPPEN, IS
11 NEGLIGENCEFUL, AND THE PERSON WHO INFLECTS THE BLOW. BOTH
12 WOULD BE GUILTY UNDER THIS STATUTE OF THE TOP ONE, CAUSING
13 THE DEATH OF A CHILD UNDER ELEVEN WHILE COMMITTING ABUSE OR
14 NEGLIGENCE. MORE THAN ONE PERSON ON THE SAME CHILD CAN BE
15 GUILTY OF THIS TOP ONE RIGHT HERE.

16 ALL RIGHT. NOW, LET'S GO TO THE SECOND ONE. THE
17 SECOND ONE -- AND AGAIN, THIS IS THE STATUTE OR LAW. CHILD
18 ABUSE FELONY. AND AGAIN, WE HAVE ELEMENTS. WE'VE GOT TO
19 PROVE THAT THE DEFENDANT, AGAIN, INFLECTED GREAT BODILY
20 INJURY UPON A CHILD. THOSE ARE THE ELEMENTS. THE DEFENDANT
21 INFLECTED GREAT BODILY INJURY UPON A CHILD. FOR THE
22 PURPOSES OF THIS SECTION, GREAT BODILY INJURY MEANS, "BODILY
23 INJURY WHICH CREATES A SUBSTANTIAL RISK OF DEATH OR WHICH
24 CAUSES SERIOUS OR PERMANENT DISFIGUREMENT OR PROTRACTED LOSS
25 OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER OR

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6

1 ORGAN." NOW, REMEMBER WHAT DR. WOODARD SAID. HE SAID, YES
2 SEVERAL OF THESE INJURIES FELL WITHIN THIS DEFINITION. SKI
3 IS THE LARGEST ORGAN OF THE BODY. REMEMBER THE VAGINAL
4 INJURIES, THE CIGARETTE BURNS. THE THINGS THAT WOULD NOT
5 RISE TO THE LEVEL OF KILLING A CHILD, BUT WOULD BE GREAT
6 BODILY INJURY CAUSING SERIOUS OR PERMANENT DISFIGUREMENT.

7 YOU WILL ALSO HAVE TWO CHOICES UNDER THIS. ONE IS
8 GUILTY OF INFLICTING GREAT BODILY INJURY UPON THE CHILD.
9 AND THE SECOND ONE IS GUILTY OF ALLOWING ANOTHER PERSON TO
10 INFLECT GREAT BODILY INJURY UPON THE CHILD. AND CERTAINLY,
11 SHE INFLICTED AND ALLOWED.

12 SO THOSE ARE THE STATUTES. THE JUDGE IS GOING TO TELL
13 YOU THAT YOU MUST FIND THAT HER BEHAVIOR WAS WILLFUL. IN
14 OTHER WORDS, SHE KNEW WHAT SHE WAS DOING. SHE WILLFULLY DI
15 THE ACT. YOU DON'T HAVE TO INTEND TO KILL. YOU DON'T HAVE
16 TO INTENT TO MAIM. BUT YOU HAVE TO WILLFULLY DO THE ACT
17 THAT CAUSES THAT. IN OTHER WORDS, SOMEBODY CAN'T TAKE MY
18 HAND, AND WHEN I'M NOT REALIZING WHAT'S HAPPENING, HIT IT
19 AGAINST SOMEBODY. I HAVE TO WILLFULLY MANEUVER MY HAND OR
20 WHATEVER THE OBJECT WAS.

21 NOW, ONE MORE THING ABOUT THE LAW THAT I'M GOING TO
22 TALK TO YOU ABOUT. AND YOU HEARD A LITTLE BIT ABOUT THE
23 DEFENDANT CAME IN ON THE 25TH AND TALKED. WHEN SHE WAS TOLD
24 THAT HER HUSBAND HAD DISCLOSED THINGS TO THE POLICE, SHE
25 ASKED FOR AN ATTORNEY. AND THEN LATER, SHE CALLED OR TALKED

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1 TO THE LAW ENFORCEMENT PEOPLE AND SAID, I WANT TO TALK. THE
2 MIRANDA FORM, WHICH YOU WILL HAVE, SAYS, "IF YOU CANNOT
3 AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY
4 QUESTIONING IF YOU WISH." BEFORE ANY QUESTIONING. ONCE SHE
5 ASKED FOR AN ATTORNEY, THEY STOPPED TALKING TO HER. THAT'S
6 THE LAW. YOU'RE NOT ALLOWED TO TALK TO THE PERSON ANYMORE
7 ONCE THEY ASK FOR AN ATTORNEY. NOW, THERE IS ABSOLUTELY NO
8 OBLIGATION TO GO GET AN ATTORNEY FOR SOMEBODY AT THAT POINT.
9 THE OBLIGATION IS TO STOP TALKING TO THEM, AND THAT'S
10 EXACTLY WHAT WAS DONE.

11 THE LAW, WHICH THE JUDGE WILL READ TO YOU, SAYS, "AN
12 ACCUSED, HAVING EXPRESSED HIS DESIRE TO DEAL WITH THE POLICE
13 ONLY THROUGH COUNSEL IS NOT SUBJECT TO FURTHER INTERROGATION
14 BY THE AUTHORITIES UNTIL COUNSEL HAS BEEN MADE AVAILABLE TO
15 HIM UNLESS THE ACCUSED HIMSELF INITIATES FURTHER
16 COMMUNICATION EXCHANGES OR CONVERSATIONS WITH THE POLICE."
17 SO IF THEY CUT OFF ALL TALKING AND THE DEFENDANT
18 REINITIATES, THERE IS NO NEED TO GET AN ATTORNEY. YOU WOULD
19 NEVER HAVE HEARD OF THE STATEMENT IF IT VIOLATED THE LAW OR
20 WAS A MIRANDA VIOLATION.

21 I'LL BE BACK TO TALK TO YOU AFTER THE DEFENSE ABOUT THE
22 FACTS IN THE CASE.

23 THE COURT: THANK YOU, MA'AM.

24 MR. GAMBLE?

25 MR. GAMBLE: MAY IT PLEASE THE COURT, YOUR HONOR?

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CLOSING ARGUMENTS - MR. GAMBLE

1 THE COURT: YES, SIR.

2 MR. GAMBLE: IN 1999, MAY, MICHELE CARTER MADE A
3 DECISION THAT GOT HER HERE TODAY. SHE MARRIED DEREK CARTE
4 WHOM SHE MET IN MAY. SHE MARRIED HIM IN JUNE OF 1999. SH
5 IMMEDIATELY FOUND OUT SHE WAS PREGNANT AND WAS PREGNANT
6 UNTIL SHE DELIVERED ON FEBRUARY THE 15TH OF 2000.

7 NOW, THE STATE PUT FORTH A THEORY DURING THE
8 QUESTIONING OF MICHELE CARTER THAT I FIND TO BE SOMEWHAT
9 INTERESTING. SHE SAID THAT MICHELE CARTER HATED Minor
10 BECAUSE Minor LOOKED LIKE ANGIE, THE PRIOR WIFE. IT'S
11 INTERESTING TO NOTE THAT MICHELE CARTER NEVER SAW ANGIE, T
12 PRIOR WIFE. NEVER MET HER. DIDN'T KNOW HER PERSONALLY.

13 ANGIE HAD DIED OF LUPUS SOMETIME BEFORE THIS. BUT
14 WOULDN'T IT BE INTERESTING IF YOU TURNED THAT AROUND THE
15 OTHER WAY AND DEREK CARTER DIDN'T LIKE SEEING HIS DEAD WIF
16 IN THE HOUSE ALL THE TIME BECAUSE HE MISSED HER. HE TOOK
17 OUT, THEN, ON THE MINOR CHILD, Minor WHO LOOKED LIKE
18 HER MOTHER. HE DRANK. HE BECAME ABUSIVE. HE DID THINGS
19 THE CHILD. HE IS THE FORCE YOU SAW IN THE PICTURES WITH H
20 ARM THAT BIG, THE ONE WITH WHERE THE TATTOO WAS. REMEMBER
21 IT WAS A BIG ARM. THAT IS -- I DOUBT SHE WEIGHS EIGHTY-NI
22 POUNDS SOAKING WET, MY CLIENT, MICHELE CARTER. BUT DEREK
23 BIG AND WOULD DRINK, AND MICHELE SAID, WOULD INFLECT HARM
24 HIS DAUGHTER, AND SHE WAS NOT ALLOWED TO INTERFERE BECAUSE
25 HE SAID, IT'S MY DAUGHTER. YOU STAY AWAY FROM HER.

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CLOSING ARGUMENTS - MR. GAMBLE

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1 THIS IS PROBABLY ONE OF THE WORST CASES I'VE EVER BEEN
2 INVOLVED WITH. BUT I'VE TRIED TO LOOK AT IT OBJECTIVELY.
3 AND SUPPOSE THAT Minor AND D.W. DID JUMP OFF THE BED.
4 WHY DID THE HOSPITAL KEEP HIM IF HE DIDN'T -- IF THEY DIDN'T
5 SEE SOME INJURY OR NOTE SOMETHING ON D.W. THE HOSPITAL
6 DOESN'T JUST KEEP YOU FOR FUN. IF ANY OF YOU HAVE DEALT
7 WITH THE EMERGENCY ROOM, YOU KNOW THAT.

8 SO THEY KEPT Minor AND SHE DID HAVE, AS EVIDENCED
9 BY THE MEDICALS, A SUBDURAL HEMATOMA FROM A BLOW TO THE
10 HEAD. YOU'VE BEEN TOLD WHAT THAT IS BY THE DOCTOR. I WON'T
11 GO OVER THAT AGAIN. IF, IN FACT, D.W. TOLD THE TRUTH AT ANY
12 TIME, AND IF, IN FACT, HE AND Minor ON THAT MORNING WENT
13 OVER AND PLAYED ON THE TRAMPOLINE, AND IF, IN FACT, SHE FELL
14 OFF THAT TRAMPOLINE, THEN THAT WOULD ACCOUNT FOR THE SOLID
15 BLOW TO Minor SIDE HEAD THAT DR. WOODARD TESTIFIED TO.
16 AND THAT WOULD ACCOUNT FOR THE SECOND SUBDURAL HEMATOMA
17 WHICH LED TO THE DEATH OF Minor

18 WHY DO I SAY THAT? BECAUSE DR. WOODARD SAID SHE WOULD
19 HAVE TO HAVE BEEN STRUCK TWO TO THREE HOURS BEFORE SHE WAS
20 IN THE HOSPITAL WITH THE SUBDURAL HEMATOMA TO HAVE CAUSED
21 THE SWELLING OF THE BRAIN THAT IT DID. THAT BEING THE CASE,
22 THEN MICHELE IS NOT GUILTY OF HOMICIDE BY CHILD ABUSE
23 BECAUSE SHE IS NOT THE ONE WHO STRUCK THE FATAL BLOW OR
24 CAUSED THE FATAL BLOW TO BE STRUCK OR AIDED AND ABETTED WITH
25 THE FATAL BLOW TO BE STRUCK. SHE WAS AT HOME. SHE WAS

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1 TENDING TO J.C. SHE WAS FIXING STUFF. SHE FED THIS CHI
2 SOME PEAS. DR. WOODARD SAID SHE ATE PEAS BEFORE SHE DIED.
3 SO THEREFORE, SHE IS NOT GUILTY OF HOMICIDE BY CHILD ABUSE
4 NOW, I'M WRESTLING WITH THE SECOND CHARGE. THAT IS
5 ALLOWING OR KNOWING, AIDING AND ABETTING SOMEONE TO CREATE
6 GREAT BODILY HARM TO A CHILD BY ABUSE. IT HAS TO BE
7 WILLFUL. WHAT IF YOU'RE IN A TRAPPED SITUATION WHERE YOU
8 CAN'T GO ANYWHERE? YOU'RE AFRAID TO CALL THE D.S.S. OR
9 YOU'RE AFRAID TO CALL THE SHERIFF BECAUSE YOU'RE AFRAID
10 YOU'LL LOSE YOUR OWN CHILDREN. THEN YOU'RE IN A TRAP.
11 YOU'RE IN A BIG TRAP. IF YOU'RE AFRAID OF DOING ANYTHING
12 BECAUSE YOU GET BLACK EYES, THEN YOU'RE IN A TRAP. IF
13 YOU'RE IN AN ABUSIVE SITUATION YOURSELF, THEN ARE YOU
14 WILLFULLY IN THAT SITUATION? I DON'T KNOW. THAT'S YOUR
15 PROBLEM. YOU HAVE TO THINK THAT OUT.
16 Y'ALL HAVE THE GREAT RESPONSIBILITY OF WEEDING THESE
17 THINGS OUT AND FINDING OUT WHAT REALLY WAS THE TRUTH OF WH
18 STRUCK THE FATAL BLOW. OTHER THAN THAT, LET'S LOOK AT IT
19 THIS WAY. SUPPOSE WHAT WE DON'T KNOW. DEREK CARTER WAS
20 WITH HIS DAUGHTER FOR AN HOUR OR SO RIDING WITH HER. WAS
21 THERE A FATAL BLOW STRUCK THEN BY HIM SOMEWHERE BETWEEN HE
22 AND GREENVILLE? WAS THERE AN INTERVENING CAUSE HERE THAT
23 DON'T KNOW ABOUT? I'M NOT JUST GRABBING AT STRAWS. I SEE
24 IN A MAN OF HIS SIZE, I DON'T BELIEVE WOULD ALLOW THAT
25 LITTLE WOMAN OVER THERE TO DO ANYTHING TO HIS DAUGHTER. I

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CLOSING ARGUMENTS - MS. WHITE (REPLY)

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1 JUST DON'T SEE THAT MAN ALLOWING THAT. BUT I SEE HIM DOING
2 IT.

3 FINGERPRINTS THAT WERE SHOWN BY DR. WOODARD SAID THEY
4 WERE ABOUT A HALF AN INCH ACROSS. MEN, MEASURE YOUR
5 FINGERS. FIND THE SMALLEST WOMAN AND LOOK AT HERS. SEE
6 WHO'S GOT A HALF INCH FINGER AND WHO DOESN'T.

7 MICHELE CARTER THANKS YOU FOR BEING HERE AND PAYING
8 ATTENTION TO WHAT'S GONE ON. AND YOU HAVE. WE'VE WATCHED
9 YOU. YOU WERE HER JURY. SHE SAID, I'M NOT GUILTY. I WANT
10 A TRIAL BY MY PEERS. YOU'RE HER PEERS. YOU'RE PEOPLE THAT
11 LIVE JUST LIKE SHE LIVES. YOU'RE PEOPLE WHO ARE TO JUDGE
12 HER. YOU'RE PEOPLE WHO ARE TO MAKE UP YOUR MINDS ABOUT WHAT
13 HAPPENED.

14 YOU'VE GOT TO -- ALL TWELVE OF YOU HAVE TO AGREE. IF I
15 MAKE A MISTAKE HERE, WE CORRECT IT SOMEWHERE ELSE. THAT
16 WOULD BE A MISTAKE OF LAW THAT I DID OR A MISTAKE I MADE.
17 IF THE STATE DOES IT, IT WILL BE CORRECTED SOMEWHERE. IF
18 HIS HONOR MAKES AN ERROR, THERE'S ANOTHER COURT TO HEAR
19 THAT. BUT IF YOU MAKE AN ERROR OF FACT, THEN ALL OF US HAVE
20 TO LIVE WITH THAT. SO IT'S A WEIGHTY DECISION THAT YOU
21 MAKE. AND IT'S VERY SERIOUS TO MICHELE CARTER. THANK YOU
22 FOR YOUR ATTENTION.

23 THE COURT: THANK YOU, SIR.

24 SOLICITOR?

25 MS. WHITE: WHEN WE BEGAN THIS CASE, I TOLD YOU THAT

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CLOSING ARGUMENTS - MS. WHITE (REPLY)

1 I HAD NAMED THIS CASE NIGHTMARE ON [REDACTED] [REDACTED]. AND TH
2 DEFENDANT ASSIGNED A ROLE IN THIS NIGHTMARE TO HER FOUR-
3 YEAR-OLD STEPDAUGHTER. AND I'LL QUOTE FROM THE VIDEO WHAT
4 THE ROLE WAS ASSIGNED. "THIS IS Minor SHE'S THE CHI
5 THAT DON'T EXIST. THERE'S MISS Minor AGAIN. SHE'S
6 SCARED TO TALK. WE FINALLY GOT THROUGH TO HER. IT MIGHT
7 BEST IF SHE JUST BARELY LIVES AND BREATHES." OR IN THE
8 COMPUTER, "I REALLY WISH SHE WAS NOT HERE. SHE IS ALL MY
9 PROBLEMS."

10 Minor 'S ROLE WAS THE CHILD THAT DID NOT EXIST. Y
11 KNOW, THIS DEFENDANT ACCOMPLISHED THAT GOAL, TOO, DIDN'T
12 SHE? Minor NO LONGER EXISTS. AND WHEN YOU COMMIT A
13 HOMICIDE, YOU ACCOMPLISH ANOTHER GOAL, TOO, BECAUSE YOU
14 PREVENT THE PERSON YOU HARMED FROM EVER GETTING UP ON THIS
15 WITNESS BOX AND TELLING YOU WHAT SHE WENT THROUGH.

16 THIS DEFENDANT THOUGHT SHE HAD IT COMPLETELY SEWN UP.
17 DEREK WASN'T GOING TO SAY ANYTHING. HE WAS INVOLVED IN IT
18 TOO. SHE CALLED THE SCHOOL, COVERED THE BASES WITH J.W.
19 NOBODY COULD TALK TO HIM. J.C. TOO SMALL. D.W. -- SHE
20 COULD CONTROL D.W. SHE HAD IN THE PAST. TELL HIM WHAT T
21 SAY, AND HE'LL SAY IT. SHE'S A VERY, VERY MANIPULATIVE
22 WOMAN.

23 BUT THE PROBLEM IS SHE MAY HAVE MADE Minor CEASE
24 EXIST, BUT SHE DID NOT SHUT Minor UP BECAUSE D.W. CAME
25 IN TO TELL HER STORY. D.W. CAME IN AND TOLD YOU WHAT WAS

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1 DONE TO THIS TINY CHILD IN THIS HOUSE. AND HE IS A TRUTHFUL
2 CHILD. REMEMBER, THE DEFENSE SAID, WELL, YOU'RE GETTING
3 HELP WITH LYING, AREN'T YOU. YEAH. IT'S NOT BEING A LIAR.
4 HELP SORTING OUT WHAT HE WAS TOLD TO SAY TO COVER UP FOR
5 THIS MANIPULATIVE LYING WOMAN.

6 WELL, YOU CAN'T BELIEVE D.W. LET ME ASK YOU
7 SOMETHING. IS D.W. RELATED TO DEREK OR TO MICHELE?
8 REMEMBER WHAT HE TOLD YOU ABOUT WHO INFLECTED THE WORST
9 ABUSE. WHY WOULD HE MAKE UP A STORY AGAINST HIS OWN MOTHER?
10 IF HE HAD ALLEGIANCE OR A REASON TO LIE, IT WOULD BE TO HIS
11 MOTHER. BUT HE CAME IN. YOU'D BETTER BELIEVE HE FEELS BAD
12 ABOUT WHAT HAPPENED TO HIS STEPSISTER. BUT NOW HE CAME AND
13 WAS WILLING TO TELL HER STORY TO YOU.

14 BUT YOU KNOW, YOU DON'T HAVE TO JUST BELIEVE D.W.
15 BECAUSE EVERYTHING HE TOLD YOU IS CORROBORATED. LOTS OF
16 OTHER WITNESSES CAME IN. AND YOU KNOW, THE DEFENSE REALLY
17 HAMMERED ON SOME OF THEM. AND TO BE HONEST WITH YOU, SOME
18 OF THE CHILDREN FELL APART UP THERE. SOME DIDN'T. BUT DO
19 ANY OF YOU REMEMBER THE FIRST DAY YOU WALKED INTO THIS
20 COURTROOM AND SAT BACK HERE? PUBLIC SPEAKING IS THE NUMBER
21 ONE FEAR IN AMERICA. STRANGE COURTROOM. MAN IN A ROBE.
22 PEOPLE TALKING LEGAL JARGON. HOW DID IT FEEL TO STAND UP
23 AND GIVE YOUR NAME AND OCCUPATION? REMEMBER THAT FEELING?
24 WHAT IF YOU WERE ELEVEN, TWELVE, THIRTEEN OR FOURTEEN YEARS
25 OLD? YOU DON'T JUST STAND UP AND GIVE YOU NAME AND

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1 OCCUPATION. HOW ABOUT GETTING UP HERE, TAKING AN OATH,
2 ASKED QUESTION AFTER QUESTION AFTER QUESTION, AND THEN CRC
3 EXAMINED BY AN EXPERIENCED DEFENSE ATTORNEY? IT'S NOT EAS
4 ON A CHILD.

5 I WISH WE KNEW A CRIME AHEAD OF TIME, AND THE STATE
6 COULD PICK THE WITNESSES. WE'D SEND PREACHERS DOWN THERE
7 AND TEACHERS DOWN THERE AND PARENTS DOWN THERE SO THAT ALL
8 WITNESSES ARE COMING IN TO TELL YOU WHAT HAPPENED. BUT TH
9 DEFENDANT PICKED THE WITNESSES IN THIS CASE. SHE KNEW SHE
10 COULD NOT SERIOUSLY ABUSE Minor AROUND PEOPLE WHO WOULD
11 BE CREDIBLE AND GO TELL PEOPLE. SO SHE PICKED THE
12 NEIGHBORHOOD CHILDREN. AND REALLY, WHEN YOU THINK ABOUT I
13 IT'S A MIRACLE ANY OF THEM CAN GET UP THERE WITHOUT FALLIN
14 APART. IT'S VERY NERVE-WRACKING.

15 NOW, THE ADULTS THAT CAME IN, THEY DIDN'T SEE AS MUCH
16 SOME OF THEM REPORTED IT. AND WE'LL DEAL WITH THAT ANOTHE
17 DAY. I DIDN'T BRING IN WHAT HAPPENED IN FOLLOWUP
18 INVESTIGATIONS AND ALL OF THAT FOR A REASON. THIS IS
19 MICHELE CARTER'S DAY IN COURT. AND IT'S NOBODY'S CONCERN
20 TODAY. THE CONCERN TODAY IS, IS SHE GUILTY OF THESE TWO
21 CRIMES.

22 SOME OF THE ADULTS DID NOT REPORT. WHY? IT'S EASY T
23 USE TWENTY-TWENTY HINDSIGHT. BUT JUST THINK. SOMEBODY
24 BRINGS A CHILD IN. OH, THIS CHILD HAS LEUKEMIA. I'VE BEE
25 TAKING IT TO THE DOCTOR OVER AND OVER. YEAH, LOOK AT THE

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1 BRUISES. SHE'S SO SICK. WHAT ARE WE GOING TO DO? SHE'S
2 GOT A FATAL DISEASE. THE DOCTORS SAID LET HER DO THIS.
3 IT'S REALLY EASY TO JUDGE NOW.

4 NOW, THERE ARE ALL SORTS OF WITNESSES THAT CORROBORATE
5 WHAT D.W. SAID. AND THESE WITNESSES ARE INCAPABLE OF LYING.
6 YOU NEVER SAW THEM WALK UP HERE. YOU NEVER HEARD THEM SAY
7 ANYTHING. YOU NEVER SAW THEIR FACES. BUT THEY ARE
8 INCAPABLE OF LYING. AND THOSE WITNESSES ARE THE PHYSICAL
9 EVIDENCE IN THE CASE. THE INJURIES ON HER BODY. Minor
10 MAY NOT BE HERE TO TELL HER STORY, BUT HER BODY TOLD THE
11 STORY TO THE FORENSIC PATHOLOGIST.

12 THE PHYSICAL EVIDENCE TAKEN FROM THE HOUSE, DOES THAT
13 TELL THE STORY, OR DOES THAT TELL THE STORY? PHYSICAL
14 EVIDENCE DOES NOT LIE. AND THEY CORROBORATE WHAT D.W. SAID.

15 LET'S LOOK AT WHAT D.W. SAID. HE SAID Minor WAS
16 TREATED DIFFERENTLY. YOU KNOW WHY? SHE LOOKED LIKE MAMA.
17 MAMA DIED IN MARCH, THEY MARRY IN JUNE, BABY'S BORN IN
18 FEBRUARY. SHE HAS RED HAIR, AND MAMA HAD RED HAIR. LET'S
19 DYE THE HAIR OF A, WHAT, TWO-YEAR-OLD? THREE-YEAR-OLD? SHE
20 WAS THE TARGET CHILD. WHAT DID D.W. SAY? SHE WASN'T
21 TREATED AS WELL AS THE REST OF US.

22 WHAT ABOUT THE FOOD? HE SAID, SHE'D GET FOOD AND
23 WATER, STAND OFF TO THE SIDE. WHAT DID DR. WOODARD TELL
24 YOU? MALNUTRITION. VERY LITTLE FAT -- BODY FAT.
25 CORROBORATES.

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1 REMEMBER, SHE'S THE ONE THAT WAS HOME WITH Minor
2 DEREK WORKED, WHAT, SIXTY, EIGHTY HOURS A WEEK SOMETIMES.
3 SHE WAS HOME WITH Minor REMEMBER WHEN Minor WENT
4 AND STAYED WITH MS. CARTER FOR A COUPLE OF WEEKS, SHE ATE
5 TONS OF FOOD. SHE WAS STARVING. CLASSIC SIGN OF
6 STARVATION. REMEMBER WHAT D.W. SAID? THEY'D COUNT TO FIVE
7 JUST STOP AND THINK A MINUTE. WE'VE HEARD SO MANY THINGS.
8 BUT STOP AND THINK ABOUT THIS. THIS LITTLE GIRL RIGHT HERE
9 HER NAME IS Minor AND YOU KNOW WHAT SHE WOULD DO? SHE
10 WOULD SIT THERE WHILE THE REST OF THE FAMILY ATE A MEAL.
11 AND SHE'D STAND OFF ON THE SIDE FOR LEFTOVERS OR HER LITTLE
12 BOWL OF CAT FOOD-TYPE STUFF. SHE'S A LITTLE GIRL, LADIES
13 AND GENTLEMEN, A LITTLE FOUR-YEAR-OLD. AND YOU KNOW WHAT
14 WOULD HAPPEN IF SHE DIDN'T EAT FAST ENOUGH? ONE, TWO,
15 THREE, FOUR, FIVE. SHE'D GET A SMACK AND SLAPPED AND HIT
16 AND KNOCKED DOWN.
17 THINK ABOUT WHAT SHE HAD IN HER STOMACH FOR BREAKFAST
18 THAT MORNING, PEAS. WHAT DID HE SAY? SHE HAD LEFTOVERS IN
19 THE MORNING, A LITTLE CAT FOOD-TASTING STUFF AT NIGHT. FOUR
20 CHAIRS IN THE KITCHEN. HER GASTROINTESTINAL TRACT WAS FINE
21 THE DEFENDANT, IN HER OWN STATEMENT, SAID, WE COUNTED TO
22 FIVE, AND IF SHE DIDN'T SWALLOW WE WOULD PUNISH HER.
23 NO DRINKS. THIS CHILD WAS SO DESPERATE FOR DRINK THAT
24 SHE GOES INTO A BATHROOM. AND WHAT DOES SHE DO? SHE TRIES
25 TO DRINK OUT OF THE TOILET. SHE WAS DRINKING OUT OF A

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1 TOILET BECAUSE NOBODY WOULD GIVE HER A DRINK. SO DID THEY
2 LET HER DRINK OUT OF A TOILET? OH, NO. THEY'RE NOT EVEN
3 GOING TO BE THAT BENEVOLENT. CLOROX GOES IN THE TOILET.
4 YOU KNOW WHY? BECAUSE LITTLE KIDS THAT EAT AND DRINK GO TO
5 THE BATHROOM. AND WE ALL KNOW WHAT A NUISANCE THAT CAN BE.

6 D.W. SAID THAT SHE WAS LOCKED IN THE BATHROOM EIGHTY TO
7 NINETY PERCENT OF HER TIME. TOLD EVERYBODY SHE WAS GOING TO
8 BOOT CAMP. TOLD SEVERAL PEOPLE THIS. GO OVER FOR THE
9 BIRTHDAY. CAN YOU IMAGINE THESE GRANDPARENTS FINDING OUT
10 THAT THE WHOLE TIME THEY SAT THERE FOR FOUR AND A HALF HOURS
11 WHERE THAT CHILD PROBABLY WAS? YOU REMEMBER THE NEIGHBORS
12 DIDN'T SEE HER MUCH THERE AT THE END.

13 IN THE DEFENDANT'S OWN QUESTIONNAIRE, SHE TALKS ABOUT
14 HOW SHE COULD HAVE GOTTEN INJURIES FROM TRYING TO PUSH OUT
15 FROM THE DOOR. HOW DESPERATE WOULD A FOUR-YEAR-OLD BE TO
16 PUSH OUT OF A DOOR? SO THEY TOOK CARE OF THAT WITH BOLTING
17 ALL THE DOORS. CHAINED HER. EIGHTY TO NINETY PERCENT OF
18 HER TIME WAS SPENT BACK THERE.

19 A FOUR-YEAR-OLD DOESN'T LIKE TO BE ALONE IN A ROOM VERY
20 MUCH. WE'RE GOING TO TAKE ONE MINUTE AND SEE HOW LONG THAT
21 IS WHEN YOU DON'T HAVE ANYTHING TO DO BUT SIT IN A BATHROOM.

22 (WHEREUPON MS. WHITE SAT ON THE FLOOR WITHIN THE TAPED
23 BATHROOM DIAGRAM)

24 MS. WHITE: THAT'S ABOUT A MINUTE. SHE SPENT EIGHTY
25 TO NINETY PERCENT OF HER TIME DOING NOTHING IN THAT

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1 BATHROOM. WE FOUND THE PLACE FOR THE BOLTS ON THE GROUND.
2 D.W. WAS TELLING THE TRUTH. WE FOUND THE BOLTS ON THE
3 DOORS. D.W. WAS TELLING THE TRUTH.

4 WHAT ABOUT THE VIDEO? REMEMBER WHAT JOHN CARPENTER
5 TOLD YOU? THEY LOOKED AT ALL THE FAMILY VIDEOS. IN THE
6 YEAR 2000, THERE WERE SIXTEEN DIFFERENT DATES OF FAMILY
7 VIDEOS. SHE WAS IN ONE. THAT WAS THE LAST ONE ON THE
8 MONTAGE THAT YOU ALL SAW. REMEMBER THAT ONE? SITTING AT
9 THE TABLE DURING THE BIRTHDAY PARTY. SHE FINALLY GOT THE
10 NERVE TO TURN HER HEAD ONCE OR TWICE. YOU'LL HAVE THIS BA
11 THERE, AND YOU CAN VIEW IT AGAIN. SHE HAD BEEN TOTALLY
12 BEATEN DOWN. WHERE DO YOU THINK SHE WAS DURING THE OTHER
13 FIFTEEN DATES WHILE THE REST OF THE FAMILY WAS TAPED? IN
14 THE DEFENDANT'S OWN STATEMENT, SHE ADMITS THAT. THE DOOR
15 WAS DAMAGED, NOT TO THE PARENTS' BEDROOM, BUT THE OTHER WA
16 THE SOILED DIAPER. THAT'S CORROBORATED AS WELL.

17 REMEMBER THE DISCOLORED SKIN. AND YOU ONLY GET THAT FROM
18 SITTING IN FECES FOR A LONG AMOUNT OF TIME. THE BOYS SAID
19 WEEK. IT PROBABLY SEEMED LIKE IT HAD BEEN IN THERE FOR
20 ABOUT A WEEK FROM THE SMELL OF IT. WELL, YOU'RE NOT GOING
21 TO LET HER RUN AROUND THE HOUSE. OH, NO. UH-UH. SHE HAD
22 PLACE TO GO WHERE SHE WOULDN'T SOIL THE HOUSE IF HER DIAPE
23 GOT FULL. THAT WAS CORROBORATED AS WELL BY THE PEOPLE WHO
24 SAW HER OUTSIDE.

25 PINCHED THE VAGINAL AREA. THE INJURIES ARE THERE. S

1 HAD A FASCINATION WITH POTTY TRAINING. AND UNFORTUNATELY,
2 THIS IS THE AREA THAT IS INVOLVED. SO REMEMBER WHAT SHE
3 TOLD HER COUSIN -- NOT HER COUSIN. THAT WAS A FRIEND. I'M
4 GOING TO BREAK HER ONE WAY OR ANOTHER. ALCOHOL POURED ON
5 HER LITTLE RAW VAGINAL AREA.

6 D.W. SAID THAT SHE WAS BEATEN, HIT REPEATEDLY WITH
7 VARIOUS OBJECTS. SHE'S GOT ALL THE INJURIES ON HER. YOU
8 CAN SEE ALL THE SCARS AND INJURIES. WHAT DO YOU THINK THOSE
9 LITTLE ROUND, PERFECTLY CIRCULAR, WITH LITTLE ROLLED EDGES
10 ARE? THERE'S ONLY ONE THING THEY CAN BE. SHE WAS A HUMAN
11 ASHTRAY, TOO, ON TOP OF EVERYTHING ELSE. IT SURE WASN'T
12 THAT SHE RAN INTO THE HEATER. WHAT? SHE RAN INTO IT LIKE
13 FIFTY TIMES?

14 HER TOES. THE DEFENDANT ADMITTED IN HER OWN STATEMENT
15 THAT SHE WOULD SMACK THE TOES. AGAIN, CORROBORATES
16 EVERYTHING D.W. TOLD YOU. EVERYTHING HE TOLD YOU IS
17 CORROBORATED BY THE PHYSICAL EVIDENCE AND BY THE OTHER
18 WITNESSES.

19 AND WHAT ABOUT THIS FASCINATION WITH HER POSITION ALL
20 THE TIME? SHE EITHER HAD TO BE STANDING SOMEWHERE,
21 MARCHING, DOING SQUATS, RUNNING LAPS. AND AGAIN, OTHER
22 PEOPLE CORROBORATE THIS. THE TREADMILL. EVEN THE SHERIFF'S
23 DEPARTMENT WENT OUT THERE ONE TIME. HIRED FOR BOOT CAMP FOR
24 A FOUR-YEAR-OLD? WHAT ABOUT THE FETCH? REMEMBER WHAT CHASE
25 TOLD YOU? WHO WOULD EVER THINK OF THAT? HOW COULD YOU EVER

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1 THINK TO TAKE A BALL -- THAT'S ALMOST THE SICKEST THING OUT
2 OF THIS WHOLE THING. HOW COULD YOU EVEN THINK TO TAKE A
3 BALL AND MAKE A CHILD FETCH IT? AND REMEMBER WHEN I ASKED
4 HIM, WELL, HOW WAS SHE ACTING. SHE WAS CRYING. SHE BROUGH
5 IT BACK, AND THEY MADE HER FETCH AGAIN. WHICH, WHEN YOU
6 THINK ABOUT WHAT SHE TOLD THE DENARDOS, I'VE GOT TO GO HOSE
7 THE DOG OFF NOW. MAYBE THEY SAW NOTHING WRONG WITH PLAYING
8 FETCH. SHE WAS NOT JUST A HUMAN ASHTRAY, SHE WAS ALSO THEI
9 DOG.

10 NOW, AS D.W. SAID, SHE WAS HIT ON THE HEAD VERY HARD.
11 HOW DO WE KNOW THAT THAT'S TRUE? THIS CHILD WAS FOUR. AND
12 IN SIX MONTHS, SHE HAD HAD TWO MAJOR HEAD INJURIES THAT
13 REQUIRED TREMENDOUS FORCE. DOES ANYBODY KNOW WHAT HAPPENED
14 EITHER TIME? JUST NOT SURE. DON'T KNOW. REMEMBER WHAT
15 D.W. TOLD YOU. IT WAS NOT DEREK THAT MADE HIM LIE. HIS
16 MOTHER MADE HIM LIE ON BOTH OF THEM. AND DON'T GET ME
17 WRONG, DEREK IS GUILTY OF HOMICIDE BY CHILD ABUSE. BUT HE'
18 GUILTY OF THE ADMISSION PART OF ALLOWING THE CHILD TO BE
19 NEGLECTED ENOUGH TO STAY WITH SOMEONE YOU KNOW IS ABUSING
20 THE CHILD. BUT HE'S JUST AS GUILTY. THIS ISN'T HIS DAY IN
21 COURT. THIS IS HERS.

22 THINK ABOUT HER INJURIES, WHEN D.W. TOLD YOU THERE WER
23 MULTIPLE HEAD INJURIES. SHE HAD A BRUISE TO THE EAR.
24 THAT'S CERTAINLY NOT A TRAMPOLINE. BESIDES WHICH -- YOU MA
25 HAVE ALREADY THOUGHT ABOUT THIS -- HOW DID SHE GET HOME? I

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1 SHE'S GOT THIS SEVERE BLOW TO THE HEAD AND NOBODY NOTICE'S
2 ANYTHING. GEE, WE DON'T KNOW. IT MIGHT HAVE HAPPENED. IT
3 MIGHT NOT. AND SHE WALKED HOME. THAT WASN'T FROM A
4 TRAMPOLINE.

5 SHE HAD A NOSE INJURY, NOT FROM A COLD. THAT'S A BLOW.
6 WAS THERE MORE THAN ONE BLOW THAT MORNING MAYBE? DON'T
7 KNOW. BUT WE KNOW THAT WHAT D.W. TOLD YOU ABOUT THE HEAD
8 INJURIES WAS TRUE.

9 WHAT ABOUT THE MISSING TEETH? SOME KID. WHO WAS THAT?
10 DON'T REALLY KNOW. KNOCKED HER TEETH OUT. NO, WE WOULDN'T
11 GO TO THE DOCTOR BECAUSE OUR THREE-YEAR-OLD HAD HER TEETH
12 KNOCKED OUT OR ANYTHING IN SOME KIND OF VIOLENT ACCIDENT.
13 WE'LL NEVER KNOW WHAT HAPPENED THERE EXCEPT WHAT D.W. TELLS
14 US. THEY KNOCKED HER AROUND ALL THE TIME.

15 AND FINALLY, REMEMBER WHAT D.W. TOLD US. THAT THEY
16 WOULD YANK HER BY THE HAIR. AND SHE HAS PIECES OF HAIR,
17 CLUMPS OF HAIR, MISSING. EVERYTHING D.W. TOLD YOU IS
18 CORROBORATED BY THE PHYSICAL EVIDENCE. HE HAD NO WAY OF
19 KNOWING ABOUT THIS PHYSICAL EVIDENCE. HE HAD NO IDEA WHAT
20 THE AUTOPSY RESULTS WERE.

21 Minor TOLD YOU HER STORY. SHE TOLD IT TO DR.
22 WOODARD. AND SHE TELLS YOU IN THESE PICTURES. SHE SUFFERED
23 FROM BATTERED CHILD SYNDROME. DIFFERENT AGES. DIFFERENT
24 AREAS OF INJURY. MULTIPLE INJURIES. LOOK AT THE DELAY IN
25 TREATMENT. YOU KNOW, IF MY CHILD FALLS OUT OF A TREE AND

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1 HURTS HIMSELF, WHAT DO I DO? I GRAB HIM UP, AND I RUSH TO
2 THE DOCTOR, IF HE'S UNCONSCIOUS OR IN A COMA OR WHATEVER.
3 BUT YOU KNOW WHAT? IF I PUSHED HIM OUT OF THE TREE TO ABUS
4 HIM, I'VE GOT TO FIGURE OUT WHAT I'M GOING TO SAY.

5 SO WHAT DO YOU LOOK AT IN BATTERED CHILD SYNDROME? IS
6 THERE A DELAY IN TREATMENT? THEY WEREN'T GOING TO GO TO
7 ANDERSON HOSPITAL. THEY HAD ALREADY BEEN QUESTIONED THERE.
8 THEY WERE MORE CONCERNED ABOUT COVERING FOR HER... THIS WOMA
9 WAS MORE CONCERNED ABOUT COVERING HERSELF THAN SHE WAS ABOUT
10 SAVING THE LIFE OF A CHILD. HOW IS A DOCTOR GOING TO SAVE
11 CHILD WHEN THEY DON'T EVEN KNOW THE APPROPRIATE HISTORY?

12 BUT REMEMBER, Minor WAS THE CHILD THAT DIDN'T EXIST. S
13 DID IT REALLY MATTER? SHE WAS JUST A DOG AFTER ALL.

14 THIS DEFENDANT IS GUILTY OF BOTH CHARGES. SOME OF THE
15 INJURIES WERE FATAL. THE HEAD INJURIES THAT SHE INFLECTED.
16 YET, SOME OF THE ABUSE, THE CIGARETTE BURNS AND THINGS LIKE
17 THAT, FALL UNDER THE OTHER STATUTE. THIS CHILD WAS TORTURE
18 FOR THE ENTIRE LAST YEAR AND A HALF OR MORE OF HER LIFE.

19 NOW, LET'S LOOK AT THE DEFENDANT. EVERYTHING THAT DRE
20 SAID WAS CORROBORATED. HOW ABOUT THE DEFENDANT? IS SHE
21 BELIEVABLE? WELL, WHICH STORY? WHICH ONE DO WE WANT TO
22 PICK TO BELIEVE BECAUSE THERE SURE ARE A LOT OF THEM.
23 ANYBODY WHO WOULD LIE TO GET OUT OF TROUBLE WHEN THEIR CHIL
24 IS LYING THERE DYING, BELIEVE ME, IS NOT TRUSTWORTHY UP
25 HERE. LOOK AT ALL THE VARIOUS STORIES SHE'S TOLD. THIS

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1 CHILD HAD MORE UNWITNESSED ACCIDENTAL THINGS HAPPEN TO HER
2 THAN ANY OTHER CHILD IN THE WORLD. IN HER QUESTIONNAIRE,
3 ONE OF HER ANSWERS IS, WHEN SHE'S QUESTIONED ABOUT WHETHER
4 THEY COULD HAVE CAUSED IT, "DEAR, GOD. THIS IS OUR
5 DAUGHTER." PLEASE. SHE STANDS HER OUT IN THE SUNLIGHT.
6 STANDS HER IN THE CORNER. HAS HER ON TREADMILLS. TAUNTS
7 HER IN THE VIDEOS. THERE ARE NO TOYS IN THIS HOUSE. SHE'S
8 THE CHILD THAT DOESN'T EXIST. SHE DOESN'T EVEN HAVE A BED.
9 EVERYBODY ELSE IN THE HOUSE HAS A BED. SHE'S GOT A BEDROOM
10 RIGHT HERE (INDICATING TAPED DIAGRAM ON FLOOR). THAT'S HER
11 BEDROOM.

12 SHE DIDN'T TELL EVERYTHING SHE KNEW IN THAT STATEMENT.
13 THE DEFENDANT SAYS, WELL, SHE HAD A SERIOUS DISEASE. YOU
14 SEE HOW MANY TIMES SHE TOOK THAT CHILD TO THE DOCTOR WITH
15 THESE SERIOUS INJURIES? BUT THEY COULDN'T TAKE THE CHILD TO
16 THE DOCTOR. THEN THEY'D HAVE TO EXPLAIN.

17 Minor WAS NOT A BAD CHILD. IN FACT, YOU CAN SEE IN
18 THE VIDEO, SHE WASN'T A PROBLEM CHILD. HAVE YOU EVER TRIED
19 TO GET A FOUR-YEAR-OLD TO STAY STILL? HOW MANY OF US HAVE
20 BEEN IN CHARGE OF A CHILD THAT WE COULD PUT A FACE IN A WALL
21 OVER HERE IN THE HOT SUNLIGHT WITH BEES AND BUGS FLYING ALL
22 AROUND AND GET THEM TO STAND THERE THREE HOURS WITHOUT
23 MOVING LIKE A STATUTE? BUT JUST THINK OF THIS. THE
24 ALTERNATIVE OF WHAT SHE FACED IF SHE DIDN'T STAND THERE WAS
25 WORSE THAN STANDING THERE WITH A FULL DIAPER AND BUGS

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1 BUZZING ALL AROUND IN THE SUMMER. THAT'S A SCARY THOUGHT.
2 REMEMBER THE TEACHER? SHE SAT STILL FOR FIFTEEN MINUTES.
3 NO TOYS.

4 LISA KNIGHT. WAS THAT PITIFUL OR WHAT? LISA FINALLY
5 FINDS OUT THAT THE CHILD IS SITTING OUT THERE IN THE
6 SUNLIGHT, AND SHE BRINGS HER IN. DON'T YOU KNOW THAT LITTLE
7 Minor WAS SO DELIGHTED THAT SOMEBODY FINALLY TOOK OVER
8 AND TOOK UP FOR HER? SO SHE SITS DOWN BESIDE LISA KNIGHT.
9 WHAT DOES LISA TELL YOU? SHE STARES AT HER AND SMILES AT
10 HER, RUBS HER ON THE LEG, ABOUT AN HOUR, HOUR AND A HALF.

11 THIS DEFENDANT WAS NOT AFRAID OF DEREK. SHE WAS NOT
12 AFRAID OF ANYBODY. SHE SAID, WELL, I WAS SO AFRAID THAT I
13 HAD TO LET THIS HAPPEN. REALLY, IN THE STATUTE I DON'T
14 THINK THEY MAKE AN EXCEPTION FOR A CHILD DYING SO YOU DON'T
15 LOSE YOUR HOUSE. I DON'T THINK YOU'LL FIND THAT ANYWHERE I
16 THERE. THIS DEFENDANT KILLED Minor ON OCTOBER 14TH OF
17 THE YEAR 2000. SHE TORTURED HER. SHE SAYS IN HER STATEMENT
18 SHE PUSHED TISSUE UP HER NOSE. DID SHE SMOTHER HER, TOO?
19 DON'T KNOW. WITH THE TISSUE UP THE NOSE? I DON'T KNOW.
20 SHE CERTAINLY INFLECTED HEAD TRAUMA. IN HER OWN STATEMENT,
21 SHE SAID DEREK WAS NOT THERE. I'M RESPONSIBLE.

22 THE DEFENSE SUGGESTS THAT JUSTICE DEMANDS THAT HIS
23 CLIENT NOT BE HELD ACCOUNTABLE FOR THESE TWO CHARGES. BUT
24 LADIES AND GENTLEMEN, THE UNITED CONSTITUTION CLAIMS JUSTICE
25 FOR ALL. AND THAT INCLUDES VICTIMS OF CRIME, EVEN WHEN

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CHARGE OF THE COURT

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1 THEY' RE FOUR YEARS OLD AND THEY WEIGH ABOUT FORTY POUNDS AND
2 THEY' RE ABOUT FORTY INCHES TALL.

3 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WOULD
4 ANYONE LIKE TO TAKE BREAK BEFORE WE HAVE THE CHARGE? THE
5 CHARGE WILL TAKE ABOUT TWENTY TO TWENTY-FIVE MINUTES.

6 (NO RESPONSE)

7 THE COURT: ALL RIGHT. LET'S GO FORWARD WITH THE
8 CHARGE ON THE LAW. LET ME TELL YOU PRELIMINARILY THAT THE
9 CHARGE IS FAIRLY LENGTHY. I'VE GIVEN YOU A GOOD BIT OF LAW
10 TO DIGEST. PLEASE UNDERSTAND DURING YOUR DELIBERATIONS, IF
11 YOU WANT ME TO REPEAT ANY PART OF MY CHARGE, I'LL BE GLAD TO
12 DO SO. JUST REDUCE THAT REQUEST TO WRITING. IDENTIFY THE
13 PART YOU WANT RESTATED, AND I'LL COMPLY.

14 ALSO, I WANT YOU TO UNDERSTAND THAT THE RECORD OF
15 EVIDENCE IS CLOSED. OFTENTIMES, A JURY WILL SEND A NOTE TO
16 ME ASKING TO SEE A DOCUMENT THAT WAS NOT RECEIVED AS AN
17 EXHIBIT OR TO HEAR ANOTHER WITNESS' TESTIMONY. PLEASE
18 UNDERSTAND THE RECORD OF EVIDENCE IS CLOSED. THE LAW DOES
19 NOT PERMIT ME TO SUPPLEMENT THE RECORD OR ADD TO THE RECORD
20 IN ANY WAY. YOU MUST MAKE YOUR DECISION BASED ON THE
21 EVIDENCE THAT IS BEFORE YOU.

22 ONCE YOU BEGIN YOUR DELIBERATIONS, LADIES AND
23 GENTLEMEN, PLEASE TAKE WHATEVER TIME YOU NEED. PLEASE DON'T
24 FEEL YOU'RE UNDER ANY TIME CONSTRAINTS OF ANY KIND. TAKE
25 WHATEVER TIME YOU NEED TO REACH A VERDICT IN THE TWO

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CHARGE OF THE COURT

1 INDICTMENTS PRESENTED TO YOU.

2 IT'S MY DUTY TO CHARGE YOU ON THE LAW APPLICABLE TO
3 THIS CASE. IT'S YOUR DUTY TO ACCEPT AND APPLY THE LAW AS
4 STATE IT TO YOU. WHILE I'M THE JUDGE OF THE LAW, YOU'RE
5 JUDGES OF THE FACTS. YOU DETERMINE WHAT THE FACTS ARE AND
6 WHAT THE TRUTH IS FROM THE EVIDENCE IN THE CASE.

7 THE CONSTITUTION OF SOUTH CAROLINA PROVIDES THAT A
8 TRIAL JUDGE SHALL NOT COMMENT UPON OR MAKE ANY STATEMENT TO
9 A TRIAL JURY ABOUT THE FACTS IN A CASE. THEREFORE, PLEASE
10 DO NOT INFER FROM ANYTHING THAT I HAVE SAID DURING THE
11 PROGRESS OF THIS TRIAL IN RULING ON THE ADMISSIBILITY OF
12 EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY TO YOU NOW
13 DURING THE COURSE OF THIS INSTRUCTION, THAT I HAVE ANY
14 OPINION ABOUT THE FACTS OF THIS CASE. THE LAW DOES NOT
15 PERMIT ME TO HAVE AN OPINION WHICH I MAY SHARE WITH YOU.
16 THAT IS A MATTER SOLELY AND EXCLUSIVELY WITHIN YOUR
17 PROVIDENCE AS JURORS, AS JUDGES OF THE FACTS IN THIS CASE.

18 NOW, AS JUDGES OF THE FACTS, PART OF YOUR FACT-FINDING
19 FUNCTION REQUIRES YOU TO ASSESS THE CREDIBILITY OR THE
20 BELIEVABILITY OF THE WITNESSES WHO TESTIFIED IN THIS CASE.
21 IN THAT REGARD, YOU MAY BELIEVE ONE WITNESS AGAINST SEVERAL
22 OR SEVERAL WITNESSES AS AGAINST ONE. YOU MAY BELIEVE PART
23 OF WHAT A WITNESS HAS TOLD YOU, BUT REJECT THE REMAINING
24 PORTIONS OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY
25 BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY, OR YOU

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1 MAY REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU
2 MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY
3 INTEREST, ANY BIAS, ANY PREJUDICE IN THE CASE. YOU MAY
4 CONSIDER THE DEMEANOR OF A WITNESS, THE MANNER AND
5 APPEARANCE OF A WITNESS AS HE OR SHE MAY HAVE TESTIFIED FROM
6 THIS WITNESS STAND. AND YOU MAY, OF COURSE, CONSIDER THE
7 OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT
8 WHICH A WITNESS HAS TESTIFIED.

9 WE HAVE HEARD TESTIMONY FROM WITNESSES WHO HAVE BEEN
10 STIPULATED TO TESTIFY AS EXPERTS. EXPERTS CAN TESTIFY IN
11 THE FORM OF OPINIONS. OPINION TESTIMONY OF AN EXPERT IS
12 EVIDENCE THAT YOU MAY CONSIDER. BUT YOU'RE TO TREAT THE
13 OPINION TESTIMONY OF AN EXPERT JUST AS YOU DO ALL OF THE
14 OTHER EVIDENCE IN THE CASE. THAT IS, YOU MAY ACCEPT IT OR
15 REJECT IT BASED ON YOUR VIEW OF THE EVIDENCE.

16 MR. FOREMEN AND LADIES AND GENTLEMEN, YOUR OBJECTIVE IS
17 TO FIND THE TRUTH IN THE CONTEXT OF DETERMINING THE
18 BELIEVABILITY OF THE WITNESSES. IN THAT REGARD, IN
19 DETERMINING WHAT YOU CONSIDER TO BE THE TRUE EVIDENCE IN
20 THIS CASE, THE LAW REQUIRES THAT YOU EXERCISE YOUR GOOD
21 JUDGEMENT, YOUR COMMON SENSE, AND YOUR SENSE OF LOGIC AND
22 REASON. YOU APPLY THESE ATTRIBUTES TO THE EVIDENCE,
23 DETERMINE WHAT YOU CONSIDER TO BE THE TRUTH, THEN APPLY THE
24 LAW AS I GIVE IT, AND THROUGH THAT PROCESS, ARRIVE AT A
25 VERDICT WHICH SPEAKS THE TRUTH IN BOTH OF THE INDICTMENTS

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1 THAT ARE PRESENTED TO YOU.

2 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY
3 PRESENTED DURING A TRIAL, DIRECT EVIDENCE AND CIRCUMSTANTIAL
4 EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
5 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS
6 AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
7 OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A
8 FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
9 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
10 CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF
11 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT
12 EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE. AFTER
13 WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED OF
14 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU
15 MUST FIND HER NOT GUILTY.

16 LADIES AND GENTLEMEN, WHILE THE COURT GENERALLY,
17 INITIALLY, DETERMINES THE ADMISSIBILITY OF EVIDENCE, I
18 INSTRUCT YOU THAT IN REGARD TO ANY ALLEGED STATEMENT MADE BY
19 THE DEFENDANT, IT IS YOUR RESPONSIBILITY, AND SOLELY YOUR
20 RESPONSIBILITY, TO DETERMINE WHETHER OR NOT THE DEFENDANT
21 MADE ANY STATEMENT ALLEGED TO HAVE BEEN ATTRIBUTED TO HER.
22 IF YOU FIND THAT THE DEFENDANT DID MAKE ANY SUCH STATEMENT
23 AS ALLEGED, YOU MUST FURTHER DETERMINE WHETHER THE STATEMENT
24 WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HER OWN FREE
25 WILL. IF YOU CONCLUDE THAT THE DEFENDANT MADE ANY SUCH

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1 ALLEGED STATEMENT AND THAT SHE DID SO FREELY AND VOLUNTARILY
2 OF HER OWN FREE WILL, THEN YOU MUST DETERMINE WHAT WEIGHT,
3 IF ANY, SHOULD BE GIVEN TO ANY SUCH STATEMENT.

4 SO IN ORDER FOR YOU TO CONSIDER ANY ALLEGED STATEMENT
5 OF THIS DEFENDANT, YOU MUST DETERMINE SEVERAL THINGS. THAT
6 THE ALLEGED STATEMENT WAS, IN FACT, MADE BY THE DEFENDANT.
7 AND IF THE ALLEGED STATEMENT WAS MADE BY THE DEFENDANT,
8 WHETHER THE STATEMENT WAS THE PRODUCT OF A FREE AND
9 UNCONSTRAINED CHOICE BY THIS DEFENDANT. PLEASE REMEMBER
10 THAT THE BURDEN IS UPON THE STATE TO PROVE THESE
11 REQUIREMENTS BEYOND A REASONABLE DOUBT. AND IF YOU CONCLUDE
12 THAT THE STATE HAS MET THAT BURDEN, YOU MAY GIVE ANY SUCH
13 STATEMENT SUCH CONSIDERATION AS YOU DEEM PROPER. IF YOU
14 DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND
15 VOLUNTARY WILLED EXPRESSION OF THE DEFENDANT, THEN YOU
16 SHOULD NOT CONSIDER THE STATEMENT AT ALL.

17 IN DETERMINING WHETHER A STATEMENT WAS GIVEN FREELY AND
18 VOLUNTARILY, YOU SHOULD CONSIDER ALL FACTS AND CIRCUMSTANCES
19 WHICH IS REFERRED TO IN THE LAW AS THE TOTALITY OF THE
20 CIRCUMSTANCES. YOU MAY CONSIDER ALL FACTS AND
21 CIRCUMSTANCES, INCLUDING THE CHARACTERISTICS OF THE ACCUSED
22 AND ALL FACTS AND CIRCUMSTANCES SURROUNDING THE ALLEGED
23 STATEMENT. YOU MUST CAREFULLY SCRUTINIZE ALL OF THE
24 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO THE
25 ALLEGED STATEMENT. YOU MUST BE SATISFIED BEYOND A

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1 REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE ACCUSED
2 AND IF THE STATEMENT WAS MADE BY THE ACCUSED, YOU MUST
3 FURTHER BE SATISFIED BEYOND A REASONABLE DOUBT THE STATEMENT
4 WAS MADE FREELY AND VOLUNTARILY.

5 THIS LAW THAT I HAVE JUST GIVEN YOU APPLIES TO ANY
6 STATEMENT ALLEGEDLY MADE BY THE DEFENDANT. WHEN LAW
7 ENFORCEMENT QUESTIONS OR INTERROGATES ONE WHO IS IN CUSTODY,
8 THE LAW REQUIRES MORE BEFORE YOU MAY CONSIDER A STATEMENT
9 ALLEGEDLY MADE BY THE DEFENDANT. THEREFORE, I CHARGE YOU
10 THAT ANY ALLEGED STATEMENT OF THE DEFENDANT WHILE IN CUSTODY
11 PURSUANT TO POLICE INTERROGATION MAY NOT BE CONSIDERED BY
12 YOU UNLESS YOU FIRST FIND BEYOND A REASONABLE DOUBT THAT THE
13 DEFENDANT WAS FULLY ADVISED THAT SHE HAD THE RIGHT TO REMAIN
14 SILENT, THAT SHE HAD THE RIGHT TO AN ATTORNEY, THAT SHE HAD
15 THE RIGHT TO CONSULT WITH AN ATTORNEY PRIOR TO ANY
16 QUESTIONING, THAT AN ATTORNEY WOULD BE PROVIDED AND
17 APPOINTED TO REPRESENT HER IF SHE WAS UNABLE TO AFFORD ONE,
18 AND THAT IF THE DEFENDANT WAIVED HER RIGHTS TO REMAIN SILENT
19 AND LEGAL COUNSEL, ANY STATEMENT COULD BE USED AGAINST HER
20 IN COURT.

21 THE STATE MUST PROVE ALL OF THIS BEYOND A REASONABLE
22 DOUBT. THAT IS, THE DEFENDANT WAS ADVISED OF HER RIGHTS,
23 THAT SHE UNDERSTOOD THOSE RIGHTS AND THAT SHE FREELY AND
24 VOLUNTARILY WAIVED THOSE RIGHTS. AND IF YOU FIND THE STATE
25 HAS NOT MET THIS BURDEN, THEN YOU MAY NOT CONSIDER ANY

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1 ALLEGED STATEMENT OF THE DEFENDANT DURING POLICE
2 INTERROGATION. HOWEVER, IF YOU FIND THE STATE HAS MET THIS
3 BURDEN AND YOU FURTHER FIND BEYOND A REASONABLE DOUBT THAT
4 THE STATEMENT WAS MADE AND WAS MADE FREELY AND VOLUNTARILY,
5 YOU MAY CONSIDER SUCH ALLEGED STATEMENT AND GIVE IT SUCH
6 WEIGHT AS YOU DEEM APPROPRIATE.

7 I CHARGE YOU FURTHER THAT AN ACCUSED, HAVING EXPRESSED
8 HER DESIRE TO DEAL WITH THE POLICE ONLY THROUGH COUNSEL, IS
9 NOT SUBJECT TO FURTHER INTERROGATION BY THE AUTHORITIES
10 UNTIL COUNSEL HAS BEEN MADE AVAILABLE TO HER UNLESS THE
11 ACCUSED HERSELF INITIATES FURTHER COMMUNICATION, EXCHANGES
12 OR CONVERSATIONS WITH THE POLICE.

13 NOW, LADIES AND GENTLEMEN, I'M GOING TO REITERATE TWO
14 PRINCIPLES THAT I HAVE STRESSED TO YOU FROM THE VERY
15 BEGINNING, EVEN DURING THE JURY QUALIFICATION PROCESS AND
16 THROUGHOUT THE SELECTION OF YOU FOLKS FOR THE TRIAL OF THIS
17 CASE. NUMBER ONE IS THE PRESUMPTION OF INNOCENSE. IT IS A
18 CARDINAL AND FUNDAMENTAL RULE OF LAW THAT A DEFENDANT WILL
19 ALWAYS BE PRESUMED INNOCENT FOR THE CRIME OR CRIMES FOR
20 WHICH HE OR SHE HAS BEEN INDICTED UNLESS AND UNTIL THE GUILT
21 OF THE DEFENDANT HAS BEEN PROVED BY EVIDENCE WHICH SATISFIES
22 YOU OF GUILT BEYOND A REASONABLE DOUBT.

23 PLEASE UNDERSTAND THAT PRESUMPTION OF INNOCENSE IS NOT
24 SOME MERE LEGAL THEORY.. BUT IT IS A SUBSTANTIAL RIGHT TO
25 WHICH ANY ACCUSED, INCLUDING MS. CARTER, IS ENTITLED. THIS

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1 PRESUMPTION OF INNOCENSE ACCOMPANIES THE DEFENDANT FROM THE
2 TIME OF HER ARREST FROM HER INITIAL APPEARANCE IN COURT AND
3 THROUGHOUT EVERY STAGE OF THIS TRIAL AND CONTINUES WITH HER
4 EVEN AFTER YOU RETIRE TO THE JURY ROOM TO CONSIDER YOUR
5 VERDICTS IN THE TWO CASES PRESENTED TO YOU. THE PRESUMPTION
6 OF INNOCENSE REMAINS IN EXISTENCE TO THE BENEFIT OF THIS
7 DEFENDANT UNLESS AND UNTIL YOU, THE JURY, REACH THE
8 CONCLUSION THAT THE STATE HAS PROVED GUILT BEYOND A
9 REASONABLE DOUBT.

10 NOW, LET'S TALK ABOUT THAT PHRASE, PROOF BEYOND A
11 REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN
12 CIVIL CASES IN THE PAST WHERE YOU WERE TOLD IT'S ONLY
13 NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT
14 TRUE. IN CRIMINAL CASES, THE GOVERNMENT OR STATE'S PROOF
15 MUST BE MORE POWERFUL THAN THAT. AND THE WORDS USED TO
16 DESCRIBE THIS MOST STRINGENT BURDEN KNOWN TO THE LAW IS
17 PROOF BEYOND A REASONABLE DOUBT.

18 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
19 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE
20 VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
21 CERTAINTY. AND IN CRIMINAL CASES, THE LAW DOES NOT REQUIRE
22 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON
23 YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED
24 THAT THE DEFENDANT IS GUILTY OF THE CRIME OR CRIMES CHARGED,
25 YOU MUST FIND HER GUILTY. ON THE OTHER HAND, IF YOU THINK

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1 THERE IS A REAL POSSIBILITY THAT SHE IS NOT GUILTY, YOU MUST
2 GIVE HER THE BENEFIT OF THE DOUBT AND FIND HER NOT GUILTY.

3 NOW, LET'S LOOK SPECIFICALLY AT THE TWO INDICTMENTS
4 THAT ARE PRESENTED TO YOU. ONE IS INFLICTION OR ALLOWING
5 INFLICTION OF GREAT BODILY INJURY UPON A CHILD, AND THE
6 OTHER IS KNOWN AS HOMICIDE BY CHILD ABUSE. I FIRST WANT TO
7 INSTRUCT YOU ON THE LAW THAT DEALS WITH INFLICTION OR
8 ALLOWING INFLICTION OF GREAT BODILY INJURY UPON A CHILD. IT
9 IS CHARGED IN THE INDICTMENT -- AND LET ME JUST REITERATE
10 THAT AN INDICTMENT, OF COURSE, IS NOT EVIDENCE. IT'S MERELY
11 THE CHARGE THAT IS PRESENTED TO YOU.

12 IT IS ALLEGED THAT ILA MICHELE CARTER DID IN ANDERSON
13 COUNTY ON OR BETWEEN NOVEMBER 1, 1999, AND OCTOBER 14, 2000,
14 INFLICT GREAT BODILY INJURY UPON HER STEPDAUGHTER, Minor
15 [REDACTED], DATE OF BIRTH [REDACTED], [REDACTED], AND/OR THAT ILA
16 MICHELE CARTER, A PERSON WITH WHOM Minor [REDACTED] [REDACTED]'S
17 PARENT OR GUARDIAN WAS COHABITING, DID KNOWINGLY ALLOW
18 ANOTHER PERSON TO INFLICT GREAT BODILY INJURY UPON Minor
19 [REDACTED].

20 NOW, LADIES AND GENTLEMEN, THE STATUTE THAT DEALS WITH
21 ALLOWING OR INFLECTING GREAT BODILY INJURY UPON A CHILD
22 READS AS FOLLOWS: "IT IS UNLAWFUL TO INFLICT GREAT BODILY
23 INJURY UPON A CHILD. IT IS FURTHER UNLAWFUL FOR A CHILD'S
24 PARENT OR GUARDIAN, OR PERSON WITH WHOM THE CHILD'S PARENT
25 OR CHILD IS COHABITING, KNOWINGLY TO ALLOW ANOTHER PERSON TO

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1 INFLECT GREAT BODILY INJURY UPON A CHILD." NOW, THE STATUT
2 DEFINES THE TERM GREAT BODILY INJURY, AND IT DEFINES THAT
3 TERM AS FOLLOWS: "GREAT BODILY INJURY MEANS BODILY INJURY
4 WHICH CREATES A SUBSTANTIAL RISK OF DEATH OR WHICH CAUSES
5 SERIOUS OR PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR
6 IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER OR ORGAN."
7 THIS LAW FURTHER PROVIDES THAT THE STATUTE MAY NOT BE
8 CONSTRUED TO PROHIBIT CORPORAL PUNISHMENT OR PHYSICAL
9 DISCIPLINE WHICH IS ADMINISTERED BY A PARENT OR PERSON SUCH
10 AS A GUARDIAN IN A MANNER WHICH DOES NOT CAUSE GREAT BODILY
11 INJURY UPON A CHILD. THE STATE, THEREFORE, MUST PROVE TO
12 YOUR SATISFACTION BEYOND A REASONABLE DOUBT THAT DURING THE
13 TIME PERIOD AND PLACE ALLEGED IN THE INDICTMENT, THAT THIS
14 DEFENDANT DID WILLFULLY COMMIT THE OFFENSE OF INFLECTION OR
15 ALLOWING INFLECTION OF GREAT BODILY INJURY UPON A CHILD.

16 WHEN I USE THE TERM WILLFULLY, HERE'S WHAT I MEAN. TO
17 DO AN ACT WILFULLY IS TO DO AN ACT INTENTIONALLY, PURPOSELY
18 NOT BY WAY OF ACCIDENT OR MISTAKE. WILLFULNESS IS A MENTAL
19 STATE OF CONSCIOUS WRONGDOING.

20 WITH REGARD TO THIS INDICTMENT OF INFLECTION OR
21 ALLOWING INFLECTION OF GREAT BODILY INJURY UPON A CHILD, YO
22 WILL HAVE THREE OPTIONS. AND I WILL EXPLAIN THOSE THREE
23 OPTIONS TO YOU. AND YOU'LL HAVE A VERDICT FORM THAT SETS
24 THESE OUT IN A VERY STRAIGHTFORWARD FASHION FOR YOU. YOU
25 MAY FIND THE DEFENDANT GUILTY OF INFLECTING GREAT BODILY

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1 INJURY UPON A CHILD. YOU MAY, BASED ON YOUR VIEW OF THE
2 EVIDENCE, FIND THE DEFENDANT GUILTY OF ALLOWING ANOTHER
3 PERSON TO INFLECT GREAT BODILY INJURY UPON A CHILD. OR YOU
4 MAY FIND THE DEFENDANT NOT GUILTY.

5 IN ORDER TO FIND THE DEFENDANT GUILTY OF EITHER
6 DIRECTLY INFLECTING GREAT BODILY INJURY UPON A CHILD, OR
7 ALLOWING ANOTHER PERSON TO INFLECT GREAT BODILY INJURY UPON
8 A CHILD, YOU MUST FIRST BE SATISFIED BEYOND A REASONABLE
9 DOUBT THAT THE STATE HAS ESTABLISHED EACH ELEMENT OF THAT
10 OFFENSE BEYOND A REASONABLE DOUBT. IF YOU FIND THE STATE
11 HAS FAILED IN ANY REGARD TO PROVE EACH AND EVERY ELEMENT
12 BEYOND A REASONABLE DOUBT, IT WOULD BE YOUR DUTY TO FIND THE
13 DEFENDANT NOT GUILTY.

14 NOW, LET'S EXAMINE THE FINAL INDICTMENT. AND THIS IS
15 THE INDICTMENT, AGAIN THE CHARGE, OF HOMICIDE BY CHILD
16 ABUSE. THIS INDICTMENT CHARGES THAT ILA MICHELE CARTER DID
17 IN ANDERSON COUNTY ON OR BETWEEN APRIL 14, 2000, AND OCTOBER
18 14, 2000, CAUSE THE DEATH OF HER FOUR-YEAR-OLD STEPDAUGHTER,
19 Minor , WHILE COMMITTING CHILD ABUSE OR
20 NEGLECT, AND THE DEATH OCCURRED UNDER CIRCUMSTANCES
21 MANIFESTING AN EXTREME INDIFFERENCE TO HUMAN LIFE AND/OR ILA
22 MICHELE CARTER KNOWINGLY AIDED AND ABETTED ANOTHER PERSON TO
23 COMMIT CHILD ABUSE OR NEGLECT, AND THE CHILD ABUSE OR
24 NEGLECT RESULTED IN THE DEATH OF Minor
25 LADIES AND GENTLEMEN, THE STATUTE THAT DEALS WITH THIS

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1 PARTICULAR CHARGE READS, IN PERTINENT PART, AS FOLLOWS: "
2 PERSON IS GUILTY OF HOMICIDE BY CHILD ABUSE, IF THE PERSON
3 CAUSES THE DEATH OF A CHILD UNDER THE AGE OF ELEVEN WHILE
4 COMMITTING CHILD ABUSE OR NEGLECT, AND THE DEATH OCCURS
5 UNDER CIRCUMSTANCES MANIFESTING AN EXTREME INDIFFERENCE TO
6 HUMAN LIFE, OR KNOWINGLY AIDS AND ABETS ANOTHER PERSON TO
7 COMMIT CHILD ABUSE OR NEGLECT, AND THE CHILD ABUSE OR
8 NEGLECT RESULTS IN THE DEATH OF A CHILD UNDER THE AGE OF
9 ELEVEN."

10 THIS STATUTE HAS THE FOLLOWING DEFINITION WHICH I SHAL
11 WITH YOU AND INSTRUCT TO YOU: "CHILD ABUSE OR NEGLECT MEAN
12 AN ACT OR OMISSION BY ANY PERSON WHICH CAUSES HARM TO THE
13 CHILD'S PHYSICAL HEALTH OR WELFARE. HARM TO A CHILD'S
14 HEALTH OR WELFARE OCCURS WHEN A PERSON INFLECTS OR ALLOWS
15 BE INFLECTED UPON THE CHILD PHYSICAL INJURY, INCLUDING
16 INJURIES SUSTAINED AS A RESULT OF EXCESSIVE CORPORAL
17 PUNISHMENT." HARM TO A CHILD'S HEALTH OR WELFARE ALSO
18 OCCURS WHEN A PERSON "FAILS TO SUPPLY THE CHILD WITH
19 ADEQUATE FOOD, CLOTHING, SHELTER, OR HEALTH CARE, AND THE
20 FAILURE TO DO SO CAUSES A PHYSICAL INJURY OR CONDITION
21 RESULTING IN DEATH."

22 NOW, LADIES AND GENTLEMEN, REGARDING THE HOMICIDE BY
23 CHILD ABUSE CHARGE, IN DETERMINING WHETHER THE STATE HAS
24 PROVEN GUILT BEYOND A REASONABLE DOUBT, YOU MAY ONLY
25 CONSIDER EVIDENCE, IF YOU FIND SUCH EVIDENCE, OF INJURIES

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1 RESULTING FROM THE WILLFUL CHILD ABUSE OR NEGLECT THAT
2 CAUSED THE DEATH OF THE CHILD.

3 NOW, LADIES AND GENTLEMEN, UNDER THIS PARTICULAR
4 CHARGE, HOMICIDE BY CHILD ABUSE, AGAIN, YOU ARE GIVEN THREE
5 OPTIONS. YOU MAY, BASED ON YOUR VIEW OF THE EVIDENCE, FIND
6 THE DEFENDANT GUILTY OF DIRECTLY CAUSING THE DEATH OF A
7 CHILD UNDER THE AGE OF ELEVEN WHILE COMMITTING ABUSE OR
8 NEGLECT, AND THE DEATH OCCURRED UNDER CIRCUMSTANCES
9 MANIFESTING AN EXTREME INDIFFERENCE TO HUMAN LIFE. THAT'S
10 ONE OPTION. ANOTHER OPTION IS GUILTY OF KNOWINGLY AIDING OR
11 ABETTING ANOTHER PERSON TO COMMIT CHILD ABUSE OR NEGLECT,
12 AND THE CHILD ABUSE OR NEGLECT RESULTED IN THE DEATH OF A
13 CHILD UNDER THE AGE OF ELEVEN. AND YOU ALSO ALWAYS HAVE THE
14 OPTION OF NOT GUILTY.

15 SO WITH RESPECT TO EACH OF THE INDICTMENTS PRESENTED TO
16 YOU, YOU HAVE THREE OPTIONS. THOSE OPTIONS ARE PRESENTED TO
17 YOU ON THE VERDICT FORM.

18 NOW, LADIES AND GENTLEMEN, PLEASE UNDERSTAND IN ORDER
19 TO FIND THE DEFENDANT GUILTY OF ANY OFFENSE UNDER EITHER
20 INDICTMENT, YOU MUST BE CONVINCED BEYOND A REASONABLE DOUBT
21 THE STATE HAS ESTABLISHED EACH ELEMENT OF THAT OFFENSE
22 BEYOND THAT STANDARD OF PROOF BEYOND A REASONABLE DOUBT.

23 NOW, MR. FOREMAN, YOU WILL BE RESPONSIBLE FOR
24 COMPLETING THE VERDICT FORM THAT'S BEEN PREPARED. ALL
25 TWELVE OF YOU WHO DELIBERATE CAN EXAMINE IT AND STUDY IT

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1 JUST AS YOU DO THE EXHIBITS THAT WILL BE WITH YOU IN THE
2 JURY ROOM.

3 NOW, MR. FOREMAN, IN REACHING A VERDICT, YOU'LL NOTICE
4 THERE'S A BLANK LINE NEXT TO EACH OPTION. YOU SIMPLY PUT A
5 CHECK OR 'X' OR SOME SIGNIFYING MARK TO INDICATE THE VERDICT
6 YOU REACH WITH RESPECT TO EACH INDICTMENT. PLEASE
7 UNDERSTAND THAT YOUR INDICTMENT -- THAT YOUR VERDICT WITH
8 RESPECT TO EACH INDICTMENT MUST BE UNANIMOUS. THAT IS, ALL
9 TWELVE OF YOU WHO DELIBERATE MUST AGREE. AND WHEN YOU
10 RETURN A VERDICT, IT MUST REFLECT UNANIMOUS JUDGEMENT AND
11 CONSENT OF ALL TWELVE WHO DELIBERATE.

12 AS TO THE CHARGE UNDER CHARGE ONE, YOU HAVE THREE
13 VERDICT OPTIONS. I HAVE EXPLAINED THOSE TO YOU. YOU SELECT
14 THE ONE THAT YOU VIEW APPROPRIATE UNDER YOUR VIEW OF THE
15 FACTS GIVEN THE STATE'S STANDARD OF PROOF OF PROVING GUILT
16 BEYOND A REASONABLE DOUBT.

17 WITH CHARGE TWO, SAME APPROACH. YOU HAVE THREE
18 OPTIONS. YOU REACH ONE VERDICT BASED ON YOUR VIEW OF THE
19 EVIDENCE IN ACCORDANCE WITH THE LAW AS I HAVE INSTRUCTED IT.

20 NOW, PLEASE PLACE NO SIGNIFICANCE IN THE ORDER IN WHICH
21 YOUR VERDICT OPTIONS APPEAR. THERE IS NO SIGNIFICANCE IN
22 THE ORDER IN WHICH THE OPTIONS APPEAR. YOU FIND THE TRUTH
23 FROM THE EVIDENCE, YOU APPLY THE LAW AS I HAVE GIVEN IT, AND
24 THROUGH THAT PROCESS, ARRIVE AT A VERDICT IN EACH INDICTMENT
25 WHICH SPEAKS THE TRUTH OF THE FACTS OF THIS CASE IN

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1 ACCORDANCE WITH THE APPROPRIATE LEGAL PRINCIPLES.

2 NOW, AT THIS TIME, I'M GOING TO EXCUSE ALL SIXTEEN OF
3 YOU BACK TO THE JURY ROOM. BUT WHEN YOU GET BACK THERE,
4 DON'T START YOUR DELIBERATIONS QUITE YET. THE LAW REQUIRES
5 THAT BEFORE THE JURY BEGINS DELIBERATING, I MUST TAKE UP MY
6 CHARGE OUTSIDE YOUR PRESENCE WITH THE ATTORNEYS. IN GIVING
7 YOU ALL THIS LAW, I MAY HAVE INADVERTENTLY MISSTATED A
8 PRINCIPLE OF LAW. I MAY HAVE INADVERTENTLY OMITTED
9 SOMETHING. AND IF THAT'S HAPPENED, THESE FINE ATTORNEYS
10 WILL BRING IT TO MY ATTENTION. IN THAT EVENT, YOU WOULD
11 NEED TO COME BACK IN THE COURTROOM, ALL OF YOU, FOR FURTHER
12 CLARIFICATION AND INSTRUCTION.

13 BUT IT MAY BE THAT YOU DO NOT NEED TO COME BACK TO THE
14 COURTROOM. AND IF YOU DON'T NEED TO COME BACK TO THE
15 COURTROOM, HERE'S THE SIGNAL FROM ME TO YOU TO BEGIN YOUR
16 DELIBERATIONS. WHEN THE BAILIFF BRINGS THE VERDICT FORM AS
17 WELL AS ALL THE EXHIBITS AND PLACES THEM ON THE TABLE IN THE
18 JURY ROOM, THAT WILL BE THE SIGNAL TO BEGIN YOUR
19 DELIBERATIONS.

20 IF YOU HAVE ANY CONCERN OR QUESTION DURING THE COURSE
21 OF YOUR DELIBERATIONS, PLEASE REDUCE THEM TO WRITING AND
22 GIVE THEM TO YOUR BAILIFF, AND I WILL RESPOND TO YOU AS
23 QUICKLY AS I CAN TO THE EXTENT THE LAW PERMITS ME TO DO SO.

24 THANK YOU FOR YOUR PATIENCE. I'D ASK YOU TO RETIRE TO
25 THE JURY ROOM, ALL OF YOU, AND AWAIT FURTHER INSTRUCTIONS.

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VERDICT AND SENTENCING

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1 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:15 P.M.)

2 THE COURT: THE JURY HAS BEEN EXCUSED. AND I'LL BE
3 GLAD TO HEAR ANY EXCEPTIONS OR ADDITIONS FROM THE STATE.

4 MS. WHITE: NONE, YOUR HONOR.

5 THE COURT: FROM DEFENDANT?

6 MR. GAMBLE: NONE, YOUR HONOR.

7 THE COURT: NUMBER ONE, I WANT TO THANK THE
8 ATTORNEYS ON BOTH SIDES IN A VERY DIFFICULT CASE BEING SO
9 WELL-PREPARED AND REPRESENTING YOUR SIDES VIGOROUSLY AND
10 PROFESSIONALLY. AND I THANK BOTH OF YOU VERY MUCH.

11 I WOULD LIKE, IF YOU WOULD BE KIND ENOUGH, JUST TO
12 REVIEW, IF YOU HAVEN'T ALREADY DONE SO DURING THE LUNCH
13 BREAK, REVIEW THE EXHIBITS AND MAKE SURE THAT WE HAVE THAT
14 IN PROPER ORDER. WHAT I WILL DO IS REMOVE THE FOUR
15 ALTERNATES AND EXCUSE THEM. AND ONCE WE'VE ORGANIZED THE
16 EXHIBITS, THEN WE WILL COMMENCE WITH THE DELIBERATIONS.
17 WE'LL BE IN RECESS PENDING FURTHER WORD FROM THE JURY.

18 (WHEREUPON THE ALTERNATES WERE EXCUSED)

19 (WHEREUPON ALL EXHIBITS ADMITTED INTO EVIDENCE AND
20 VERDICT FORMS WERE PRESENTED TO THE JURY TO BEGIN THEIR
21 DELIBERATIONS AT 3:21 P.M.)

22 (WHEREUPON COURT STOOD AT RECESS AWAITING THE VERDICT
23 OF THE JURY)

24 THE COURT: I'M INFORMED THE JURY HAS REACHED A
25 VERDICT. IS THE STATE READY TO RECEIVE THE VERDICT?

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VERDICT AND SENTENCING

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1 MS. WHITE: THE STATE IS READY.

2 THE COURT: IS THE DEFENDANT READY TO RECEIVE THE
3 VERDICT?

4 MR. GAMBLE: THE DEFENDANT IS READY, YOUR HONOR.

5 THE COURT: LADIES AND GENTLEMEN, THOSE IN THE
6 COURTROOM, I APPRECIATE YOUR ATTENDANCE TODAY AND FOR THOSE
7 WHO HAVE BEEN HERE THROUGHOUT THE TRIAL. AND PLEASE
8 UNDERSTAND THAT DURING THE VERDICT, NO EXPRESSION OF
9 PLEASURE OR DISPLEASURE WITH THE JURY'S VERDICT WILL BE
10 TOLERATED. WHILE YOU MAY RESPECTFULLY DISAGREE WITH THE
11 JURY'S VERDICT, YOU'LL DO SO QUIETLY. I'M INSTRUCTING THE
12 BAILIFFS AND THE SHERIFF'S OFFICE TO TAKE ANYONE INTO
13 CUSTODY WHO ENGAGES IN ANY OUTBURSTS OF ANY KIND WITH REGARD
14 TO THE JURY'S VERDICT IN THE COURTROOM OR VICINITY OF THE
15 COURTHOUSE. IF THERE'S ANYONE WHO CANNOT FOLLOW THIS ORDER,
16 HE OR SHE SHOULD BE EXCUSED AT THIS TIME. BY REMAINING IN
17 THE COURTROOM, YOU'RE INDICATING TO ME THAT YOU'RE ABLE TO
18 COMPLY WITH MY ORDER.

19 BRING THE JURY.

20 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:08 P.M.)

21 THE COURT: MR. FOREMAN, HAVE YOU AND THE LADIES AND
22 GENTLEMEN OF THE JURY REACHED A VERDICT IN THE TWO
23 INDICTMENTS THAT WERE PRESENTED TO YOU?

24 FOREMAN: YES, SIR.

25 THE COURT: IF YOU'D HAND IT TO THE BAILIFF.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
VERDICT AND SENTENCING

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1 (WHEREUPON VERDICT FORMS WERE HANDED TO THE BAILIFF AND
2 PASSED UP TO THE COURT)

3 THE COURT: THE VERDICT IS IN PROPER FORM. MADAM,
4 CLERK, IF YOU'D PLEASE PUBLISH THE VERDICT.

5 MADAM CLERK: CASE 2001-GS-04-765, STATE VERSUS ILA
6 MICHELE CARTER, CHARGE ONE, INFLICTION OR ALLOWING
7 INFLICTION OF GREAT BODILY INJURY. THE VERDICT OF THE JURY
8 WE, THE JURY, FIND THE DEFENDANT GUILTY OF INFLICTING GREAT
9 BODILY INJURY UPON A CHILD.

10 2001-GS-04-1203, THE STATE VERSUS ILA MICHELE CARTER,
11 CHARGE TWO, HOMICIDE BY CHILD ABUSE. THE VERDICT OF THE
12 JURY, WE, THE JURY, FIND THE DEFENDANT GUILTY OF DIRECTLY
13 CAUSING THE DEATH OF A CHILD UNDER THE AGE OF ELEVEN WHILE
14 COMMITTING ABUSE OR NEGLECT, AND THE DEATH OCCURRED UNDER
15 CIRCUMSTANCES MANIFESTING AND EXTREME INDIFFERENCE TO HUMAN
16 LIFE. THAT'S SIGNED JOHNNY D. SIMPSON, FOREPERSON.

17 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, IF THESE
18 ARE YOUR VERDICTS, WOULD YOU PLEASE INDICATE BY RAISING YOUR
19 RIGHT HAND?

20 (WHEREUPON ALL JURORS RAISED THEIR RIGHT HAND)

21 MADAM CLERK: ALL HANDS RAISED, VERDICTS OF THE JURY,
22 YOUR HONOR.

23 THE COURT: ANYTHING FURTHER WITH RESPECT TO THE
24 JURY PRIOR TO DISCHARGE? FIRST FROM THE STATE?

25 MS. WHITE: NO, SIR.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
VERDICT AND SENTENCING

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1 THE COURT: FROM DEFENDANT?

2 MR. GAMBLE: NO, YOUR HONOR.

3 THE COURT: LADIES AND GENTLEMEN, THIS WILL CONCLUDE
4 YOUR SERVICE IN THIS CASE. AND I WANT TO THANK YOU FOR YOUR
5 CONSCIENTIOUS SERVICE IN THIS CASE. I NEED YOU FOLKS,
6 PARTICULARLY YOU, MR. FOREMAN, TO SIGN THE ACTUAL INDICTMENT
7 CONSISTENT WITH THE VERDICTS THAT YOU HAVE REACHED. SO I'M
8 GOING TO ASK IF YOU ALL TWELVE WOULD RETIRE TO THE JURY
9 ROOM. MS. PHILLIPS AND I WILL BE THERE MOMENTARILY. WE'LL
10 ACCOMPLISH THAT TASK AND BID YOU FAREWELL. THANK YOU.

11 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:10 P.M.)

12 THE COURT: THE JURY HAS BEEN DISCHARGED. MS.
13 PHILLIPS AND I ARE GOING TO RELEASE THE JURY ONCE THEY
14 CONFORM THE INDICTMENT TO THE VERDICT FORM. THIS PROCESS
15 WILL TAKE FIVE TO TEN MINUTES. AT THAT POINT, I'LL COME
16 BACK ON THE RECORD. I'LL HEAR ANY MOTIONS AT THAT TIME.
17 WE'LL THEN PROCEED TO SENTENCING.

18 IF THE STATE WISHES TO HAVE A LIMITED NUMBER OF FAMILY
19 MEMBERS PRESENT AND LAW ENFORCEMENT INVOLVED IN THE CASE,
20 THEY MAY STAND WITH THE SOLICITOR DURING SENTENCING.

21 LIKewise, MR. GAMBLE, IF YOU HAVE ANYONE YOU WISH TO BE
22 WITH THE DEFENDANT DURING SENTENCING, YOU'RE ACCORDED THE
23 SAME COURTESY.

24 (WHEREUPON COURT STOOD AT RECESS)

25 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:21 P.M.)

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
VERDICT AND SENTENCING

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1 THE COURT: THE FIRST ORDER OF BUSINESS IS TO PLACE
2 ON THE RECORD ANY MOTIONS. ANY MOTIONS YOU'D LIKE TO PLACE
3 ON THE RECORD AT THIS TIME, MR. GAMBLE?

4 MR. GAMBLE: NO, YOUR HONOR. AND I'VE ALREADY
5 DISCUSSED WITH MY CLIENT HER APPEAL RIGHTS. WE GENERALLY D
6 THAT.

7 THE COURT: VERY GOOD. AND I DID NOT SAY THIS IN
8 THE PRESENCE OF THE JURY AS THEY BEGAN THEIR DELIBERATIONS
9 WHEN I COMMENDED BOTH SIDES FOR THE PREPARATION. AND I
10 COMMEND THE ATTORNEYS FOR THEIR FINE REPRESENTATION AND
11 PREPARATION ON BOTH SIDES.

12 LET ME HEAR FIRST FROM THE STATE. SOLICITOR, ANYTHING
13 ELSE YOU'D LIKE TO ADD, I'LL BE GLAD TO HEAR FROM YOU. IF
14 LAW ENFORCEMENT WOULD LIKE TO SPEAK OR A LIMITED NUMBER OF
15 FAMILY MEMBERS, I'LL BE GLAD TO HEAR FROM THEM AS WELL.

16 MS. WHITE: YOUR HONOR, I JUST WANT TO SPEAK -- IF
17 Y'ALL DON'T MIND STEPPING BACK. I JUST WANT TO SPEAK TO TH
18 JURORS AND THE ALTERNATES AND AGAIN SAY I'M SO SORRY FOR
19 PUTTING THEM THROUGH THIS. I MEAN, I DEAL WITH TERRIBLE
20 ABUSE AND MURDER CASES EVERY DAY. AND I CAN'T IMAGINE WHAT
21 THIS IS GOING TO DO TO SOMEBODY WHO -- YOU NEVER GET USED T
22 IT. BUT WHO HAS NEVER HEARD THIS. AND I JUST HOPE THEY CA
23 GET OVER LISTENING TO ALL THIS. AND WE VERY MUCH APPRECIAT
24 YOUR VERDICT. AND I THINK IT'S NOT GOING TO BRING Minor
25 BACK, BUT I DO APPRECIATE THEM DOING WHAT THEY CAN FOR

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VERDICT AND SENTENCING

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1 Minor TO BRING JUSTICE.

2 YOUR HONOR, SHERIFF TAYLOR, I BELIEVE, WOULD ALSO LIKE
3 TO THANK THE JURY. HE HAD INDICATED TO ME THAT HE WOULD.

4 THE COURT: YES, SIR, SHERIFF?

5 SHERIFF TAYLOR: I APPRECIATE IT. IF YOU'RE LIKE
6 ME, SOME OF YOU HAVE PROBABLY GONE HOME AND SHED A FEW TEARS
7 OVER THIS WHOLE ORDEAL. IT'S BEEN TOUGH. LIKE THE
8 SOLICITOR SAID, WE SEE IT A GOOD BIT. IT DOESN'T MEAN WE
9 REALLY GET USED TO IT. UNFORTUNATELY, THIS IS IN MY TWELVE
10 YEARS THE MOST HEINOUS, THE MOST VICIOUS, THE MOST CRUEL
11 CASE THAT I'VE EVER BEEN ASSOCIATED WITH. AND IT'S BEEN
12 HARD FOR ALL OF US. I CERTAINLY APPRECIATE IT.

13 MS. WHITE: YOUR HONOR, I BELIEVE THE FAMILY MEMBERS
14 WOULD LIKE TO ADDRESS THE COURT.

15 THE COURT: YOUR NAME, PLEASE, MA'AM?

16 MS. LEGETTE: REBECCA LYNN LEGETTE.

17 THE COURT: YES, MA'AM, MS. LEGETTE?

18 MS. LEGETTE: I'M MICHELE'S MOTHER-IN-LAW. I JUST
19 WANT TO SAY TO YOU, MICHELE, ALL THE LIES YOU TOLD ME. THE
20 THINGS THAT YOU CAME UP HERE -- AND YOU PUT YOUR HAND ON A
21 BIBLE TO SWEAR TO TELL THE TRUTH ABOUT WHAT HAPPENED WHEN
22 Minor TEETH WERE KNOCKED OUT AND SHE HAD A BLACK EYE
23 AND COULDN'T EAT ALL THAT FOOD. I KNOW NOW YOU LIED.
24 EVERYTHING YOU EVER TOLD ME WAS A LIE. AND I JUST DON'T
25 UNDERSTAND WHY YOU WOULDN'T LET ME COME AND GET HER AND TAKE

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1 HER IF YOU DIDN'T WANT HER.

2 ALL SHE WANTED WAS FOR YOU TO LOVE HER AND BE A MOTHER.
3 TO HER. THAT'S ALL SHE WANTED. AND YOU DIDN'T HAVE IT IN
4 YOU TO GIVE HER. AND I HOPE HER LITTLE FACE IS ETCHED IN
5 YOUR MIND FOR THE REST OF YOUR LIFE.

6 MR. HARMON: TIMOTHY DAVID HARMON. I'M THE
7 GRANDFATHER ON ANGIE CARTER, THE BIOLOGICAL MOTHER'S SIDE.
8 AND I WANT TO SAY -- WHAT ALL DO I WANT TO SAY? EVERY TIME
9 I SEE BLUES CLUES SOMETHING, I CAN'T WATCH IT. I CAN'T SEE
10 IT. YOU STOLE SOMETHING PRECIOUS FROM ME. I OFFERED TO YOU
11 AND DEREK TWICE TO LET ME TAKE HER BECAUSE Y'ALL COMPLAINED
12 ABOUT HER SO MUCH. AND YOU REFUSED ME. I DON'T KNOW WHY.
13 BUT I WOULD HAVE SAT THERE, AND I WOULD HAVE RAISED HER.
14 AND I WOULD HAVE LOVED HER AND CARED FOR HER.

15 WHAT SHE HAS GONE THROUGH IS HER OWN BATTLE ZONE. SHE
16 WAS A PRISONER OF WAR. AND IF THEY WOULD DO WHAT Y'ALL DID
17 TO PRISONERS, THEY WOULD HUNT THEM DOWN FOR WAR CRIMES AND
18 EXECUTE THEM. AND I PRAY, ASK THE COURT, LIFE SENTENCE
19 WITHOUT PAROLE. AND THE WHOLE -- I'M SPEAKING FOR THE WHOLE
20 FAMILY. AND I HOPE YOU NEVER FORGET, AND I HOPE YOU LIVE
21 WITH SOME OF THE TORMENT THAT YOU PUT HER THROUGH.

22 THE COURT: THANK YOU, MR. HARMON.

23 MS. CARTER: MY NAME IS KAY CARTER. Minor WAS M.
24 GRAND-BABY, THE ONLY THING I HAD LEFT. MICHELE, I WISH YOU
25 WOULD LOOK AT ME, PLEASE. THE ONLY THING I HAD LEFT OF

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
VERDICT AND SENTENCING

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1 ANGIE. THAT WAS MY HEART. YOU DIDN'T ONLY KILL Minor
2 YOU KILLED ALL OF US. PART OF US WILL ALWAYS BE DEAD. WE
3 TRIED WITH YOU. I LOVED DEREK JUST LIKE HE WAS MY OWN SON.
4 AND IF YOU HAD LOVED Minor I COULD HAVE LOVED YOU. BUT
5 YOU DIDN'T GIVE US A CHANCE.

6 I HAVE Minor CHRISTMAS PRESENT THAT I WASN'T
7 ALLOWED TO GIVE HER STILL PUT AWAY. I DON'T KNOW WHAT TO DO
8 WITH IT. I CAN'T GET RID OF IT BECAUSE THAT WAS
9 Minor

10 YOU'D BETTER BE GLAD THERE'S A FORGIVING GOD. AND ONE
11 DAY, MAYBE, IF YOU WILL TELL THE TRUTH AND SPEAK TO HIM AND
12 SAY, I'M SORRY -- YOU'D BETTER BE GLAD HE'S A FORGIVING GOD.
13 BUT HE'LL KNOW IF YOU'RE LYING OR NOT. WE DON'T HAVE TO
14 HAVE IT ON PAPER. HE'LL KNOW. YOU REMEMBER THAT.

15 MS. WHITE: THAT'S ALL, YOUR HONOR.

16 THE COURT: I DO WANT TO COMMEND THE SHERIFF'S
17 OFFICE FOR THE FINE INVESTIGATION AND PROFESSIONAL JOB IN
18 WHICH THEY HANDLED THIS CASE.

19 MS. WHITE: THEY DID AN EXCELLENT JOB, YOUR HONOR.

20 THE COURT: YES, THEY DID.

21 MR. GAMBLE, I'LL BE GLAD TO HEAR FROM YOU FURTHER, SIR.
22 I'LL CERTAINLY BE GLAD TO HEAR FROM MS. CARTER.

23 MR. GAMBLE: I HAVE NOTHING FURTHER, YOUR HONOR.

24 THE COURT: ANYTHING FROM YOU, MA'AM?

25 DEFENDANT CARTER: NO, SIR.

STATE v. ILA MICHELE CARTER 2001-GS-04-765, 1203
VERDICT AND SENTENCING

7.

1 THE COURT: THE EVIDENCE OF GUILT AGAINST THIS
2 DEFENDANT IS OVERWHELMING. Minor LEFT THIS EARTH ON
3 OCTOBER THE 14TH. HER SPIRIT LEFT HER MUCH EARLIER. WORDS
4 CAN NEVER ADEQUATELY CONVEY OR DESCRIBE THE LIFE OF
5 UNMITIGATED TORTURE SUFFERED BY THIS POOR CHILD.

6 THE SENTENCE OF THE COURT ON INDICTMENT 2001-1203,
7 HOMICIDE BY CHILD ABUSE, ILA MICHELE CARTER IS COMMITTED TO
8 THE DEPARTMENT OF CORRECTIONS FOR THE TERM OF HER NATURAL
9 LIFE.

10 INDICTMENT 2001-765, GREAT BODILY INJURY UPON A CHILD,
11 THE DEFENDANT, ILA MICHELE CARTER IS COMMITTED TO THE
12 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF TWENTY YEARS
13 CONSECUTIVE TO HER LIFE SENTENCE.

14 THAT CONCLUDES THIS MATTER. REMOVE THE DEFENDANT.

15 MS. WHITE: THANK YOU, YOUR HONOR.

16 (TRIAL ENDED)

17 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED RENEE H. TOLLISON, OFFICIAL COURT
3 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 25TH
9 THROUGH 28TH DAYS OF JUNE, 2001.

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

12 SEPTEMBER 15, 2001

13
14 Renee H. Tollison

15 CIRCUIT COURT REPORTER
16

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

John W. Kittredge, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ILA MICHELLE CARTER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The judge erred by allowing the solicitor to suggest that appellant's invocation of her right to counsel while being interrogated by the police was evidence of her guilt.

STATEMENT OF FACTS

On March 27, 2001, an Anderson County grand jury indicted Ila Michelle Carter for homicide by child abuse and inflicting great bodily injury upon a child. (She was re-indicted for homicide by child abuse on May 1, 2001.) The victim was Carter's four-year old stepdaughter, Minor who died on October 14, 2000 after sustaining severe head trauma. The state contended that Carter began to abuse the little girl after she married Minor father a year and a half earlier.

Judge John W. Kittredge presided at Carter's jury trial June 25 – 28, 2001. (Minor father, Derek, pleaded guilty to similar charges.) The jury found Carter guilty as charged and the judge sentenced her to life imprisonment plus twenty years.

ARGUMENT

The judge erred by allowing the solicitor to suggest that appellant's invocation of her right to counsel while being interrogated by the police was evidence of her guilt.

The police initially questioned Michelle Carter one week after her stepdaughter's death. R. p. 127, lines 24 and 25. Although she was not in custody at the time, the police informed Carter of her rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). R. p. 128, line 7 – p. 130, line 3. She eventually told the police that she thought she needed to consult with an attorney. R. p. 135, line 25 – p. 136, line 5.

As a matter of strategy, defense counsel cross-examined the police about Carter's request for counsel. R. p. 399, line 19 – p. 403, line 1. Carter herself testified that she had requested an attorney. R. p. 616, lines 13–16.

In her closing argument, the solicitor stated to the jury:

[Y]ou heard a little bit about [how] the defendant came in... and talked. When she was told that her husband had disclosed things to the police, she asked for an attorney... Once she asked for an attorney, they stopped talking to her. That's the law. You're not allowed to talk to the person anymore once they ask for an attorney... The obligation is to stop talking to them, and that's exactly what was done.

R. p. 682, line 21 – p. 683, line 20. In other words, the solicitor treated Carter's request for counsel as some evidence of her guilt. Defense counsel did not object to this argument.

"It is impermissible for the state to argue in favor of guilt or punishment based upon the accused's assertion of a constitutional right." State v. Brown, 289 S.C. 581, 347 S.E.2d 882, 887 (1986). "Such comments may not be made either directly or indirectly." State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10, 13 (1987). See, also, State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987).

The mere fact that the defense waived any objection to evidence that Carter invoked her right to counsel did not automatically mean that the state could imply that it was proof of her guilt. For this reason, the Court should reverse both convictions and remand for a new trial.

Respectfully submitted,

Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

This 21st day of May, 2002.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

John W. Kittredge, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ILA MICHELLE CARTER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ila Michelle Carter states:

1. He is Deputy Chief Attorney for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge John W. Kittredge, which was held on , and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Ila Michelle Carter .

Respectfully submitted,

Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

This 21st day of May, 2002

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant

May 21, 2002

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

John W. Kittredge, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ILA MICHELLE CARTER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief in the above referenced case has been served upon Charles H. Richardson, Esquire; a copy of the Record on Appeal and Final Anders Brief has been served on Ila Michelle Carter #276333, Womens Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 21st day of May, 2002.

Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of May, 2002.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007 .



STATE OF SOUTH CAROLINA

County of Anderson

In the Court of Common Pleas

2004-CF-04-0529

11a Michele Carter 271-333
 Full name and prison number (if any) of Applicant.

vs.

The State of South Carolina
 Name of Respondent.

APPLICATION FOR
 POST-CONVICTION RELIEF

TRUE COPY
 FEB 24 2004
 CLERK OF COURT

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Leath Correctional Institution
2809 Airport Rd Greenwood, SC 29149
2. Name and location of Court which imposed sentence Anderson County P.O. Box 8002
Anderson, SC 29122
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2001-95-04-1203 Homicide By Child Abuse
 - (b) 2001-95-04-765 Great Bodily Injury Upon A Child
 - (c) N/A
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-29-01 Life 2001-95-04-1203
 - (b) 6-29-01 20 years 2001-95-04-765
 - (c) N/A

5. Check whether a finding of guilty was made

(a) after a plea of guilty N/A

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere N/A

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. N/A

iii. N/A

(c) the date of each such result:

i. February 25, 2003

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Attorney did not represent me effectively

(b) No witnesses were called in my defense

(c) Findings of New Evidence

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Attached

(b) See Attached

(c) See Attached

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

15. If any ground set forth in (9) 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) I was unaware of grounds it was filed on or could be filed on.

(b) N/A

(c) N/A

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(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 Joseph I. Savitz;

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ~~Yes Joseph I. Savitz~~ NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Joseph I. Savitz III SC Office of Appellate Defense
1122 Lady Street Suite 940 Columbia SC 29622

ii. Robert Gambrell 301 Camson Rd Anderson, SC 29625

iii. N/A

(b) the proceedings at which each such attorney represented you:

i. Appeal

ii. Trial

iii. N/A

18. State clearly the relief you seek in filing this application.

New Trial Sentence Overturned Sentence Reduction Innocence Proven

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of Anderson

VERIFICATION

I, Ms Michele Carter, 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.

Ms Michele Carter

SWORN to and subscribed before me this 2

day of FEB, 2004

Willie M. Wood (L.S.)
Notary Public

My Commission Expires: Jan 14 2008

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Ms Michele Carter, 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 therefor.

Ms Michele Carter
Applicant

SWORN or affirmed to and subscribed before me this

2 day of FEB, 2004

Willie M. Wood
Notary Public

My Commission Expires Jan 14 2008

ATTACHMENTS For ⁷⁴⁹

Questions #9 + #10

p90214-15 I did not freely go down to the Sheriff's department. Officer Carpetner called my home on 10-24-2000. Carpetner said that Derek and I had to come into the Sheriff's department on 10-25-00. I called Officer Carpetner back later on that day on 10-24-00 to try to reschedule because I could not find a baby sitter and I wasn't feeling well. Carpetner told me that Derek and I had to come into the Sheriff's department on 10-25-00. So it was not done freely and voluntarily, he said we had to come in on 10-25-00.

p90223-25 I did not leave after the questioning on 10-25. I was told to sit in the waiting room. I was not mirandized after the questioning. I did not give a formal statement on 10-25. I was not allowed to go home until late that night on 10-25 and then I was told that the officers would escort me to my house. I was to ride in the middle of the police cars. There were to be police cars in front of me and behind me.

p9191-4 On the night of 10-25, Officer Carpetner told me that he was not going to tell me anything about my children or Derek until I spoke with him. Carpetner gave me a card and told me that if I wanted to find out about my children or Derek I had to call the number on the card and set up an appointment. He also told me that he ~~did~~ ^{was} not going to give me any information if I asked to speak to an attorney.

p91919-25 I did not contact Terri and Jessie to go to my house and clean it out. My brother said he was going to get my

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things but Terri would not let him get them. I
 never had any contact with Terri. It wasn't a
 matter of being excited because it was only a
 day or so later when I found out Terri had
 already went to my house and was taking things
 p92 l 4-5 I did not request the Carter to go out to my house
 to clean it out. By the time I found out anything
 about my things the Carter had taken my things
 out of my house.
 p92 l 14-15 The tape hit and the D.A. proved she was not
 p93 l 1-5 It also proved that only Minor
 was found.
 p93 l 4-5 One part of the tape shows that she would not
 p93 l 5-14 She was clumsy after the head injury. Also they
 would not play the sound of the photo with Aggie
 and Dick stating how she acted.
 p93 l 10-16 Dr. Reporda told us the clumsiness was due to the
 head injury. Dr. Reporda also told us the photo type
 thing as Minor face and back was a pattern
 of Reporda called maculitis. I can only go by what he
 told by doctors.
 p93 l 15-16 If Dr. Woodard is going to describe the pictures
 where are the pictures shown?

3

p94 l 3-6 I do not believe that the testimony should be admissible due to the fact that the Defense attorney was present at another hearing and had heard all of the testimony from that hearing.

p94 l 13-19 Even though it is recognized as a valid syndrome and Dr Woodard has the credentials to identify it he was not a Minor doctor Dr Woodard never ^{saw} Minor except at the autopsy Dr Woodard had Officer Carpenter there at the autopsy to influence his opinion on injuries

p94 l 20-25 The court said that "I'm not aware of any in light of the existing case law which recognizes that syndrome and his qualifications in that particular area and his knowledge of that area" If there isn't any case law that recognizes Dr Woodard's testimony on the syndrome why is the testimony allowed?

p95 l 8-14 Just because Derek plead guilty does not mean I am guilty The motions are different for each case My case is not Derek's case A decision should not have matter dealing with Derek's trial and saying the same thing will happen in my trial

p95 l 24 I did not see all those photographs until they were put on a screen at my trial.

p96 l 23-25 Some of her bruises came from needles while drawing blood and for other medical procedures.

p97 l 1-3 Minor I had not eaten any food the whole time she was in the hospital The IV fluids were going straight thru

4

her. The fluid was not absorbing. Minor was not malnourished. She had just seen Dr. Raggs and a few days before she was admitted to the hospital. Dr. Raggs did not tell us that she was malnourished.

p. 97 14-25 Pictures are being entered into evidence that are injuries due to needles at the hospital. First, any injury should be thrown out and not shown if it were caused by the medical procedures.

p. 98 14 I do not see how an injury can be classified as accidental or not when Minor had injuries as well as a blind spot on her left side.

p. 98 1. 22 The photographs are an unfair prejudice. When Minor was at the hospital the ER doctors worked in a rush. Anything could have happened if the injuries could have been caused during medical procedures then the photographs show that I am being held responsible for them and it wasn't caused by me.

p. 101 11-19 Minor's nose was running. Her nose was raw due to rubbing it so much. When your nose runs and you are constantly wiping it your nose does become raw. Dr. Woodward testified p. 196 1. 20-25 that the outside of her nose was injured. It was not due to any other type of trauma. Davidson,

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mid Prior 1.15-17 that the outside of her nose was not how up

Dr. Woodard said it was. Minor nose was wiped a lot for

at least a week or more. So it was caused by toilet paper! Prior

p.102 1.1-22 The questionaire I filled out stated what I thought could have caused an injury. Detective Carpetner told me to write down everything that I could think of that may have caused any injury. Carpetner said to write down any and all things that could have caused any injury. The answers to the questionaire were not saying that an injury was caused due to

falling on the edge of the tub, Carpetner told me to write down what could have caused it. I do not know anything about a

tear. Derek said he jumped over the seat and accidentally knee

Minor as he came over the seat. That could have caused

swelling. I did not say the injury was self-inflicted. Carpetner

asked me if Minor had ever put anything in her vagina. I

told him that she has been known to put silverware and

matchbox caps around her vagina area. She also had problems

with her vagina when she was born. The doctor that she went

to as a baby stated several infections and a procedure to her

vagina when he treated her. So she was having problems with

her vaginal area since birth. I was not in the picture at that

time Derek and Angie were. So the problem was already there.

1.23-25

p102

Minor had gotten a roll brush tangled up in her hair so

that would pull hair out. She also had some hair ties

with hard plastic charms on them. The charms would get

He had stomach p 209 1.4-5 Minor - ingested all
meals. She had been in the hospital several days
without food at the time of autopsy. That is a lie
she was not starved!

P. 103-107 all
L. 11-25 Some of the boys

[illegible]

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- 1- Transcript p.111 line 19-21 I was outside with Drew and Jordan. Mike Mitchell was also outside telling me how he hit his ex-wife. I was not inside because they told me to go outside while they spoke to Derek.
- 2- Transcript p.112 line 1-7 I did not say it injured all ten toes.
- 3- Transcript p.112 line 11-13, 20-22. That proves she was not starved.
- 4- Transcript p.113 line 4-12 What I said was while Minor was outside without shoes or we watched how she walked. Then I put her shoes on and watched how she walked. Derek saw that she was walking with her feet turned out and her ankles touched the floor. Minor was going down the stairs with shoes on.
- 5- Transcript p.113 line 17-25 p.114 line 1-2 John Carpenter called our home and said we had to come to the Sheriff's office. He did not give us a choice. I explained to him that Drew and Jared was sick and I needed to take them to the doctor. John Carpenter got upset and said we had to come into the Sheriff's office. So we were made to come.
- 6- Transcript p.114 line 20-23 I was not free to leave. I was locked in the room and told I couldn't leave until they were ready to talk to me.
- 7- Transcript p.114 line 24-25 Transcript p.115 line 1-10. That is not what happened. I had to ask permission to ^{smoke} ~~smoke~~. I was escorted downstairs in line 9, he said he didn't stay outside or it proves I was escorted out or I was not free to leave. He did not say "If she wanted to go get some food, come back, whatever." They wouldn't let me leave to go pick up my children.
- 8- Transcript p.115 line 11-13 I was not free to leave nor was I encouraged to leave. I had to get permission to go to the bathroom.
- 9- Transcript p.116 line 17-25 p.117 line 1-18. Through out the whole day I kept asking about Drew, Jordan, Jared and Derek. John Carpenter told me since I asked to speak to an attorney that he did not have to

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- 9 cont- ~~tell me anything about Drew, Jordan, Jared or Derek the way he phrased his words was I had to talk to them before he would tell me anything about Drew, Jordan, Jared or Derek~~ Carptner told me to call on 10-26 if I wanted to find out anything about Drew, Jordan, Jared or Derek. So I called because Carptner said I had to have an appointment I wanted to know about my children and husband ASAP.
- 10- Transcript p.117 line 22-25 p.118 line 1-3 I called because he said I had to call in order to set up an appointment to get information on my children and Derek.
- 11- Transcript p.119 line 11-15 The door was locked.
- 12- Transcript p.118 line 4-15 I was told that was the only way I could find out anything about Drew, Jordan, Jared and Derek. I was told I had to call to set up an appointment.
- 13- Transcript p.119 line 19-25 p.120 line 1 I was told I couldn't leave until I got permission. John Carptner said I ^{was} not to leave without letting him know. When at one point I asked to go outside, I was told I had to wait. So I was not free to leave. Drew, Jordan and Jared was used as leverage to keep me from leaving because I was told the other officers were bringing them to me.
- 14- Transcript p.121 line 24-25 p.122 line 1-3 Yes he did say that also see #9 above.
- 15- Transcript p.122 line 4-10 That is not what he said to me. See #9, #14 above.
- 16- Transcript p.122 line 11-16 That did not happen inside the house. He did not speak to me inside the house.
- 17- Transcript p.122 line 17-25 I did specify that I wanted to know about my children and Derek. See #9, #14 + #15 above.

31- Transcript p 140 line 1-10 I did not go to the house of the
 32- Transcript p 140 line 11-15 I did not go to the house of the
 33- Transcript p 140 line 16-20 I did not go to the house of the

18- Transcript p 123 line 1-8 It was not in the house

19- Transcript p 123 line 9-25 Carpenter told me I had to call and make an
 appointment. See #9, #14, #15, #17 above

20- Transcript p 126 line 5-6 Again see #9, #14, #15, #17, #19 above

21- Transcript p 126 line 24-25 p 127 line 1-5 I did not leave on my own I was
 not free to do whatever I want. Jean Sutton told me to follow them and she
 told another detective to follow behind me I had to get permission to use
 the bathroom I wasn't even allowed to go pick up my children. They told
 me to have a seat in the lobby that my children were going to be brought
 to me. Transcript p 146 line 13-20

22- Transcript p 127 line 13-25 After I filled out the questionnaire they did
 not read me my rights. Goto p 114-115 that is contradicting what John
 Carpenter said happened p 136 that isn't what Jean Sutton said either.

23- Transcript p 128 line 1-6 According to John Carpenter I finished the ques-
 tionnaire at 11:30 p 119 line 21 She is saying she spoke with me at 6:20 pm
 She lied saying it was right after I filled out the questionnaire.

24- Transcript p 128 line 7-9 I was not free to do whatever I wanted I had to
 get permission to go to the bathroom. See #11 above

25- Transcript p 128 line 10-14 If I wasn't in any kind of custody they why
 was I escorted around, had to ask permission to go to the bathroom
 or make or anything else. See #11 above

26- Transcript p 129 They didn't read anything to me I was trying to find
 out about my children. They said they were bringing them - my child-
 ren - to me but first I had to sign this before they could tell me any
 thing

27- Transcript p 130 line 1-9 See #26 above line 10-23 that is not what
 they said again see #26 above

10

- 28- Transcript p. 131 line 13-14 I never said Westwood Drive was in the Oak Square Apartments. She can't keep her lies straight.
- 29- Transcript p. 131 line 23-25 That is not what I said. ^{Jami Brothers} ~~She said~~ only say what she wants said and Jean Sutter add and take out words as well as trying words around. I said, "They have loved but he is going through a one-ter spell that he doesn't let his friends know because at that age they think certain things are uncool."
- 30- Transcript p. 132 line 22-25 If I wasn't in any type of custody as she stated on #21 *24 *25 above then why was I turned over to Detective Sutter. So that proves I wasn't free to leave.
- 31- Transcript p. 133 line 19-20 They were making remarks about me the whole time as if I wasn't around which I was.
- 32- Transcript p. 134 line 9-10 I was not with them at the search of the car. They got into my car and drove it someplace. I had to give them the key. So I wasn't free to leave.
- 33- Transcript p. 136 line 14-16 See #21 *24 *30 I stated what happened in #21 above. I was surrounded by detectives. I was never free to leave. They made that perfectly clear. They dictated what I was suppose to do.
- 34- Transcript p. 136 line 22-24 see p. 116-117 Carpenter said, he was talking to the detectives as he didn't leave.
- 35- Transcript p. 137 line 4-25 That is not what happened see #9 *10 *12 *14 *15 *17 *19 *20 above.
- 36- Transcript p. 138 line 2-25 p. 139 line 1-14 See #7, #8, #9, #10, #12, #14, #15, #17, #19 *20, #26, #27, #30, #35 That is not what happened. I was told that was the only way I could find out about my children or Derek.
- 37- Transcript p. 140 line 3-8 I never admitted to several different acts of abuse with Minor

38- Transcript p140 line 9-15 Jean Sutor did not write my words Jean Sutor also said to me that if I did not sign a statement or give a statement she would get John Carpenter to come in the room because he had a way of making people talk. I want Jean Sutor to take a polygraph on that.

39- Transcript p140 9-25 See #38 above I told her what she wrote was not what I said or how I said it. She said Denik said it happened or she wrote it. I kept telling her it wasn't right that is when she threatened me with John Carpenter.

40- Transcript p142 line 19-25 p143 line 1-4 They kept making comments about me. They also kept asking me where were my children at.

41- Transcript p143 line 5-7 That is not true See #31 above.

42- Transcript p147 line 1-12 See #9, #10, #12 #31 above.

43- Transcript p148 line 1-25 See #42 above.

44- Transcript p149 line 8-20 See #42 above.

45- Transcript p150 line 1-14 The door was locked.

46- Transcript p151 line 9-12 I was answering no to "You could have done what ever you wanted."

47- Transcript p152 line 1-7 See #31 above.

48- Transcript p157 line 6-19 See #31 above looked several times and at one point I was told to shut up.

49- Transcript p159 line 1-7 Our daughter had just passed we hadn't slept in days on my frame of mind was on my daughter not who they were.

50- Transcript p159 line 8-22 See #49.

51- Transcript p160 line 6-11 That is not true I kept asking they kept saying Jared's medicine dispenser was a syringe to do drugs.

52- Transcript p161 line 21-25 p162 line 1-2 See #51 above #48 above.

53- Transcript p162 line 7-18 That is not true they never told me any of that.

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- 53 cont - I kept asking and none gave me an answer See #31 above
- 54- transcript p 165 line 16-25 that is not what happened See #33 above
- 55- transcript p 166 line 10-13 that is not what I said
- 56- transcript p 168 line 5-25 that is not true just because the law enforcement
mid it, happened doesn't mean it is true. Take them take a polygraph
- 57- transcript p 169 line 2-7 See #31 above
- 58- transcript p 169 line 8-14 that is not true See #31 above
- 59- transcript p 171 line 20-25 p 172 line 1-4 Mr. Gamble stated to me he never saw
or went through any of the tapes.
- 60- transcript p 179 line 23-24 that is not true
- 61- transcript p 180 line 2-3 that is not any type of burn
- 62- transcript p 180 line 8 that is not true
- 63- transcript p 180 line 15-25 that is not true
- 64- transcript p 184 line 8-10 that is the key word This is only opinions not
facts
- 65- transcript p 186 line 17-25 When a person has seizures there is not a certain
way that they fall All falls consist of objects being pushed upon a person
- 66- transcript p 187 line 3-25 Derek said that may have happened when he went
over the seat. It was an accident.
- 67- transcript p 190 line 1-12 There was not poor hygiene concerning ^{Minor}
had a bath everyday sometimes 2 or 3 Had a history of yeast infection
- 68- transcript p 191 line 16-25 She did scratch herself. During a fall brought
on by a seizure there is no planned consistent way you fall each time
- 69- transcript p 192 line 4-22 An abrasion not burn when you scrape yourself
or correct that that is when the surface of the skin is pulled away
- 70- transcript p 192 line 19-25 p 193 line 1-5 It was caused from a pull-up rubbing
while she moved her leg while walking, playing, etc.

13

71- Transcript p 193 line 6-23 We had an old dog. If your foot were in the way where it was opened or closed it would scrape your toes as well as the top of your foot. The corner of the door was bent.

72- Transcript p 194 line 2-25 p 195 line 1-4 When you fall down or don't pick up your feet you can scrape your toes. See #71 above.

73- Transcript p 195 line 5-10 When you fall down your knees do tend to hit the ground and you get bruises and scrapes. Especially if you fall during a seizure.

74- Transcript p 195 line 15-24 p 196 line 1-5 A pill is not the only place a heater gets hot. If you didn't touch the pill and touched another part of the heater, then it would not produce a pill type injury. You said all of it was burns.

75- Transcript p 196 line 6-12 Min. It would squeeze her hands and her hands would draw up when she had seizures. She dug her nails into her hands or whatever was nearby when she had seizures. Also she had a scar from a broken window. It was not done by a fingernail.

76- Transcript p 196 line 13-17 When you fall your elbows and knees get bruised and scraped. Minor I also had seizures. If we were close by when she had a seizure we would reach out to her to keep her from falling or lessen the fall.

77- Transcript p 196 line 18-25 p 197 line 1-15 That was not due to a blow to the nose. Minor A nose was new due to wiping it. She had a runny nose since before the last night of Survivor. It was not due to a blow to the nose.

78- Transcript p 197 line 19-25 p 198 line 1-14 I never said it was definitely caused by a beating. I was asked how it might have happened. Minor I had seizures so it could have happened during a seizure.

79- Transcript p 198 line 20-25 p 199 line 1-25 p 200 line 1 Minor I was never burned with a cigarette, cigarette lighter or burned with any objects that is not burns. They asked me what could have caused it.

80- Transcript p 200 line 2-25 p 201 line 1-15 Dr. Kapenda told us the reason for

14

80 cont. - this was due to Lupus She went over the symptoms when we asked her questions.

81- Transcript p 201 line 16-25 p 202 line 1-4 Dr. Raponda was pulling at
Minor a last visit. We also spoke to her about Minor injuries as well as her clumsiness. Dr. Raponda set up therapy, eye exam and EEG.

82- Transcript p 203 line 7-20 Drew accidentally hit Minor in the head with the dog. Also a head injury can be caused during a seizure.

83- Transcript p 202 line 1-25 p 203 7-20 see #81 #82

84- Transcript p 203 line 21-25 p 204 line 1-5 See #81 #82

85- Transcript p 204 line 16-25 p 205 1-25 See #81 #82 Drew accidentally knocked
Minor out with the dog it was an accident. Also a blunt force can be a fall during a seizure.

86- Transcript p 206 line 8-12 See #81 above that proves that swelling was there days before.

87- Transcript p 207 line 23-25 p 208 line 1-3 See #85 #82 above

88- Transcript p 208 line 4-7 forty pounds is not mal-nourished.

89- Transcript p 208 line 4-21 p 209 line 1-8 Seizures can cause eating problems.
Minor eat meat as well food in her stomach proves she ate.

90- Transcript p 209 line 9-16 See #89, #88, #85, #81 #82 above

91- Transcript p 209 line 4-25 Minor did eat meat.

92- Transcript p 210 line 1-8 that is not true

93- Transcript p 211 line 2-25 p 212 line 1-25 p 213 line 1-25 See #91, #90, #81, #79, #77, #76, #75, #73, #70, #69, #68, #67, #65 above

94- Transcript p 214 line 11 Read the rest of the article

95- Transcript p 214 line 25 p 215 line 1-6 they told me to write down any explanation or how injuries could occur. I never said it happened that way.

15

96- transcript p 215 line 7-12 That is what Derek did.

97- Transcript p 215 line 7-12 We did take her to Dr. Klaprda about her seizures, clumsiness and other problems. If Dr. Klaprda didn't seem to think it was urgent how were we suppose to know ^{Minor} was in a urgent medical condition?

98- Transcript p 215 line 13-20 Hypoxia also occurs during seizures. We told Dr. Klaprda about the seizures See #81 #82

99- Transcript p 215 line 13-20 Dr. Klaprda saw swelling on ^{Min} last visit which was 3 days before ^{Minor} was admitted to Greenville See #81 #82 #86

100- Transcript p 215 line 21-23 Earlier in Dr. Woodard testimony he said it was the front of the brain. The ear is not in the front.

page 216 line 3-21

If it is a slow bleed and hard to detect then there's a test showing how old it is also could have occurred earlier rather than when he said. Derek said he shook ^{Minor} trying to get her to respond to him.

He was only doing that to try to get her to respond.

page 216 line 22-25 page 217 line 1-5 or 1155 page

Seizures, epilepsy or convulsions can cause this. I

have medical research on this. It can be caused by

page 217 line 16-19. It could be caused by a stroke or a tumor.

It was caused from tissue.

page 217 line 10-19

It could have been caused by seizures, poisoning

on brakes, when Thew hit her in the head.
 page 217 line 20-25 page 218 1-25 page 219 1-7

First he said a fall from 10 stories now he is saying a ball hitting you in the head. Again she was having repeated spells (seizures) one clamping on the brakes, Thew hitting her with the door. Also Th. Heprda never told us we needed to be cautious with ^{Minor} during her activities.

page 219 line 20-22

The doctor at Greenville Memorial said there was a problem with her bladder. He said something about it being very big. It was full. She wasn't peeing right.

page 220 line 15-19

That lupus book is outdated. He went to say that and she cut him off.

page 220 line 20-25 page 221 line 1-25

That is based on SLE lupus.

page 221 line 1-25

Lupus DOES NOT show positive every time. That is why it is so hard to detect. You will test positive during a flare up. Th. Heprda explained that to us.

page 223 line 1-21

When Th. Heprda told us ^{Minor} was positive

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for Supus she met 7 out of 11 elements. Also we tried to get her in to see a Rheumatologist but Dr. [unclear] [unclear] office kept telling us Dr. [unclear] had not sent ^{Minor} records. I kept calling and calling.
page 224 line 2-22 LYING A.V.C.

Dr. [unclear] told us that the butterfly shaped rash on ^{Minor} was vasculitis ^{was vasculitis} ^{was vasculitis} ^{was vasculitis}
page 227 line 7-11 19-21 and 22-23

He never said no to a seizure. He said "no to a quoted 'spell'" ^{He never said no to a seizure. He said "no to a quoted 'spell'"}
page 227 line 12-21 22-23 and 24-25

Just because you have a seizure it does not mean you will have an injury to the inside of your mouth. There are different types of seizures. I have medical research on this as well. She was also on carbamazepine and phenobarbital for seizures. I have been dealing with seizures since 1988 so I do know something about seizures. ^{page 227 line 24-25 page 228 line 1-15 and 2}

You tear or are cut during labor a lot worse than this tear. It has never caused any dysfunction to going to the bathroom or sex. ^{page 230 line 25 page 230 line 1 and 2}

He testified to 8 days after she entered the hospital or page 188 line 5-6 Now he is saying 18th four days

after she entered the hospital.
page 231 line 2-23

His testimony backs up the fact that she would dig her nails into her skin because he found her
D.N.A. ONLY!

page 232 line 8-11
injuries happen during seizures!

page 232 line 12-21

We took her every time she had an appointment. We also called and scheduled an appointment with Dr. Agorda concerning seizures. You don't take a child to the doctor over every scrape and bruise.

page 234 line 2-9
She continually scratched, picked and dug to and in her vagina.

page 234 line 13-19
It was caused by tissue.

page 234 line 23-25 page 235 line 1-6

She hadn't had food in 5 days at the time of the pictures. She would pull her hair, brush got stuck as well as some hair rubber bands that had plastic flowers, bees, birds etc.: Also ringworm.

page 234 ~~page~~ line 10-19.

It was caused by a pull-up rubbing against her skin.

19

page 236 line 4-16

It is not a cigarette burn. She was ~~never~~ ^{never} with a cigarette.

page 236 line 17-23

Every child has scrapes and bruises on elbows and knees.

page 237 line 2-5

He testified page 197-198 that it was there now he is saying it wasn't present at the autopsy.

page 237 line 6-13

That was from glass if that is the picture. I have yet to see the pictures. Ever at only through my attorney had me sitting where I could not see the pictures or the overhead projector. He never showed me any pictures.

page 237 line 14-21

A fall would cause this.

page 237 line 22-25 page 238 line 1-6

He don't scraping them, stubbing her toes while playing.

page 238 line 7-13

Knees will get scraped when you fall or hit fire.

page 239 line 4-19

She was never burned with a cigarette. Burns are caused by falling, running into things.

20

falling on you.

page 239 line 20-25 page 240 line 1-9 and 10 for a 11

Some of the bruises were caused by needles and tape in the hospital. Knees are injured when falling. The thigh was from her pull-up rubbing against her skirt. Knees get hurt from falling. We would grab her during her spells (seizures).

page 239 line 10-23

Just because an injury is curved does not mean it's a fingernail. She would dig with her nails during spells (seizures).

page 249 line 13-19

It was caused from tissue.

page 249 line 20-25 page 250 line 1-9

This was caused by a broken window.

page 250 line 10-14

Can be caused from falling.

page 250 line 15-25 page 251 line 1-13

She walked on her ankles. Also he never said anything about her toenail missing. So what type of witness is he.

page 252 line 1-5

Knees get hurt during falls also feet were turned out. If feet are turned out so is the ankle. Dr. Hapida noticed it as well as Dr. Maddox. It is in her file.

21

page 252 line 6-10

That can happen during a fall or seizure at blood

page 252 line 11-17

That is not finger nail marks

page 253 line 12-15

It could happen during a fall, seizure or when being
planned or braked

page 254 line 18-24

It is not a cigarette burn

page 255 line 5-9

Both hands had tape on them. Some of the bruising
could have happened during the stay in the hos-
pital. The doctor ever said he pinched her very
hard and they did other things to her to see how
she would response to pain.

page 255 line 16-22

It was caused by her pull-up.

page 255 line 23-25 page 256 line 1-2

From falling, seizure

page 256 line 17-25

That shows that some of the bruising could have
happened in the hospital. The doctor did not want
us in there while he performed the tests or how
she would react to pain. He did this at least
one time a day!

22

page 257 line 1-4

Could have been caused when she was grabbed out
from the doctor's pair tests.

page 257 line 5-10

Hairbrush, hair bands, wig worn

page 257 line 11-25 page 258 line 1-21

Infections, rash, Derek accidentally kneed her sitting
over the seats

proceed with the same as the other side of the
and with the same as the other side of the

proceed with the same as the other side of the
and with the same as the other side of the

proceed with the same as the other side of the
and with the same as the other side of the

proceed with the same as the other side of the
and with the same as the other side of the

proceed with the same as the other side of the
and with the same as the other side of the

proceed with the same as the other side of the
and with the same as the other side of the

proceed with the same as the other side of the
and with the same as the other side of the

proceed with the same as the other side of the
and with the same as the other side of the

Simulator

23

page 262 line 15-17

Pl-8. enil. d. S. gar

He was not answering the question. That was the...
 some place on the way in. Pl-8. enil. d. S. gar
 page 263 line 3-16

He can't say it was caused by something he did. It...
 could have happened during the...
 and he is explaining it in a way that is...
 up and throw.

page 263 line 17-23

Pl-8. enil. d. S. gar

That would support the slammung of...
 weight or weighed. AD. He is not...
 How like that, at...
 page 264 line 12-20

page 264 line 12-20

Pl-8. enil. d. S. gar

It was describing these...
 were the question.

page 264 line 21-25

page 265 line 1-2

If a fall from the back...
 how can a person that weighs...
 He was not her doctor.

page 264 line 3-14

Pl-8. enil. d. S. gar

She did have...
 his leg...
 were just beginning to heal.

page 266 line 5-7

Pl-8. enil. d. S. gar

That supports the fact of a seizure.

born

read

24

S. Emanuel

page 216 line 8-19

PI-21 and SLS pg

We took her to Dr. Leppard for the spells. She made an appointment for an EEG. They were giving her medicine in Greenville for seizures.

11-8 and SLS pg

page 216 line 17-18 "I don't know if it was caused by the doctor when he did this test to see if she would respond to pain. He said he

page 219 line 2-6

11-8 and SLS pg

I don't have fingernails

SLS-PI and SLS pg

page 219 line 17-18 "I don't know if it was caused by the doctor when he did this test to see if she would respond to pain. He said he

That could have been caused when the doctor made their knuckles to see if she responded to pain. He said he

page 270 line 5-9

SLS-PI and SLS pg

Coulda have been caused by doctor all around and it

page 270 line 5-10

11-8 and SLS pg

You can fall different ways during a seizure. SLS pg

page 271 line 11-23 "I don't know if it was caused by the doctor when he did this test to see if she would respond to pain. He said he

He was sure that before Sullivan it was caused by

by tissue.

11-8 and SLS pg

page 271 line 24-25 page 272 line 1-13 "I don't know if it was caused by the doctor when he did this test to see if she would respond to pain. He said he

It could happen any time. He stated it was blow?

When Sullivan was tested the doctor was going to test

old part or new part he tested principal to see if

page 272 line 23-25 page 273 line 1-3 "I don't know if it was caused by the doctor when he did this test to see if she would respond to pain. He said he

That shows it can happen during a seizure, when

born

Mead

25

I obtained or broken or when I was hit from behind the door.

all-S. and all-S. prop
page 273 line 4-13 I told him I took a trauma test
She already had swelling on the visit to Dr. Bhopal
as he is now saying the swelling and hematoma was
was there a few days before she went into the hospital.
So that means it didn't occur the day she went to the
hospital. Because the spine and neck and all that was
there at the visit with Dr. Bhopal or a few days be-
fore she went into the hospital. So she contradicted her-
self. Saying line 13 that means Dr. Bhopal's opinion and
it happened days before she entered the hospital.

page 273 line 14-22 I told him I took a trauma test
He said they were common. This happens during a
falls or injuries.

21-S. and 48-S. prop
page 273 line 23-25 page 274 line 1-3 I told him again
Could have been caused by doctor or by the fall.

page 274 line 8-14 I told him I took a trauma test
That supports what I said. I told him I took a trauma test.

page 275 line 1-24 I told him I took a trauma test
What can be caused during a fall? It could be to
was it present at the time of the autopsy? All that is
lasts longer than 4 or 5 days. So that means it had
had to happen days before she went into the hospital.

born

mead

26

2 emulor

hospital not the dog she went in the hospital at 1
page 276 line 2-16 mob

That supports what I said about slapping of the
the dog at the time it was in the hospital at 2

page 276 line 2-25, page 277 line 1-10 and 1-11
That supports a seizure case causing a seizure

page 278 line 1-10 and 1-11 and 1-12 and 1-13
He keeps changing his story - she fell several times

and a seizure case causing a seizure at the time it was in the hospital at 2
page 278 line 20-23 and 20-24 and 20-25 and 20-26

You can't put a dog's head during a seizure? She
page 279 line 3-11 and 3-12 and 3-13 and 3-14

He testified earlier that you can't tell during a seizure
autopsy of a dog who has a seizure and you tell him at

page 284 line 12-15 Terri Carter's testimony all of
I never said that to her HFS page 28-29 and 28-30

page 285 line 7-10 and 7-11 and 7-12 and 7-13
At that time we knew nothing of the Dupin's baby

was born in February. We didn't find out she was
lactose intolerant until her hospital stay in April.

We didn't find out about the Dupin until April - long
at the Dupin's office if she was mal-nourished. And

can she be changed and go on to the next from
page 285 line 12-14 and 12-15 and 12-16 and 12-17

That's what she said and she said it right at
bom

Mead

Simulator

27

page 285 line 18-24

ES-OS and PPS ppm

did not believe Minor

did think Alon was injured

potly training problems until after the head injury

Minor

did not stay with anyone after the

head injury but P. was not with her

page 286 line 8-11 P. was not with her

They did see her she just never showed up again

page 286 line 17-22

PI-SI and PPS ppm

We were at their house for Easter about a year

page 287 line 4-10

SI-11 and PPS ppm

They went to their dad's over weekends P. was not

page 288 line 6-9

SI-SI and PPS ppm

After the head injury P. was not with her

page 289 line 12-22

SI-P and PPS ppm

She hit her mouth that knocked her teeth loose

The football accident happened while they were together

page 290 line 11-22

PI-11 and PPS ppm

If Drew took her through the house how could P.

she not know there was a half bath and PPS ppm

page 292 line 2-8 P. was not with her

I was not present

more or less in which

page 293 line 22-25 page 294 line 1 SI-SI and PPS ppm

I never spoke with anyone about getting the train on

thing except my brother

IS-PI and PPS ppm

page 294 line 11-14 P. was not with her

basm

Mead

28

S. Amador

page 294 line 20-23

45-51 and 285 page

It was police now I locked the house and they didn't find
it in the house and it was a long time to go to the prison

page 295 line 1-15

4 that was before the head injury. She didn't start
doing that until after the head injury. She didn't stop

with the rape after the head injury and was his first

page 296 line 15-17

45-51 and 285 page

Only to do that. After that she went to the prison

page 297 line 11-12

41-44 and 285 page

She told Derek she was married helped her to get out

page 298 line 12-16

P-1 and 285 page

She had our things before the power of attorney

page 299 line 9-10

45-51 and 285 page

They told (police) Minor was in much better

Minor was in much better

page 299 line 11-14

45-51 and 285 page

Derek went to their house and at that time

page 299 line 15-18 I had some and then

That's a lie. Derek would be outside and would be

be inside on the road

page 301 line 15-18 I and 285 page 45-51 and 285 page

She wasn't there until she was there

page 301 line 19-21 after the rape

She was fine until the head injury

born

Mead

29

page 303 line 8-19-1 encl H.E. 25-45 encl 018 page
 It took four or five days to notice a dark spot
 page 304 line 4-18 01-8 encl 218 page
 She admits Minor would fall and break her fall
 Dr. Woodard said it wasn't likely to fall and get a
 skin that had a head and no skin on it at all
 page 305 line 19-21 from line 19-21
 Minor was in the bed with me H1-S1 encl H18 page
 page 306 line 10-12 no other encl 2-12
 She testified earlier they came to our house H18 page
 page 306 line 15-19 encl 1-19
 That proves after the head injury we were having
 problems with her eating H2-25 encl H18 page
 page 307 line 14-25 encl 1-25
 looked there if they were open H18 encl 218 page
 page 308 line 19-24 encl 1-24
 If she was abused why weren't there any marks there
 page 309 line 5-7 encl 1-7
 She saw her after that H18 encl 25-41 encl 218 page
 page 309 line 8-22 encl 1-22
 just didn't play in the water and play golf with her We
 did not ignore her Terri got her from us and we
 we needed a break from physical abuse so we went to
 page 310 line 13-23 H2-25 encl H18 page
 That was the last time we saw her and we were

best

mead

30

S. Simulor

page 310 line 24-25 ^{page} 311 line 1-5 1-8 and 808 ppm
 I had no idea that was a question of what was going on at the
 page 312 line 8-10 21-41 and 408 ppm
 I had no idea that was a question of what was going on at the
 page 312 line 14-24 21-41 and 408 ppm
 I had no idea that was a question of what was going on at the
 page 314 line 12-14 21-41 and 408 ppm
 She bought ^{Minor} pants and shirts 118 ppm
 page 314 line 15-17 21-41 and 408 ppm
 There are tapes of ^{Minor} and I danced (singing) playing
 and other things as well. I had it all in a room for
 page 314 line 22-24 21-41 and 408 ppm
 We did not have a speaker phone 21-41 and 408 ppm
 page 315 line 7-12 21-41 and 408 ppm
 That is what the kids said and that is what I told them.
 page 315 line 15-18 21-41 and 408 ppm
 He never said anything to me 21-41 and 408 ppm
 page 315 line 19-25 line 1-3 21-41 and 408 ppm
 They never had her after the head injury and 21-41 and 408 ppm
 I did not know that was a question of what was going on at the
 page 317 line 17-19 21-41 and 408 ppm
 Why is there an issue with the kind of person for the time
 page 317 line 20-25 21-41 and 408 ppm
 Minor ^{Minor} can the boss get me a wash cloth or she had it

Mead

Mead

31

Simulator

doing what she was then doing with a pencil a small thing
page 318 line 1-5
That is not what I said to him. I said to her that she
home I took ^{Minor} shoes and socks off she could do
Derek how she walked on her ankles. I said she would
take her shoes off because it mattered like she could walk
better as well as she had big feet. I heard you put a pair
of shoes on her it looked like canoe shoes. I don't know
walking in shoes were because she had big feet
page 318 line 17-20

She didn't want to wear shoes I didn't say he liked his
understanding it

page 319 line 11
Derek made ^{Minor} know walk he had to wear
page 319 line 24

I said play with your while I would ^{with} ~~with~~ 888
page 320 line 1-5
not I make foot to go and I said I said to go
page 320 line 20
Derek's baby how far he was about 10 months old
page 321 line 1-5
I was not present during the conversation that had with
Derek was told to wait outside in the yard
page 321 line 15-21

He told me we had to come in. I explained to him we

boom

mead

34

page 349 line 3-9 F-E and PEE prog

I do not understand why because he said he took it

page 350 line 14-25 F-E and OHE prog

He is stating he didn't find any of these things during

his search that was later brought in. So it only needed

have come from the house, and I'm sure as I was

page 351 line 9-16 F-E and PEE prog

At that time Minor dresser had been in the closet

Jared's room from the closet so he is lying on the bed

page 353 line 13-24 F-E and PEE prog

There was not a chair there it was Minor at that time

went with her table F-E and PEE prog

page 357 line 15-19 F-E and PEE prog

Minor I could not be able to hit that head and

page 362 line 1-16 F-E and PEE prog

He could also have done something to the desk and

page 375 line 4-6 F-E and PEE prog

The questionnaire was not about Derek and F-E prog

page 375 line 15-16 F-E and PEE prog

I have shown that I sat there all day into late afternoon

and they would not let me go. So I never felt anything

never told me I was free to leave. F-E and PEE prog

page 376 line 7 F-E and PEE prog

I did not say that

S. errator

35

page 377 line 18-20

I did not say that

page 378 line 6-8

I did not say that I said when

spitting food, stuffing food in her mouth until she gag-

ed we would put her by herself to rest at the hospital

after because we hardly ever ate as a family

everyone ate at different times of day I had no reason

page 378 line 10

I was never hostile with them

page 378 line 18-19

I did not say that I said she should put the things

close to inserting sperm into her vagina

page 379 line 16-8

There was also a recall on the tape by the Ford company

page 380 line 12

I was not stuffing tissue up her nose

I got small and please her nose so that

wipe it because it was raw

page 381 line 14

Home said that to me I was told to put my initials

it and sign it for

page 382 line 10

They couldn't have done all that without a minute

reason because I was asking about

born

mead

36

children. 92-31 and PFE pg 9
 page 383 line 5-8 last pg tan bib I
 Carpenter said the only way he would tell me where Derek
 or the kids were at was to talk to the doctor tan bib I
 page 384 line 217 I was not in any of the rooms
 I big testified earlier to Ford and cough medicine so he
 page 384 line 812 no at all there was no room at all
 I was never asked if I was afraid of Derek in the room
 page 384 line 23-25 page 385 line 1-7 Al said PFE pg 9
 I did not say we were burning everything I also did not
 say I put chloro in the toilet to stop Minor from pg 9
 drinking out of it I said she played in the toilet I did
 not say Minor was locked in the bathroom at all
 page 385 line 14-19 Al said PFE pg 9
 I never said the red stop bucket. It was the table and
 given at the hospital and it had ice not ice water pg 9
 page 385 line 20-21 was not in the room at all
 I did not say that I said she was potty trained until
 the head injury was not in the room at all
 page 385 line 22-25 Al said PFE pg 9
 I did not say that Minor would play with her
 food. We were concerned about her not eating I was
 counting to five was not 1, 2, 3, 4, 5. It was 1 the 2nd pg 9
 minute or so later 2, minute or so later 3 and so on
 She is not what I said to suit her and room
 born Mead

...the way one ended the statement 785
wrote and told. I had to sign in order for me to leave and see my
children was not true. Jean Sutton said I had to sign it. I want a
polygraph on that as well. p. 389-398

5- the way Jean Sutton read the statement in court she over drama-
tized it by 100%. I want a polygraph on that as well. p. 389-398

1a- Transcript p. 385 1. 4-7

I did not put clorox in the toilet to make Minor stop drinking
out of the toilet. I never said Minor drank out of the toilet. I want
a polygraph on this as well.

7- Minor was not starved. I was trying to keep weight on her. I
want a polygraph on this as well.

8- Transcript p. 386 1. 1-2

I never said that Derek and I made up the story about getting the
polygraph on this as well.
ran listed. I told her the recall was on top of the tv for the car.

9- Transcript p. 386 1. 19-22

Minor had been having seizures that is why we took her to
Dr. Haganda. So it didn't just start that day.

10- Transcript p. 387 1. 14-25

I never said we abused Minor. Jean Sutton's question to me
was "Who did most of the punishment in our household?" She
never said abuse nor did I. What I said about being responsible for
depth was because I am her mother it was my responsibility
to make sure the doctors did their job. I never said it the way Jean
Sutton is putting it.

11- I was not aware that Minor died due to a blow to the head. Jean
Sutton said it was suffocation. No one said anything to me about a
head injury. I did not know that until my trial started. I knew but
with the doctor's accident that is what caused the head
injury. I want a polygraph on that as well. It was an accident. he
didn't mean to do it.

12- Transcript p. 387 line 3-57 Clorox was ^{Minor} put in the toilet to keep from drinking out of the toilet. I did not say any of that. Jean & Sutter lied.

13- ^{Minor} was not starved. I was trying to keep weight on her.

14- I did not state that Denise and I were equal in the amount of abuse towards ^{Minor}. I never said anything about abuse.

15- Transcript p. 387 line 14-15 Jean Sutter asked who decided or carried out punishment if my children did something wrong. It was never stated as abuse.

16- Jean & Sutter took words and changed them around. She took words out of context. She twisted things around.

17- Transcript p. 387 line 16-17 I said since I was the mother I should have pushed the doctors more or did something more to make them understand how ^{Minor} was doing during a seizure. I said I felt responsible because I could have did more in making the doctors understand. Jean & Sutter twisted that around.

18- Transcript p. 387 line 17-19 That is not what I said. She had a surgery nose. Her nose was tender due to wiping it so much.

19- Transcript p. 387 line 19-21 Again look at #17 above.

20- Transcript p. 387 line 20-22 Jean & Sutter said ^{Minor} died due to suffocation. I said I didn't know how that could have happened.

21- Transcript p. 387 line 23-25 See #18

22- Transcript p. 388 line 15-16 I did not say that.

23- Transcript p. 386 line 2-3 The nurse at Dr. Gladdox's office did tell me that.

24- Transcript p. 386 line 12-14 Dr. Reporda stated at the last visit that the fluid was building back up.

25- As for as injuries of ^{Minor} was a toddler. She had seizures. A child gets scrapes, bumps, bruises etc while they are playing. As for as injuries of John Carpenter told me to write down any

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25 cont - thing and everything that I could think up that may have caused any type of injury.

26- transcript p. 375 line 4-6 I was never asked that question

27- transcript p. 376 line 2-18 I did not feel that they needed to know about my medical history.

28- transcript p. 377 line 21-25 p. 378 line 1-2 also #14 of this. That proves I never said abuse that Jean re Sutton said I said on page 387 line 14-15. So that proves Jean re Sutton lied and twisted words around.

29- transcript p. 378 line 16-8 I said if ^{Minor} spit food or misbehaved at the table then she ate by herself. We very rarely ever ate at the kitchen table.

30- transcript p. 378 line 10-11 I was never hostile.

31- transcript p. 381 line 3-8 I was told to sign it before I could see my children or Derek.

32- transcript p. 382 line 8-19 look at #31 #1 #2 #3 above.

33- transcript p. 383³ line 3-11 that is not true see #1 #3 #31 above.

34- transcript p. 384 line 8-12 see #26 above.

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Serrador

page 384 line 1-18 says that he was away at the time
 I did not say I made up that story. The fact is that I did not
 had a recall from Ford. She is twisting my words and
 page 386 line 19-22 2-1 and 388 page

Minor was not suffering from injuries. She had been
 having these spells (seizures) that is why we took her to
 see Dr. Haponda 11-P and 388 page

page 387 line 13-14 about the fact that she was
 that is not what I said. She is twisting my words. I did
 Minor kept running in the house and waking her
 baby up. So I kept getting on to her top of my head and

page 387 line 8-13 and 14 about the fact that she was
 twisting my words around. I am a proper person
 page 387 line 14-15 I am a proper person and I did not say that

I did not say that. She asked me who pushed the
 kids down and I said we both pushed them. I did not
 page 387 line 16-17 I am a proper person and I did not say that

I did not say it like that. I did not feel responsible
 cause I should have known something. I am a proper person
 because I am the mother. It is my responsibility to take
 pressure her spells (seizures) more at the right time.

The Haponda took her into an arm for blood. I did not
 page 387 line 17-19 I am a proper person and I did not say that

I did not say that. She was now and I was cleaning her nose
 because it was running and the point is that I did not say that

boen

Mead

41

[REDACTED]

[REDACTED]

her nostrils was raw and bleeding from wiping and blowing.

page 387 line 23-25 *at the time I was for him*

She was laying in my lap *at that time I was a bad*

page 388 line 1-5 *SS-PI and also was*

She is twisting my words again. That is not what I know

David that *at the time I was a bad*

page 388 line 9-11 *she was a bad*

She said Derek said that Dr. Woodard's testimony said it

could not have been caused by a blow to the head

page 388 line 14-18 *she was a bad*

She was trying to get me to say yes and I told her she

was not buried with a cigarette or half of what they

were saying was not true. I never said it tortured. Minor

I also told them I was not going to write a statement

saying David. She said she would write a statement

of what we had talked about and what Derek had

had said. I told her I was not going to write it

because it wasn't true. I did not write it for him

page 388 line 19-25 *at the time I was a bad*

I did not write it for him. I did not write it for him

page 389 line 17-20 *at the time I was a bad*

I said I would not write a statement because what

she was saying was not true. I refused to write it

She said she was going to write down what Derek

and David said and I was to sign it. I was a bad

page 389 line 20-22

2-1 erid PPE spq.

John had not by words and I told her on some tan am I

page 389 line 23-24

It was not need back to me I say am I you blue just

page 390 line 1-5

That is not the way it went. She told me that she told

initial and sign I told her it was not come PPE spq.

and according to Derek it was to release him and

page 390 line 24-25 page 391 line 1-25 page 392 line 1-25

page 393 line 1-25 page 395 line 1-10 page 395 line 13-25 and

page 396 line 1-17

All of this is her words not mine. What do you say?

would not write it because it wasn't true to him was?

twisting what I said to suit herself. I told her that

page 396 line 21-25

That is not true. I said 204 spq. 22-25 and 204 spq.

page 396 line 13

She wanted to go with Derek. I am sure had he gone?

page 397 line 5-7

I was telling her what ^{Minor} would do during

her spells (seizures).

page 397 line 8-25 page 398 line 1-2

That is her words and bits of a conversation. I told

page 398 line 9-11

I did not say that I said she was at home at 22 and 20

basm

Meod

43

~~Exhibit 107~~

page 399 line 1-5

DE-45 and PSE pg 399

I was not encouraged to leave. They said that as long as they could get me to leave the parking lot that they could say I was free to leave. That is not true. I that I was encouraged to leave. They never said I take care of whatever others I needed to take care of.

page 399 line 9-14 and 15-16 and 17-18 and 19-20 and 21-22

She said earlier it was her stuff at prison was her

page 399 line 23-24 and 25-26 and 27-28 and 29-30 and 31-32

She said earlier that she did not want to go to prison

page 400 line 15-25 page 401 line 1-4 and 5-6 and 7-8 and 9-10

Part of what she is saying is actually true. It is a

Sutton's statement not mine. I did not say that.

page 404 line 20-23 and 24-25 and 26-27 and 28-29 and 30-31

Exactly. What Carpenter wanted her to know was

page 404 line 24-25 page 405 line 1-11 and 12-13 and 14-15

Yes she called because of the conversation that John

Carpenter had with me. It is not right that they

are allowed to lie and twist words. He told me I had

to call to set up an appointment. That was after I

said I wanted an attorney.

page 405 line 12-16 and 17-18 and 19-20 and 21-22 and 23-24

That is because she called me to come in. I told her

told her I wanted an attorney she called. I told her

on the 25th I wanted an attorney she called the 26th and

45

~~CONFIDENTIAL~~~~CONFIDENTIAL~~

page 409 line 19-21

SI and 234 page

John Carpenter said I had to talk to them in order to find out about Derek and my children's situation

page 410 line 7-9

SI and 234 page

No one was present during the conversation about I had to talk to them to find out about my children and Derek except John Carpenter and myself

page 410 line 10-17

SI and 234 page

It was not in my hand when it was in my hand

page 410 line 18-23

I was told to initial and sign it even after I said I wanted an attorney present and after I said that they were not right in how they told me to sign it

page 410 line 23-25

page 411 line 1-4

No I was not. So they did all that and said it was to protect them because Derek said it happened

page 411 line 10-14

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

They did not read over it they said that was what was going on paper and that was that. So I had no choice in the matter.

born

mead

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page 414 line 3-5

page 414 line 3-5

I was told they wouldn't tell me until I came in and I talked to them.

page 414 line 23-25

What did not happen that day I heard it and I would not tell me anything until after I agreed to talk to them on the 26th.

page 415 line 8-11

That is a lie. They would not let me go because I told me they were not sure of where the children were that they believe a neighbor had them and I got it at that point because the neighbor they said had them was the White House. We were not in good with them because of the stealing and the beating and I knew I had to call the police after on the White House. I had when I went to base they wouldn't let me in and they said they were bringing the kids to the police station where I was at.

page 415 line 12-19

That is not what they said. They said the kids were being brought to the police station where I was at.

page 415 line 16-19

That is not what they said. They said the kids were being brought to the police station where I was at.

page 415 line 20-25

That is not true. That is not what they said to me.

born

mead

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S. Arruñón

Kimberly Testimony
Wages ~~Thomas Harwood~~

page 418 line 25 page 419 line 1 2-8 and 11th group

That is also not true we saw that and we will not say it

page 419 line 1-5 had at her lot

hardly ever spoke to her at all because we stayed

near each other because they stole from me as well

as the other kids and I was not going to let them

page 419 line 19-23 13. it is well

I had stopped at Harwood to fix a bottle and

was on the porch which had a top or it is the shade

page 420 line 5-8 14-15 and 11th group

I was hardly ever there that long and I did not

page 420 line 9-24 had to say I was not there

All the kids played on the treadmill and she was

off of it when she wanted of playing on it. She never

talked to me or anything because I didn't talk to her

that much because they stole from me and I was

nervous. When did not say she was a diabetic. I

could she may have diabetes. We were going to have

her checked at a hospital and I was not going to

page 420 line 25 page 421 line 1-4 16-17 and 11th group

That is because Kim's dog had jumped on

and I did not want to let her out of the yard

page 421 line 6-12 1-1 and 11th group 18-19 and 11th group

He was with me almost every single time I went to

Harwood and he punished her there as well

born

Mead

S. 11-11

48

page 421 line 17-19

11-P and PSH p. 100

That goes to show how telling the truth was a hard lesson

page 422 line 19-21

12-P1 and PSH p. 100

Judy did not get up to 100 degrees and she said that I was the last time she saw me and she doesn't remember

if ^{Minor}

Minor

-s with me 422 line 3-4 So that's why

was not made to sit in the hot car in the hot

page 423 line 1-5

airline 100

She admits that ^{Minor} could come and go and she pleased

page 423 line 12-13

25-25 and PSH p. 100

How is low/walk speed a punishment?

page 424 line 20-25

91-11 and PSH p. 100

It was never between 2 and 3 because I was at the school each day at 2 pm. There is shade at that time as well as before and after that time.

page 425 line 7-9

I was hardly ever there for more than 15-20 minutes

page 425 line 12-15

not to

She is saying ^{Minor}

was mean 11-11 and PSH p. 100

page 425 line 19-21

It is a 2 bedroom house

page 426 line 10-19

It was too hot for ^{Minor}

why is it too hot?

for them kids

Meat

boon

49

L. Amato

page 427 line 9-11

PI-PI and SSH pg 427

I never had a conversation with her and words at 3:30 p.m.

page 427 line 19-21

PI-PI and SSH pg 427

I would not talk to her in person and not personally. I
remember from the time she was in the hospital and I was

page 427 line 24-25 and SSH pg 427 line 24-25

Now she is saying that she was with grandparents in
Columbia

PI-PI and SSH pg 427

page 428 line 5-7 and SSH pg 428 line 5-7

Here she admits I said she was with family, brother, and

page 428 line 23-25

PI-PI and SSH pg 428

Impossible. I remember a large physical attack

page 429 line 14-18

PI-PI and SSH pg 429

Her kids were PLAYING in the hot and I never could

page 431 line 19-20 and SSH pg 431 line 19-20

That proves what I said about the cut of her thumb
being cut and not a fingernail mark. PI-PI and SSH pg 431

page 432 line 5-9 and SSH pg 432 line 5-9

Not true.

PI-PI and SSH pg 432

page 433 line 1-14 and SSH pg 433 line 1-14

If she knew about Derek how could she not know about

Minor

She said she spoke with me at the phone p 434

line 20-23. So one minute she is saying she didn't know

anything about it.

Minor

on the phone talking to

Minor

Also p 432 line 15-21

mean

mean

She says she offered to watch ^{Minor} how could she have
watch a child if she didn't know anything about it? She
hadie p 433 line 3-6 ^{Minor} was playing at the
pouch. and who else?

page 434 line 3-8 J-1 and SHH comp SS and PSH comp
I did not tell her that. I did not go to the house and I was not
page 434 line 18-23 J-1 and SHH comp

Now she is saying she did know about ^{Minor} 21 ^{Minor}
was spitting her food out. She also came to the house
page 435 line 6-10 line 11-19 and J-1 and SHH comp
I never told her I put alcohol in her private photo. She
is lying

page 435 line 20-25 J-1 and SHH comp
I did say that but not in the way she is taking it?

from page 436 line 14-23
like if we were friends why didn't she know why last time?

page 437 line 1-3 J-1 and SHH comp
I was not there. She has her stories wrong.

page 437 line 11-17 J-1 and SHH comp
She called to see if I had any information on her husband
and she said to see if he was cheating on her
with women at the plant he worked at. She wanted
Derek and I to get him on tape. J-1 and SHH comp

page 438 line 19-21 J-1 and SHH comp
She only saw ^{Minor} twice. has a bad attitude

com

Mead

51

S. Amador

page 439 line 2-5 in which? data on a hand made card?

Yes she did a print on a card the card is blank a data

page 439 line 12-14 was in which? 18 and 2209 and

Yes she was

page 439 line 25 page 440 line 1-3 2-8 and 484 pg

That shows I am telling the truth and that for bibl

page 440 line 15-16 22-31 and 484 pg

She said earlier in a week bib do you want to work

page 443 line 9-11 in which? 2-8 and 484 pg

When she called told her we would believe after that

opt. Minor and Jaded told of col how would she not

know Minor was with me

page 443 line 19-21 22-31 and 484 pg

She watched the one with rubbing her leg with a bibl

25 Stated in testimony

Sometimes they clocked in but not before they left did

clock in just out

pg 452 line 11-17 22-31 and 484 pg

I did not say Minor had been told Jaded told me

page 452 line 18-25 page 453 line 1-5 him and 2 hand

She told Minor where she could sit. The blocks

were very small and Minor could choke in the

I said she may put them in her mouth did it

know who hands had been on them was it?

been

Mead

page 453 line 15-24

H-T and EdH pg

I had just said In Spanish H-T and EdH pg

page 455 line 18-25 page 456 line 1-8 and now she seemed

I didn't want London to get upset. I said if he was to

talk about it that is fine but he didn't quite understand

stand so we decided we would talk to him further

at his pace rather than force it on him. I had said

page 456 line 9-12 H-T and EdH pg

I didn't tell her they could not talk to him. I said

for them to see if he would come to them. I didn't want

want anything forced on him. H-T and EdH pg

page 457 line 23-24 page 458 line 15-18 H-T and EdH pg

I wasn't eating nor had I planned on eating. I had

went and got him something to eat. The doctor's put

him on a liquid diet, no up because she was throwing

up. H-T and EdH pg

page 458 line 11-25 page 459 line 1-5 H-T and EdH pg

That was the only injury and she had a couple of

of bruises due to them playing and falling. H-T and EdH pg

page 459 line 14-20 H-T and EdH pg

Children get scrapes and bruises while playing. H-T and EdH pg

page 461 line 14-25 H-T and EdH pg

That proves she was potty trained before the head

injury and we weren't having problems until after the

head injury. H-T and EdH pg

born

mead

53

S. 200107

page 463 line 7-14 40-41 and 824 pm
 She was drinking 7-10 chocolate milks they said it was
 because she was lactose intolerant. They said to stop
 give her a milk product a day. Check the weights.
 she was not underfed. 1st and 2nd to find out that

page 463 line 14-20 40-41 and 824 pm
 I was hardly there. Because I had three more children to
 at home. Derek was there 98% of the time. ^{Minor} Holdo
 then what happened because we were in the house
 we were not in there. Check Derek's time and don't have
 day for from April 14th - 17th in house of production too.

page 463 line 21-25 page 464 line 1-10 and 124 pm
 She or someone asked me what they had been doing.
 page 465 line 20-25 page 466 line 1-3 and 10 pm
 Derek and ^{Minor} both were asleep. He asked
 me. Derek had a bad stomach virus.

page 466 line 12-13 and 124 pm 824 pm
 That is the same bunk beds. We had to take the
 other bunk beds down for a while and we made for
 pallets in the floor.

page 466 line 14-21 40-41 and 824 pm
 If she called why didn't D.S. come out and 124 pm
 page 469 line 1-11 40-41 and 824 pm
 He had to study his testimony that is in the D.S. Sin
 files

born

Mead

55

page 472 line 24-25 page 473 line 1-4

That is not true. Kimberly Dickson's testimony as well as Teresa Denard's testimony they testified to seeing ^{Minor} out side alot.

page 473 line 5-9

That is not the reason the locks were brought.

page 473 line 10-13

That is not true. She was in our bedroom with Thier.

page 473 line 22-23

Yes when Dred was smaller he had one as well to kept him from running off or someone from pulling him.

page 473 line 20-21

Dred had one that went around his wrist when he was smaller.

page 474 line 1-2

The investigators said they didn't find a harness.

page 474 line 3-6

She would wear the harness at stores, fair etc.

page 474 line 7-9

That is not true.

page 474 line 12-18

I never told Dred that and he would babysit ^{Minor}

when I would go to the store or pick Derek up.

page 475 line 7-9

That is not true. She always had on a shirt.

Mead

56

page 475 line 10-14

01-2 and PTH spm

We didn't ever have a puppy. The little pads that Maria referring to are the pads I got from the hospital. I didn't have them to put under her table or under Jane's cot while they ate to keep from messing up the floor or mess.

page 475 line 19-22

ES-22 and PTH spm

That is a lie. A pull up or a diaper would not hold that long. A few hours would let alone a week because it is not going to come apart. You would go around and try to get that out.

page 476 line 1-6

01-2 and PTH spm

They all got sprayed off with the hose pipe before they began to because of the red dirt. It is not a hose pipe.

page 476 line 7-8

01-2 and PTH spm

We didn't have a hose pipe in cold weather. PTH didn't get a hose pipe until we planted the garden. It was cold weather then.

page 476 line 9-19

01-2 and PTH spm

That is not true.

01-2 and PTH spm

page 476 line 20-23

01-2 and PTH spm

She testified I was there when she seen ^{Minor} it burned so that proves she is lying and I am telling the truth that she was never burned!

01-2 and PTH spm

page 476 line 24-25

01-2 and PTH spm

That is correct but not the way he is stating it. I had done to clean her nose because her nose was raw.

born

Mend

57

S. 100-107

S. 100-107

page 477 line 5-10

P-H and JFH pg

I would not do that he is lying

page 477 line 11-15

The word and testimony said it could be have happened with a broom so that proved he is lying there and at the point

page 477 line 20-23

P-H and JFH pg

That is not true in my opinion

page 478 line 4-8

You can tell that is true because of the way he is

plaining it. That is not choking

page 478 line 9-16

Yes when she would run in the house she was pushed

not the way he is saying it.

page 478 line 17-18

A child could do that for that long

page 478 line 19-22

Neighbors testified they never saw

page 478 line 25 page 479 line 1-2

I used a pillow from the hospital and she was inside

page 479 line 5-10

What do they say about what they are talking about

page 479 line 14-20

Was

The kids

was

bom.

Mead

S. en. 07

10-18

10-18

58

page 479 line 24-25 page 480 line 1-10

two of li

That is what they told us and I knew had to be taken back
 to the doctor on a weekend day because he was complain-
 ing of headache, dizziness, blurred vision. If it didn't hap-
 pen why did I have to make an emergency appointment
 with his doctor on a weekend day to bring him in to be
 seen. This was after he got out of the hospital a few
 days later.

81-11 enil 284 ppg

page 480 line 15-16

Yes he was

page 480 line 25 page 481 line 1-5

HS-P1 enil 284 ppg

Yes he was and I was at that at that time

page 481 line 10-12

81-1 enil 284 ppg HS enil 284 ppg

What child is opposite single, day as a child

page 481 line 13-21

I never told I knew that

page 482 line 1-6

HS-22 enil 284 ppg

That is what the kids said happened

page 482 line 10-11

tough top just was

She rode the 1-2-3 like

SI-01 enil 284 ppg

page 482 line 20-25 page 483 line 1-7

enil 284 ppg

He has to study his testimony that is in the 288 file

in the file is a paper stated I was a history of a

telling the truth I did not tell him any of that Robert

He left that paper on his desk rather than bringing

boon

Mead

S. Arthur

10-10

10-10

it to count

11-1 and 194 pgs 25-45 and 194 pgs

page 483 line 21-25 d. w. P. brown hat just taken out

That was in his bedroom playing video games on the new

me. He is 6 ft 11 in. tall, brown hair, brown eyes, and a goatee

page 485 line 10-13 and pgs 25-45 and 194 pgs

Why was it he that descriptive in his statement at the time

made him study each day what he was to say in court

page 485 line 11-18

11-1 and 194 pgs

He was told to call me Michele in court to make me look

bad

11-1 and 194 pgs

page 485 line 19-24

2-1 and 194 pgs 25-45 and 194 pgs

He is not telling the truth he was in his bedroom

page 485 line 25 page 486 line 1-13

11-1 and 194 pgs

He said that is a couple of his statements to the jury that

getting a new statement from him until they could change

into saying what they wanted him to say. That is not

page 487 line 22-24

11-1 and 194 pgs

That says I was telling the truth that I was told that is not

how they got hurt

11-1 and 194 pgs

page 488 line 10-12

11-1 and 194 pgs

That is not true

11-1 and 194 pgs 25-45 and 194 pgs

page 488 line 22-23 and 194 pgs 25-45 and 194 pgs

Yes he did because he was forced into saying this. I did

about 1000 to 1500 and 11-1 and 194 pgs 25-45 and 194 pgs

prison and 11-1 and 194 pgs 25-45 and 194 pgs

room

Mead

S. 100007

60

page 489 line 1-23. I am not a doctor and I don't know what it is but I know
 that proves he is getting mixed up or what he is not supposed
 to say. They were sitting in the courtroom and saying that head
 on hole he should answer and on a significant and I don't print

page 490 line 14-18 line 19-21

That proves he hit her and knocked her out with the door.

page 490 line 24-25

That proves that I am telling the truth about her being clumsy

page 491 line 1-4

That proves that I was telling the truth that she wasn't the
 same after the head injury

page 491 line 5-12

A pull up would fall apart after a few hours of being
 coiled.

page 491 line 16-21

Yes they would. They played down at the creek and on the
 pile of red dirt in front of the house as well as the track the
 built.

page 491 line 22-25 page 492 line 1-6

A pull up would come apart so it wouldn't last hours let
 alone days

page 494 line 6-9

They had him study what he was supposed to testify to

page 494 line 10-18

That is not true I did not tell him to say that. The

bncm

Meed

page 498 line 3-6

He was not over there every day. Around the last couple of months that we lived there he wasn't aloud to come over because he stole and took things up.

page 498 line 7-9

Verak told him he wasn't allowed to come over unless he was chore because he caused too much trouble.

page 498 line 17-18

He is lying because I wouldn't let them have snacks while he was there because he would bully them so I told them while he was there not to get anything.

page 498 line 25. page 499 line 1

Minor had her own table.

page 499 line 2-4

Everyone would eat leftovers when we had them. She ate what ever I cooked for the day.

page 499 line 5-8

She would not get beat and the counting was not like that at all.

page 499 line 9-12

That is not true.

page 499 line 16-24

He is not telling the truth. If a child was beat why would the person doing it do it in front of people.

page 499 line 25. page 500 line 1-2

He is lying we used the spoon on her head.

page 500 line 3-14

You can tell he is lying. How do you hold skin back?

page 500 line 23-25. page 501 line 1-6

A can cigarette lighter would not do that. They have a guard there to keep them from burning you. Also they don't stay hot long enough to burn you.

page 501 line 11-15

That is not true. You can't hold ice on someone for 5 seconds and

63

pull skin off to make it bleed.

page 501 line 16-21

That is not true. She did not live in the harness.

page 502 line 3-12

That is a big bathroom plus where she would use the toilet. She could go into the bathroom.

page 502 line 13-20

A pull-up or a diaper will not last a week coiled or uncoiled. They come apart. A pull-up or a diaper was not left on her for a week.

page 502 line 21-25 page 503 line 1-5

The neighbors said they never saw this. An adult can't run that long let alone a child. You can tell he is lying.

page 503 line 21-25 page 504 line 1-13

She is leading him into what to say. When you throw a ball back and forth if you miss it you have to go get it. I never played fetch with

Minor

like a dog. She was never whipped for getting the ball and going after it again. The neighbors did not testify to that or seeing it.

page 504 line 20-22

They were playing ball not Minor

and she ran into the game.

page 504 line 23-25 page 505 line 1-3

Yes Minor

has to jump on the trampoline.

page 505 line 6-8

Minor

would not get a beating for that.

page 505 line 9-17

We didn't have a hose pipe during the cold weather. He said she wasn't cleaned up. A pull-up does not last that long. It was not cold weather.

page 505 line 18-21

Theris said she was on Chase's trampoline that is what Robert Gamble told me.

page 506 line 12-14

He said it was and now he is saying he's not sure now he's saying it was in line 16.

page 506 line 15-25 page 507 line 1-17

If it did happen a car lighter would not stay even warm let alone hot enough to burn someone from the car, yard, porch, living room, kitchen, hallway and then into the bedroom. Plus it has a guard on it to keep you from burning yourself. The whole testimony on that is untrue.

page 509 line 6-25 page 510 line 1-25 page 511 line 1-11

I will not do that. Common sense tells you that can't happen. It is as off the wall as the car cigarette lighter.

page 511 line 17-19

She did not live in the harness.

page 511 line 22-25

He was allowed to use that toilet because it didn't work properly. He was never allowed near our bedroom.

page 512 line 1-25 page 513 line 1-25 page 514 line 1-25 page 515 line 1-25

He can't get his story straight on where or what bathroom it was. You can tell from that whole line of questioning that he is lying.

page 516 line 12-25 page 517 line 1-3

That doesn't even make sense. A pull-up or a diaper would fall to pieces.

page 517 line 4-25 page 518 line 1-10

A pull-up definitely would not last a week if she was doing that. The neighbors testified to they never saw that.

page 518 line 11-25 page 519 line 1-9

Earlier he said he did it do a boot camp now he is saying he did. Also ^{Minor} would not be allowed to go to the front yard unless we were with her because of the cars and road.

page 519 line 12-13

Yes he did.

page 519 line 18-25 page 520 line 1-25 page 521 line 1-11

He wasn't home so how would he know if she was on his trampoline also the dog was chained up inside the fence not running?

65

around in the yard. His whole testimony does not make any sense.

page 522 line 1-4

That is not true.

page 522 line 5-8

He was not at our house every day. We had to call the law to get him quiet a few times and the officer told him he wasn't allowed in our yard anymore.

page 523 line 4-10

She was never injured. He is lying.

page 523 line 11-21

They all played in the yard with the hose pipe. That proves what I said about them playing in the red dirt.

page 523 line 22-25 page 524 line 1-5

That doesn't even make sense. The neighbors testified they never saw that.

page 524 line 12-20

That doesn't even make sense.

page 525 line 13-20

I never had that conversation with her. I never said I hated girls.

page 525 line 21-25 page 526 line 1-2

We hadn't finished moving in yet. We hadn't moved all the beds yet. It took us two weeks to get moved in because I was pregnant.

page 526 line 3-6

She is lying there because ^{Minor} did not have a problem going to the bathroom until after the head injury and at that time it was before the head injury.

page 526 line 9-23

That is the way she was after the head injury.

page 526 line 24-25 page 527 line 1-14

She would have clothes on. She may have on a T-shirt. When it was hot out she would take her clothes off. At that time she had the head injury and would soil her pull-up if it was on.

66

playing you do get dirty. I also did not tell her the doctor said to ignore her. I told her ^{Minor} was not the same after her head injury.

page 528 line 1-25 page 529 line 1-25 page 530 line 1-4
Everyone was outside. We were clearing out our yard as well. ^{Minor} was standing because she was pooping. When she finished she said what she had done and Derek changed her pull-up. We told her to stay close to the house because we were cutting down trees so were the neighbors and we didn't want her to get hurt. She was swinging in her swing.

page 530 line 15-21
I never said anything about PSS. She was going to change doctors and asked me who I took the kids to.

page 531 line 6-14
She never came over while I was getting out of the car because we did not have the car when Jared was born. So that is a made up story.

page 531 line 15-20
That was before the head injury.

page 531 line 21-25 page 532 line 1-10
We were going to Derek's mom's house for the weekend. I never said we were picking ^{Minor} up from boat camp because she was standing beside me when Derek and I asked them to keep an eye on the house. Earlier in testimony people were saying she was outside. People can't get their stories straight.

page 532 line 17-25
Those were put on to keep them out of the bathroom especially Jared because medicine was kept in there.

page 533 line 22-25
Now she is saying ^{Minor} was outside.

page 535 line 1-3
Naturally.

67

page 535 line 4-13

We went for the weekend to Perko's mom's house.

page 535 line 14-25

She was popping at that time. No one placed her there.

page 536 line 1-7

She was building a rock pile and a track.

page 536 line 8-25 page 537 line 1-8

That proves she was not made to run or they would have seen her. They can see from their windows outside.

page 539 line 21-25

She was not tied to a stump. We were outside burning leaves and tree limbs. I had her in her harness because she kept leaving the yard and I didn't want her to get burned. She was attached to me except when I went to mess with the fire.

page 540 line 5-25 page 541 line 1-18

How could she have seen what shape the pull-up was from the road. We were to burn leaves and tree limbs. We were burning them the night of Survivor. So she is lying about calling them two days. The police department only shows one call from the night of Survivor only. It was not a rope or a chair.

page 542 line 14-25 page 543 line 1-25

We (Minor and I) were signing camp and playing around. Earlier she said we weren't burning page 540 line 13-15 now she says we were. You can tell she is lying. She never came in our yard.

page 546 line 2-8 line 12-14

See she could not have seen that from that distance.

page 548 line 11-13

She jumped on his trampoline the day they were out of town. Oct 14 according to Robert Gamble. She would jump on the trampoline across the street.

page 548 line 9-10

He did not see her everyday.

page 548 line 14-15

She did play but no one was allowed to tackle her only tag her.

page 548 line 22-24

She was not tied to a tree.

page 549 line 3-15

We did not play fetch. We would kick or throw the ball back and forth. She only cried when we had to stop playing.

page 551 line 6-25

At a glance how does he know where we were at? That was only on the right of Survivor. The

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2004-CP-04-0529
COUNTY OF ANDERSON	)	
	)	
Ila Michelle Carter,	)	
S.C.D.C. No. 276333,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed February 7, 2004, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Anderson County Grand Jury indicted the Applicant at the March 2001 and May 2001 terms of General Sessions for Homicide by Child Abuse (01-GS-04-1203) and Great Bodily Injury on a Child (01-GS-04-765). The Applicant was represented by Robert Gamble, Esquire. On June 29, 2001, the Applicant went to a trial by jury and was found guilty as indicted. The Honorable John W. Kittredge sentenced the Applicant to life imprisonment for homicide and to a consecutive twenty (20) year term on the great bodily injury indictment.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was filed by Joseph L. Savitz, III, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Ila Carter, Op. No. 2003-UP-160 (S.C. Ct. App. filed February 25, 2003).

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the relevant records on direct appeal.

II.

In her application for post-conviction relief the Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Attorney did not represent me effectively;
2. No witnesses called in my defense;
3. Findings of new evidence.

III.

The Respondent asserts the Applicant's allegation that her attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be convened solely for the purpose of determining whether the Applicant received the effective assistance of trial counsel.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTOPHER L. NEWTON
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P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

Columbia, South Carolina

10-5, 2004

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

)

) IN THE COURT OF COMMON PLEAS

)

2004-CP-04-0529

Ila Michelle Carter, #276333

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:

E. Alexander Turner, III
P.O. Box 2506
Anderson, SC 29622

DATED this 19th day of October, 2004.


Gianandrea A. Maoli, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

ILA MICHELLE CARTER, 276333)

Applicant,)

v.)

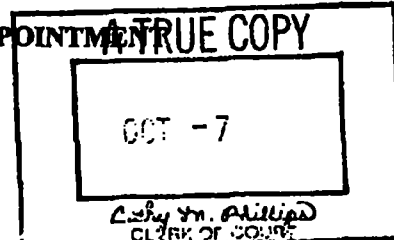
STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2004-CP-04-529

ORDER OF APPOINTMENT



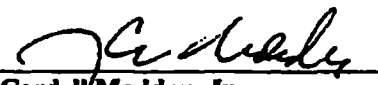
THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief.

An evidentiary hearing was convened in this matter on June 19, 2009. At the outset of that hearing, it was brought to this Court's attention that the Applicant wanted her court-appointed attorney, Hugh Welborn, relieved as her counsel on the grounds that Attorney Welborn had represented her husband in a previous matter. With the consent of Attorney Welborn, this Court relieved him as counsel of record in this case. The Applicant has been represented by several previous lawyers from the Anderson County Bar. Because of the numerous conflicts of interest which have arisen in this case, this Court has requested that Tara Dawn Shurling of the Richland County Bar, agree to accept court-appointment to this PCR action. Attorney Shurling was present in the Anderson county Court of Common Pleas on another matter when the motion in this case was heard. The client has agreed to the appointment of Ms. Shurling, and Ms. Shurling has agreed to accept this court-appointment.

THEREFORE, IT IS ORDERED THAT:

1. Hugh Welborn is relieved as counsel; and
2. Tara Dawn Shurling is appointed to represent the Applicant; and
3. Hugh Welborn is directed to turn his file concerning this case over to Attorney Shurling within ten (10) days of the filing of this Order; and
4. Respondent is to direct all future correspondence concerning this case to Attorney Shurling; and
5. Notwithstanding any bills submitted by previous court-appointed PCR lawyers, Attorney Shurling is to be paid for all her time expended on this case provided any fees claimed in excess of \$1,000.00 are approved by the Court at the conclusion of the case.

IT IS SO ORDERED.


J. Cordell Maddox, Jr.
Presiding Circuit Judge
Tenth Judicial Circuit

This 6 day of October, 2009.

Anderson, South Carolina.

State of South Carolina

County of Anderson

In the Court of Common Pleas

Ila Michelle Carter,

Applicant,

-vs-

State of South Carolina,

Respondent.

2004-CP-04-529

October 7, 2010

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Tara Shurling, Esquire
Attorney for the Applicant

A. West Lee, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter

Q3

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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 1:44 p.m.

4 THE COURT: Okay. All right. Yes, ma'am?

5 MR. LEE: May it please the Court? This is Ila
6 Michelle Carter versus the State of South Carolina. It's
7 2004-CP-04-0529. It comes to the Court by way of
8 application for post-conviction relief filed February
9 7th, 2004. The Applicant was indicted at the Anderson
10 County Grand Jury March 2001 and May 2001 terms for
11 homicide by child abuse and great bodily injury to a
12 child.

13 The Applicant was represented by Mr. Robert Gamble
14 and on June 29, 2001 the Applicant underwent a jury
15 trial, pursuant to which she was found guilty as
16 indicted. She was sentenced by the Honorable John
17 Kittridge to life imprisonment for homicide and a
18 consecutive twenty-year term on the great bodily injury
19 indictment. A timely notice of appeal was filed on her
20 behalf and an Anders brief was filed, and the South
21 Carolina Court of Appeals subsequently dismissed the
22 Applicant's appeal.

23 In her current application the Applicant made
24 general allegations of ineffective assistance of counsel.
25 In her original application there was a reference to

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Opening Statement by Ms. Shurling (10/7/2010)

5

1 attorney did not represent me effectively. No witnesses
2 called to my defense and findings of new evidence. There
3 are so many papers here, I'm not sure where, but I feel
4 confident, though, there's an amendment filed. So at
5 this time, I'll turn it over to Ms. Tara Shurling to
6 expand upon her claims.

7 THE COURT: All right. Yes, ma'am?

8 MS. SHURLING: Thank you, Your Honor.

9 For the record, I am Tara Shurling from the Richland
10 County Bar. I would like the record to reflect that I
11 had the good fortune to be here on a retained matter some
12 months ago when the Court was having a problem finding
13 another attorney for Ms. Carter. Her previous attorney,
14 I believe, had a conflict of interest because either he
15 or his law firm had represented her husband, her ex-
16 husband. And at that time I agreed at the request of the
17 Court to take this matter.

18 THE COURT: And I appreciate it. I appreciate
19 it.

20 MS. SHURLING: I make that point for the record
21 only because when it comes time to bill S.C.C.I.D. for
22 some of the expenses in this case, they would try to make
23 an issue out of it if they thought I had volunteered, so
24 ...

25 THE COURT: No. Let the record reflect that I

1 do recall that. And I appointed you and I appreciate
2 your not appealing my appointment.

3 MS. SHURLING: Thank you.

4 THE COURT: All right.

5 MS. SHURLING: And I was happy to do it, Your
6 Honor.

7 Your Honor, the applicant alleges generally that she
8 received ineffective assistance of counsel prior to and
9 during her jury trial in violation of her rights pursuant
10 to the Sixth and Fourteenth Amendments of the United
11 States Constitution, as well, of course, as our own § 13
12 of our State Constitution.

13 Specifically, she alleges that prior to her --
14 pardon me, Your Honor.

15 THE COURT: No, I didn't say anything.

16 MS. SHURLING: Oh, I'm sorry. I thought you
17 said something. An echo. Sorry.

18 Specifically, she alleges that counsel failed to
19 adequately review discovery materials with her prior to
20 trial, failed to adequately discuss with her possible
21 ramifications of a plea bargain that had been offered by
22 the State versus the consequences of going to trial and
23 being convicted. She also would allege, Your Honor, that
24 there were a couple of important instances during this
25 trial where key objections should have been made and were

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter - Direct Examination by Ms. Shurling

7

1 not made. And she will demonstrate at the conclusion of
2 this hearing that those errors were such that they not
3 only might have effected the outcome of the jury trial,
4 but they also, if the trial had resulted in conviction,
5 would have given her a chance for the review of
6 meritorious preserved issues on direct appeal. Whereas,
7 as it was, the South Carolina Office of Indigent
8 Defense's Appellate Division filed an Anders brief in
9 this case addressing a single issue that was not, in
10 fact, preserved for appellate review.

11 Your Honor, at this time, I would call Ila Michelle
12 Carter to the stand.

13 MS. SHURLING: Your Honor, for the record, if
14 you see me drinking as we progress here today -- I've got
15 a Coke on the table -- my apologies to the Court. I'm
16 taking antihistamines that are wreaking havoc with
17 speaking voice.

18 THE COURT: I've been there. No, you're fine.

19 MS. SHURLING: Thank you.

20 ILA MICHELLE CARTER,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MS. SHURLING:

24 Q. Ms. Carter, I want to go over a few things just to
25 sort of set straight what you and I have done as we've

1 prepared for this collateral review.

2 A. Okay.

3 Q. When I met with you, did you have an opportunity to
4 discuss with me the difference between a direct appeal
5 and a post-conviction relief action?

6 A. Yes, ma'am.

7 Q. And did I explain to you the difference and the
8 sorts of issues that are raised on direct appeal versus
9 those that would be raised in, what we here in South
10 Carolina call, post-conviction relief?

11 A. Yes, ma'am.

12 Q. And I explained to you that in South Carolina a
13 post-conviction relief application is the codified method
14 for obtaining collateral review of your judgments and
15 sentences, correct?

16 A. Yes, ma'am.

17 Q. Okay. Now, I also explained to you, did I not, that
18 only errors that were raised, argued, and ruled upon by
19 the presiding judge at trial, could be the foundation for
20 a reversal and the grant of a new trial by an Appellate
21 Court?

22 A. Yes, ma'am.

23 Q. Okay. Now, when I visited with you, I explained to
24 you that in a post-conviction relief action, the primary
25 goal is to demonstrate for the reviewing Court -- that

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter - Direct Examination by Ms. Shurling

9

1 would be Judge Maddox -- the errors and omissions
2 committed by your trial lawyer, okay? And I explained to
3 you what an omission was?

4 A. Uh-huh (affirmative).

5 Q. What did I tell you an omission was?

6 A. It was something that -- I know, but I can't call
7 the word.

8 Q. Something the lawyer should have done ---

9 A. Yeah.

10 Q. --- but did not do versus an error being something
11 the lawyer did incorrectly.

12 A. Yeah.

13 Q. Do you understand that standard?

14 A. Uh-huh (affirmative).

15 Q. Okay. Now, your lawyer was Robert Gamble ---

16 A. Uh-huh (affirmative).

17 Q. --- at trial, correct?

18 A. Yes, ma'am.

19 Q. Mr. Gamble was the head public defender in Anderson
20 County?

21 A. I guess so.

22 Q. And he was court-appointed to be your lawyer?

23 A. Yes, ma'am.

24 Q. Now, prior to your trial, did Mr. Gamble discuss
25 with you the possibility of exploring a negotiated plea

1 bargain with the Prosecutor's office?

2 A. No, ma'am.

3 Q. Do you understand that in the Court of General
4 Sessions you can either exercise your right to trial by a
5 jury or you can plead guilty, correct?

6 A. Yes, ma'am.

7 Q. And I explained to you that no one can ever stop you
8 from pleading guilty to a crime, correct?

9 A. Correct.

10 Q. But that there's no Constitutional right to make the
11 Solicitor's office engage in a plea bargain with you?

12 A. Right.

13 Q. That that would be the distinction. You can't make
14 them offer you a better deal. You can't make them let
15 you plead to a lesser offense or to give you a
16 recommended sentence. If they're not willing to do that,
17 all you can do if you don't want to go trial is just
18 plead guilty. And you understand that?

19 A. Yes, ma'am.

20 Q. In this case, did you ever ask your lawyer to see
21 what the State would be willing to let you plead to?

22 A. No, ma'am.

23 Q. And why not?

24 A. I mean, I didn't know anything about the law. I
25 didn't know that was an option at that time. I mean, I

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter - Direct Examination by Ms. Shurling

11

1 hardly -- I think I spoke to him two, maybe three times,
2 tops. Mainly, I spoke to Jimmy Penn. He never said
3 anything about any of that.

4 Q. Okay. Now, Ms. Carter, I have some hearing loss so
5 I admit that this may be worse for me than it is for you
6 or for others in the courtroom. But I have some
7 difficulty hearing you. Maybe it's the acoustics in this
8 big courtroom. But if you could speak up just a little
9 bit, I would appreciate it because it's very important
10 not only that His Honor hear you, but that Madam Court
11 Reporter be able to write down what you're saying. And
12 she can't write it down if she doesn't understand it,
13 okay?

14 A. Okay.

15 Q. So it's your testimony that he only met with you two
16 or three times before your trial?

17 A. Yes, ma'am.

18 Q. Were you on bond or were you in jail?

19 A. I was in Anderson County Detention Center.

20 Q. Okay. And did your lawyer ever come to you at some
21 juncture and tell you that the State had just offered you
22 a plea bargain?

23 A. No, ma'am.

24 Q. Never?

25 A. Never.

- 1 Q. Now, your husband, Derek Carter ended up
2 approximately -- I don't remember exactly -- a week or
3 two before your trial, Derek pleaded guilty?
- 4 A. Yes, ma'am.
- 5 Q. And he pleaded guilty to homicide by child abuse,
6 correct?
- 7 A. Yes, ma'am.
- 8 Q. And what sentence did he receive?
- 9 A. Twenty years.
- 10 Q. Twenty or Twenty-five?
- 11 A. Twenty. It might be twenty-five. I know it's
12 twenty or twenty-five.
- 13 Q. Okay. When you found out about that, did your
14 lawyer ever discuss with you the possibility that he
15 might be able to negotiate with the Prosecutor's office
16 the same deal for you?
- 17 A. No, ma'am. I didn't see him anymore until the day I
18 come to court.
- 19 Q. Okay. I understand that this is a delicate subject.
20 But you and I have talked about the fact that sometimes
21 even innocent people have a good reason to plead guilty
22 ---
- 23 A. Uh-huh (affirmative).
- 24 Q. --- and take a deal, right?
- 25 A. Yes, ma'am.

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter - Direct Examination by Ms. Shurling

13

1 Q. And you understand from your conversations with me
2 that even the law says that there are occasions when
3 someone says, I'm innocent.

4 A. Uh-huh (affirmative).

5 Q. But I also know all the evidence that the State
6 intends to introduce against me, and I accept the fact
7 that there's a risk those twelve people may say I'm
8 guilty. And so I don't want to take the chance, okay?

9 A. Yes, ma'am.

10 Q. You and I talked about that?

11 A. Yes, ma'am.

12 Q. Did you have those kinds of conversations with Mr.
13 Gamble?

14 A. No, ma'am, not one.

15 Q. Did Mr. Gamble ever discuss with you the fact that
16 any sentence you received for less than life would carry
17 with it the possibility, if you were a model inmate, of
18 being released a little early? Now, it's the eight-five
19 percent rule. You hear inmates talking about that all of
20 the time. It's only fifteen percent early, but it is
21 fifteen percent. Did he ever discuss the fact with you
22 that if you were able to negotiate a sentence for
23 something less than life, that there would be a
24 possibility of being released on supervised community
25 release after you served eighty-five percent of your

1 sentence?

2 A. No, ma'am.

3 Q. If you had known that, would that possibly have made
4 a difference in your willingness to consider approaching
5 the State about a plea bargain?

6 A. Yes, ma'am, especially now.

7 Q. Pardon?

8 A. Especially now that I know how the -- I had surgery
9 so the medicine's kind of messing with me too. Because I
10 know how the system is. And just, you know, if I would
11 have known, yeah.

12 Q. Okay. Now, did you just say you've have surgery?

13 A. Yes, ma'am.

14 Q. What kind of surgery did you have?

15 A. I have cancer in my back and under my arm.

16 Q. Okay. And what kind of surgery did you have?

17 A. They went in and took this part out of my back and
18 up under my arm.

19 Q. Okay. And have they discussed with you what your
20 prognosis is?

21 A. Uh-huh (affirmative).

22 Q. Do you mind sharing that with us, please?

23 A. Everything looks good.

24 Q. It looks good?

25 A. Everything looks good.

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter - Direct Examination by Ms. Shurling

15

1 Q. Okay. I'm glad to hear that. Now, are you taking
2 any medication here today ---

3 MS. SHURLING: Your Honor, for the record, I
4 was unaware that my client had had surgery.

5 THE COURT: Yeah.

6 Q. Are you taking any medication here today?

7 A. Just my normal medicines each day.

8 Q. Well, let's talk about what your normal medicines
9 are. Tell us for the record what prescription
10 medications you're taking.

11 A. Buspar, Prozac, Lithium and Nortriptyline.

12 Q. Are you taking anything here today that you were not
13 taking on previous occasions when I've talked to you at
14 Leath Correctional?

15 A. No, ma'am.

16 MS. SHURLING: Your Honor, I would then state
17 for the record that in my interviews with Ila Carter at
18 Leath Correctional, I have found her to be articulate and
19 have experienced no difficulty whatsoever with getting
20 her to answer my questions. She seemed to fully
21 understand everything I've ever said to her.

22 THE COURT: Okay.

23 MS. SHURLING: And I have never had any concern
24 that her medications were in any way clouding her
25 judgment.

1 Q. Now, having said that, you only get one post-
2 conviction relief case.

3 A. Yes, ma'am.

4 Q. Is there any doubt in your mind that you're clear of
5 mind today, that you have all your faculties about you
6 and that you're able to understand my questions and
7 answer them without any difficulty?

8 A. Yes, ma'am.

9 Q. You're fine?

10 A. Yes, ma'am.

11 Q. Okay. We don't want at some later date to be saying
12 that you were in a cloud ---

13 A. Yeah.

14 Q. --- and you didn't know what was going on. You're
15 able to fully understand me and fully answer questions?

16 A. Yes, ma'am.

17 Q. Okay. Now, do you know what I mean when I refer to
18 discovery materials?

19 A. I do now. At the time, I didn't. I didn't know
20 there was a such thing as something of discovery. I
21 didn't know that at the time.

22 Q. Okay. When I visited with you, did I discuss with
23 you *Brady* motions and Rule 5 motions?

24 A. Yes, ma'am.

25 Q. And I explained to you that in the prison population

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter - Direct Examination by Ms. Shurling

17

1 you hear people talking about. I want to see my motion
2 for discovery.

3 A. Uh-huh (affirmative).

4 Q. What they really mean is they want to see the papers
5 that were turned over in response to the motion for
6 discovery, okay?

7 A. Okay.

8 Q. In your case prior to trial, did your defense
9 attorney ever come to the jail or did any member of his
10 staff ever come to the jail and bring with them the
11 discovery materials provided by the Prosecution and give
12 you an opportunity to review them?

13 A. No, ma'am.

14 Q. I have a large packet of materials that you gave me
15 when I visited you in Leath Correctional.

16 A. At Leath. That's when I got those. I didn't even
17 know to ask for any of them.

18 Q. And ---

19 A. I didn't know any of that existed until I wrote to
20 him and asked what was that and could he send me the
21 papers. And that's what he sent me.

22 Q. A courtroom lesson. This nice lady is trying to
23 write down every word we say. And it's a miracle she can
24 do it. I think it's fascinating. But she's writing down
25 what I've just said while she's listening to what I say.

1 But if you throw in you and I talking over each other ...

2 A. Okay.

3 Q. ... even she's not that good. So when I ask a
4 question, let me completely finish and then you answer.

5 A. Okay.

6 Q. And I'll try to be good about letting you finish
7 before I talk some more, okay?

8 A. Okay.

9 Q. All right.

10 MS. SHURLING: For the record, Your Honor, this
11 envelope is postmarked July 30th, 2004 and bears the
12 return address of the Office of the Public Defender at
13 301 Camson Road. And it shows that it was received at
14 Leath Correctional Institution on August 3rd, 2004.

15 THE COURT: All right.

16 MS. SHURLING: I'm showing Respondent, Your
17 Honor.

18 Q. And for the record, the materials in this envelope
19 that you've shared with me is what you were sent and
20 received back in August 2004?

21 A. Yes, ma'am.

22 Q. Which was quite some time after your jury trial?

23 A. Uh-huh (affirmative).

24 Q. Okay. Was your husband in jail while the two of you
25 were awaiting trial, or was he on bond?

Iln Michelle Carter v. State of South Carolina 2004-CP-04-529
Iln Michelle Carter - Direct Examination by Ms. Shurling

19

1 A. He was in jail.

2 Q. He was in jail?

3 A. Yes, ma'am.

4 Q. Did you know in advance that he was going to plead
5 guilty?

6 A. No, ma'am.

7 Q. Okay. And again, just so I'm real clear, once you
8 knew he did plead guilty and received a sentence of
9 twenty, twenty-five years, did you ask Robert Gamble to
10 explore the possibility of getting the same or a similar
11 deal for you?

12 A. No, ma'am. I never saw Robert until -- at that
13 point, after Derek went to court, I didn't see Robert
14 until the day I went to court. And I said I had a few
15 questions today. He said we didn't have time. We have
16 to get in the courtroom.

17 Q. Okay. Tell me, if you can, in simple terms -- and
18 I'm going to break this up a little bit so we don't do
19 too long a narrative. But what do you think Robert
20 Gamble could have done that he did not do that would have
21 enabled you to present a stronger more convincing defense
22 at your jury trial?

23 A. He could have sent me for a mental evaluation. And
24 a lot of the evidence and all of that, I didn't know
25 anything about. I mean, there's just a lot I didn't know

1 about in the whole thing. I didn't know anything about
2 no motion of discovery. I didn't find out about that
3 until I come to prison. And I only talked to him a
4 couple of times. I mean, you know, three at the most. I
5 mean, he really didn't have time for me.

6 Q. Okay. So he could have sent you for a psychological
7 evaluation?

8 A. Uh-huh (affirmative).

9 Q. And he could have reviewed the discovery materials
10 with you?

11 A. Uh-huh (affirmative).

12 Q. Now, let's start with the evaluation. At the time
13 this charge for killing your stepdaughter was brought
14 against you, did you have a history of mental illness?

15 A. Yes, ma'am.

16 Q. And what, specifically, was your mental illness?

17 A. Bi-polar, conversion disorder.

18 Q. Pardon?

19 A. Conversion disorder.

20 Q. Conversion disorder?

21 A. I can't think what the other one is.

22 Q. Okay. And did you discuss any of this with your
23 trial attorney?

24 A. Uh-uh (negative).

25 Q. Okay. Now, what else do you think your trial

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter - Direct Examination by Ms. Shurling

21

1 attorney could have done that he didn't do that might
2 have increased the chances that the jury would believe
3 you were not criminally responsible for Minor
4 death?

5 A. He could have called witnesses because I had no
6 witnesses called. He could have called ---

7 Q. You -- sorry. That was my fault. I apologize. You
8 were the only witness presented on behalf of the Defense?

9 A. Yes, ma'am.

10 Q. What other witnesses would you have wanted him to
11 present?

12 A. The doctors.

13 Q. Specifically, which doctors?

14 A. Dr. Maddox and Dr. Sheets, Dr. Avant and another
15 doctor. I can't think of his name.

16 Q. Okay. Now, you understand that the medical records
17 for your stepdaughter were obtained by the Public
18 Defender's Office?

19 A. (Shook head side to side in the negative).

20 Q. You didn't know that?

21 A. (Shook head side to side in the negative).

22 Q. And they were never reviewed with you?

23 A. No, ma'am.

24 Q. What about other types of witnesses? Were there
25 other neighbors or family members or anyone that could

1 have been called to testify to your being a loving,

2 caring, stepparent?

3 A. Yes, ma'am. My nanny and my aunt.

4 Q. Your nanny and your aunt?

5 A. Uh-huh (affirmative). And my cousin, Kelly.

6 Q. And did you give their names to Mr. Gamble?

7 A. Uh-huh (affirmative).

8 Q. What were their names?

9 A. Drucilla Patterson, Patsy Cape. I think Kelly was a

10 Cape then. I don't know.

11 Q. Drucilla Patterson and ---

12 A. Patsy Cape.

13 Q. Patsy Cape?

14 A. C-A-P-E.

15 Q. Dr. Legarda ...

16 A. Uh-huh (affirmative).

17 Q. ... is referred to you by someone -- pardon me -- is

18 referred to in your testimony as someone who diagnosed

19 Minor as having Lupus?

20 A. Uh-huh (affirmative).

21 Q. But later on in your testimony, you testified that

22 you looked Lupus up on the Internet because of something

23 Dr. Legarda said on the second or third visit with him?

24 A. With her, yes, ma'am.

25 Q. Do you recall that?

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23

1 A. Yes, ma'am.

2 Q. Okay. So did Dr. Legarda actually diagnosis
3 Minor as having Lupus, or did he review with you
4 symptoms which you later went on the computer and were
5 able to find out were consistent with Lupus?

6 A. No, ma'am. She said that her tetter number, some
7 number, was high and that she met four of the
8 qualifications or whatever. And she said that it was
9 lucky because you could only find Lupus when they're
10 having a flareup. That's why it's not found until your
11 childbearing years. And she said that's how she found it
12 on her. She just happened to be having a flare up at the
13 time she drew the blood work.

14 Q. Okay. However, did Mr. Gamble explain to you that
15 his research had shown that the injuries that were found
16 on your stepdaughter at the time of autopsy were not
17 consistent with being systemically related to Lupus?

18 A. No, ma'am. He didn't tell me that.

19 Q. All right. Now, you had a direct appeal that was
20 handled by Joseph Savitz from the Appellate Division of
21 S.C.C.I.D.?

22 A. Uh-huh (affirmative).

23 Q. I think back then it was still called the Office of
24 Appellate Defense, right?

25 A. Yes, ma'am.

- 1 Q. Okay. He filed what's known as an *Anders* brief in
2 your case, didn't he?
- 3 A. Yes, ma'am.
- 4 Q. Did you understand at the time what that meant?
- 5 A. No, ma'am.
- 6 Q. Did you subsequently get a letter from the Court
7 giving you forty-five days to respond to his articulated
8 position that your case had no merit?
- 9 A. No, ma'am.
- 10 Q. You did not?
- 11 A. No, ma'am. All I received is this blue piece of
12 paper and this blue thing.
- 13 Q. So you never got any documentation from the Court
14 giving you a chance to respond to that *Anders* brief?
- 15 A. No, ma'am.
- 16 Q. Okay. Now, I explained to you what the United
17 States Supreme Court's ruling in *Anders v. California*
18 was, didn't I?
- 19 A. Yes, ma'am.
- 20 Q. And I explained to you that under the authority of
21 *Anders*, once a lawyer files an *Anders* brief, it shifts
22 the burden to the reviewing court to review the entire
23 trial transcript from cover to cover for any error that
24 the Court may feel has merit as compared to the opinion
25 of the author that it has no merit?

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25

1 A. Yes, ma'am.

2 Q. Okay. I also explained to you that under case law
3 *Evatts v. Lucy*, which I don't expect you to remember.
4 But I told you that in P.C.R., it's generally about one
5 or both of two things, ineffective assistance of trial
6 counsel, number one, and/or ineffective assistance of
7 appellate counsel.

8 A. Yes, ma'am.

9 Q. Do you remember me explaining that to you?

10 A. Yes, ma'am.

11 Q. Okay. And I explained to you that when an *Anders*
12 brief is filed, in my opinion based on my thirty-one year
13 career, it virtually eliminates the possibility of ever
14 prevailing on a claim of ineffective assistance of
15 appellate counsel. I explained that to you?

16 A. Yes, ma'am.

17 Q. Do you remember why I told you that was so?

18 A. Because you had asked me something about the *Anders*
19 brief, if I had got it. And I said, yeah. And you had
20 asked me what the results of it was. And I said it was
21 just -- he dismissed it. And that's when I went in my
22 building and got the stuff.

23 Q. Do you remember me explaining to you that when an
24 *Anders* brief is submitted, the reviewing Court, the
25 Appellate Court has to read the entire trial transcript

1 and decide whether they agree with the lawyer that the
2 case has no appellate merit before they can grant the
3 Anders request?

4 A. Yes, ma'am.

5 Q. Okay. And that that would mean that if I raised any
6 claims of ineffective assistance of appellate counsel
7 against Joey Savitz at this juncture, if Judge Maddox
8 wanted to agree with some complaint I have about Joey
9 Savitz, he would have to find that the panel on the Court
10 of Appeals that ruled in the Anders brief submitted in
11 your case made a mistake. That they didn't know what
12 they were doing. They missed something, okay?

13 A. Uh-huh (affirmative).

14 Q. And you understand that there's a high degree of
15 probability that no circuit court judge is going to tell
16 the Appellate Court they messed up?

17 A. Yes, ma'am.

18 Q. Okay. Having said that, you and I talked about
19 whether or not we thought there were any preserved issues
20 in your trial that could have been briefed and should
21 have been briefed, correct?

22 A. Yes, ma'am.

23 Q. And I told you I didn't see any, right?

24 A. Yes, ma'am.

25 Q. But we discussed the fact that there were a couple

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1 of issues that I thought would have had merit if they had
2 been objected to, correct?

3 A. Yes, ma'am.

4 Q. I'll go over those issues with Mr. Gamble here in a
5 little bit, okay, because those are legal issues. I
6 don't really need to talk to you about. I will just --
7 suffice it to say that if errors occurred during the
8 course of your trial and they created, you know, a
9 substantive error of law that might have been the basis
10 for a reversal, you would have wanted him to object and
11 preserve that for the record for you, wouldn't you?

12 A. Yes, ma'am.

13 Q. Okay. Have I covered -- now, I'm going to cover
14 legal issues with Robert Gamble. But have I covered all
15 the issues that you wanted to raise in this case?

16 A. Yes, ma'am.

17 Q. You're confident of that?

18 A. Yes, ma'am.

19 Q. Let me explain to you that while the Court has said
20 they want everybody to have one full and fair bite at the
21 apple, barring some fairly extraordinary circumstances,
22 you're not likely to ever be granted another P.C.R. So
23 if I've left something out -- don't worry about hurting
24 my feelings -- just say what I've left out. Anything?

25 A. No, ma'am.

1 Q. One last question. Your original application refers
2 to some new evidence in your case. Can you tell us now
3 what new evidence you were thinking about when you wrote
4 that?

5 A. Well, I had sent all of it -- I didn't know any
6 better. I sent my transcripts and everything to the
7 court with all that. I didn't know to make copies or
8 anything like that. I sent everything with them. That's
9 how I had to get another transcript.

10 Q. Yes, ma'am. My question to you is, on -- I think
11 it's item nine or ten of the application, when you list
12 what your allegations are, you do refer to new evidence
13 in your case. Can you tell us what new evidence you
14 think exists in your case?

15 A. Well, I was thinking along the lines of the doctors
16 not being called.

17 Q. Okay.

18 A. And that was never put in.

19 Q. But there wasn't anything that is like a brand new
20 discovery you've made ---

21 A. No, ma'am.

22 Q. --- since you went in prison?

23 A. No, ma'am.

24 Q. Thank you.

25 MS. SHURLING: Your Honor, I would be through

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1 at this point with my direct examination of the
2 Applicant. I don't know what Your Honor's schedule is.

3 THE COURT: Yeah. I'm going to head on out.
4 We'll start back in about a half an hour.

5 MR. LEE: Okay.

6 MS. SHURLING: Thank you.

7 THE COURT: Okay. I'll be back.

8 (WHEREUPON, court stood in recess at approximately
9 2:14 p.m. and reconvened at approximately 3:22 p.m.)

10 THE COURT: We're back. Do we need her back on
11 the stand?

12 MS. SHURLING: Your Honor, I have finished my
13 direct examination of the Applicant and now turn the
14 witness over to the Respondent.

15 THE COURT: Okay. Ms. Carter, come on back up.

16 MS. SHURLING: And I would remind you that
17 you're under oath. They don't need to re-swear you.

18 THE COURT: All right. I need to remind you,
19 you still are under oath.

20 Okay. Go Ahead.

21 THE WITNESS: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. LEE:

24 Q. Ms. Carter, I just have a couple of questions for
25 you. I believe it was your testimony that Mr. Gamble

1 didn't explain to you the difference between going to
2 trial and taking a guilty plea?

3 A. No, he didn't.

4 Q. And he didn't -- and I think you said he didn't
5 explain to you that pleading was an option?

6 A. No, he didn't.

7 Q. And you testified that you didn't even mention to
8 Mr. Gamble after you were aware that your husband had
9 pled, that you wanted to plead; is that correct?

10 A. No, I mean none of that was ever brought up.

11 Q. It was never brought up?

12 A. I never saw him again until I got to the courthouse.

13 Q. You never saw him? How long was that a period of
14 time where you didn't see him?

15 A. About two weeks.

16 Q. Two weeks. Did you attempt to contact him in any
17 way?

18 A. Uh-huh (affirmative).

19 Q. You did?

20 A. (Nodded head up and down in the affirmative)

21 Q. And you just weren't ever able to get in touch with
22 him?

23 A. Jimmy Penn would come and say when he needed to talk
24 to me, he would come.

25 Q. And you were aware that Jimmy Penn was working with

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1 Mr. Gamble on your case?

2 A. Uh-huh (affirmative).

3 Q. Okay.

4 MS. SHURLING: I apologize for interrupting.

5 But Your Honor, could you instruct Ms. Carter to speak up
6 just a little bit.

7 THE WITNESS: Okay.

8 MS. SHURLING: I'm sorry. I know I'm about
9 half deaf, but I'm having trouble hearing her.

10 THE COURT: Yeah. Just make sure you pull that
11 in. I mean, I can hear you, but ---

12 A. Okay. :

13 Q. And you testified that basically the discovery
14 material that you have now is what you received in July
15 of 2004; is that correct?

16 A. Yes, sir.

17 Q. And that was after your conviction?

18 A. Yes, sir.

19 Q. In fact, it was after you filed your application for
20 post-conviction relief, correct?

21 A. Yes.

22 Q. So that discovery was obtained by request as part of
23 that post-conviction relief proceeding, correct?

24 A. I just sent a letter and told him that I needed that
25 information.

1 Q. For the P.C.R.?

2 A. Yeah.

3 Q. Okay.

4 MR. LEE: I beg the Court's indulgence one
5 second.

6 (Pause)

7 MR. LEE: No further questions for this
8 witness, Your Honor. Thank you.

9 THE COURT: Anything in reply?

10 MS. SHURLING: No reply, Your Honor.

11 THE COURT: Okay. You can step down.

12 Yes, ma'am?

13 MS. SHURLING: Your Honor, at this time we
14 would call Robert Gamble, trial counsel, to the stand.

15 ROBERT M. GAMBLE,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. SHURLING:

19 Q. Mr. Gamble, you are currently the Chief Public
20 Defender for this region; is that correct?

21 A. Yes, ma'am. I'm Public Defender for the Tenth
22 Judicial Circuit.

23 Q. And how long have you been the Chief Public Defender
24 for this area?

25 A. For this area, Tenth Judicial Circuit, since January

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1 14th, 2008. I started as Public Defender for Anderson
2 County in April 1st of 1984.

3 Q. And you've worked continuously as a Public Defender
4 from '84 through current?

5 A. That's correct.

6 Q. Do you recall representing Ila Carter?

7 A. I sure do.

8 Q. And have you had an opportunity to meet with me and
9 briefly discuss this case in preparation for this post-
10 conviction relief hearing?

11 A. Yes. We've talked on the phone a couple of times.

12 And we met face-to-face once.

13 Q. Thank you. And for the record, you've given me
14 complete access to your entire file and have given me the
15 opportunity to review anything in it that I wanted to
16 see, right?

17 A. I've given you my file with free access.

18 Q. Thank you. The child at issue in this case was
19 approximately four years old at the time of her death; is
20 that correct?

21 A. That's correct.

22 Q. Do you recall the State putting up a witness at
23 trial who was a forensic pathologist?

24 A. Brett Woodard.

25 Q. Pardon?

1 A. Brett Woodard.

2 Q. Yes. And are you familiar with Dr. Woodard? Have
3 you dealt with him in other cases?

4 A. Almost every case and murder that I have, I've dealt
5 with Brett Woodard.

6 Q. And he is qualified as an expert in the field of
7 what, sir?

8 A. Pathology.

9 Q. Specifically, forensic?

10 A. Specifically, forensic pathology.

11 Q. Thank you. In preparation for this hearing, did I
12 ask you to take a look with me at a portion of his
13 testimony?

14 MS. SHURLING: Found, Your Honor, at page 214
15 going through -- 214, line 8, going through about 216,
16 line 4.

17 Q. ... wherein, Dr. Woodard testified that a four-year-
18 old would not have the ability or knowledge to self-
19 inflict injuries selectively in areas that would not be
20 readily apparent to others. Do you recall reviewing that
21 portion of the testimony with me earlier today?

22 A. Yes. Yes.

23 Q. And we discussed the fact, did we not, that Dr.
24 Woodard giving an opinion on this issue, which would deal
25 with the psychological development of this child, would

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1 be outside the scope of his expertise?

2 A. Yes.

3 Q. Do you agree with that?

4 A. I agree with that.

5 Q. And you didn't object to this testimony, did you?

6 A. I did not.

7 Q. Should you have?

8 A. In retrospect, yes.

9 Q. Okay. Thank you very much. And there was, of
10 course, testimony and argument by Ms. White designed --
11 pardon me, by the defense designed to -- I'm sorry. I'm
12 getting it backwards again. Ms. White was referring to
13 the fact that most of these injuries were found in places
14 where people who saw the child on a day-to-day basis
15 would not have seen them.

16 A. That's correct. Some of the injuries were what
17 would be under clothing or, as a matter of fact, in the
18 underwear of the child.

19 Q. Okay. And there was also testimony that the child
20 was usually seen in long-sleeved tops and long pants so
21 that even her legs and arms were under cover, correct?

22 A. There was some testimony to that effect.

23 Q. Okay. And of course, the inference the State was
24 trying to draw was that the child was not only
25 deliberately injured, but injured in such a malicious and

1 premeditated way that they were hiding the injuries or
2 inflicting injuries in a way that they could hide from
3 the public and other family members?

4 A. I think that's the inference she was trying to make
5 with that, with Dr. Woodard.

6 Q. Okay. Now, do you recall another place during
7 closing argument when Solicitor White made an issue out
8 of the fact that your client requested legal counsel
9 during her interrogation by the police?

10 A. I recall that, yes.

11 MS. SHURLING: A moments indulgence, Your
12 Honor, and I'll find the spot.

13 Q. Here we go. Page 682, line 1.

14 MR. LEE: Do you have a second volume of the
15 ---

16 THE COURT: No, I've just got one volume. It
17 ends at 495.

18 (WHEREUPON, document was handed up to the Court.)

19 THE COURT: 682?

20 MS. SHURLING: 682, line 21.

21 Q. Now, one more thing about the law that I'm going to
22 talk to you about, and you heard a little bit about the
23 Defendant came in on the 25th and talked. When she was
24 told that her husband had disclosed things to the police,
25 she asked for an attorney. And then later she called or

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1 talked to the law enforcement people and said, I want to
2 talk. Do you recall Ms. White highlighting the fact that
3 your client had initially asked for an attorney and
4 stopped the interview process?

5 A. I don't independently recall it. I don't argue with
6 the record though.

7 Q. Okay. And if the record shows that Ms. White chose
8 to highlight your client's desire not to talk anymore
9 until she talked to a lawyer, would you agree with me
10 that that would be a Constitutional violation under what
11 we criminal lawyers call *Doyle* error?

12 A. It's getting close to *Doyle*. Although she cleared
13 it by saying later she said she wanted to talk with them.
14 I think that would come under *Edwards Arizona*, which
15 would then -- if I objected, it would go back -- it would
16 come in. And my objection to it would call attention to
17 it again. So I didn't object in that case.

18 Q. Okay. So when Ms. White pointed out to the jury
19 that ---

20 MS. SHURLING: Page 683, Your Honor.

21 Q. --- that your client was told, if you cannot afford
22 a lawyer, one will be appointed for you before any
23 questioning -- if you wish before any questioning, once
24 she asked for an attorney they stopped talking to her.
25 That's the law. You're not allowed to talk to the person

1 anymore once they ask for an attorney. Do you recall Ms.
2 White arguing all of that?

3 A. I don't recall it.

4 Q. Okay. And did you consider objecting to that as an
5 unconstitutional comment on your client's exercise of her
6 Sixth Amendment right to counsel and her Fifth Amendment
7 right to remain silent?

8 A. I don't recall my motivation, but I can tell you my
9 usual motivation. And my usual is not to object too much
10 during a closing. Not to call attention back to it. And
11 I don't know whether that's right or wrong, but that's
12 the way I practice.

13 Q. Okay. But you have no specific recollection here
14 today whether your not objecting was strategic or
15 tactical, do you?

16 A. No.

17 Q. Okay. Now, you've heard Ms. Carter say that her
18 daughter had been diagnosed with Lupus by a physician.

19 A. Yes.

20 Q. Did you research the possibility that this child had
21 Lupus?

22 A. I did.

23 Q. And what were you able to find?

24 A. I found that children of this age generally do not
25 have Lupus, that the symptoms that were described and

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1 what my research led me to believe was that there was not
2 Lupus. By the way -- I was trying to remember her
3 doctor's name. Her name was Sally Carter, was the
4 pediatrician that had seen this child. I talked with Dr.
5 Carter. And from everything I could gather, the child
6 did not, nor had not had Lupus.

7 Q. And from the research you were able to do on Lupus
8 and your discussions with the child's pediatrician, were
9 you able to ascertain any probable connection between the
10 various injuries this child was found to have and what
11 would be the normal systemic symptoms of Lupus?

12 A. No, I couldn't attach any significance between the
13 bruises, the subdural hematomas and Lupus.

14 Q. And I guess what I'm saying specifically is, after
15 studying Lupus and talking to the pediatrician, did you
16 feel that any of the injuries could be explained if the
17 child had had Lupus?

18 A. Some could. But not to the extent of the injuries
19 that were shown to me.

20 Q. Okay. Now, you did, in fact, obtain this child's
21 medical records.

22 A. Yes.

23 Q. Is that correct?

24 A. Yes, I did.

25 Q. And prior to trial, did you review them carefully?

1 A. I reviewed them as they came in even.

2 Q. Okay.

3 A. And then I suppose I reviewed the entire file prior
4 to trial. I know I took it home. I distinctly remember
5 my wife looking at some of it.

6 Q. Okay. Did you see anything in those medical records
7 that gave you reason to believe this child suffered from
8 Lupus? Was there any mention of Lupus or symptoms
9 described as possibly being related to Lupus?

10 A. Dr. Laguardia (phoinic), Legarda.

11 Q. Yes, sir. Legarda?

12 A. Legarda, had mentioned Lupus in one of his reports,
13 but other doctors did not mention it.

14 Q. Okay. And did Dr. Legarda conclusively find that
15 the child had Lupus, or did he mention it as a
16 possibility?

17 A. It was mentioned as a possibility. I don't think it
18 was ever defined conclusively that the child had Lupus.

19 Q. And upon -- you've reviewed, I assume, this child's
20 autopsy report?

21 A. I have.

22 Q. Was there anything in the autopsy report that gave
23 you reason to believe that Lupus may have been involved
24 in this child's death?

25 A. I don't recall it if it did. I don't remember, to

1 be honest with you.

2 Q. Now, my client's son, her little boy, testified
3 against her at trial. Is that right?

4 A. Yes. Yes.

5 Q. Did you personally interview him before trial?

6 A. No, I don't think so.

7 Q. You had reviewed his statement?

8 A. I got his statement and reviewed it.

9 Q. Okay.

10 A. And -- yeah, I had a copy of the statement. I read
11 it before trial.

12 Q. It's clear from the record that prior to the death
13 of Minor , the little boys lived with their
14 mother and Derek Carter, right?

15 A. Yes.

16 Q. Pardon?

17 A. Lived with their mother and Mr. Carter.

18 Q. Right.

19 A. Right.

20 Q. And of course, after this incident they went back to
21 live with their father? Or this child went back to live
22 with his father.

23 A. For a brief time, yeah.

24 Q. Okay. Did you ever investigate whether there were
25 any child custody issues between this child's father and

1 your client?

2 A. There was a family court case. I was familiar that
3 there was a family court case and she was appointed a
4 family court practitioner, I guess you'd say. And I kept
5 out of that fray. I did not get into the family court
6 matters.

7 Q. Okay. And my question was, prior to Minor
8 death, had there been any kind of custody battle between
9 the boys' father and your client?

10 A. I don't recall.

11 Q. And did you consider exploring the possibility that
12 the child's testimony might have been influenced by his
13 father?

14 A. The boy's?

15 Q. Yes.

16 A. No, I didn't. I didn't go into that.

17 Q. And the State explored at some length how much your
18 client had allegedly told him what to say to various
19 figures of authority in this case, right?

20 A. Right.

21 Q. You never explored to what extent this son may have
22 been coached in his testimony, did you?

23 A. No.

24 Q. Should you have?

25 A. Probably. Maybe, maybe not. It's -- God, I wish I

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1 could try them a second time, again, you know, but you
2 can't. So it's snap decisions.

3 Q. I understand. Now, you were able to solicit some
4 testimony concerning the fact that this boy had been
5 counseled about lying.

6 A. Yes.

7 Q. Do you recall that?

8 A. Yes.

9 Q. Okay. And you brought that testimony out on cross-
10 examination, right?

11 A. I guess. The record says -- and I haven't seen the
12 record.

13 Q. Now, Derek Carter pled guilty very shortly before
14 Ms. Carter's trial, didn't he?

15 A. Yes. May or June of '01.

16 Q. Were you surprised when he entered a plea of guilty?

17 A. No.

18 Q. Prior to hearing word of his decision and his
19 eventual plea, had you discussed the option of entering
20 into plea negotiations with your client?

21 A. I am of the opinion, and I think -- and this is nine
22 years ago. I think I did discuss the possibility of a
23 plea. I don't distinctly recall because she always
24 maintained her innocence. And I don't -- I don't push
25 pleas. I give the plea and say there it is. If you want

1 it, we'll take it. If not, we go to trial. But I don't
2 recall our specific conversation on that.

3 Q. Okay. So here today you have no independent
4 recollection of discussing potential plea bargaining with
5 Ms. Carter?

6 A. No. I have a letter from her that indicates
7 something I might have said. In that -- if you want me
8 to tell you what it says, I will.

9 Q. I think I'd like to see it, if I may, please?

10 A. Sure.

11 MS. SHURLING: May I approach, Your Honor.

12 THE COURT: Yes, ma'am.

13 A. About the middle of that.

14 Q. Thank you.

15 MS. SHURLING: A moment's indulgence.

16 THE COURT: Sure.

17 Q. This appears to be a piece of correspondence written
18 on a form used within the S.C.D.C. system?

19 A. It's used within the Anderson County Detention
20 System.

21 Q. Okay. And is it a one-page document? Is this the
22 entire letter?

23 A. That's the entire letter that I have.

24 Q. And the document is captioned, Grievance or Appeal.

25 A. That doesn't mean anything. These are pages that

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1 they use to write on in order to save their own papers.

2 These are furnished by the jail.

3 Q. Okay. And so do you know to whom this was mailed?

4 A. It's not mailed. They're put in a box at the jail,

5 and our investigator -- excuse me -- our first

6 interviewer picks them up from that box and brings them

7 to us.

8 Q. Okay. So you are being referred to in the third

9 person in this letter. I assume that it is being

10 addressed to someone on your staff?

11 A. Jimmy Penn, who was my investigator at that time.

12 Q. Okay. And this document indicates that you've

13 already told her that her case is hopeless.

14 A. Yeah. That's what it says.

15 Q. And that you've told her there's not any point in

16 you wasting a lot of time preparing for trial because

17 there's not going to be anything you can do?

18 A. Basically, which indicates to me that I had offered,

19 taken an offer to her. That's the way I talk to the

20 client. I don't recall specifically. But if Derek got

21 that time, knowing the Solicitor's office like I do, it

22 would have been the same offer. I don't recall it. I'm

23 not saying it did happen, but that indicates to me that

24 you don't have much of a case. You know, we'd better

25 take this offer.

1 Q. So you are saying that you would not have addressed
2 Ms. Carter's case in the terms that are being referred to
3 in this letter unless you were trying to make a point
4 with her that you don't have a good defense, and you'd
5 better consider an offer?

6 A. That's correct. That's what it -- and I'm telling
7 you, I don't -- I think there was an offer. I'm not
8 going to swear there was an offer, but I think there was.
9 If Derek got it, knowing Druanne like I did, it would
10 have been an across-the-board offer.

11 Q. Well, let me ask you this. Was it the custom of the
12 Solicitor's office to make plea offers in writing?

13 A. No, not then.

14 Q. Not then?

15 A. Not then. Now we get them by email.

16 Q. Okay.

17 A. We've gone modern. But back then it would have been
18 a telephone call.

19 MS. SHURLING: Before I go any further, I would
20 move to introduce this document as Applicant's Exhibit 1.

21 THE COURT: Any objection?

22 MS. SHURLING: Any objection?

23 MR. LEE: No objection, no.

24 THE COURT: All right. No objection.

25 (WHEREUPON, Applicant's Exhibit Number 1 was marked

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1 and admitted into evidence.)

2 Q. Are there other similar documents in your file, Mr.
3 Gamble?

4 A. Letters?

5 Q. Yes. And let me be specific. Other letters from
6 Ms. Carter to you or your staff.

7 A. I have these letters here. And ...

8 MS. SHURLING: Once again, Your Honor, may I
9 approach?

10 THE COURT: Sure.

11 THE WITNESS: All of these. I think that's
12 all.

13 MS. SHURLING: A moment's indulgence, Your
14 Honor.

15 THE COURT: All right.

16 (Pause)

17 MS. SHURLING: My apologies to the Court. I
18 thought I had read all of these. And I have read most,
19 but I -- or at least some, but I want to double check
20 something.

21 THE COURT: All right.

22 MS. SHURLING: If I could see those right
23 quick.

24 Q. While I'm glancing through these, Mr. Gamble, did
25 you become aware in the course of your representation of

1 Ila Michelle Carter that the young victim's mother had
2 died following some sort of seizure disorder?

3 A. Yes.

4 Q. And was that seizure disorder connected to Lupus?

5 A. I don't recall. I know she had a seizure and had
6 died some, I guess -- I'm thinking six months or so
7 before Ila Michelle Carter came into the picture.

8 Q. Okay. And ---

9 A. Three to six months.

10 Q. And were you able to, in your research concerning
11 Lupus, to investigate whether or not there was any
12 genetic component to Lupus?

13 A. Don't recall.

14 Q. How many times would you say -- I'm going to take
15 this over here with me. How many times would you say you
16 visited with Ila Michelle before the trial?

17 A. I have no independent recollection, and my sheet
18 that we use at the office is not in the file. I can
19 recall several visits, but I don't know how many.

20 Q. Okay. Did you ever go see Ms. Carter with your
21 investigator?

22 A. I don't remember. There were rare times that he and
23 I went together. And I don't remember any specific time.

24 Q. What was your policy in your office at the time
25 concerning plea offers? Were they documented?

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1 A. There would be a phone call from Ms. White to me.
2 And she would have said, can we get rid of this thing.
3 And I would say, give me some -- give me the time. And
4 that would have been all there was to it, verbal, all the
5 time. Like I said, now we do it on email, and we require
6 some sort of written offer.

7 Q. If a client elected to decline a plea offer that you
8 thought was in their best interest to accept, did you
9 document the offer and the fact that the client had
10 declined it?

11 A. No. We just got ready to go to trial.

12 Q. Do you now document?

13 A. Oh, golly, yeah.

14 Q. Did you ever explain to Ms. Carter what the possible
15 penalties for the offenses she was charged with were?

16 A. I always do. I would say I did. She's facing life
17 without. Well, not without -- I don't know if it was
18 without or not. Yeah, it was '96. It would have been
19 life without.

20 MS. SHURLING: A moment's indulgence, Your
21 Honor.

22 THE COURT: All right.

23 Q. Mr. Gamble, here's a letter. It's postmarked
24 February 2001 from Ila Carter, Michelle Carter. And it
25 appears to be discussing possible plea negotiations. Do

1 you recall getting this particular letter?

2 A. No, not this specific, I don't recall it.

3 Q. Now, in that letter there is some discussion about
4 this not being a thirty. I would hand you another letter
5 postmarked also February 2001 where she says you told me
6 thirty if I really needed you. Is that some sort of
7 code?

8 A. Thirty generally was what we pled to on murder.
9 There's another letter in there noted that has four
10 thirties written on it. And if it is a code, that's
11 generally what the offer would be on murder.

12 Q. Okay. This particular letter, which I've just shown
13 the Respondent says, you told me thirty if I really
14 needed you and you would come out. That hadn't worked,
15 so I explained when I called and wrote in my letters that
16 thirty is something different than what went on before.

17 A. I have no idea of what that means.

18 Q. Okay.

19 MS. SHURLING: Your Honor, at this time I would
20 move to introduce the first letter I referred to, which
21 is postmarked February ---

22 THE WITNESS: 5.

23 MS. SHURLING: --- February 5, 2001. And the
24 one postmarked February 7, 2001.

25 THE COURT: Any objection?

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1 community release after service of eighty-five percent of
2 a sentence less than life?

3 A. I wouldn't have, and I don't recall any conversation
4 like that.

5 Q. Okay.

6 MS. SHURLING: A moment's indulgence, Your
7 Honor.

8 Q. Mr. Gamble, there were quite a few gruesome pictures
9 of this child introduced into evidence at trial. Is that
10 correct?

11 A. That's correct.

12 Q. And I believe that Judge Kittridge culled those
13 proffered by Druanne White and eliminated quite a few of
14 them on the ground that you had asserted, which was that
15 their probative value was outweighed by their potential
16 to inflame the jury.

17 A. Right.

18 Q. Nevertheless, quite a few depicting injuries to the
19 child were introduced over your objection?

20 A. Yes.

21 Q. Did you ever consider offering to stipulate to the
22 physical injuries sustained by the child in order to
23 avoid the jury seeing photographs?

24 A. I don't think so.

25 Q. Is that a strategy that you have employed in other

1 MR. LEE: No objection.

2 THE COURT: All right. Without objection.

3 (WHEREUPON, Applicant's Exhibits Number 2 and 3 were
4 marked and admitted into evidence.)

5 MS. SHURLING: And I would ask that Madam Court
6 Reporter staple these envelopes to these letters because
7 the envelopes contain the only dating information.

8 Q. Do you recall having any discussion with Ila Carter
9 about the fact that any sentence she received for the
10 offenses in question, other than life, would potentially
11 carry with it the possibility of release sometime less
12 than one hundred percent of the sentence?

13 A. No.

14 Q. And did you ever explain to her the operation of
15 what we lawyers refer to as the eighty-five percent rule?

16 A. No.

17 Q. You never ---

18 A. She wrote me and said that Derek would have a sixty-
19 one percent sentence, but he told her it was an eighty-
20 five or something like that. And I take the position
21 that thirty is thirty, and I don't try to ever guess when
22 they're going to get out.

23 Q. Okay. So you did not, to the best of your
24 recollection, have any discussion with her about the fact
25 that she could potentially earn release on supervised

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1 cases to avoid; the jury being contaminated by grotesque
2 or otherwise inflammatory pictures?

3 A. I don't recall ever stipulating to the injuries in
4 order to avoid the pictures. We were trying in this
5 case, I think, to say somebody else did it and they
6 already pled to it is kind of where we were going.

7 Q. So to the best of your recollection, you never
8 considered avoiding the inflammatory nature of the jury
9 viewing the photographs ---

10 A. No.

11 Q. --- by stipulating to the injuries?

12 A. No. I don't think I did consider that.

13 Q. In retrospect is that a strategy that you should
14 have explored?

15 A. Well, yeah, maybe. But there again, that would be
16 left to His Honor to either allow it or not allow it as a
17 stipulation, I think.

18 Q. Well, as my daddy would say, you don't know until
19 you ask, do you?

20 A. You don't know until you try it.

21 Q. Okay. Was the evidence against Ila Michelle Carter
22 any better or worse than that against her husband, Derek?

23 A. Worse.

24 Q. How so?

25 A. The film that was made from the time this child was

1 a bouncy little three- or so-year-old, red-headed,
2 freckled faced child until she was filmed as a, almost a
3 third world person staring at the film was narrated off-
4 camera by Ila Michelle Carter. And that put her directly
5 into the one who was in charge of this child, so to
6 speak. And it was difficult from that, after the film
7 was shown, to cast dispersions on Derek or any other
8 member of the family.

9 Q. Now, Derek admitted taking part in abusing this
10 child, didn't he?

11 A. To the point of putting an I-bolt in the bedroom and
12 using a chain or a leash on the child. He, in the
13 admission, I don't think admitted to hitting the child or
14 anything like that, as I recall. And I think Robert
15 Treacy was troubled by the fact that he was present --
16 Robert Treacy represented Derek -- was troubled by the
17 fact that he was present and allowed this to go on with
18 his child and would be convicted if he went to trial.

19 Q. You have indicated -- perhaps not here today, maybe
20 it was in earlier conversations -- that there were
21 copious amounts of correspondence flowing from Derek
22 Carter to Ila Carter while they were awaiting trial.

23 A. Yes. Michelle Carter furnished me -- and it looks
24 to be about three inches of correspondence between Derek
25 and she -- or Derek to her. And that's all written on

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1 yellow pages, approximately three inches high. Copious
2 amounts of correspondence.

3 Q. And would you agree with me that much of that
4 correspondence is directed toward trying to convince Ila
5 Michelle to take all the blame for what happened to
6 Minor

7 A. Attempting to, yes.

8 Q. And none of that correspondence that -- well, let me
9 rephrase. The tone of that correspondence was begging
10 her to take responsibility for everything that had
11 happened to Minor correct?

12 A. To most extent, yes. He couldn't get away from the
13 fact that he put the I-bolt in, I don't think, and
14 consented to the keeping of the child in the half bath.
15 Also using a halter or a harness on the child when they
16 went outside and harnessed her to a log, as I understand
17 it, outside their house. He was involved in that also.

18 Q. And I believe that he also made some admissions
19 about some patterns that he and Ms. Carter allegedly
20 followed in trying to get the child to eat.

21 A. Yes.

22 Q. Do you recall that?

23 A. Yes.

24 Q. He admitted that they would, when the child took a
25 bite of food, count to five, and if she didn't eat it

1 fast enough they would slap her?

2 A. Slap her, yeah.

3 Q. And he was admitting that he was involved in that,
4 correct?

5 A. That's right.

6 Q. Okay.

7 A. And excluding her from birthday celebrations and not
8 permitting her to eat with the boys at the table.

9 Numerous other things that went on.

10 Q. My point being, Mr. Gamble, this was not an example
11 of a case where one spouse stood by mute and allowed the
12 other spouse to do all of the abuse?

13 A. No, no. They were equal. Even though Ila Michelle
14 may have been the moving party on some of it, he was a
15 co-conspirator, you might say, because he was there and
16 allowed it to go on to his own daughter.

17 Q. And was, in fact, even by his own admission an
18 active participant?

19 A. Right.

20 Q. So did you believe that you had a basis for arguing
21 that she should be entitled to at least the same
22 treatment as he in terms of plea negotiation?

23 A. I would have had a basis for it, yeah, to Ms. White
24 to say, look, you let Derek plead, let us go too. But
25 I'm not going to force -- my principle that I've always

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1 had is not ever forcing a person to plead guilty because
2 that can bite you back too.

3 Q. Sure.

4 A. So I say you take it or not. I don't care. You go
5 to trial, I'll try it. And that's all there is to it.
6 And I don't recall a specific offer to Michelle, Ila
7 Michelle, in this case. I would have passed it to her if
8 I had it. And I think there was an offer. I'm not for
9 sure there was an offer.

10 Q. Mr. Gamble, what is an Alford plea?

11 A. Alford is saying I'm pleading guilty because I want
12 to accept the recommendation that's been given even
13 though I'm not saying I'm actually guilty, but I've
14 looked at the facts and they could possibly convict me of
15 this case.

16 Q. Did you discuss, to the best of your recollection
17 here today, the possibility of pursuing permission from
18 the State to enter an Alford plea?

19 A. I don't recall if I did or did not. And I'm not so
20 sure -- some judges will take an Alford and some won't.
21 I don't recall any discussion about Alford in this case.
22 And knowing Ms. White and her vehemence in this matter, I
23 don't believe I would have been offered Alford.

24 Q. And to be redundant, once again, you don't know
25 until you ask, do you?

1 A. No.

2 MS. SHURLING: A moments indulgence, Your
3 Honor.

4 THE COURT: All right.

5 MS. SHURLING: Your Honor, I have no further
6 questions of Mr. Gamble. I would just ask that he
7 address those put to him by the Respondent.

8 THE COURT: All right.

9 CROSS-EXAMINATION

10 BY MR. LEE:

11 Q. Mr. Gamble, I believe it was your testimony that you
12 were appointed in this matter, correct?

13 A. Yes.

14 Q. Okay. And I believe it was also your testimony that
15 after you were appointed, while you don't specifically
16 remember exactly how many meetings you had with the
17 Applicant, you remember having several?

18 A. I had several meetings with her.

19 Q. Okay. And during those meetings, would you have
20 gone over things like the Applicant's -- the charges that
21 she was facing, the elements of those charges, the
22 possible punishments?

23 A. Yes.

24 Q. Okay. Would you have discussed things like the
25 ramifications of pursuing a plea versus going to trial?

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1 A. I don't ever do that initially. I would have done
2 that toward the -- after I looked into the case
3 thoroughly.

4 Q. Okay.

5 A. And would have gone into the possibility of
6 negotiating a plea. The difficulty I had is Ila Michelle
7 continually said everybody was lying. They're lying.
8 And I had difficulty discussing with her because she
9 would just say, they're lying. They're lying. And ---

10 Q. Well, we can get back into the plea in a second.
11 Let's back up and talk about the investigation of the
12 case. I believe it was your testimony that you had an
13 investigator working with you on the case?

14 A. Yes, Jimmy Penn.

15 Q. Okay. And I believe it was also your testimony that
16 you obtained the services of an expert in the field of
17 forensic pathology?

18 A. No, I didn't obtain it.

19 Q. The State did?

20 A. Brett Woodard was the pathologist that did the
21 autopsy in the case. I was familiar with Brett's work
22 and knew that he would be prosecution-oriented. But
23 after reading the autopsy and reading the medical reports
24 and looking at all the medicals that I could get my hands
25 on with regard to this and seeing the pictures, I don't

1 think I hired an independent pathologist.

2 Q. Okay. But you consulted with Brett Woodard on the
3 case?

4 A. Yeah.

5 Q. Okay. Now, I believe it was your testimony that you
6 don't have any specific recollection of whether or not
7 you told the Applicant that she had the ability to plead
8 guilty. Is that right?

9 A. I don't have an independent recollection of that.

10 Q. Okay. Is that -- okay, well, let's -- did you file
11 a Rule 5 Brady motion?

12 A. Sure.

13 Q. Do you recall what the contents of that discovery
14 were? I believe we've talked about some of it already.

15 A. Good Lord. That file is, what, five inches thick.
16 And most of that is discovery or letters, one of the two.

17 Q. Okay. What were some particularly damning aspects
18 of the evidence?

19 A. The doctors' reports and the -- there were two
20 subdural hematomas. One was an older one; one was a new
21 one. The statement of those was that she fell off the
22 top bunk. Dr. Woodard's explanation and another doctor's
23 explanation -- I can't call his name right now -- were
24 that a child of that weight would not cause that type
25 injury from falling from a five-foot-high bunk. You'd

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1 have to weigh more than thirty or forty pounds to create
2 that type injury. The injury to her toes and her fingers
3 were not self-inflicted. They were inflicted by someone
4 else. The bruises to the vagina or distension of the
5 vulva was not normal. The bruises on the back could have
6 been from normal play, but definitely the subdural
7 hematomas were not from normal play.

8 Q. So that's the doctors' reports?

9 A. Yes.

10 Q. All right. What else was it? Is there a video of
11 some sort? I believe you talked about some videos.

12 A. There was a video that was a home video that was
13 taken as a result of a search warrant, I think it was, or
14 else somebody got it that showed this child from the very
15 beginning of Ila Michelle's involvement with her until --
16 the last frame was the child staring at the camera and
17 the voice purportedly Ila Michelle saying, now, there's
18 one damn youngun' that's learned to keep her mouth shut.
19 After viewing that, the jury was crying. Some of the
20 members of the jury were crying. I knew I had a loser
21 once that video was shown.

22 Q. And I believe it was Derek, her husband, or Mr.
23 Carter had already pled at this point, correct?

24 A. Yes.

25 Q. And was he available to testify against her?

1 A. He was available, but I don't think he was called.

2 Q. Oh, is that correct? Okay.

3 A. Now, you remember I had all of the letters from him,
4 too. So -- and Druanne knew I had them. So Druanne
5 White didn't need him. And if she doesn't need
6 something, generally she doesn't put it in.

7 Q. So after reviewing the discovery materials, after
8 reviewing the evidence, would you have discussed that
9 with the Applicant?

10 A. Sure.

11 Q. After reviewing all of the evidence and discussing
12 with the Applicant, did you come to an opinion about the
13 strength of the State's case?

14 A. Yeah.

15 Q. Okay. And what was your opinion about the strength
16 of the State's case?

17 A. We needed to plead and get out of there because it
18 was a conviction all the way down -- coming ninety miles
19 an hour down the road.

20 Q. Did you feel it was pretty overwhelming evidence?

21 A. Yeah.

22 Q. Now, you stated, I believe it was your testimony
23 that you thought there was a plea offer of thirty years,
24 but you weren't sure. Is that correct?

25 A. I'm not sure of that. I won't testify to a hundred

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1 percent belief that there was an offer. I just don't
2 remember.

3 Q. Right. I believe it was your testimony earlier that
4 you thought there was, but you weren't sure.

5 A. That's right. And if Derek got the offer, I would
6 think we would too.

7 Q. Okay. And I believe it was also your testimony that
8 you had informed her of it. But again, you weren't sure?

9 A. That's right.

10 Q. And then today, just a few minutes ago, there were
11 some rather cryptic letters introduced talking about the
12 number thirty that we really couldn't understand. Is
13 that right?

14 A. That's right.

15 Q. Okay. And I believe you also stated that you had a
16 note of some sort that said Jimmy Penn and it had the
17 number thirty under it?

18 A. That's right.

19 Q. So one possible interpretation of that is a plea
20 offer, correct?

21 A. An offer of thirty is a possible interpretation.

22 But thirty is also, you know, used in the newspaper for
23 end of a paragraph, so I -- I use it sometime, but I
24 don't think Jimmy would.

25 Q. Do you still have the copies of the letters that

1 weren't introduced up there with you.

2 MS. SHURLING: They're right there.

3 MR. LEE: Oh, no. Those are the ones that were
4 introduced, right?

5 MS. SHURLING: Yes.

6 MR. LEE: The ones that you haven't introduced
7 ---

8 A. From ---

9 MS. SHURLING: Oh, I'm sorry.

10 MR. LEE: May I approach the witness, Your
11 Honor?

12 THE COURT: Sure.

13 A. From Ms. Carter to me?

14 Q. Yes, sir. Particularly that you might have
15 regarding discovery.

16 A. Yeah. The note that we have was on one of those
17 pieces of paper like we've already said what they're
18 like. And it said that she had to have Jimmy Penn come
19 by and pick up the papers because they weren't allowed to
20 keep that much paper in the cell.

21 Q. Was it your interpretation upon reading that letter
22 that she was discussing the discovery?

23 A. Right. We had previously taken the discovery down
24 there.

25 Q. When you went to discuss it with her?

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1 A. Right.

2 Q. I believe it was on one of those forms.

3 A. It was on a white form. That's why I'm flipping the
4 yellow pages rapidly looking for the white form. Oh,
5 dated June 20 of '01. Jimmy Penn, they said I cannot
6 keep these papers, so can you please come by and dispose
7 of them. Also, Tommy said I would be going for a mental
8 examination. When is that? Thank you. Michelle Carter,
9 6/20/01. Tommy is Tommy Olgesby who is a psychologist
10 with Tri-County Mental Health. And picking up the papers
11 would have been after we delivered the discovery to her.
12 And that was an inter-jail correspondence.

13 Q. Okay.

14 MR. LEE: The State would move to have this
15 marked and submitted as the Respondent's Number 1.

16 THE COURT: Any objection?

17 MS. SHURLING: No objection.

18 THE COURT: All right. Without objection.

19 (WHEREUPON, Respondent's Exhibit Number 1 was marked
20 and admitted into evidence.)

21 Q. Mr. Gamble, during your meetings with Ms. Carter,
22 did you ever have any trouble communicating with her?

23 A. Yeah.

24 Q. Did she seem that she might have any issues,
25 mentally or emotionally, that would affect her ability to

1 assist you in preparation of her trial?

2 A. No. She just didn't want to listen and kept
3 insisting that she had nothing to do with this incident
4 with the child.

5 Q. Did you ever have her evaluated mentally?

6 A. No.

7 Q. Did you see any reason to have her evaluated?

8 A. No.

9 Q. Okay.

10 MR. LEE: I beg the Court's indulgence one
11 second, Your Honor.

12 THE COURT: All right.

13 Q. Do you recall Ms. Carter giving you a number of
14 witnesses to call on her behalf?

15 A. Yes.

16 Q. And did you attempt to contact those witnesses or
17 have your investigator do so?

18 A. We attempted to. Some of them wouldn't talk to us.

19 Q. And did you successfully talk to some of them? Did
20 you successfully talk to any of the witnesses?

21 A. I don't recall.

22 Q. Do you recall finding any witnesses that would have
23 been beneficial to your case?

24 A. No.

25 Q. Okay. There was some discussion about whether or

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1 not you explained whether or not you could go for less
2 than a life sentence in this case, wherein it would
3 result in parole if she were to take a plea for something
4 less than life. I believe it was, again, your testimony
5 that you don't recall specifically having that
6 discussion. It was also your testimony that you didn't
7 recall having a discussion about the eighty-five percent
8 rule. But isn't it true that Ms. Carter sent you a
9 letter wherein she talked about the eighty-five and the
10 sixty-one percent?

11 A. She was talking about that with regard to Derek.

12 Q. But did that imply to you that she had some
13 understanding of the concept?

14 A. It appeared that she was thinking of an eighty-five
15 percent. Prior to that, prior to eighty-five percent,
16 fifty-one percent would have been the percentage on some
17 cases and she had it as a sixty-one, which is neither
18 here nor there. None of that really applied, in my
19 opinion. Like I said, I never advise anybody that --
20 well, there are some cases that are eighty-five, but I'm
21 not so sure murder would be one of them.

22 Q. I believe it was your testimony that typically it's
23 your practice to tell people that they should expect to
24 serve every day that they're sentenced to?

25 A. I just tell them the offer is thirty, and that's

1 thirty.

2 Q. I think it was your testimony that there was a point
3 in the trial where the forensic pathology expert
4 testified to something that was outside of his scope of
5 expertise ---

6 A. Yes.

7 Q. --- and that you should have testified at that point
8 -- or objected at that point?

9 A. I did not object to it.

10 Q. That's correct. And would that have -- in light of
11 the evidence against the Applicant, do you think your
12 failure to object there would have affected the outcome
13 of the trial?

14 A. Speculating, no, I don't think it would.

15 Q. Of course, you're certainly called upon to speculate
16 there, that's true.

17 MS. SHURLING: Thank you for saving me getting
18 up.

19 Q. The closing, you testified -- I think you've already
20 testified a bit to why you didn't object during the
21 closing. But why is it typically your practice not to
22 object during closing argument?

23 A. It just calls attention to what the Solicitor said.
24 And I don't know how many trials you've ever watched, but
25 most jurors during closing are not really in rapt

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1 attention of the attorneys' argument. They pay more rapt
2 attention to somebody in a black robe than they do us up
3 there with our coats and ties on, and fancy dress and
4 telling them what our opinion of the case was. If you
5 object, and the Judge is working on his charge, he says,
6 what was that? And you repeat it once more. And then
7 it's heard again, and then they -- he's overruled or
8 whatever. They don't understand that either, but you've
9 called attention to the statement on two or three
10 different occasions. So I try not to object during --
11 unless it's really heinous, I don't object to closing
12 argument.

13 Q. If was something that was very far over the line,
14 you would object, though, correct?

15 A. Well, yeah. If it was -- if it wasn't based on some
16 scintilla of evidence, I would have objected to it.

17 Q. And I believe in your testimony it was stated that
18 it was getting close to a *Doyle* violation, but it wasn't
19 way over the line?

20 A. Well, it was close. But there was also an *Edwards*
21 *v. Alabama*, which I think would have cured the *Doyle*
22 violation. And I was relying also on *Jackson v.*
23 *Michigan*, a portion of that, from the Supreme Court. Of
24 course, *Edwards* would have cured *Jackson* if it were, in
25 fact, an *Edwards* where she volunteered to go back in and

1 give a statement.

2 Q. Do you recall Ms. Carter having any particular
3 belief about why she should go to trial as it relates to
4 Mr. Carter, Derek Carter? I believe it was your
5 testimony -- you stated to me earlier that she had a
6 belief that Derek would -- do you recall -- that Derek
7 would take the fall for her. Do you recall saying that?

8 A. I think that was her belief, that Derek would take
9 the fall and had taken the fall.

10 Q. Did she ever communicate that to you?

11 A. I don't recall. It's something I believe, but I
12 don't recall it specifically.

13 Q. And with regard to the pictures, you did make an
14 objection to those pictures, correct?

15 A. Yes.

16 Q. And the Judge eliminated a few of those based on a
17 403 analysis?

18 A. All of the pictures were given to Judge Kittridge.
19 He took a break and went through the pictures and brought
20 us back up and said, I'm letting these in. I'm not
21 letting these in. A minor victory.

22 Q. So ultimately, what was your trial strategy in this
23 case?

24 A. According to her, she didn't do it. So she's got a
25 right to say, I didn't do it. And that had to be the

In Michelle Carter v. State of South Carolina 2004-CP-04-529
Robert M. Gamble - Cross-Examination by Mr. Lee

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1 trial strategy, she didn't do it or else she was under
2 the influence of Derek at the time. Not much of one at
3 all, to be honesty with you.

4 Q. And then asserting that defense, is that why you
5 attempted to impeach the son by eliciting testimony about
6 his counseling for lying?

7 A. Right. You've been told what to say.

8 Q. I remember you stating to me that this was a hard
9 case for you to try. Is that right?

10 A. The worst case I've tried of all that I've tried.
11 And the worst case, according to Judge Kittridge, that
12 he's had to try, he later told me. I had three that term
13 of Court.

14 MS. SHURLING: Your Honor, I hate to interrupt,
15 but that's hearsay. Judge Kittridge isn't here today.

16 THE COURT: All right. I understand. That's
17 sustained. Go ahead.

18 Q. But it obviously effected you, the case. Is that
19 right? Would that be fair to say?

20 A. Yeah.

21 Q. Okay. Did you work -- do you feel like you provided
22 effective assistance of counsel in this case?

23 A. I always try to do that. I did as good as I could
24 with what I had to work with. But I can't manufacture
25 evidence and I can't manufacture testimony.

1 Q. And again, in this case it was your testimony that
2 there was some pretty overwhelming evidence of guilt?

3 A. The film killed this case dead.

4 MR. LEE: That would be all of my questions.

5 Thank you.

6 THE COURT: Anything in rebuttal?

7 MS. SHURLING: Just a few brief follow-ups.

8 REDIRECT EXAMINATION

9 BY MS. SHURLING:

10 Q. The term thirty being used, you said a moment ago,
11 was a term used by newspapers sometimes. What did you
12 say about that?

13 A. Thirty is the end of a column in a newspaper.

14 Q. Ah.

15 A. Yeah.

16 Q. Okay. Now, when you were flipping through those
17 letters from Ila Carter, I notice big thirties, about
18 three inches tall written ---

19 A. Four of them to the page.

20 Q. Correct. And none of those refer to thirty as being
21 a plea offer, do they?

22 A. No. I don't know what it means.

23 Q. Okay.

24 A. I just noticed that there was thirty -- Jimmy Penn,
25 thirty; Jimmy Penn, thirty; Jimmy Penn, thirty; thirty on

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Robert M. Gamble - Redirect Examination by Ms. Shurling

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1 one page. On another page there was a thirty at the top
2 of the page. I have no idea. At this point, I don't
3 know what it means.

4 Q. Okay. Well, would you agree at least that in one of
5 the letters it says that if you got -- if you told them
6 thirty, that you would get down there as quick as you
7 could?

8 A. Yeah.

9 Q. And you're not asserting that that's some sort of
10 statement by her that if and when she decided to take the
11 offer of thirty, you'd come on down there, are you?

12 A. No.

13 Q. Okay.

14 A. I don't know it means.

15 Q. You just don't know what it means?

16 A. I don't know what it means. Like I say, it's used
17 in newspaper as the end of a column.

18 Q. Okay. Now, Jimmy Penn is your investigator?

19 A. Yes.

20 Q. Tommy, you said is who? Tommy. You referred to
21 somebody that -- in one of the letters, there was a
22 reference to Tommy and you made reference to mental
23 health something.

24 A. Tommy Olgesby.

25 Q. Okay.

1 A. Dr. Tommy Olgesby.

2 Q. And who is he, sir?

3 A. He's with Tri-County Mental Health, and he's the one
4 that worked the jail with regard to people in need of
5 mental health. He referred then to an M.D. to get
6 scripted if they needed tranquilizers or what have you.

7 Q. So would he have been interacting with your client
8 at the jail without your knowledge?

9 A. Yes. I also knew -- I knew he was talking with Ila
10 Michelle.

11 Q. And one of the letters referred to Tommy saying that
12 she would be going for an evaluation?

13 A. Yeah.

14 Q. Do you remember there ever being any discussion of
15 her being sent for a court-ordered evaluation?

16 A. It wasn't a court-ordered evaluation. It was a
17 mental health evaluation within the Tri-County Mental
18 Health system, Anderson/Oconee County Mental Health.
19 They would have gone -- the way it happens is Tommy
20 recommends a mental health evaluation to justify any
21 drugs or what have you that they were giving her. Not
22 for competency or any of that sort of thing.

23 Q. Okay. So the evaluation that Dr. Tommy Olgesby
24 would have been talking about would have been that which
25 would be necessary for her to continue getting, say, her

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Robert M. Gamble - Redirect Examination by Ms. Shurling

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1 bi-polar medication?

2 A. Right.

3 Q. Now, you said a while ago that I had questioned you
4 -- or pardon me. I believe it was Respondent's counsel
5 that said I had questioned you about whether or not you
6 had advised her about parole eligibility. I never
7 mentioned the word, parole, did I?

8 A. There ain't no such thing.

9 Q. Okay. And in fact, I was asking you whether you had
10 discussed supervised community release after service of
11 eighty-five percent with your client.

12 A. I wouldn't have done that.

13 Q. Okay. Closing argument. By the time this case got
14 to closing argument, how much hope did you have of your
15 client not being convicted?

16 A. By closing argument?

17 Q. By the time closing argument started in this case,
18 how much hope did you have that your client would be
19 acquitted?

20 A. On a scale of up to a hundred -- I'm sorry. Ten
21 percent.

22 Q. And would you agree with me that any hope you had of
23 her being acquitted hinged almost entirely on the jury
24 believing Ila Michelle Carter's testimony?

25 A. It would have to.

1 Q. Okay. And let's talk for just a second about Ms.
2 White's closing argument. She was drawing attention to
3 the fact that your client had invoked her right to remain
4 silent and her right to legal counsel, right?

5 A. Right.

6 Q. Now, *Edwards v. Arizona* deals with your Fifth
7 Amendment right to counsel once that right has been
8 invoked either by yourself or by your attorney. Is that
9 right?

10 A. Right. And by the accused person contacting law
11 enforcement voluntarily saying, I want to talk to you.

12 Q. Okay. But Sixth Amendment right to counsel attaches
13 after formal charging, arrest?

14 A. Yeah.

15 Q. Fifth Amendment can be invoked by you or your
16 counsel as part and parcel of your invocation of other
17 Constitutional privileges, including the right to remain
18 silent?

19 A. Right.

20 Q. So -- and *Doyle* error -- the case that's so famous
21 we all just say *Doyle* -- refers to when a prosecutor
22 entreats the jury to believe that the fact that someone
23 invoked their right to remain silent is evidence of a
24 guilty conscience.

25 A. Yeah. That's what *Doyle* says.

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Robert M. Gamble - Redirect Examination by Ms. Shurling

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1 Q. Okay. So at the time Druanne White was emphasizing
2 to this jury that she said she wanted a lawyer and we
3 stopped, we couldn't talk to her anymore once she said
4 she wanted a lawyer, would you agree with me that that
5 was an attempt to draw attention to the fact that your
6 client wanted a lawyer and wanted to not be questioned
7 anymore?

8 A. Yeah.

9 Q. And that the next step in that inference process is
10 that the jig was up, she had a guilty mindset and needed
11 a lawyer?

12 A. That would be an inference, yeah.

13 Q. Okay. Given the fact that after all the evidence
14 had come in, including the testimony of her own son, you
15 felt there was very little chance of an acquittal, unless
16 the jury believed her, what would you have to lose by
17 objecting to that portion of the closing argument?

18 A. Like I said, just calling attention to it again.

19 Q. Well, could you not have said, objection, Your
20 Honor, I'd like to be heard outside the presence of the
21 jury?

22 A. Could.

23 Q. And could you not have expressed your problem with
24 the argument outside the presence of the jury?

25 A. Could.

1 Q. And couldn't you have made a motion for a mistrial
2 outside the presence of the jury?

3 A. Could.

4 Q. And if both of those were denied when you came back,
5 you could have simply said, my apologies for
6 interrupting and the argument would have gone on.

7 A. Or said nothing. Let the Judge say, I'm sorry we
8 had the interruption.

9 Q. Well, let's review. If you objected and made a
10 motion for a mistrial, there was at least a chance that a
11 mistrial would be granted and there would be another day
12 in court, correct?

13 A. Yeah.

14 Q. If you didn't object, you were already pretty much
15 convinced your client was fixing to be convicted, weren't
16 you?

17 A. Yeah.

18 MS. SHURLING: Thank you. No further
19 questions.

20 THE COURT: Anything from the State?

21 MR. LEE: As it pertains to what she just
22 elicited?

23 THE COURT: Uh-huh (affirmative).

24 MR. LEE: I beg the Court's indulgence just one
25 second.

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Robert M. Gumble - Recross-Examination by Mr. Lee

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I RECROSS EXAMINATION

2 BY MR. LEE:

3 Q. Have you ever made a *Doyle* objection before in any
4 other trial?

5 A. Yeah.

6 Q. Okay. Have you made it in similar circumstances
7 such as this one where there is one reference to
8 asserting your Fifth Amendment right to remain silent?

9 A. State v. Richard Cadillac Stewart. Yes.

10 Q. That's a good memory. In your experience do you
11 have any recollection of such motions being fruitful
12 where there is one reference to exercising of that right
13 and then it's basically withdrawn?

14 A. I've never had the success of that. Also, I was
15 concerned with *Jackson v. Michigan*, which has been
16 overruled now. But it was in existence at that time
17 also.

18 Q. Okay.

19 MR. LEE: That would be all of my questions.

20 Thank you.

21 MS. SHURLING: Nothing further, Your Honor.

22 THE COURT: All right. You can step down.

23 MR. GAMBLE: Can I step out?

24 THE COURT: If there's no objection, you can
25 go. We'll miss you, of course.

1 MS. SHURLING: Your Honor, I would ask to
2 recall Ila Carter briefly to the stand.

3 THE COURT: Okay.

4 ILA MICHELLE CARTER,

5 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. SHURLING:

8 Q. Ms. Carter, why were you writing thirty in big
9 letters on the outside of these notes that were going
10 back to the Gamble Law Firm?

11 A. Because I kept writing letters and writing letters.
12 I couldn't get no response, even with Jimmy Penn. We was
13 supposed to -- they had a box there that we put stuff in
14 and I still wouldn't get no answers anywhere. And he had
15 come. They had found him for a handwriting thing and he
16 had come there. And so I told him, I said, I've been
17 writing. I've been writing. He says, well, anytime you
18 ever need me, if it's an emergency, you write thirty and
19 I'll know that you need me to come. And that's what I
20 did.

21 Q. And the significance of that thirty was the reason
22 you wrote it really big on some of those letters?

23 A. Yeah. Because by that point in time, I still hadn't
24 heard from him. Hadn't heard from Jimmy Penn, nothing.
25 Days and days and days and days and days goes by.

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Ila Michelle Carter (recalled) - Direct Examination by Ms. Shurling

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1 Q. Okay. There was reference to a note from you where
2 you said they've said I can't keep all of these papers
3 down here. Will you come and get them and destroy them?
4 Were you referring to discovery materials from the Gamble
5 Law Firm?

6 A. No. It was letters from Derek.

7 Q. Okay. Now, you heard Mr. Gamble say that he had
8 about an inch or so worth of letters from your husband to
9 you in the jail. Is that what you've been told you
10 couldn't hold on to at the jail?

11 A. Yeah. Because they said it was -- somebody came in
12 with a crack pipe and they done a shakedown and said that
13 we had to get rid of some of our material, that we wasn't
14 allowed to have that because it was a fire hazard.

15 Q. Okay. And that's what you asked them to come and
16 get and destroy?

17 A. Yeah. Because he told me to keep them. And so I
18 kept them.

19 Q. If the reference had been to the discovery materials
20 in your case, would you have had any reason to ask them
21 to come pick them up and destroy them?

22 A. Uh-uh (negative). No, ma'am.

23 Q. There wouldn't be any point in destroying documents
24 that were in a bunch of other peoples' files, would
25 there?

1 A. Uh-uh (negative).

2 Q. Okay. And this is an important question. When you
3 found out your husband had pled and received a sentence
4 of, we've now been told thirty years, if Mr. Gamble had
5 come to you and told you that he believed the odds were
6 pretty overwhelming you were going to be convicted, but
7 that he thought he could get you the same deal as had
8 been given to your husband, would you have taken it?

9 A. Yes, ma'am.

10 MS. SHURLING: Thank you. No further
11 questions.

12 THE COURT: All right. You can step down.

13 MS. SHURLING: Your Honor, I have no further
14 witnesses. I'd have a brief summary when the opportunity
15 presents itself. I don't know whether Respondent has any
16 other witnesses.

17 THE COURT: All right. Do you have any
18 witnesses? Any other witnesses?

19 MR. LEE: Are you talking to me?

20 THE COURT: Yes, sir.

21 MR. LEE: If I could just have two minutes to

22 ---

23 THE COURT: Yeah. Let's take a quick break.

24 (WHEREUPON, court stood in recess at approximately

25 4:49 p.m. and reconvened at approximately 5:00 p.m.)

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Closing Argument by Ms. Shurling

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1 THE COURT: All right. Have we got anything
2 else we need to ...

3 MR. LEE: Your Honor, after reviewing the rest
4 of the notes, I've determined that we don't need to
5 recall Mr. Gamble, so we don't have any witnesses.

6 THE COURT: Okay. Anything from either one of
7 you?

8 MS. SHURLING: Your Honor, only to summarize
9 and say that if nothing else, even the two errors which
10 Mr. Gamble was forthright enough to address in his
11 testimony, the first being the failure to object to the
12 pathologist exceeding the scope of his expertise, and the
13 second being one which he was a little less inclined to
14 agree with me on, but nevertheless acknowledged that the
15 closing argument of the State did constitute a comment in
16 the presence of the jury on my client's exercise of her
17 Fifth Amendment privilege and her right to counsel. And
18 while Mr. Gamble indicated some strategic or tactical
19 reason may have been at play in not objecting, he
20 acknowledged that he actually has no recollection of
21 making any strategic or tactical decision not to object.
22 And perhaps more important, he admits that at that point
23 in the record the trial was a virtual *fata complete* that
24 it was apparent that there was very little chance that
25 Ila Carter was going to be acquitted unless the jury

1 believed his client, and that even then, he would give
2 odds of no more than ten percent of an acquittal, which
3 highlights the importance of objecting to any closing
4 argument that would have tended to attack and make less
5 believable the testimony of Ms. Carter. I would note
6 that he has also acknowledged that there would have been
7 a way to raise that objection outside earshot of the
8 jury, that certainly the objection could have been made
9 out of the presence of the jury and a motion for a
10 mistrial, likewise, could have been made without the jury
11 knowing the subject matter of the objection.

12 So we believe that those were two critical omissions
13 by trial counsel in the trial of this case. We also
14 believe that we've demonstrated that Ila Carter would
15 have seriously considered a plea offer in this case had
16 one been extended to her. And Mr. Gamble has
17 forthrightly admitted that he has no specific independent
18 recollection of there being an offer, putting forth an
19 offer to Ms. Carter. And I would have to say, tellingly,
20 a lawyer of Mr. Gamble's long-term experience for the
21 file not to reflect that the client was extended an offer
22 and rejected it in a case that was likely to result in a
23 life sentence if it went to trial is not particularly
24 credible. And so we would submit that once the husband
25 was permitted to plead and received -- or once the

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Closing Argument by Mr. Lee

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1 husband pled and received a sentence of less than life,
2 that if not before, certainly then, Mr. Gamble should
3 have either approached for the first time or re-
4 approached Ms. Carter about the subject of a possible
5 plea negotiation and plea. And for all of those reasons
6 we believe that we have amply demonstrated that she
7 received ineffective assistance of counsel and should now
8 receive a new trial.

9 THE COURT: All right.

10 MR. LEE: Well, Your Honor, with respect to the
11 allegations of ineffective assistance of counsel, the
12 State would just note that Mr. Gamble did testify that he
13 met with the Applicant on several occasions. He had an
14 investigator work the case with him who went and met with
15 the Applicant also. There were copious notes that Mr.
16 Gambrel referred to throughout the hearing. He talked
17 about receiving the State's evidence, going over that.
18 In particular, he noted that he had -- in pursuing his
19 trial strategy of attempting to show that it was not her,
20 she was innocent, he attempted to impeach at least one of
21 the State's witnesses. He made arguments relating to
22 that.

23 Your Honor, the question of ineffective assistance
24 of counsel, at least with regard to the objections where
25 Mr. Gamble did admit that he probably should have, in

1 retrospect, objected in that case in the closing
2 argument, he did articulate a valid trial strategy, the
3 State would submit. However, he did admit that there was
4 one place where he probably should have objected. With
5 relation to that, the State would simply submit that
6 there is no resulting prejudice. Whether or not Your
7 Honor finds ineffective assistance of counsel, the
8 evidence of guilt, which consisted of the doctor's report
9 with a laundry list of various injuries to the child,
10 some of which, a couple of which might have been suffered
11 naturally, the rest of which there was testimony via, I
12 believe, the forensic pathologist -- if I'm saying that
13 right -- that was not -- it was not natural for a lot of
14 those injuries.

15 So you had the doctor's reports of all the injuries.
16 You had the videotape showing the child's degression
17 (sic) -- I don't think that's actually a word -- with Ms.
18 Carter narrating. And then you also had the testimony
19 presented at the trial of the son, of the forensic
20 pathologist and et cetera.

21 So simply, the State would just simply submit that
22 the evidence of guilt against Ms. Carter was so
23 overwhelming in this case, that one or two little errors
24 that may have been committed by Mr. Gamble would not have
25 changed the outcome, so there cannot be any resulting

Ila Michelle Carter v. State of South Carolina 2004-CP-04-529
Closing Argument by Mr. Lee

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1 prejudice. The State would also note that defendants
2 aren't entitled to perfect assistance of counsel, just
3 effective. And the State would submit that Mr. Gamble's
4 representation in this case was effective.

5 Thank you.

6 THE COURT: Okay.

7 MS. SHURLING: And, Your Honor, I would only
8 add that I did not mean to imply that we were abandoning
9 other allegations raised by the testimony today. I was
10 merely highlighting the two that I perhaps emphasized the
11 most during the testimony.

12 Thank you, Your Honor.

13 THE COURT: All right. I'll take it under
14 advisement.

15 MS. SHURLING: Thank you.

16 MR. LEE: Thank you.

17 (WHEREUPON, the hearing ended at approximately 5:08
18 p.m.)

19 *** END OF REQUESTED TRANSCRIPT OF TESTIMONY ***

20

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 7th day of October 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 April 21, 2011

15
16 Renee Tollison

17 Circuit Court Reporter

NAME Nichole CarterCELL # D-1000DATE 5.28.01

GRIEVANCE OR APPEAL

(CIRCLE ONE)

NARRATIVE Jimmy Robert said that you would be getting my clothes and things for the 12th. I have isn't any reason to do any of that. I have no reason to waste any more time or energy on me. Robert has already told me that there is basically no hope for me on there really isn't any reason for him to stay up at night going over the records. I have accepted the fact that I am a hopeless case. I am not worth wasting any more time on. I am sorry to have bothered you both. I guess there is really no reason for Robert to come to court with me. I do thank you both for trying to help me. God Bless you both. Again thank you for talking to me. I am sorry for wasting your time.

INMATE SIGNATURE Nichole CarterDATE 5.28.01

ACTION TAKEN

DIRECTORS SIGNATURE

DATE

FILE: ORIGINAL TO RECORDS

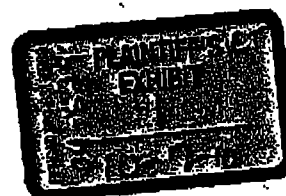
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A TRUE COPY

JUL 15 2014

Richard R. Kelly
CLERK OF COURT

Dear Mr. Gambrell,

Again I am sorry to bother you. I have some questions for you that Jimmy can't answer. I am not sure how this process works. I have some concerns as well. I gave Jimmy a pretty good bit of information the other day. I understand you have more cases to work on as well as mine. I am very afraid right now and I need to talk to you about it. This is a 30 but it doesn't pertain to that Sargent. I am doing my best to be patient but it is hard when I really don't understand some things. I guess everyone is bugging you and I don't help the matters with my calls or my letters. There is a lot that I am unsure of in here. Like they come around and ask who wants to go ahead and plead guilty. Then they come to see if you will plead guilty then they promise you that you will only get "X" amount of years. I tell you that it's a one time offer and you can't call and ask your Attorney for advice or the deal is off. You have to answer them right then. There is also some more things that I really need to speak to you about. Please can you come down to speak with me? I understand you are a busy man but also please take into consideration I have been here 101 days. I don't know what is going on. I thank you for your

CLERK OF COURT'S OFFICE

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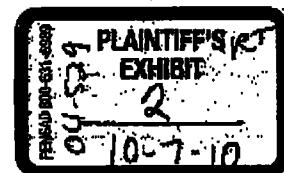
GENERAL SERVICES

Sincerely,
Michele Carter

A TRUE COPY

JUL 15 2014

Richard A. Bailey
CLERK OF COURT



Michelle Carter



Attorney Robert Gambrell
301 Cammock Rd.
Anderson, S.C.
29625

29625+1626

TRUE COPY

JUL 15 2014

Charles King
CLERK OF COURT

Mr. Gambrell,

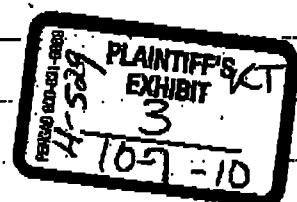
I am very sorry for writing you yet another letter. It has been three weeks since you told me you were going to come out here Mr. Gambrell you are use to cases like this and I am not. I am more confused now than when I came in here. I don't have a clue as to what is going on. I gave the information to Mr. Pera last week but the questions and concerns I have he can't answer. Believe me when I say I understand that you are busy and have other cases as well. I know that you are probably tired of dealing with me already because I keep bothering you. I just feel like I am being lost somehow. You told me 30 if I really needed you and you would come out. That hasn't worked. As I explained when I called and wrote in my letters the 30 is something different than what went on before. It's totally not the same thing. I can't put it in the letter because you know they read our mail. I can't tell you on the phone because they are standing there in the office with me while I am on the phone. I feel as if I am in a no win situation. I am really trying to just sit here and not bother you but I really do need to speak with you. I have been here 104 days and I still don't really fully understand. I really need to speak with you. Please I really need to speak to you please. Thank you for your time.

Sincerely,
Michelle Carter

A TRUE COPY

JUL 15 2014

Edward R. Kirby
CLERK OF COURT



ERIK'S OFFICE
ERSON'S

1-3 P 3

RECEIVED
AT SESSION

Ma Gambrell,

I am sorry for another letter. I have some things I really need to discuss with you. I over heard some things about my case. I was meant to over hear them. I don't know what is going on. I don't know what the deal is with Duanne or what ever her name is. I really need to see you. I have been waiting on Jimmy to pick up another letter but I am going to mail them both to you. I am very scared and afraid of what I over heard. I really need to see you before I do have a nervous breakdown. Please Ma Gambrell you said you were coming almost a month ago. I really do need to see you. Thank you for your time.

Sincerely,

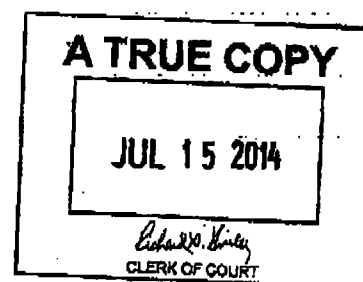
Michelle Carter

30 30 30 on something else.

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JUL 15 2014

JUL 15 2014

GENERAL SESSIONS



NAME Nichole CarterCELL# B-1DATE 6-20-01

GRIEVANCE OR APPEAL

(CIRCLE ONE)

NARRATIVE Jimmy Perry, I say said I cannot keep those papers. So can you please come by and dispose of them? Also Jimmy said I would be going for a mental evaluation. When is that? Thank you.

INMATE SIGNATURE Nichole CarterDATE 6-20-01

ACTION TAKEN

DIRECTORS SIGNATURE

DATE

FILE: ORIGINAL TO RECORDS

COPY: TO INMATE

ACDC FORM # 28

REVISED 04391296

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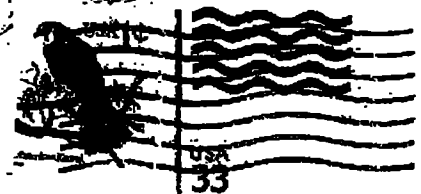
Richard M. Kelly
CLERK OF COURT



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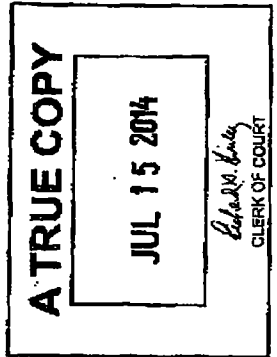
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M. Carter
 [REDACTED]
 Anderson, S.C.
 29625



Attorney Robert Gambrell
301 Conson Rd
Anderson, S.C.
29625

29625+1426 



STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)

Ila Michelle Carter, # 276333,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

2004-CP-04-0529

ORDER OF DISMISSAL

A TRUE COPY

JAN - 6 2012

Cheney
 CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 7, 2004. The Respondent made its Return on October 5, 2004. An evidentiary hearing into the matter was convened on October 7, 2010, at the Anderson County Courthouse. The Applicant was present at the hearing represented by counsel, Tara Shurling, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Robert Gamble, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Anderson County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the March 2001 and May 2001 term of General Sessions for Homicide by Child Abuse and Great Bodily Injury on a Child (2001-GS-04-0756). Applicant was represented by Robert Gamble, Esquire, on the charges. Applicant proceeded to a jury trial before the Honorable John W. Kittredge on June 29, 2001, and was

found guilty of both counts. Judge Kittredge sentenced the Applicant to life imprisonment for Homicide by Child Abuse and a consecutive twenty (20) year term for the Great Bodily Injury charge.

A notice of appeal was filed and an Anders brief was submitted on Applicant's behalf by Joseph Savitz, III, Esquire. The South Carolina Court of Appeals dismissed the appeal by unpublished opinion. State v. Ila Carter, Op. No. 2003-UP-160 (S.C. Ct. App. filed February 25, 2003).

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Attorney did not represent me effectively.
 - b. No witnesses called in my defense.
 - c. Findings of new evidence.

At the PCR hearing, Applicant amended her allegations to set forth the following contentions as her additional grounds for PCR:

1. Ineffective Assistance of Counsel:
 - a. Failure to review discovery file with Applicant.
 - b. Failure to advise Applicant of ability to negotiate plea offers.
 - c. Failure to make several key objections to be preserved for direct appeal.

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 presented 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 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 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

Failure to Review Discovery Materials

Applicant's first allegation of ineffectiveness on counsel's part is that counsel failed to review the discovery materials and state's evidence with Applicant prior to proceeding to trial on these charges. Specifically, Applicant testified at the hearing that, while she met with counsel two or three times to prepare for trial, she was never shown the discovery materials and in fact did not even know what discovery was until after her trial ended. Applicant went on to state the first time she saw the materials was after her conviction when she wrote counsel requesting a copy of such materials, which she received at Leath Correctional Institution on August 3, 2004.

Counsel testified that during his meetings with Applicant he was able to review the charges she was facing, the elements of the offenses contained in the indictments, the potential punishments she was facing, and the discovery materials. Counsel went on to state that he recalled bringing the discovery file to the jail with him during a meeting with Applicant, and further stated that he would have reviewed all of the discovery materials and evidence with Applicant after taking time to review it himself.

Based on the testimony presented at the hearing, I find Applicant has failed to establish counsel's deficiency or resulting prejudice in this regard. Further, I find counsel's testimony to be credible and, conversely, I find Applicant's testimony to not be credible. Counsel plainly testified that he did bring the discovery file with him during at least one meeting with Applicant at which time he reviewed the materials with Applicant. Therefore, his representation was not deficient. Further, Applicant failed to prove any resulting prejudice through the introduction of the discovery materials at the hearing, thereby failing to satisfy either prong of the Strickland v. Washington test in this regard.

Failure to Inform Applicant of Potential Plea Bargaining

Applicant also alleges counsel was ineffective in failing to advise her of the possibility of entering into plea negotiations to attempt to elicit an offer for a lesser prison sentence. Applicant contends counsel never discussed the option of negotiating with the solicitor for a plea offer, but that had an advantageous offer been extended, she would have entered such a plea. Applicant conceded that she was aware of a defendant's options to either plea or go to trial, but maintains plea negotiations were never something she and counsel discussed during the course of his representation.

Counsel testified in contradiction to Applicant, stating that he did believe he discussed the possibility of a plea with Applicant, ultimately referring to a letter from his file in which he indicated that he had brought a plea offer to Applicant. Counsel went on to say his general practice is to relay all plea information to his client and then allow the client time to decide whether to proceed to trial or take the plea offer. Counsel stated that he didn't specifically recall the details of any plea offers made because Applicant had always maintained her innocence of the charges, but that there would be no written record of such plea offers as they were extended orally at the time. Counsel also testified that he "would have gone into the possibility of negotiating a plea" in his discussions with Applicant when preparing the case. Counsel finished by stating that based on the state's evidence against Applicant, in his opinion Applicant needed to "plead and get out of there because it was a conviction all the way" as there was overwhelming evidence of Applicant's guilt in this matter.

I find Applicant has failed to carry her burden in proving counsel was ineffective regarding the possibility of entering into plea negotiations with the state. Further, I find counsel's testimony to be credible, while finding Applicant's testimony to not be credible. Counsel, in

accordance with his standard practice as a public defender for roughly twenty-six (26) years, reviewed with Applicant the possibility of negotiating a plea and relayed all relevant plea information to Applicant. Applicant was given the opportunity to make an independent decision as to whether to proceed to trial or enter a plea without coercion or pressure from counsel. With this information in mind, Applicant made the voluntary decision to proceed to trial in an attempt to prove her innocence after being fully advised by competent counsel of her options. Therefore, Applicant has failed to prove counsel's performance was deficient. Further, Applicant has not proven resulting prejudice based on this alleged deficiency. Applicant has failed to produce any evidence to show the state would have extended an advantageous plea offer if negotiations were entered into where Applicant now alleges they were not, or that she would have taken such a plea if one was offered, especially in light of her continued assertion of innocence. Therefore, I find this allegation to be without merit.

Failure to Make Objections to Testimony/Argument Given At Trial

Applicant's final allegation is counsel was ineffective in failing to object to statements made at trial, and that such failures rendered his representation ineffective. Specifically, there are two distinct statements which Applicant contends counsel improperly failed to object to.

First, Applicant contends counsel should have objected to opinion testimony presented by forensic pathologist and examining coroner, Dr. Brett Woodard, where Dr. Woodard commented on the psychological development of the young victim in this matter. Applicant contends these comments were improper and objectionable as they were opinions which Dr. Woodard offered outside of his area of expertise. Counsel testified he is very familiar with Dr. Woodard as he has served as the coroner in nearly every murder case counsel has ever been involved with. Counsel went on to state that, while he agreed the statement was likely objectionable and in retrospect he

probably should have objected, he did not believe that failure had any effect on the ultimate outcome of the trial as there was additional overwhelming evidence of Applicant's guilt introduced throughout the trial.

Second, Applicant alleges counsel was ineffective in failing to object to the closing argument of Solicitor White where she commented on Applicant's request for an attorney during her interrogation by police. Applicant alleges counsel's failure to pose a timely objection to the comment resulted in a violation of her Fifth Amendment right to silence and Sixth Amendment right to counsel, as set forth in Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240 (1976).

Counsel testified that he did recall the solicitor's comments in closing arguments, but stated that he did not object to the comments as he generally will not object during closing arguments unless the comment is "really heinous", as it is his strategy to avoid drawing any further jury attention to an improper comment. Counsel went on to say that had something been said during closing arguments that wasn't based on some scintilla of evidence or was otherwise was clearly inadmissible, he would have contemporaneously objected to it. Further, counsel testified that, while he believed it was a close call, any alleged Doyle violation in this matter would have been cured by the ruling set forth in Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981).

Based on a review of the trial transcript and the testimony presented at the hearing, I find Applicant has failed to carry his burden in proving counsel's ineffectiveness in this regard. First, regarding the solicitor's closing arguments, the South Carolina Supreme Court has said that our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530

(1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel articulated a valid and commonly practiced strategic reason for choosing not to object to the comments made by the solicitor in her closing argument where he opted to not bring the comment to the jury's attention again, especially in light of its likely inevitable admissibility based on the relevant case law. Therefore, I find no deficiency in this regard.

Further, Applicant has failed to prove resulting prejudice from counsel's failure to object to both the expert witness and solicitor's comments. While counsel readily admits in hindsight he could have objected to the opinion testimony rendered by Dr. Woodard, he also testified the admission of the testimony made no difference on the ultimate outcome of the trial. *See Strickland v. Washington* at 689, 2065 (*a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight...to evaluate the conduct from counsel's perspective at the time*). Additionally, where there is overwhelming evidence of guilt, as in this case, any alleged deficient performance by trial counsel will not be prejudicial to a defendant's case. *See Ford v. State* 314 S.C. 245, 442 S.E.2d 604 (1994); *See also Humbert v. State*, 345 S.C. 332, 548 S.E.2d 862 (2001); and also Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). Therefore, in both instances, Applicant has failed to carry his burden in proving counsel's ineffectiveness.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

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.

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 04 day of January, 2012.


J. Cordell Maddox
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina.

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

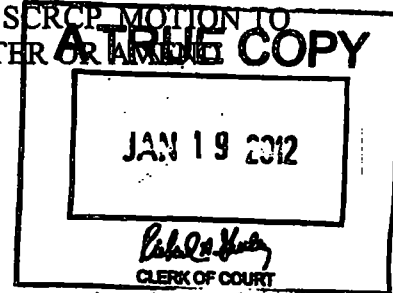
IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
2004-CP-04-529

ILA MICHELLE CARTER, 276333)
Applicant.)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

RULE 59(e) SCRPC MOTION TO
ALTER OR AMEND



NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRPC, to alter or amend its Order of Dismissal filed January 5, 2012. The Application for Post-Conviction Relief in this matter was filed on February 7, 2004. The State filed its Return on October 5, 2004. An evidentiary hearing was convened on October 7, 2010, in which the State was represented by Assistant Attorney General, A. West Lee and the Applicant was represented by Tara Dawn Shurling, Esquire. In support of this motion, the Applicant would show unto this Honorable Court the following:

The Applicant respectfully submits that there are two items in this Court's Order that warrant correction. On the second paragraph of page 4, this Order states that "Counsel further stated he would have reviewed all discovery materials and evidence with the Applicant after taking time to review it himself." See Order at p. 4. While defense counsel does assert that the discovery had been "taken down there" to discuss it with her, the Applicant has been unable to locate any testimony in the PCR transcript that he actually reviewed the discovery materials with the Applicant or that "he would have reviewed all discovery materials and evidence with the Applicant after taking time to review it himself." The Applicant, therefore, respectfully asserts

that this statement is not representative of defense counsel's actual PCR testimony. PCR Tr. pp. 64-65. Furthermore, the Order states that defense counsel testified that he brought the discovery file with him "during at least one meeting" and at that time "he reviewed the materials with Applicant." See Order p. 4. The Applicant would re-emphasize that defense counsel testified that he brought the discovery down there to discuss it with her. Defense counsel did not testify that he actually reviewed the discovery with Applicant "at least once" or otherwise suggest that the discovery materials may have been reviewed by defense counsel with the Applicant more than once. At most, his testimony can be taken to establish that a copy of these discovery materials had been taken to the Applicant at some point when defense counsel went to the jail to discuss them with her. PCR Tr. p. 64, l. 23-p. 65, l. 1.

The second paragraph of page 5 of this Order states that defense counsel testified that he believed he discussed the possibility of a plea with the Applicant "ultimately referring to a letter from his file in which he indicated that he had brought a plea offer to Applicant." See Order p. 5. The Applicant respectfully contends that this statement is inaccurate in its reference to the letter from counsel's file. PCR Tr. p. 43, l. 18-p. 46, l. 10; See also Applicant's Exhibit 1. At the evidentiary hearing, defense counsel testified as to the possibility that yet another letter *from the client* with giant "30s" written across it might be referring to a plea offer. PCR Tr. pp. 62-63. Counsel was hesitant in making that connection and stated more than once that he could not clearly recall if he discussed a plea offer with her and could not swear that there ever was an offer. PCR Tr. p. 44, ll. 3-6; p. 46, ll. 6-8; p. 62, l. 22-p. 63, l. 5. In fact, the Applicant and author of that letter later testified that the "30s" were code for emergency, a system that she had worked out with defense counsel's investigator. PCR Tr. p. 80, ll. 8-25. She testified that the "30s" were included in letters only as an attempt to try and get the investigator to visit her. Other PCR

testimony of defense counsel concerning another letter from the Applicant dating from February of 2001 corroborates that this letter from the Applicant stated "you told me thirty if I really needed you and you would come out." PCR Tr. p. 50, ll. 3-17. The Applicant desires that this Order be amended to address the fact that none of these letters contained any reference to a plea offer being discussed and any tenuous speculation made in this regard by defense counsel was dispelled by the Applicant's testimony, defense counsel's admissions in his own PCR testimony and the content of the letters introduced as Applicant's Exhibits during the evidentiary hearing.

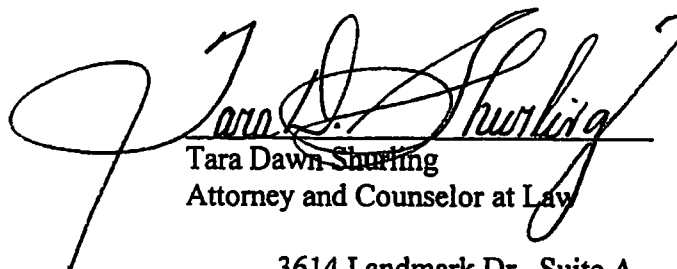
The Applicant would additionally request that this Order be amended to reflect three additional allegations of ineffective assistance of counsel that were raised and developed through the testimony of defense counsel. The first of these was that defense counsel was ineffective for failing to adequately investigate a lupus-related cause of the Victim's death. PCR Tr. p. 38, l. 17-p. 41, l. 1; p. 47, l. 24-p. 48, l. 13. The second specific allegation omitted from this Order was that defense counsel was ineffective for failing to investigate the possibility that Applicant's son, a witness against her at trial, may have been biased by a recent family court dispute between the Applicant and the witness's father. PCR Tr. p. 41, l. 2-p. 42, l. 16. The third allegation omitted from this Order was that defense counsel was ineffective in failing to consider stipulating to certain injuries to the victim, in an attempt to avoid the vast number of gruesome photographs that the State actually wound up introducing against the Applicant. PCR Tr. p. 52, l. 8-p. 53, l. 12.

As it relates to the Applicant's specific allegation that defense counsel failed to engage the Applicant in discussions concerning any possible plea offers and the likely consequences of a guilty plea versus a trial, there was some key evidence presented at the hearing which is not referenced in this Order of Dismissal. The Applicant presented evidence, in the form of defense

counsel's testimony, that he did not discuss with her the possibility that she might only have to serve 85% of her time on certain sentences. PCR Tr. p. 67, l. 6-p. 68, l. 1. Defense counsel testified conclusively that he would not have discussed this with her, PCR Tr. p. 67, l. 19-p. 68, l. 1, notwithstanding the fact that this consideration might have affected her decision to go to trial.

For all the above reasons, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRPC, grant relief and remand the Applicant's case to the Anderson County Court of General Sessions for a new trial. In the alternative the Applicant would respectfully request that the Court issue an Amended Order of Dismissal including the omitted allegations and arguments presented above. The Applicant would assert that her request for an Amended Order is necessary in order to preserve these claims for appellate review.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

Attorney for the Applicant

This 17th day of January, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUITILA MICHELLE CARTER, 276333,
Applicant,)

v.)

STATE OF SOUTH CAROLINA,
Respondent.)

CASE NO.: 04-CP-04-529

CERTIFICATE OF SERVICE

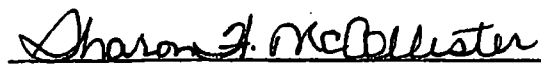
The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on opposing counsel this the 17th day of January, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

Kaelon May
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

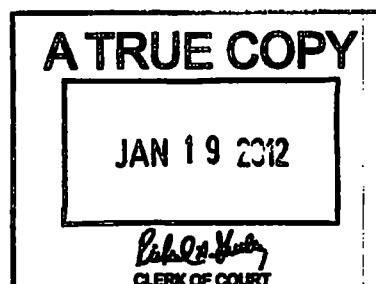
The original having been sent to the Anderson County Clerk of Court for filing.


Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE ME this 17th day of
January, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

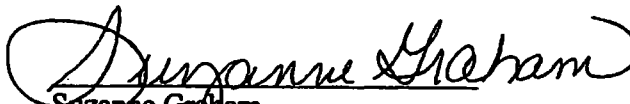


STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
ILA MICHELLE CARTER, 276333,	)	CASE NO.: 04-CP-04-529
Applicant,	)	
v.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

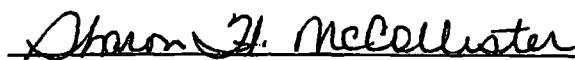
The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on the Honorable J. Cordell Maddox, Jr., presiding judge, this 17th day of January, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable J. Cordell Maddox, Jr.
Circuit Court Judge for the Tenth Circuit
P. O. Box 8002
Anderson, SC 29622

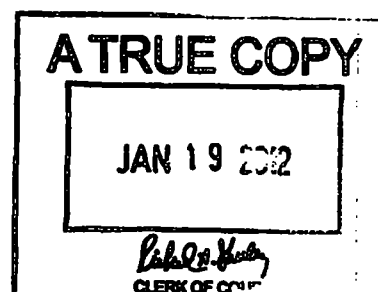
The original having been sent to the Anderson County Clerk of Court for filing.


Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE ME this 17th day of
January, 2012.


Notary Public for South Carolina (L.S.)

My Commission Expires: Jan. 16, 2017



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Ila Michelle Carter, # 276333,

Applicant,

v.

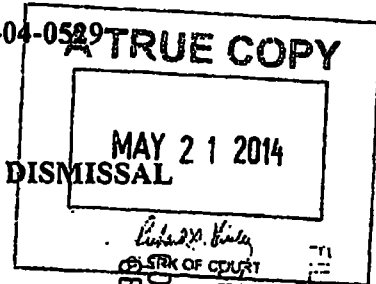
State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

2004-CP-04-0529

ORDER OF DISMISSAL



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COMMON PLEAS AND
GENERAL SESSIONS

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 7, 2004. The Respondent made its Return on October 5, 2004. An evidentiary hearing into the matter was convened on October 7, 2010, at the Anderson County Courthouse. The Applicant was present at the hearing represented by counsel, Tara Shurling, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Robert Gamble, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Anderson County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the March 2001 and May 2001 term of General Sessions for Homicide by Child Abuse and Great Bodily Injury on a Child (2001-GS-04-0756). Applicant was represented by Robert Gamble, Esquire, on the charges. Applicant proceeded to a jury trial before the Honorable John W. Kittredge on June 29, 2001, and was

found guilty of both counts. Judge Kittredge sentenced the Applicant to life imprisonment for Homicide by Child Abuse and a consecutive twenty (20) year term for the Great Bodily Injury charge.

A notice of appeal was filed and an Anders brief was submitted on Applicant's behalf by Joseph Savitz, III, Esquire. The South Carolina Court of Appeals dismissed the appeal by unpublished opinion. State v. Ila Carter, Op. No. 2003-UP-160 (S.C. Ct. App. filed February 25, 2003).

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Attorney did not represent me effectively.
 - b. No witnesses called in my defense.
 - c. Findings of new evidence.

At the PCR hearing, Applicant amended her allegations to set forth the following contentions as her additional grounds for PCR:

1. Ineffective Assistance of Counsel:
 - a. Failure to review discovery file with Applicant.
 - b. Failure to advise Applicant of ability to negotiate plea offers.
 - c. Failure to make several key objections to be preserved for direct appeal.

Pursuant to Applicant's Rule 59(e), SCRCP, motion to alter or amend this Court's ruling to conform to the testimony presented, this Court includes the following grounds for PCR:

2. Ineffective Assistance of Counsel:
 - a. Failure to review discovery file with Applicant.
 - b. Failure to advise Applicant of ability to negotiate plea offers.
 - c. Failure to make several key objections to be preserved for direct appeal.

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 presented 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 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 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 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.

Failure to Review Discovery Materials

Applicant's first allegation of ineffectiveness on counsel's part is that counsel failed to review the discovery materials and state's evidence with Applicant prior to proceeding to trial on these charges. Specifically, Applicant testified at the hearing that, while she met with counsel two or three times to prepare for trial, she was never shown the discovery materials and in fact did not even know what discovery was until after her trial ended. Applicant went on to state the first time she saw the materials was after her conviction when she wrote counsel requesting a copy of such materials, which she received at Leath Correctional Institution on August 3, 2004.

Counsel testified that during his meetings with Applicant he was able to review the charges she was facing, the elements of the offenses contained in the indictments, the potential punishments she was facing, and the discovery materials. Counsel went on to state that he recalled bringing discovery with him to the jail during a meeting with Applicant. Counsel testified it was his practice to review the State's evidence prior to discussing it with a client.

Based on the testimony presented at the hearing, I find Applicant has failed to establish counsel's deficiency or resulting prejudice in this regard. Further, I find counsel's testimony to be credible and, conversely, I find Applicant's testimony to not be credible. Counsel plainly testified that he did bring the discovery file with him during at least one meeting with Applicant at which time he reviewed the materials with Applicant. Therefore, his representation was not deficient. Further, Applicant failed to prove any resulting prejudice through the introduction of

the discovery materials at the hearing, thereby failing to satisfy either prong of the Strickland v. Washington test in this regard.

Failure to Inform Applicant of Potential Plea Bargaining

Applicant also alleges counsel was ineffective in failing to advise her of the possibility of entering into plea negotiations to attempt to elicit an offer for a lesser prison sentence. Applicant contends counsel never discussed the option of negotiating with the solicitor for a plea offer, but that had an advantageous offer been extended, she would have entered such a plea. She still maintained her innocence and testified counsel never discussed the possibility of an Alford¹ plea. Applicant conceded that she was aware of a defendant's options to either plea or go to trial, but maintains plea negotiations were never something she and counsel discussed during the course of his representation. She testified that her letters that mention '30' had nothing to do with plea bargaining. Instead, she claimed the term '30' was code she used to convey a secret message to counsel's investigator.

Counsel testified in contradiction to Applicant, stating that he did believe he discussed the possibility of a plea with Applicant, ultimately referring to a letter from his file in which he indicated might have evidenced an orally conveyed plea offer for a thirty (30) year prison sentence. Counsel went on to say his general practice is to relay all plea information to his client and then allow the client time to decide whether to proceed to trial or take the plea offer. Counsel stated that he didn't specifically recall the details of any plea offers made because Applicant had always maintained her innocence of the charges, but that there would be no written record of such plea offers as they were extended orally at the time. Counsel confidently testified that the Solicitor would have made an Alford plea based upon the facts of the case. Counsel also testified

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970)

that he "would have gone into the possibility of negotiating a plea" in his discussions with Applicant when preparing the case. Counsel finished by stating that based on the state's evidence against Applicant, in his opinion Applicant needed to "plead and get out of there because it was a conviction all the way" as there was overwhelming evidence of Applicant's guilt in this matter.

Based on a review of the trial transcript and the testimony presented at the hearing, I find Applicant has failed to carry her burden in proving counsel was ineffective regarding the possibility of entering into plea negotiations with the state. Further, I find counsel's testimony to be credible, while finding Applicant's testimony to not be credible. Counsel, in accordance with his standard practice as a public defender for roughly twenty-six (26) years, reviewed with Applicant the possibility of negotiating a plea and relayed all relevant plea information to Applicant. Applicant was given the opportunity to make an independent decision as to whether to proceed to trial or enter a plea without coercion or pressure from counsel. With this information in mind, Applicant made the voluntary decision to proceed to trial in an attempt to prove her innocence after being fully advised by competent counsel of her options. Neither was counsel deficient for failing to advise Applicant on parole eligibility in discussing a possible guilty plea. See Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997). Therefore, Applicant has failed to prove counsel's performance was deficient. Further, Applicant has not proven resulting prejudice based on this alleged deficiency. Applicant has failed to produce any evidence to show the state would have extended an advantageous plea offer if negotiations were entered into where Applicant now alleges they were not, or that she would have taken such a plea if one was offered, especially in light of her continued assertion of innocence. Therefore, I find this allegation to be without merit.

Failure to investigate and prepare Applicant's case for trial

Applicant alleged counsel was ineffective for failing to investigate the cause of the victim's death. She postulated that Lupus could have been proximate cause and not child abuse. Counsel testified he discussed this matter with Applicant. As a result, counsel investigated the victim's medical records, researched Lupus, and discussed the possibility with Dr. Carter, a Pediatrician. As a result of counsel's efforts, he formed the opinion that the Lupus theory of causation was unlikely. He did not pursue genetic testing on the matter.

Applicant alleged counsel was ineffective for failing to investigate the victim's sons' potential bias towards her because of her divorce from his father. She asserted counsel should have investigated this matter and used the material to impeach her son's credibility at trial. Counsel testified that he reviewed and evaluated the son's statement and did not find it appropriate to delve into a Family Court matter here. Counsel recalled executing a successful cross-examination of the witness in question. He stated he was able to elicit testimony that the son had been prepped by the State in anticipation of trial.

Based on a review of the trial transcript and the testimony presented at the hearing, I find Applicant has failed to carry his burden in proving counsel's ineffectiveness in this regard. Counsel demonstrated sound performance in his investigation of the victim's medical history that possibility that the victim even had Lupus. Again, counsel demonstrated sound performance in his cross-examination of Applicant's son. Regardless, Applicant's cannot show prejudice where no credible scientific testimony or evidence was presented concerning the 'Lupus' theory on causation. Similarly, no specific testimony or evidence was presented to establish the son's bias. Thus, this allegation rests entirely on speculation.

Failure to Make Objections to Testimony/Argument Given At Trial

Applicant's final allegation is counsel was ineffective in failing to object to statements made at trial, and that such failures rendered his representation ineffective. Specifically, there are two distinct statements which Applicant contends counsel improperly failed to object to.

First, Applicant contends counsel should have objected to opinion testimony presented by forensic pathologist and examining coroner, Dr. Brett Woodard, where Dr. Woodard commented on the psychological development of the young victim in this matter. Applicant contends these comments were improper and objectionable as they were opinions which Dr. Woodard offered outside of his area of expertise. Counsel testified he is very familiar with Dr. Woodard as he has served as the coroner in nearly every murder case counsel has ever been involved with. Counsel went on to state that, while he agreed the statement was likely objectionable and in retrospect he probably should have objected, he did not believe that failure had any effect on the ultimate outcome of the trial as there was additional overwhelming evidence of Applicant's guilt introduced throughout the trial.

Applicant alleges counsel was ineffective for failing to persuade to the solicitor enter an agreement to stipulate to various diagnoses and injuries found on the victim. Applicant asserts effective performance here could have resulted in the introduction of fewer gruesome pictures of the victim's injuries at trial.

Applicant alleges counsel was ineffective in failing to object to the closing argument of Solicitor White where she commented on Applicant's request for an attorney during her interrogation by police. Applicant alleges counsel's failure to pose a timely objection to the comment resulted in a violation of her Fifth Amendment right to silence and Sixth Amendment right to counsel, as set forth in Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240 (1976).

Counsel testified that that he did not considering attempting to solicit such a stipulation agreement with the State. He opined that the judge would have had ultimate discretion on whether to allow for the stipulation agreement.

Counsel testified that he did recall the solicitor's comments in closing arguments, but stated that he did not object to the comments as he generally will not object during closing arguments unless the comment is "really heinous", as it is his strategy to avoid drawing any further jury attention to an improper comment. Counsel went on to say that had something been said during closing arguments that wasn't based on some scintilla of evidence or was otherwise was clearly inadmissible, he would have contemporaneously objected to it. Further, counsel testified that, while he believed it was a close call, any alleged Doyle violation in this matter would have been cured by the ruling set forth in Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981).

Based on a review of the trial transcript and the testimony presented at the hearing, I find Applicant has failed to carry his burden in proving counsel's ineffectiveness in this regard. First, regarding the solicitor's closing arguments, the South Carolina Supreme Court has said that our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel articulated a valid and commonly practiced strategic reason for choosing not to object to the comments made by the solicitor in her closing argument where he opted to not bring the comment to the jury's attention again, especially in

light of its likely inevitable admissibility based on the relevant case law. Therefore, I find no deficiency in this regard.

Further, Applicant has failed to prove resulting prejudice from counsel's failure to object to both the expert witness and solicitor's comments. While counsel readily admits in hindsight he could have objected to the opinion testimony rendered by Dr. Woodard, he also testified the admission of the testimony made no difference on the ultimate outcome of the trial. *See Strickland v. Washington* at 689, 2065 (*a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight...to evaluate the conduct from counsel's perspective at the time*). Additionally, where there is overwhelming evidence of guilt, as in this case, any alleged deficient performance by trial counsel will not be prejudicial to a defendant's case. *See Ford v. State* 314 S.C. 245, 442 S.E.2d 604 (1994); *See also Humbert v. State*, 345 S.C. 332, 548 S.E.2d 862 (2001); *and also Geter v. State*, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). Therefore, in both instances, Applicant has failed to carry his burden in proving counsel's ineffectiveness.

Applicant's allegation that counsel was ineffective for failing to solicit a stipulation regarding the State's discretion in presenting admissible evidence to make its case is wholly without merit. *See State v. James*, 355 S.C. 25, 34, 583 S.E.2d 745, 749 (2003).

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

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.

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of May, 2014.



J. Cordell Maddox
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina.

FILED-CLERK'S OFFICE
ANDERSON SC
2014 MAY 20 A 8:59
COMMON PLEAS AND
GENERAL SESSIONS

WITNESSES

INV. J. CARPENTER, ACSO

ARREST WARRANT NO. Ref.
F-966181

ACTION OF GRAND JURY

Robert White
Foreman of Grand Jury

TRUE BILL
DATE 5/1/01

VERDICT

Guilty of directly causing the death
of the child by abuse or neglect

§ 16-3-25(A)(1)

John D. White
Foreman of Petit Jury

8-28-01

Date:

DOCKET NO. 2001-GS-04 1203

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

MAY TERM 2001

DDW THE STATE

vs.

BLA MICHELE CARTER

Indictment for

HOMICIDE BY CHILD ABUSE
16-03-0085(A)(1) [2356]

DRUANNE D. WHITE, SOLICITOR

A TRUE COPY

JUL 15 2014

Robert White
CLERK OF COURT

Commitment

6/28/01
cmp

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
HOMICIDE BY CHILD ABUSE
16-03-0085(A)(1) [2356]

At a Court of General Sessions, convened on MAY 1, 2001
the Grand Jurors of ANDERSON County present upon their oath:

HOMICIDE BY CHILD ABUSE

That Ila Michele Carter did in Anderson County on or between April 14, 2000, and October 14, 2000, cause the death of her four year old step-daughter, Minor [REDACTED], while committing child abuse or neglect and the death occurred under circumstances manifesting an extreme indifference to human life and/or that Ila Michele Carter knowingly aided and abetted another person to commit child abuse or neglect, and the child abuse or neglect resulted in the death of Minor

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Duane D. White

SOLICITOR

WITNESSES

INV. J. CARPENTER, ACSO

ARREST WARRANT NO. F-966178

ACTION OF GRAND JURY

Robert White
Foreman of Grand Jury

TRUE BILL
DATE 3/27/01

VERDICT

Guilty of inflicting great bodily
injury upon a child §16-3-95(a)

948 *John M. Sign*
Foreman of Petit Jury Date: 6-28-01

DOCKET NO. 2001-GS-04 - 765

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

MARCH TERM 2001

DDW THE STATE

vs.

ILA MICHELE CARTER

Indictment for

GREAT BODILY INJURY UPON A CHILD
16-03-0095(A)(B) [2766]

DRUANNE D. WHITE, SOLICITOR

A TRUE COPY

JUL 17 2014

Robert White
CLERK OF COURT

Commitment

6/28/01
Cmp

FORM 32 (12/87)

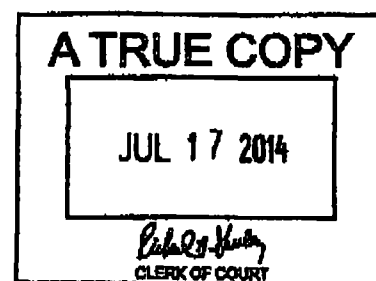
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
GREAT BODILY INJURY UPON A CHILD
16-03-0095(A)(B) [2766]

At a Court of General Sessions, convened on MARCH 27, 2001
the Grand Jurors of ANDERSON County present upon their oath:

GREAT BODILY INJURY UPON A CHILD

That Ila Michele Carter did in Anderson County on or between November 1, 1999, and October 14, 2000, inflict great bodily injury upon her step-daughter, Minor ; DOB: [REDACTED], and/or that Ila Michele Carter, a person with whom Minor parent or guardian was cohabitating, did knowingly allow another person to inflict great bodily injury upon Minor



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Duane D. White
SOLICITOR