

VOL II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

RECEIVED

MAY - 7 2015

S.C. Supreme Court

MIAMA KROMAH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001294

APPENDIX

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated June 13, 2006).....	1
APPLICATION FOR POST-CONVICTION RELIEF	534
RETURN AND MOTION TO DISMISS.....	540
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated March 18, 2014).....	544
ORDER OF DISMISSAL	608
INDICTMENTS AND ARREST WARRANT	624

1 THAT SATISFIES YOU, THE JURY, OF THE DEFENDANT'S GUILT
2 BEYOND A REASONABLE DOUBT.

3 THIS PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
4 THEORY. IT'S NOT JUST A LEGAL PHRASE, BUT PRESUMPTION
5 OF INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH EVERY
6 DEFENDANT IS ENTITLED. THE SUPREME COURT OF THIS STATE
7 HAS DECLARED THAT THE PRESUMPTION OF INNOCENCE IS LIKE
8 A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF A
9 DEFENDANT AND IT REMAINS WITH THE DEFENDANT AND ASSIGNS
10 THE DEFENDANT TO THAT CLASS, THE INNOCENT, UNTIL THAT
11 PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED
12 FROM THE DEFENDANT'S PERSON BY EVIDENCE THAT SATISFIES
13 YOU, THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A
14 REASONABLE DOUBT.

15 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE
16 DEFENDANT FROM THE TIME OF HIS OR HER ARRAIGNMENT, FROM
17 THE TIME OF HIS OR HER APPEARANCE IN COURT AND
18 THROUGHOUT EVERY STAGE OF THE TRIAL AND CONTINUES WITH
19 THIS DEFENDANT EVEN AFTER YOU RETIRE INTO THE JURY ROOM
20 TO CONSIDER YOUR VERDICT IN THIS CASE. THE PRESUMPTION
21 OF INNOCENCE CONTINUES TO EXIST TO THE BENEFIT OF THE
22 DEFENDANT UNTIL YOU, THE JURY, REACH THE CONCLUSION
23 THAT THE STATE HAS PROVEN THE GUILT OF THIS DEFENDANT
24 BEYOND A REASONABLE DOUBT.

25 THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF

1 THE DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT,
2 BUT BEYOND A REASONABLE DOUBT. WHEN WE SAY THAT PROOF
3 MUST BE ESTABLISHED BEYOND A REASONABLE DOUBT, THOSE
4 WORDS SHOULD BE GIVEN THEIR PLAIN AND ORDINARY MEANING.
5 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
6 CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

7 A REASONABLE DOUBT CAN ARISE FROM THE EVIDENCE
8 PRESENTED IN THE CASE OR THE LACK OF EVIDENCE IN THE
9 CASE. IF YOU THINK THAT A DEFENDANT IS PROBABLY GUILTY
10 OF THE CIRCUMSTANCES OR SUSPICION, THAT IS NOT ENOUGH.
11 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
12 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE
13 ARE FEW THINGS IN THE WORLD THAT WE KNOW WITH ABSOLUTE
14 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
15 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

16 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU
17 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
18 THE CRIME OR CRIMES CHARGED, YOU MUST FIND THAT
19 DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK
20 THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT
21 GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE
22 DOUBT AND FIND THAT DEFENDANT NOT GUILTY.

23 YOU ALONE MUST MAKE THE DETERMINATION OF WHETHER
24 OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THIS
25 DEFENDANT. I WOULD INSTRUCT YOU THAT THE DEFENDANT IS

1 ENTITLED TO EVERY REASONABLE DOUBT ARISING IN THE WHOLE
2 CASE, SO IF UPON ANY ISSUE OF FACT THAT IS ESSENTIAL TO
3 CONVICTION AND A VERDICT OF GUILTY, IF YOU HAVE A
4 REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE
5 RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT
6 REASONABLE DOUBT IN FAVOR OF THE DEFENDANT.

7 MR. FOREMAN AND LADIES AND GENTLEMEN, THE
8 DEFENDANT IS NOT REQUIRED TO PROVE HIS OR HER
9 INNOCENCE, BUT THE STATE IS REQUIRED UNDER THE LAW TO
10 PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSES CHARGED
11 AGAINST THE DEFENDANT BY EVIDENCE THAT SATISFIES YOU,
12 THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A
13 REASONABLE DOUBT BEFORE YOU CAN CONVICT THE DEFENDANT
14 AND FIND THE DEFENDANT GUILTY.

15 IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE
16 DOUBT AS TO THE GUILT OR THE INNOCENCE OF THIS
17 DEFENDANT, THE DEFENDANT IS ENTITLED TO THAT REASONABLE
18 DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL AND A
19 VERDICT OF NOT GUILTY, BUT ON THE OTHER HAND IF UPON
20 THE WHOLE CASE YOU FIND THAT THE STATE HAS PROVEN BY
21 EVIDENCE THAT SATISFIES YOU OF THE GUILT OF THIS
22 DEFENDANT BEYOND A REASONABLE DOUBT, THEN IN THAT
23 CIRCUMSTANCE, IT WOULD EQUALLY BE YOUR DUTY TO CONVICT
24 THE DEFENDANT AND FIND THE DEFENDANT GUILTY.

25 I WOULD INSTRUCT YOU AGAIN THAT THE INDICTMENTS IN

1 THIS CASE ARE NOT EVIDENCE OF THE CHARGES THAT THEY
2 CONTAIN AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF
3 THOSE CHARGES.

4 AGAIN THE INDICTMENTS, LADIES AND GENTLEMEN, ARE
5 SIMPLY THE FORMAL WRITTEN INSTRUMENTS THAT CONTAIN THE
6 CHARGE OR CHARGES MADE AGAINST A DEFENDANT, AND THEY DO
7 SERVE AS THE FORMAL DOCUMENT BY WHICH THE CASE HAS BEEN
8 PROCESSED OR BROUGHT TO THE COURT.

9 NOW DURING THE TRIAL YOU AND I HAVE CERTAIN DUTIES
10 THAT WE ARE TO PERFORM. AS THE TRIAL JUDGE IT IS MY
11 RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THE CASE.
12 I ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON THE
13 ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE TRIAL.
14 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE
15 YOU AND YOU ARE TO DISREGARD AND DISABUSE FROM YOUR
16 MIND ANY TESTIMONY THAT WAS ORDERED STRICKEN FROM THE
17 RECORD IN THIS CASE DURING THE PROGRESS OF THE TRIAL IF
18 THERE WAS ANY, AND YOU ARE TO CONSIDER ONLY THE
19 TESTIMONY THAT HAS BEEN PRESENTED FROM THE WITNESS
20 STAND TOGETHER WITH ANY EXHIBITS THAT HAVE BEEN MADE A
21 PART OF THE RECORD IN THIS CASE.

22 I DO HAVE THE ADDITIONAL DUTY TO CHARGE YOU OR
23 EXPLAIN TO YOU THE LAW THAT APPLIES IN THIS CASE. AS
24 THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW AND
25 IT IS YOUR DUTY AS JURORS UNDER THE OATH THAT YOU TOOK

1 WHEN THIS CASE BEGAN TO ACCEPT THE LAW AND APPLY THE
2 LAW AS I AM NOW GOING TO EXPLAIN IT TO YOU. IF YOU
3 HAVE A PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR WHAT
4 YOU THOUGHT THE LAW WAS AND THAT DOES NOT AGREE WITH
5 WHAT I AM NOW EXPLAINING TO YOU, THEN YOU ARE OBLIGATED
6 UNDER YOUR OATH TO ABANDON THAT PRECONCEPTION BECAUSE
7 YOU HAVE SWORN TO ACCEPT AND APPLY THE LAW AS THE COURT
8 IS NOW GOING TO EXPLAIN IT TO YOU.

9 IN EVERY CASE THAT IS TRIED IN THIS COURT BEFORE A
10 JURY, THE JURY DOES BECOME THE SOLE AND EXCLUSIVE
11 JUDGES OF THE FACTS OF THE CASE. YOU, THE JURY, ARE
12 THE JUDGES OF THE FACTS IN THIS CASE. THE COURT IS THE
13 JUDGE OF THE LAW OF THE CASE. THE CONSTITUTION OF THIS
14 STATE HAS DECLARED THAT A TRIAL JUDGE SHALL NOT
15 INTIMATE, STATE, COMMENT UPON OR MAKE ANY STATEMENT TO
16 A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE
17 JURY, ARE THE SOLE JUDGE OF THE FACTS OF THIS CASE, YOU
18 ARE NOT TO INFER FROM ANYTHING THAT I HAVE SAID DURING
19 THE PROGRESS OF THIS TRIAL IN RULING UPON THE
20 ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING THAT
21 I SAY NOW DURING THE COURSE OF THESE INSTRUCTIONS TO
22 YOU THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS
23 CASE. AGAIN, THE LAW DOES NOT PERMIT ME TO HAVE AN
24 OPINION ABOUT THE FACTS IN THE CASE. THIS IS A MATTER
25 SOLELY FOR YOU, THE JURY, TO DETERMINE.

1 AS JURORS THEN, IT IS YOUR DUTY AS I HAVE
2 INSTRUCTED YOU TO DETERMINE THE EFFECT, THE VALUE, THE
3 WEIGHT AND THE TRUTH OF THE EVIDENCE THAT HAS BEEN
4 PRESENTED DURING THE TRIAL. BY NECESSITY, YOU MUST
5 ASSESS THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED
6 IN THE CASE. CREDIBILITY IS SIMPLY A LEGALISTIC TERM
7 THAT MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS
8 JURORS TO ANALYZE AND EVALUATE THE EVIDENCE AND
9 DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS
10 TRUTH.

11 I WOULD INSTRUCT YOU THAT IN DETERMINING THE
12 QUESTION OF THE CREDIBILITY OR THE BELIEVABILITY OF THE
13 WITNESSES WHO HAVE TESTIFIED IN THE CASE, YOU MAY
14 BELIEVE ONE WITNESS AS AGAINST SEVERAL WITNESSES OR
15 SEVERAL WITNESSES AS AGAINST ONE. YOU MAY BELIEVE A
16 PART OF THE TESTIMONY OF A WITNESS AND REJECT THE
17 REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS.

18 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
19 ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS
20 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS
21 EXHIBITED TO YOU ANY INTEREST, ANY MOTIVE, ANY BIAS,
22 ANY PREJUDICE IN THE CASE.

23 YOU MAY CONSIDER THE Demeanor OF A WITNESS. THAT
24 IS, THE APPEARANCE OF THE WITNESS FROM THE WITNESS
25 STAND AND, OF COURSE, YOU MAY CONSIDER THE OPPORTUNITY

1 FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH A
2 WITNESS HAS TESTIFIED.

3 YOUR OBJECTIVE, MR. FOREMAN AND LADIES AND
4 GENTLEMEN, IS TO SEEK THE TRUTH REGARDLESS OF ITS
5 SOURCE AND IN DOING SO IN EXERCISING YOUR MENTAL
6 PROCESSES AND IN DETERMINING WHAT YOU CONSIDER TO BE
7 TRUE, THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR
8 GOOD JUDGMENT AND YOUR COMMON SENSE, YOUR SENSE OF
9 LOGIC AND REASON AND YOUR EXPERIENCES IN LIFE AND YOU
10 THEN APPLY THESE ATTRIBUTES OF ABILITY TO THE EVIDENCE
11 AND DETERMINE WHAT YOU, THE JURY, CONSIDER TO BE THE
12 TRUTHFUL EVIDENCE AND TO THIS STATE OF FACTS AS
13 DETERMINED BY YOU, THE JURY. YOU WILL THEN TAKE AND
14 APPLY THE LAW AS I NOW EXPLAIN IT TO YOU AND THUS
15 ARRIVE AT A TRUE VERDICT IN THE CASE.

16 I WOULD FURTHER CHARGE YOU THAT THERE ARE TWO
17 TYPES OF EVIDENCE THAT ARE GENERALLY PRESENTED DURING
18 TRIAL, DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

19 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
20 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT,
21 SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS
22 PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING
23 THE EXISTENCE OF A FACT.

24 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN
25 THE WEIGHT OR THE VALUE TO BE GIVEN TO EITHER DIRECT OR

1 CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
2 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
3 DIRECT EVIDENCE.

4 YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE, AND
5 AFTER WEIGHING ALL THE EVIDENCE IF YOU ARE NOT
6 CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE
7 DOUBT, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY.

8 NOW, MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
9 JURY, DURING THE TRIAL OF THIS CASE WE HAVE HAD WHAT WE
10 CALL EXPERT TESTIMONY. IN THAT CONNECTION I WILL TELL
11 YOU THAT ORDINARILY WITNESSES CANNOT TESTIFY AS TO
12 THEIR OPINION ON A PARTICULAR MATTER. AN EXCEPTION TO
13 THIS GENERAL RULE IS WHERE A WITNESS HAS BEEN QUALIFIED
14 AS AN EXPERT.

15 IN THAT EVENT, SUCH A WITNESS IS ENTITLED TO VOICE
16 HIS OR HER OPINION ON THAT SUBJECT. NOW, AS FAR AS
17 OPINION EVIDENCE IS CONCERNED, THAT IS TO SAY THE
18 EFFECT OF ANY EXPERT WHICH IS A MATTER OF OPINION, YOU
19 ARE NOT TO PLACE ANY OPINIONS AS ABOVE THE IDEA OF YOUR
20 OWN OPINIONS ON THE SUBJECT, BUT YOU ARE TO CONSIDER
21 THESE OPINIONS ALONG WITH ALL THE OTHER EVIDENCE IN THE
22 CASE IN FORMING YOUR OWN CONCLUSIONS.

23 I WOULD FURTHER CHARGE YOU, MR. FOREMAN AND LADIES
24 AND GENTLEMEN, THAT THERE ARE TWO SEPARATE INDICTMENTS
25 IN THE CASE. I HAVE REVIEWED THOSE BRIEFLY WITH YOU.

1 EACH INDICTMENT CONTAINS A SEPARATE AND DISTINCT
2 OFFENSE. YOU MUST DECIDE THE INDICTMENT OR THE CHARGE
3 IN THE INDICTMENT SEPARATELY ON THE EVIDENCE AND THE
4 LAW THAT APPLIES TO IT UNINFLUENCED BY YOUR DECISION AS
5 TO ANY OTHER INDICTMENT.

6 THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY
7 OR ALL OF THE OFFENSES CHARGED. YOU ARE GOING TO BE
8 ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT
9 GUILTY FOR EACH INDICTMENT, AND I'LL GO OVER THAT WITH
10 YOU AT THE CONCLUSION OF THESE INSTRUCTIONS.

11 I WOULD CHARGE YOU THAT CRIMINAL INTENT IS A
12 NECESSARY ELEMENT OF EACH CRIME THAT MUST BE PROVEN BY
13 THE STATE BEYOND A REASONABLE DOUBT.

14 CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
15 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES
16 SURROUNDING THE SITUATION.

17 THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL
18 CERTAINTY. THERE IS NO WAY THAT MEDICAL SCIENCE CAN
19 DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THAT PERSON
20 HAD IN MIND. THE LAW SAYS THAT CRIMINAL INTENT MAY BE
21 INFERRED FROM THE CIRCUMSTANCES THAT ARE SHOWN TO HAVE
22 EXISTED.

23 THIS IS HOW THE JURY MAKES A DETERMINATION OF
24 WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS
25 PRESENT. CRIMINAL INTENT IS A STATE OF MIND WHICH

1 OPERATED JOINTLY WITH AN ACT IN THE COMMISSION OF A
2 CRIME. CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
3 WRONGDOING, SO IT IS UP TO YOU, THE JURY, TO DETERMINE
4 WHAT THE DEFENDANT INTENDED TO DO BASED ON THE
5 CIRCUMSTANCES THAT ARE SHOWN TO HAVE EXISTED.

6 AGAIN, THE STATE MUST PROVE CRIMINAL INTENT BEYOND
7 A REASONABLE DOUBT JUST AS THE STATE MUST PROVE EVERY
8 ELEMENT OF EACH OFFENSE BEYOND A REASONABLE DOUBT AS I
9 HAVE PREVIOUSLY EXPLAINED THAT TO YOU.

10 I'VE ALREADY EXPLAINED THAT THERE ARE TWO
11 INDICTMENTS. I'LL EXPLAIN THE LAW THAT PERTAINS TO THE
12 CHARGE MADE IN EACH INDICTMENT.

13 THE INDICTMENT NUMBER 05-GS-40-8139 CHARGES
14 UNLAWFUL NEGLECT OF A CHILD. THAT CHARGE IS FOUND IN
15 THE SOUTH CAROLINA CODE OF LAWS UNDER SECTION 20-7-50.
16 IT READS IN PART AS FOLLOWS: IT IS UNLAWFUL FOR A
17 PERSON WHO HAS CHARGE OR CUSTODY OF A CHILD OR WHO IS
18 THE PARENT OR GUARDIAN OF A CHILD OR WHO IS RESPONSIBLE
19 FOR THE WELFARE OF A CHILD AS DEFINED IN SECTION
20 20-7-490 TO PLACE THE CHILD AT UNREASONABLE RISK OF
21 HARM AFFECTING THE CHILD'S LIFE, PHYSICAL OR MENTAL
22 HEALTH OR SAFETY OR TO DO OR CAUSE TO BE DONE
23 UNLAWFULLY OR MALICIOUSLY ANY BODILY HARM TO THE CHILD
24 SO THAT THE LIFE OR HEALTH OF THE CHILD IS ENDANGERED
25 OR LIKELY TO BE ENDANGERED.

1 THOSE ARE THE ELEMENTS THAT MAKE UP THE OFFENSE OF
2 UNLAWFUL CONDUCT TOWARDS A CHILD AND MUST BE PROVEN BY
3 THE STATE BEYOND A REASONABLE DOUBT BEFORE THE
4 DEFENDANT COULD BE CONVICTED OF THAT CHARGE.

5 I WOULD READ TO YOU A DEFINITION FOUND IN THE CODE
6 OF A PERSON RESPOND FOR A CHILD'S WELFARE. IT INCLUDES
7 A CHILD'S PARENT, GUARDIAN, FOSTER PARENT, AN OPERATOR,
8 EMPLOYEE OR CAREGIVER AS DEFINED BY SECTION 20-7-2700
9 OF A PRIVATE RESIDENTIAL HOME, INSTITUTION, AGENCY, OR
10 CHILDCARE FACILITY OR AN ADULT WHO HAS ASSUMED THE ROLE
11 OR RESPONSIBILITY AS A PARENT OR GUARDIAN FOR A CHILD
12 WHO DOES NOT NECESSARILY HAVE LEGAL CUSTODY OF THE
13 CHILD. THAT IS THE DEFINITION OF A PERSON RESPONSIBLE
14 FOR THE CHILD'S WELFARE.

15 THE OTHER CHARGE THAT IS MADE IN THE OTHER
16 INDICTMENT IS THE CHARGE OF INFLICTION OF GREAT BODILY
17 INJURY UPON A CHILD. THAT OFFENSE IS FOUND IN SECTION
18 16-3-95 OF THE SOUTH CAROLINA CODE OF LAWS, AND IT
19 READS IN PART AS FOLLOWS: IT IS UNLAWFUL TO INFLICT
20 GREAT BODILY INJURY UPON A CHILD. FOR PURPOSES OF THIS
21 SECTION, GREAT BODILY INJURY MEANS BODILY INJURY WHICH
22 CREATES A SUBSTANTIAL RISK OF DEATH OR WHICH CAUSES
23 SERIOUS OR PERMANENT DISFIGUREMENT OR PROTRACTED LOSS
24 OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER OR
25 ORGAN. AGAIN, THOSE ARE THE ELEMENTS THAT THE STATE

1 MUST PROVE BEYOND A REASONABLE DOUBT BEFORE THE
2 DEFENDANT COULD BE CONVICTED OF THIS CHARGE.

3 I WOULD FURTHER CHARGE YOU, MR. FOREMAN AND LADIES
4 AND GENTLEMEN, THAT THE PUNISHMENT PROVIDED BY LAW FOR
5 THE OFFENSES CHARGED IN THESE INDICTMENTS IS A MATTER
6 EXCLUSIVELY WITHIN THE PROVINCE OF THE COURT AND SHOULD
7 NEVER BE CONSIDERED BY THE JURY IN ANY WAY WHATSOEVER
8 IN ARRIVING AT A FAIR AND IMPARTIAL VERDICT AS TO THE
9 GUILT OR THE INNOCENCE OF THE DEFENDANT.

10 NOW, MR. FOREMAN AND LADIES AND GENTLEMEN,
11 WHATEVER YOUR VERDICT IS IN THIS CASE, IT MUST BE
12 UNANIMOUS. THAT SIMPLY MEANS THAT ALL TWELVE OF YOU
13 MUST AGREE ON IT. I HAVE HAD PREPARED FOR YOUR USE TWO
14 VERDICT FORMS - ONE FOR EACH INDICTMENT.

15 AS TO EACH INDICTMENT, THERE ARE TWO POSSIBLE
16 VERDICTS. DON'T ATTACH ANY SIGNIFICANCE TO THE ORDER
17 THAT I GO OVER THE POSSIBLE VERDICTS FOR YOU. ON THE
18 CHARGE OF INFLICTION OF GREAT BODILY INJURY UPON A
19 CHILD THE POSSIBLE VERDICT IS THAT: WE THE JURY FIND
20 THE DEFENDANT GUILTY OF INFLICTION OF GREAT BODILY
21 INJURY UPON A CHILD OR NOT GUILTY. ON THE OTHER CHARGE
22 OF UNLAWFUL NEGLIGENCE OF A CHILD THERE ARE ALSO TWO
23 POSSIBLE VERDICTS: WE THE JURY FIND THE DEFENDANT
24 GUILTY OF UNLAWFUL NEGLIGENCE OF A CHILD OR NOT GUILTY.

25 NOW, MR. FOREMAN, AFTER THE JURY HAS DELIBERATED

1 AND REACHED A UNANIMOUS VERDICT, YOU WOULD SIMPLY SIGN
2 YOUR NAME UNDER WHICHEVER VERDICT THE JURY HAS REACHED
3 AND THEN YOU WOULD DATE THE VERDICT FORM. ONCE YOU
4 HAVE REACHED A UNANIMOUS VERDICT, THEN YOU WILL SIMPLY
5 NOTIFY THE BAILIFF BY KNOCKING ON THE DOOR AND TELLING
6 HIM THAT YOU HAVE REACHED A VERDICT. DO NOT TELL HIM
7 WHAT IT IS; WE'LL BRING YOU ALL BACK TO THE COURTROOM
8 AND TAKE YOUR VERDICT HERE IN THE COURTROOM.

9 WHEN I SEND YOU BACK TO YOUR JURY ROOM IN JUST A
10 FEW MINUTES, YOU STILL ARE NOT PERMITTED TO DISCUSS THE
11 CASE, SO DO NOT BEGIN DELIBERATING.

12 I'LL HAVE TO GO OVER THE INSTRUCTIONS THAT I HAVE
13 GIVEN YOU WITH THE ATTORNEYS. IF I HAVE OMITTED
14 ANYTHING OR IF I NEED TO EXPLAIN ANY MATTER IN MORE
15 DETAIL, I WILL DO THAT IMMEDIATELY. IF THAT IS NOT
16 NECESSARY, THEN WHEN THE BAILIFF OR THE CLERK BRINGS TO
17 YOU THE EXHIBITS, ALONG WITH THESE VERDICT FORMS, THAT
18 IS YOUR SIGNAL TO THEN GO AHEAD AND BEGIN YOUR
19 DELIBERATIONS.

20 AGAIN, ONCE YOU HAVE REACHED A DECISION OR A
21 VERDICT IN THE CASE, SIMPLY NOTIFY THE BAILIFF, WHO
22 WILL BE OUTSIDE THE DOOR. WE WILL BRING YOU BACK IN
23 THE COURTROOM AND TAKE YOUR VERDICT HERE IN THE
24 COURTROOM.

25 SOMETIMES JURIES HAVE QUESTIONS. MANY MANY TIMES

1 THEY DO NOT HAVE ANY QUESTIONS. IF YOU WERE TO HAVE A
2 QUESTION, THERE ARE TWO THINGS THAT I NEED TO POINT OUT
3 TO YOU. NUMBER ONE, I CANNOT COMMENT UPON OR RESPOND
4 TO ANY QUESTIONS CONCERNING FACTS. THOSE ARE THE
5 MATTERS THAT YOU HAVE TO DETERMINE. IF YOU HAVE A
6 QUESTION ABOUT THE LAW, I MAY OR MAY NOT BE ABLE TO
7 RESPOND TO THE QUESTION. WHAT I WOULD ASK YOU TO DO IS
8 WRITE OUT YOUR QUESTION AND THE BAILIFF WILL BRING IT
9 TO ME. I'LL TAKE A LOOK AT IT. IN SOME INSTANCES I
10 MAY BE PERMITTED TO WRITE OUT AN ANSWER AND SEND THAT
11 BACK TO YOU. IN OTHER INSTANCES I MAY NEED TO BRING
12 YOU BACK IN THE COURTROOM AND GO OVER THE LAW WITH YOU.
13 THAT'S HOW YOU WOULD HANDLE THAT SITUATION IF IT DOES
14 ARISE.

15 HAVING GIVEN YOU THE CHARGE, I AM GOING TO SEND
16 YOU BACK TO YOUR JURY ROOM IN JUST A MOMENT. AS YOU
17 KNOW, WE TOOK YOUR LUNCH ORDERS. WE ARE HOPING YOUR
18 LUNCH WILL BE HERE. IT MAY ALREADY BE HERE, BUT IF NOT
19 IT WILL BE HERE SHORTLY. WHEN IT IS BROUGHT, THEY WILL
20 BRING IT TO YOU IN THE JURY ROOM. IF YOU WOULD LIKE TO
21 EAT WHILE YOU DELIBERATE OR NOT DELIBERATE WHILE YOU'RE
22 EATING, THAT WILL TOTALLY BE UP TO YOU. YOU CANNOT
23 DELIBERATE UNLESS ALL TWELVE OF YOU ARE IN THE JURY
24 ROOM. AT THIS TIME, I'LL SEND YOU BACK TO YOUR JURY
25 ROOM. AGAIN, I REMIND YOU NOT TO BEGIN DELIBERATING

1 UNTIL THE EXHIBITS AND THE VERDICT FORMS ARE BROUGHT
2 BACK TO YOU.

3 ONE OTHER THING, SOMETIMES I GET A NOTE FROM THE
4 JURY ASKING FOR MAYBE A CHART OR SOMETHING THAT ONE OF
5 THE LAWYERS USED WHEN THEY WERE MAKING THEIR ARGUMENTS
6 TO YOU. THOSE ARE NOT EXHIBITS THAT ARE IN EVIDENCE
7 AND I CANNOT SEND THOSE BACK TO YOU, BUT I WILL BE SURE
8 THAT ALL OF THE EXHIBITS THAT HAVE BEEN ADMITTED INTO
9 THE RECORD ARE WITH YOU IN THE JURY ROOM. I CANNOT
10 SEND YOU ANYTHING ELSE.

11 IF YOU WILL STEP BACK IN THE JURY ROOM AT THIS
12 TIME. I DO NEED THE ALTERNATE JUROR TO STAY IN THE
13 COURTROOM WITH ME, PLEASE. THE REST OF YOU ARE EXCUSED
14 TO RETURN TO THE JURY ROOM. EVERYONE ELSE STAY SEATED,
15 PLEASE.

16 (WHEREUPON, THE JURY LEFT OPEN COURT AT
17 APPROXIMATELY 12:01 P.M.)

18 THE COURT: YOU'RE MS. MCKENZIE; IS THAT RIGHT?

19 THE ALTERNATE JUROR: YES.

20 THE COURT: SINCE WE HAVE THE ORIGINAL TWELVE
21 MEMBERS OF THE JURY, YOU'RE NOT GOING TO BE GOING BACK
22 TO HELP THEM MAKE A DECISION IN THE CASE, BUT THAT'S
23 WHY YOU'RE HERE, BECAUSE IF SOMETHING HAD HAPPENED, YOU
24 WOULD BE GOING BACK THERE TO HELP THEM MAKE A DECISION.
25 I CAN EXCUSE YOU, BUT YOU ORDERED YOUR LUNCH. WE'RE

1 GOING TO WAIT UNTIL YOU GET YOUR LUNCH. . ONCE YOU GET
2 YOUR LUNCH, IF YOU WOULD LIKE TO EAT IT HERE, WE'LL
3 FIND YOU A PLACE WHERE YOU CAN DO THAT. IF YOU WANT TO
4 TAKE IT WITH YOU AND GO AHEAD AND LEAVE, YOU CAN DO
5 THAT.

6 I GUESS I'M GOING TO BE EXCUSING THE JURY PANEL;
7 IS THAT RIGHT?

8 THE CLERK: YES.

9 THE COURT: AND THIS YOUNG LADY WILL TALK TO YOU
10 ABOUT GETTING PAID FOR JURY SERVICE AND THINGS OF THAT
11 NATURE, BUT YOU ARE EXCUSED AT THIS TIME. IF YOU WILL
12 JUST STEP OUT IN THE HALL AND HAVE A SEAT IN ONE OF
13 THOSE CHAIRS. THANK YOU VERY MUCH.

14 THE ALTERNATE JUROR: THANK YOU.

15 THE COURT: ALL RIGHT. ANY EXCEPTIONS OR
16 ADDITIONS, ANYTHING FROM THE STATE?

17 MS. CAMPBELL: NO, SIR.

18 THE COURT: FROM THE DEFENSE?

19 MR. ROGERS: NOTHING FROM THE DEFENDANT ON THE
20 CHARGE, YOUR HONOR. I WOULD LIKE TO PUT ON AN
21 OBJECTION NUNC PRO TUNC TO TWO ITEMS IN MS. CAMPBELL'S
22 CLOSING.

23 THE COURT: ALL RIGHT.

24 MR. ROGERS: WHEN SHE ARGUED THAT SENDING THE
25 CHILD TO AFRICA WAS AN ATTEMPT TO PROTECT THE WIFE, OF

1 COURSE, THAT IMPLIES THAT THE CHILD WOULD HAVE SAID
2 SOMETHING IMPLICATING THE WIFE, AND SECONDLY WHEN SHE
3 SAID Minor WAS NOT ALLOWED TO BE HERE FOR THE SAME
4 REASON, THAT THE IMPLICATION IS THAT HAD HE BEEN HERE
5 HE WOULD HAVE IMPLICATED HER, AND THAT IS JUST NOT THE
6 STATE OF THE EVIDENCE. HE MAY HAVE BEEN FOUND
7 COMPETENT OR HE MAY NOT HAVE BEEN. TO SAY THAT IN THAT
8 MANNER, I THINK, PUT THAT IMPLICATION IN THE JURY'S
9 MIND.

10 THE COURT: ALL RIGHT. YOUR OBJECTION IS NOTED.
11 I WOULD OVERRULE. I THINK THE ARGUMENTS -- OTHER THAN
12 WHAT I RULED ON DURING THE ARGUMENTS AND OBJECTIONS
13 THAT WERE MADE WERE APPROPRIATELY WITHIN THE RULES.

14 ALL RIGHT. TAKE A LOOK AT THESE VERDICT FORMS.
15 BE SURE THAT YOU DON'T HAVE ANY OBJECTIONS TO THEM.
16 WE'LL STAND IN RECESS UNTIL WE HEAR FROM THE JURY.

17 (WHEREUPON, THE JURY BEGAN THEIR DELIBERATIONS AT
18 12:06 P.M.)

19 (WHEREUPON, THE JURY SENT OUT A QUESTION.)

20 THE COURT: ALL RIGHT. I HAVE ADVISED COUNSEL
21 THAT WE HAVE RECEIVED A NOTE -- THAT I HAVE RECEIVED A
22 NOTE FROM THE JURY. THE NOTE FROM THE JURY WILL BE
23 MADE A COURT'S EXHIBIT, IN WHICH THEY INDICATE, "WE
24 WOULD LIKE TO KNOW OR BE READ AGAIN THE THREE
25 CONDITIONS OF THE INDICTMENT UNLAWFUL NEGLECT OF A

1 CHILD. IF POSSIBLE, COULD WE ALSO, PLEASE, BE TOLD THE
2 LEGAL DEFINITION OR EXPLANATION OF CRIMINAL INTENT."

3 I TOLD COUNSEL THAT I INTENDED TO BRING THE JURY
4 BACK AND TO RECHARGE THEM AND GO BACK OVER THE STATUTE
5 DEALING WITH UNLAWFUL NEGLECT, AND THAT I ALSO WOULD GO
6 BACK OVER THE CHARGE ON CRIMINAL INTENT THAT I HAD
7 PREVIOUSLY GIVEN THEM.

8 SOLICITOR, YOU HAD ASKED FOR SOME ADDITIONAL
9 LANGUAGE THAT WAS NOT IN MY CRIMINAL INTENT CHARGE THE
10 FIRST TIME. QUITE FRANKLY, I'M NOT SURE IF WHAT YOU
11 WERE ASKING FOR IS PART OF CRIMINAL INTENT OR PART OF
12 MALICIOUSNESS. MALICIOUSNESS IS AN ELEMENT OF A
13 PORTION OF THE UNLAWFUL NEGLECT TOWARD A CHILD. I HAD
14 MADE A NOTE TO MYSELF TO DEFINE WHAT IS MEANT BY
15 MALICIOUS OR MALICIOUSLY.

16 I DON'T THINK I DID THAT THE FIRST TIME I CHARGED
17 THEM, BUT I WILL BE DEFINING MALICIOUS OR MALICIOUSLY,
18 WHAT'S FOUND IN SUBSECTION (A) 2, TO DO OR CAUSE TO BE
19 DONE UNLAWFULLY OR MALICIOUSLY ANY BODILY HARM, AND I
20 WILL BE DEFINING MALICIOUS OR MALICIOUSLY AS WICKEDLY,
21 INTENTIONALLY OR WITHOUT JUSTIFICATION OR LEGAL EXCUSE
22 BEING DONE BY A HEART VOID OF SOCIAL DUTY. THOSE ARE
23 THE CLASSIC DEFINITIONS OF MALICIOUSNESS. I'LL BE
24 USING THAT LANGUAGE TO DEFINE MALICIOUS AS IT PERTAINS.
25 WHAT ELSE ARE YOU ASKING FOR?

1 MS. CAMPBELL: IN THE CRIMINAL INTENT, I BELIEVE I
2 WAS TOLD IT WAS IN THE JUDGE'S BOOK, BUT ANYWAY, THIS
3 IS AN INTENT CHARGE THAT I WAS SURE, POSITIVE, THAT YOU
4 USED THAT WITH KEVIN GOODWIN AND THE LANGUAGE THAT'S
5 RIGHT AT THE END.

6 (PAUSE)

7 THE COURT: ALL RIGHT. I WILL GIVE THEM THE
8 DEFINITION, THE SAME THAT I GAVE THEM EARLIER. I WILL
9 EXPAND ON IT TO SOME DEGREE. I WILL NOT USE THIS
10 ENTIRE CHARGE. THIS IS THE CHARGE THAT CAME OUT OF THE
11 CHARGE BOOK THAT ALL CIRCUIT JUDGES HAVE ACCESS TO.

12 MS. CAMPBELL: YES, SIR.

13 THE COURT: IT INCLUDES WHAT I HAVE PREVIOUSLY
14 GONE OVER. IT EXPANDS IT IN SOME WAYS. I'M NOT GOING
15 TO USE ALL OF IT, BUT I WILL USE PARTS OF IT.

16 MS. CAMPBELL: ALL RIGHT. THANK YOU, YOUR HONOR.

17 MR. ROGERS: JUDGE, I WOULD OBJECT TO YOU
18 EXPANDING ON THE DEFINITION OF SPECIFIC INTENT, SINCE
19 YOU DIDN'T CHARGE THAT THE FIRST TIME AND --

20 THE COURT: I DIDN'T SAY ANYTHING ABOUT SPECIFIC
21 INTENT.

22 MR. ROGERS: I MEAN, GENERAL INTENT. THERE WAS NO
23 OBJECTION MADE BY THE STATE THE FIRST TIME. MY CONCERN
24 IS THAT YOU GIVE THEM SOMETHING DIFFERENT NOW. WE'LL
25 HAVE THE DANGER OF CONFUSING THEM EVEN MORE. I DON'T

1 HAVE A PROBLEM OF EXPANDING ON THE DEFINITION OF WHAT
2 MALICIOUS IS AND THE SECOND ELEMENT OF UNLAWFUL
3 NEGLECT, BUT I WOULD OBJECT TO EXPANDING ON YOUR CHARGE
4 ON INTENT.

5 THE COURT: ALL RIGHT. I'M GOING TO RECHARGE
6 THEM. LIKE I SAID, I MAY EXPAND ON THE DEFINITION TO
7 SOME DEGREE, BUT I'M GOING TO TRY TO RESPOND TO THEIR
8 QUESTION, WHICH IS TO EXPLAIN THE LEGAL DEFINITION OF
9 CRIMINAL INTENT, AND YOU CAN TAKE EXCEPTION WHEN I DO
10 THAT AFTER I'VE GIVEN THE CHARGE.

11 MR. ROGERS: YES, SIR.

12 THE COURT: LET'S GET THE JURY BACK IN, PLEASE.

13 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
14 APPROXIMATELY 1:58 P.M.)

15 THE BAILIFF: THE JURY IS PRESENT.

16 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, OUR
17 SYSTEM DOES NOT PERMIT ME TO SIT HERE AND CARRY ON A
18 CONVERSATION WITH YOU AND LET YOU ASK QUESTIONS AND ME
19 RESPOND TO THOSE. WHEN I DO GET A QUESTION FROM THE
20 JURY, I AM LIMITED TO TRYING TO ANSWER THE SPECIFIC
21 QUESTION THAT HAS BEEN ASKED. I HAVE TWO QUESTIONS ON
22 THE NOTE THAT YOU SENT OUT. I WILL GO OVER THOSE FOR
23 THE RECORD, AND THEN I'LL RESPOND AS BEST I'M ABLE TO.

24 I'M GOING TO START WITH THE SECOND ONE FIRST.
25 "COULD WE PLEASE ALSO BE TOLD THE LEGAL DEFINITION OF

1 THE EXPLANATION OF CRIMINAL INTENT?"

2 CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH
3 CRIME THAT MUST BE PROVEN BY THE STATE BEYOND A
4 REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER
5 THAT MUST BE DETERMINED BY THE JURY FROM THE
6 CIRCUMSTANCES SURROUNDING THE SITUATION. AGAIN, THERE
7 IS NO WAY THAT INTENT CAN BE PROVEN TO A MATHEMATICAL
8 CERTAINTY. THERE'S NO WAY THAT MEDICAL SCIENCE CAN
9 DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THAT PERSON
10 HAD IN MIND, SO THE LAW DOES SAY THAT CRIMINAL INTENT
11 MAY BE INFERRED FROM THE CIRCUMSTANCES THAT ARE SHOWN
12 TO HAVE EXISTED. THIS IS HOW A JURY MAKES A
13 DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING
14 INTENT WAS PRESENT.

15 CRIMINAL INTENT IS A STATE OF MIND WHICH OPERATES
16 JOINTLY WITH AN ACT IN THE COMMISSION OF A CRIME. IT
17 IS A MENTAL STATE, A CONSCIOUS WRONGDOING, AND IT IS UP
18 TO YOU, THE JURY, TO DETERMINE WHAT THE DEFENDANT
19 INTENDED TO DO BASED ON THE CIRCUMSTANCES THAT ARE
20 SHOWN TO HAVE EXISTED AT THE TIME.

21 CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE
22 TO ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS, OR
23 AN INDIFFERENCE TO DUTY OR THE CONSEQUENCES THAT ARE
24 CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL
25 INTENT. AGAIN, CRIMINAL INTENT IS A MENTAL STATE, A

1 CONSCIOUS WRONGDOING, SO IT IS UP TO YOU, THE JURY, TO
2 DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON
3 THE CIRCUMSTANCES THAT ARE SHOWN TO HAVE EXISTED.

4 AGAIN, THE STATE MUST PROVE CRIMINAL INTENT BEYOND
5 A REASONABLE DOUBT JUST AS THE STATE MUST PROVE EVERY
6 ELEMENT BEYOND A REASONABLE DOUBT AS I PREVIOUSLY
7 EXPLAINED THAT TO YOU, AND I WOULD ADD THAT IF FACTS
8 PROVEN ARE SUFFICIENT TO RAISE AN INFERENCE OF INTENT,
9 THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO
10 BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG
11 WITH ALL THE OTHER EVIDENCE IN THIS CASE, AND YOU MAY
12 GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE
13 AS TO WHETHER OR NOT INTENT HAS BEEN PROVEN BEYOND A
14 REASONABLE DOUBT. NOW, I HAVE TRIED TO RESPOND TO THAT
15 QUESTION AND I'LL GO TO THE OTHER QUESTION THAT WAS
16 ASKED BY THE JURY.

17 THAT QUESTION WAS ESSENTIALLY TO RECHARGE OR GO
18 BACK OVER THE LAW ON THE CHARGE OF UNLAWFUL NEGLECT OF
19 A CHILD. I WILL DO THAT AT THIS TIME. AGAIN, THIS
20 OFFENSE IS FOUND IN SECTION 20-7-50 OF THE SOUTH
21 CAROLINA CODE OF LAWS. IT IS UNLAWFUL FOR A PERSON WHO
22 HAS CHARGE OR CUSTODY OF A CHILD OR WHO IS THE PARENT
23 OR GUARDIAN OF A CHILD OR WHO IS RESPONSIBLE FOR THE
24 WELFARE OF A CHILD, AS I HAVE DEFINED THAT PHRASE FOR
25 YOU, TO PLACE THE CHILD AT UNREASONABLE RISK OF HARM

1 AFFECTING THE CHILD'S LIFE, PHYSICAL OR MENTAL HEALTH
2 OR SAFETY OR TO DO OR CAUSE TO BE DONE UNLAWFULLY OR
3 MALICIOUSLY ANY BODILY HARM TO THE CHILD SO THAT THE
4 LIFE OR HEALTH OF THE CHILD IS ENDANGERED OR LIKELY TO
5 BE ENDANGERED AND MALICIOUSLY IS DEFINED UNDER THE LAW
6 AS BEING DONE WICKEDLY, INTENTIONALLY, WITHOUT
7 JUSTIFICATION OR LEGAL EXCUSE OR BY A HEART DEVOID OF
8 SOCIAL DUTY. THAT IS THE LEGAL DEFINITION OF MALICIOUS
9 OR MALICIOUSLY. THOSE ARE THE ELEMENTS THAT THE STATE
10 MUST PROVE BEYOND A REASONABLE DOUBT BEFORE THE
11 DEFENDANT COULD BE CONVICTED OF THIS CHARGE.

12 I HAVE TRIED TO RESPOND TO WHAT YOU ASKED AND I'M
13 GOING TO SEND YOU BACK TO YOUR JURY ROOM AND ASK YOU TO
14 PLEASE CONTINUE YOUR DELIBERATIONS. EVERYONE ELSE STAY
15 SEATED, PLEASE.

16 (WHEREUPON, THE JURY LEFT OPEN COURT AT
17 APPROXIMATELY 2:13 P.M.)

18 THE COURT: ALL RIGHT. ANY EXCEPTIONS OR
19 ADDITIONS FROM THE STATE?

20 MS. CAMPBELL: NO, SIR.

21 THE COURT: MR. ROGERS?

22 MR. ROGERS: YOUR HONOR, WE TAKE EXCEPTION TO THE
23 CHARGE ON CRIMINAL INTENT.

24 THE COURT: LET ME ASK YOU THIS, DO YOU TAKE
25 EXCEPTION ON THE BASIS THAT IT IS AN INACCURATE

1 DEFINITION OF CRIMINAL INTENT OR WHAT THE STATE MUST
2 PROVE OR SIMPLY BECAUSE PARTS OF IT WERE NOT INCLUDED
3 THE FIRST TIME?

4 MR. ROGERS: THE LATTER.

5 THE COURT: THANK YOU. YOUR EXCEPTION IS NOTED.
6 WE'LL WAIT ON THE JURY. WE'LL STAND IN RECESS. THANK
7 YOU.

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 (WHEREUPON, COURT'S EXHIBIT NUMBER 3 WAS MARKED
10 FOR IDENTIFICATION ONLY.)

11 THE COURT: ALL RIGHT. I HAVE BEEN ADVISED THE
12 JURY HAS REACHED A VERDICT. FOR THE BENEFIT OF THOSE
13 IN THE COURTROOM, I CANNOT DEAL WITH ANY EMOTIONAL
14 OUTBURSTS. IF YOU DO NOT FEEL LIKE YOU WILL BE ABLE OR
15 CANNOT CONTROL YOUR EMOTIONS, YOU NEED TO EXCUSE
16 YOURSELF FROM THE COURTROOM AT THIS TIME.

17 ALL RIGHT. LET'S GET THE JURY IN, PLEASE.

18 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH
19 THE VERDICT AT 2:20 P.M.)

20 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

21 VERDICT

22 THE COURT: ALL RIGHT. MR. FOREMAN, I HAVE BEEN
23 ADVISED THAT THE JURY HAS REACHED A VERDICT; IS THAT
24 CORRECT?

25 THE FOREMAN: YES, SIR..

1 THE COURT: IS IT UNANIMOUS, SIR?

2 THE FOREMAN: YES.

3 THE COURT: WOULD YOU HAND THE VERDICT FORM TO THE
4 BAILIFF, PLEASE, SIR.

5 (THE FOREMAN COMPLIES.)

6 THE COURT: ALL RIGHT. MADAM CLERK, IF YOU WILL
7 PUBLISH THE VERDICT, PLEASE.

8 MR. ROGERS, IF YOU AND YOUR CLIENT WILL STAND.

9 THE CLERK: INDICTMENT 20006-GS-40-2991, THE STATE
10 OF SOUTH CAROLINA VS. MIAMA KROMAH, WE THE JURY FIND
11 THE DEFENDANT GUILTY OF INFLICTION OF GREAT BODILY
12 INJURY UPON A CHILD, SIGNED AUBURY BOSKET, FOREPERSON,
13 JUNE 15TH, 2006.

14 INDICTMENT NUMBER 2005-GS-40-8139, THE STATE OF
15 SOUTH CAROLINA VS. MIAMA KROMAH, WE THE JURY FIND THE
16 DEFENDANT GUILTY OF UNLAWFUL NEGLECT OF A CHILD, SIGNED
17 AUBURY BOSKET, FOREPERSON, JUNE 15, 2006.

18 MR. FOREPERSON, IS THIS YOUR VERDICT AND THE
19 VERDICT OF THE ENTIRE JURY?

20 THE FOREMAN: YES, IT IS.

21 THE COURT: MR. ROGERS, DO YOU WANT THE JURY
22 POLLED?

23 MR. ROGERS: YES, YOUR HONOR.

24 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN,
25 THE JURY IS GOING TO BE POLLED. THE CLERK IS GOING TO

1 ASK YOU TWO QUESTIONS, AND THE QUESTION WILL BE WHETHER
2 THIS WAS YOUR VERDICT IN THE JURY ROOM AND WHETHER IT
3 IS STILL YOUR VERDICT. IF YOU WOULD RESPOND TO THAT AS
4 THE CLERK CALLS YOUR NAME. AS SHE POLLS THE JURY, IF
5 YOU WILL RAISE YOUR HAND SO WE CAN SEE WHERE YOU ARE,
6 PLEASE.

7 THE CLERK: AUBURY BOSKET, WAS THIS YOUR VERDICT?

8 THE JUROR: YES.

9 THE CLERK: IS IT STILL YOUR VERDICT?

10 JUROR: YES.

11 THE CLERK: AMY MCCARTHY, WAS THIS YOUR VERDICT?

12 THE JUROR: YES, IT WAS.

13 THE CLERK: IS IT STILL YOUR VERDICT?

14 THE JUROR: YES.

15 THE CLERK: ERNEST SETTLES, WAS THIS YOUR VERDICT?

16 THE JUROR: YES, IT WAS.

17 THE CLERK: IS IT STILL YOUR VERDICT?

18 THE JUROR: YES, MA'AM.

19 THE CLERK: LEONARD JACKSON, WAS THIS YOUR
20 VERDICT?

21 THE JUROR: YES.

22 THE CLERK: IS IT STILL YOUR VERDICT?

23 THE JUROR: YES, IT IS.

24 THE CLERK: BRIAN BLEDSOE, WAS THIS YOUR VERDICT?

25 THE JUROR: YES, MA'AM.

1 THE CLERK: IS IT STILL YOUR VERDICT?
2 THE JUROR: YES, MA'AM.
3 THE CLERK: MERCY PALACIOS, WAS THIS YOUR VERDICT?
4 THE JUROR: YES.
5 THE CLERK: IS IT STILL YOUR VERDICT?
6 THE JUROR: YES, IT IS.
7 THE CLERK: QUIANA WHITTED, WAS THIS YOUR VERDICT?
8 THE JUROR: YES.
9 THE CLERK: IS IT STILL YOUR VERDICT?
10 THE JUROR: YES, IT IS.
11 THE CLERK: ROBERT LANEY, WAS THIS YOUR VERDICT?
12 THE JUROR: YES.
13 THE CLERK: IS IT STILL YOUR VERDICT?
14 THE JUROR: YES, IT IS.
15 THE CLERK: KEVIN MCWILLIAMS, WAS THIS YOUR
16 VERDICT?
17 THE JUROR: YES.
18 THE CLERK: IS IT STILL YOUR VERDICT?
19 THE JUROR: YES, MA'AM.
20 THE CLERK: DOROTHY HAM, WAS THIS YOUR VERDICT?
21 THE JUROR: YES.
22 THE CLERK: IS IT STILL YOUR VERDICT?
23 THE JUROR: YES, IT IS.
24 THE CLERK: DONNA WESTFALL, WAS THIS YOUR VERDICT?
25 THE JUROR: YES, IT IS.

1 THE CLERK: IS IT STILL YOUR VERDICT?

2 THE JUROR: YES, MA'AM.

3 THE CLERK: JAY PARK, WAS THIS YOUR VERDICT?

4 THE JUROR: YES.

5 THE CLERK: IS IT STILL YOUR VERDICT?

6 THE JUROR: YES, IT IS.

7 THE CLERK: THE JURY HAS BEEN POLLED, YOUR HONOR.

8 THE COURT: THE JURY HAS BEEN POLLED. ANYTHING

9 FURTHER?

10 MR. ROGERS: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. ANY OTHER MATTERS? ANY

12 OTHER MOTIONS AT THIS TIME BEFORE SENTENCING,

13 MR. ROGERS?

14 MR. ROGERS: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT. SOLICITOR, I WOULD BE GLAD

16 TO HEAR ADDITIONAL INFORMATION FROM THE STATE AND THEN

17 I WILL HEAR FROM YOU, MR. ROGERS, AND YOUR CLIENT.

18 MS. CAMPBELL: YOUR HONOR, WE THINK THE FACTS

19 SPEAK FOR THEMSELVES, AND WE HAVE NOTHING ADDITIONAL TO

20 PUT ON THE RECORD.

21 THE COURT: ALL RIGHT. MR. ROGERS, I'LL BE GLAD

22 TO HEAR FROM YOU.

23 MR. ROGERS: THANK YOU, YOUR HONOR. YOU'VE HEARD

24 ABOUT MS. KROMAH'S BACKGROUND. SHE IS 24 YEARS OLD,

25 ORIGINALLY FROM MONROVIA, LIBERIA. SHE CAME TO THIS

1 COUNTRY A WHILE BACK. SHE HAS NO CRIMINAL HISTORY AT
2 ALL. SHE HAS NEVER BEEN IN TROUBLE BEFORE. I WOULD
3 ASK THE COURT TO CONSIDER A PROBATIONARY SENTENCE AND
4 IN THE ALTERNATIVE, I WOULD ASK YOU TO BE AS LENIENT AS
5 POSSIBLE UNDER THE CIRCUMSTANCES.

6 THE COURT: ALL RIGHT. DID YOUR CLIENT WISH TO
7 SAY ANYTHING?

8 (PAUSE)

9 MR. ROGERS: SHE DOES NOT WANT TO ADDRESS THE
10 COURT, YOUR HONOR.

11 THE COURT: ALL RIGHT. THANK YOU. SOLICITOR,
12 ANYTHING IN RESPONSE?

13 MS. CAMPBELL: YOUR HONOR, WE DO THINK THAT A
14 PERIOD OF INCARCERATION WOULD BE APPROPRIATE IN THIS
15 CASE.

16 SENTENCING

17 THE COURT: DURING SOME OF THE OTHER ARGUMENTS AND
18 MOTIONS TO ELECT, I HAD INDICATED THAT I FELT LIKE THE
19 STATE WOULD NOT BE REQUIRED TO ELECT BETWEEN THE TWO
20 CHARGES, BUT THERE IS A PRINCIPLE THAT A PERSON CANNOT
21 BE PUNISHED TWICE FOR THE SAME CONDUCT, WHILE THE
22 CONDUCT MAY SUPPORT TWO DIFFERENT CHARGES. FOR THAT
23 REASON, ANY SENTENCE THAT THIS COURT IMPOSES WOULD NOT
24 BE RUN CONSECUTIVELY. I BELIEVE THE INTENTIONAL --
25 INFLECTING SERIOUS BODILY INJURY IS A 20 YEAR OFFENSE.

1 THE OTHER IS A TEN YEAR OFFENSE; IS THAT CORRECT,
2 SOLICITOR?

3 MS. CAMPBELL: THAT'S CORRECT, YOUR HONOR.

4 THE COURT: THE 20 YEAR OFFENSE WOULD BE AN
5 85 PERCENT OFFENSE; IS THAT CORRECT?

6 MS. CAMPBELL: YES, SIR.

7 THE COURT: THAT'S YOUR UNDERSTANDING ALSO,
8 MR. ROGERS?

9 MR. ROGERS: YES, YOUR HONOR.

10 THE COURT: I BELIEVE, BASED ON THE TESTIMONY,
11 THAT THE CHILD AT THIS TIME IS FOUR YEARS OLD; IS THAT
12 CORRECT?

13 MS. CAMPBELL: YES, YOUR HONOR.

14 MR. ROGERS: YES.

15 THE COURT: MR. ROGERS, AT THE TIME YOUR CLIENT
16 WAS ARRESTED, DID SHE SPEND ANY TIME IN JAIL BEFORE SHE
17 BONDED OUT?

18 MR. ROGERS: JUST OVERNIGHT, YOUR HONOR.

19 THE COURT: OVERNIGHT, OKAY.

20 THE TESTIMONY AND THE EVIDENCE THAT THIS JURY
21 HEARD AND THE ACTIONS IN THIS CASE ON A THREE YEAR OLD
22 LITTLE BOY ARE INEXCUSABLE AND QUITE FRANKLY
23 INCOMPREHENSIBLE TO THE COURT. ON THE GREAT BODILY
24 INJURY CHARGE, INDICTMENT 06-2991, THE SENTENCE OF THIS
25 COURT IS THAT THE DEFENDANT BE CONFINED TO THE

1 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 18 YEARS.

2 ON THE OTHER CHARGE, TEN YEARS, TO RUN
3 CONCURRENTLY.

4 MR. ROGERS: YOUR HONOR, WOULD YOU CONSIDER,
5 BECAUSE OF THE FACT THAT SHE IS PREGNANT, TO ALLOW HER
6 TO REPORT TO THE DETENTION CENTER ON MONDAY MORNING?
7 SHE TELLS ME THAT HER PASSPORT HAS EXPIRED. SHE IS NOT
8 GOING ANYWHERE. SHE NEEDS A FEW DAYS TO TIE UP SOME
9 LOOSE ENDS.

10 THE COURT: AT THIS POINT, I'D LIKE FOR HER TO BE
11 HELD IN A HOLDING CELL AND I WILL TALK WITH YOU ALL A
12 LITTLE MORE ABOUT THAT.

13 MR. ROGERS: YES.

14 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN,
15 THAT WILL CONCLUDE YOUR SERVICE IN THIS CASE. I KNOW
16 THE CLERK NEEDS TO TALK TO YOU FOR JUST A MINUTE, IF
17 YOU WILL JUST STEP BACK INTO YOUR JURY ROOM. ONCE SHE
18 HAS FINISHED WITH YOU, I MAY COME BACK AND VISIT WITH
19 YOU FOR JUST A MOMENT, THEN YOU CAN BE EXCUSED. WE'VE
20 EXCUSED THE REST OF THE JURY PANEL, SO THAT'S GOING TO
21 CONCLUDE YOUR SERVICE AS JURORS. I DO WANT TO THANK
22 YOU FOR YOUR HARD WORK AND FOR BEING HERE THROUGHOUT
23 THIS TRIAL, BUT I'LL COME BACK AND SPEAK TO YOU IN JUST
24 A FEW MINUTES. IF YOU WILL STEP BACK TO YOUR JURY ROOM
25 AT THIS TIME.

1 EVERYONE ELSE STAY SEATED, PLEASE.

2 (WHEREUPON, THE JURY LEFT OPEN COURT AT
3 APPROXIMATELY 2:29 P.M.)

4 THE COURT: WE'LL STAND IN RECESS A FEW MINUTES
5 AND THEN WE'LL TAKE PLEAS.

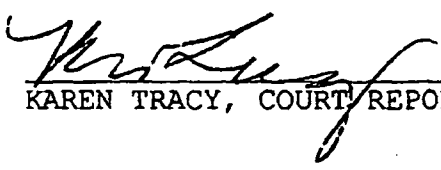
6 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, KAREN TRACY, OFFICIAL COURT REPORTER FOR THE
5TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS
HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL
SESSIONS COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 13TH DAY OF JUNE, 2006.

SEPTEMBER 21, 2006


KAREN TRACY, COURT REPORTER

MY COMMISSION EXPIRES: 04/01/14

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF RichlandMiama Kromah #316117
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2013 CP 000895
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2013 FEB 13 PM 10:39
JEANEITE W. MCBRIDE
C.L.P. & G.S.**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 clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Carnille Griffin Graham Correctional Institution
2. Name and location of Court which imposed sentence Richland County General Session Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-GIS-40-8139 unlawful neglect of a child
 - (b) 2006-GIS-40-2991 Infliction of great bodily injury upon a child
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 15, 2006 10 yrs. (concurrent with (b))
 - (b) June 15, 2006 18 yrs. (concurrent with (a))

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of appeal
- ii. The Supreme Court of South Carolina
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The ruling of the General Session Court was upheld.
- ii. The ruling of the Appellate Court was upheld.
- iii. _____
- (c) the date of each such result:
- i. June 15, 2009
- ii. January 23, 2013
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. Mr. Jimmy Rogers, Columbia SC
- ii. Mrs. Tara Shul Columbia, SC
- iii. Mr. Robert Dudley, Columbia SC

- (b) the proceedings at which each such attorney represented you:

- i. attorney Jimmy Rogers represented me in General session Court
- ii. attorney Tara Shul represented me in Appellate Court
- iii. attorney Robert Dudley represented me in my Writ of Certiorari

19. State clearly the relief you seek in filing this application:

Time Served

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of)

Richland)

VERIFICATION

I, _____, 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.

M. amari Samuel

SWORN to and subscribed before me this 7th
day of February, 2013.

Kathy R. Barnes (L.S.)
Notary Public

My Commission Expires August 12, 2015

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Miama Kromah, #316117,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-00895

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief application filed February 13, 2013, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the April 2006 term of the Richland County Grand Jury for Infliction of Great Bodily Injury Upon a Child (2006-GS-40-2991) and Unlawful Neglect of a Child (2006-GS-40-8139). Jimmy Rogers, Esquire, represented Applicant. On June 13, 2006, Applicant proceeded to a jury trial before the Honorable James W. Johnson, Jr., where she was convicted as indicted. On June 15, 2006, Judge Johnson sentenced Applicant to eighteen years imprisonment for Great Bodily Injury Upon a Child and ten years imprisonment for Unlawful Neglect of a Child, with the sentences to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tara Shurling, Esquire. On June 15, 2009, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. Ms. Shurling subsequently filed a Petition for Rehearing on Applicant's behalf, which the South Carolina Supreme Court denied on August 25, 2009.

Robert M. Dudek, Esquire, of the Office of Appellate Defense filed a Petition for Writ of Certiorari to the Supreme Court on Applicant's behalf. The Supreme Court affirmed the Court of Appeals ruling. The Remittitur was sent on February 8, 2013.

II.

In her application for post-conviction relief, Applicant fails to state any grounds for relief, leaving the required portions of her application completely blank. Under the Post-Conviction Procedure Act, an applicant is required to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1976). As Applicant has failed to allege any grounds entitling her to relief, this application should be summarily dismissed.

III.

Respondent also submits that this application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may

institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

Applicant has failed to state any grounds of relief in her Application, thus there is no cognizable claim for post-conviction relief under any of the statutory grounds. Additionally, the relief sought by Applicant is "Time Served," which is not a remedy that can be obtained through post-conviction relief. Therefore, the Court should summarily dismiss this application.

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests that the Application be summarily dismissed for failure to any ground of relief and failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By:

Megan E. Harrigan
Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211

July 29, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MIAMA KROMAH, #316117

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

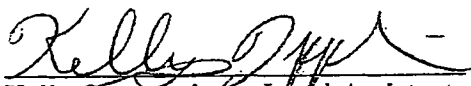
2013-CP-40-00895

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 and Motion to Dismiss and Proposed Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Miama Kromah, #316117
 Graham Correctional Institution
 4450 Broad River Road
 Columbia, SC 29210

DATED this 29th day of July, 2013.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

In the Court of Common Pleas
Fifth Judicial Circuit
2013-CP-40-0895

Applicant,

vs.

Transcript of Record

Respondent.

March 18, 2014
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

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

Kristy G. Goldberg, Esquire
Attorney for Applicant

Megan E. Harrigan, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

Proceedings	4
TESTIMONY - WITNESS	
Miama Kromah,	
Direct Examination by Ms. Goldberg	7
Cross-Examination by Ms. Harrigan	17
Redirect Examination by Ms. Goldberg	28
Recross-Examination by Ms. Harrigan	29
James Rogers, Esq.	
Direct Examination by Ms. Goldberg	30
Cross-Examination by Ms. Harrigan	41
Redirect Examination by Ms. Goldberg	59
Certificate Page	64

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
------------	--------------------	-----------------

No exhibits were introduced during this proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:44 a.m.)

THE COURT: Yes, ma'am.

MS. HARRIGAN: This is the matter of *Miama Kromah v. the State of South Carolina*, Docket No. 2013-CP-40-0895. Ms. Kromah was indicted during the April 2006 term of the Richland County Grand Jury for infliction of great bodily injury upon a child and unlawful neglect of a child. Jimmy Rogers represented Ms. Kromah.

On June 13th, 2006, Ms. Kromah proceeded to a jury trial before the Honorable James W. Johnson, Jr., where she was convicted as indicted on both counts. On June 15th, 2006, Judge Johnson sentenced Ms. Kromah to 18 years' imprisonment for great bodily injury upon a child and to 10 years' imprisonment for unlawful neglect of a child, with both sentences to be served concurrently.

Ms. Kromah thereafter filed a motion to reconsider her sentence and a motion to reconsider based on newly discovered evidence. Following a hearing on said motion, Judge Johnson declined to amend her sentence or grant a new trial. A timely notice of appeal was filed on Ms. Kromah's behalf, and an appeal was perfected by Tara Shurling.

On June 15th, 2009, following briefing and argument, the South Carolina Court of Appeals affirmed Ms. Kromah's convictions and sentences. A subsequent petition for

1 rehearing was denied on August 25th, 2009.

2 Thereafter, Robert Dudek of the Office of Appellate
3 Defense filed a petition for writ of certiorari to the
4 Supreme Court on Ms. Kromah's behalf. The Supreme Court
5 affirmed the Court of Appeals' ruling and remittitur was
6 sent on February 8th, 2013.

7 On February 13th, 2013, Ms. Kromah filed an
8 application for postconviction relief but failed to state
9 any grounds on which relief was sought. The state made a
10 return and motion to dismiss for failure to state a claim.
11 A conditional order of dismissal was signed on July 30th,
12 2013, by Judge Manning, provisionally dismissing the
13 application but giving Ms. Kromah 20 days to show why the
14 order should not become final.

15 Thereafter, Ms. Kromah filed an amended application,
16 alleging ineffective assistance of counsel. An order
17 vacating the conditional order of dismissal and setting the
18 matter for an evidentiary hearing was signed on September
19 16th, 2013. Subsequently, Ms. Kromah, through counsel,
20 Kristy Goldberg, filed an amended application on January
21 6th, 2014, alleging the following grounds of ineffective
22 assistance of counsel: ineffective assistance of counsel
23 regarding plea negotiations; ineffective assistance of
24 counsel for failure to sufficiently place Ms. Kromah on
25 notice that the state would be proceeding against her on

1 two indictments; ineffective assistance of counsel for
2 failure to object to the qualification of the forensic
3 examiner as an expert witness; and ineffective assistance
4 of counsel for failure to object to the introduction of
5 testimony regarding findings in custody orders by DSS and
6 the family court.

7 And Ms. Kromah is represented in this action by Kristy
8 Goldberg. And I'll turn it over to Ms. Goldberg at this
9 time.

10 THE COURT: Yes, ma'am. Good morning.

11 MS. GOLDBERG: Thank you. Thank you. Good morning.
12 One small correction that I need to point out to the Court:
13 For the Court's information, I did just go to the clerk of
14 court's office. Someone's going to be dropping off
15 indictment copies with the front and back any minute now
16 for Your Honor's assistance. But Your -- I believe Your
17 Honor does have the front of each indictment.

18 THE COURT: Yes.

19 MS. GOLDBERG: I believe the attorney general stated
20 that they were both indicted the April term of 2006.
21 Actually, the unlawful neglect was the September term of
22 2005. And the infliction of great bodily injury was the
23 April term of 2006. They were two different grand-jury
24 sessions. So I needed to make that clear for Your Honor.

25 MS. HARRIGAN: I apologize for ---

DIRECT EXAMINATION BY MS. GOLDBERG - MIAMA KROMAH

7

1 THE COURT: Thank you.

2 MS. HARRIGAN: --- misstating that, Your Honor.

3 MS. GOLDBERG: Thank you. And -- and I bring that up
4 because that is a part of our case. Your Honor -- and Your
5 Honor does have with -- in your file the copy of our
6 amended application?

7 THE COURT: Yes, ma'am.

8 MS. GOLDBERG: Okay. Very good.

9 THE COURT: And -- and just to be clear: Those are
10 the only four claims that you're making at this particular
11 time?

12 MS. GOLDBERG: Yes, Your Honor.

13 THE COURT: Okay.

14 MS. GOLDBERG: That's correct. At this time I will
15 call Miama Kromah to the stand.

16 THE COURT: If you'd step forward, ma'am, to be sworn.

17 (Whereupon, the witness came forward.)

18 MIAMA KROMAH, having been first duly sworn,
19 testified as follows:

20 THE COURT: Yes, ma'am.

21 MS. GOLDBERG: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. GOLDBERG:

24 Q Good morning, Ms. Kromah.

25 A Good morning.

DIRECT EXAMINATION BY MS. GOLDBERG - MIAMA KROMAH

8

1 Q Where are you currently housed?

2 A Camilla Griffin Graham.

3 Q Graham?

4 A Yes.

5 Q And were you sent there pursuant to a guilty plea or a
6 jury trial?

7 A Jury trial.

8 Q What were you convicted of after the jury trial?

9 A Unlawful neglect of a child and great bodily injury.

10 Q Both charges?

11 A Yeah.

12 Q Do you know what your sentence is on each charge?

13 A Eighteen years on great bodily injury and ten years on
14 unlawful neglect.

15 Q And how is that calculated? Is it considered violent
16 or nonviolent?

17 A Violent.

18 Q Do you know why -- which -- why it's considered
19 violent?

20 A Because somebody was hurt, I guess.

21 Q Do you know which charge is classified as violent?

22 A No.

23 Q Do you understand what a postconviction-relief action
24 is?

25 A Yes.

1 Q Do you understand that if you're successful in this
2 hearing today, that means your case would start over?

3 A Yes.

4 Q Your case won't be dismissed. You understand that?

5 A Uh-huh.

6 Q You'd have to start over and face both charges again?

7 A Uh-huh.

8 Q Okay.

9 THE COURT: And if you -- and if you would, please, if
10 you'd answer verbally with a "yes" or "no" because -- so
11 the court reporter can't take down the correct answer ---

12 THE WITNESS: Yes, ma'am.

13 THE COURT: --- so it's not misinterpreted later on.

14 THE WITNESS: Yes, ma'am.

15 Q Do you remember approximately when you were arrested,
16 what month and year?

17 A September or August of 2005.

18 Q And what charge were you arrested for?

19 A Unlawful neglect of a child.

20 Q Did they serve you with an arrest warrant?

21 A Yes.

22 Q Was that ---

23 THE COURT: One ---

24 Q --- your only ---

25 THE COURT: --- one ---

DIRECT EXAMINATION BY MS. GOLDBERG - MIAMA KROMAH

10

1 Q --- charge?

2 THE COURT: One moment.

3 MS. GOLDBERG: Yes, ma'am.

4 (Off the record briefly.)

5 Q You were arrested on only the one charge?

6 A Yes, ma'am.

7 Q Did you hire an attorney at some point?

8 A Yes.

9 Q Who did you hire?

10 A Mr. Jimmy Rogers.

11 Q And how soon did you hire him? Was it soon after your
12 arrest?

13 A Yeah. Soon after I hire him.

14 Q Did you have DSS -- a DSS case pending also?

15 A Yes, I did.

16 Q Did he represent you on your DSS case as well?

17 A Yes.

18 Q So he represented you on the criminal charge and the
19 DSS charge?

20 A Yes, he did.

21 Q Did you meet with him several times?

22 A Yes. We met.

23 Q Related to both cases?

24 A Yes.

25 Q Did he come to family court with you?

1 A He did.

2 Q And he would talk with you about the case when he'd
3 come to family court with you?

4 A Yes. About what was going on in family court. Yeah.

5 Q And then you also met with him in his office a few
6 times?

7 A Yes.

8 Q Were you on bond while your charges were pending?

9 A I was.

10 Q The entire time?

11 A Yes.

12 Q Was there ever a point when you and Mr. Rogers
13 discussed the possibility of pleading guilty to your
14 criminal charges?

15 A Yes.

16 Q Tell me about the first discussion you had -- or the
17 first thing you remember.

18 A I talked to my sister, and she told me about looking
19 into that and talking to my lawyer about pleading instead
20 of going to court so I can get the situation over with.
21 And I call him and ask him about it, and he said yes; he
22 was going to look into that. So he went and had a meeting
23 with the -- the persecutors. And he called me and then he
24 told me the meeting didn't go well.

25 But I asked him why. And he said, "Because they want

DIRECT EXAMINATION BY MS. GOLDBERG - MIAMA KROMAH 12

1 you to go to prison."

2 And so he told me to just think about what I wanted to
3 do. And I talked to my family and I call him back. And I
4 said, "We need a expert in this case, so what do you think
5 is best to do?" because I don't know nothing about the
6 legal system.

7 And he said, "The best thing is to go to trial because
8 they want you to go to prison." And that was that.

9 Q Did he ever tell you if the state was recommending a
10 particular sentence?

11 A No.

12 Q A particular number of years?

13 A No.

14 Q You said that you didn't know anything about the legal
15 system.

16 A Uh-huh.

17 Q Where are you from?

18 A Liberia.

19 Q And how long did you live in Liberia?

20 A Up until I was 15. Uh-huh.

21 Q You went to school in Liberia?

22 A Yes.

23 Q Where did you move when you were 15?

24 A To South Carolina, Columbia.

25 Q And did you go to school here in Columbia?

- 1 A Yes.
- 2 Q Did you graduate from school in Columbia?
- 3 A Columbia High. Yes.
- 4 Q Had you ever been arrested prior to this?
- 5 A No.
- 6 Q Had you ever had any dealings with the legal system
- 7 prior to this?
- 8 A Speeding tickets.
- 9 Q Speeding tickets?
- 10 A Uh-huh.
- 11 Q Nothing where you faced any real jail or prison time?
- 12 A No.
- 13 Q Did you know anybody about how jury trials and pleas
- 14 worked?
- 15 A No.
- 16 Q Did you trust your attorney?
- 17 A Yes.
- 18 Q Were you relying on what he told you?
- 19 A Yes.
- 20 Q After that conversation where Mr. Rogers told you that
- 21 you should go to trial because they wanted you to go to
- 22 prison ---
- 23 A Uh-huh. Yes.
- 24 Q --- were there any more conversations about plea
- 25 deals?

1 A No.

2 Q At that time were you facing one charge or two?

3 A One.

4 Q At what point did you learn that there was a second
5 indictment in this case?

6 A We were supposed to go to court on Tuesday. And I was
7 supposed to meet with him that Friday. So when me and my
8 sister went to meet with him, he said, "I have a new
9 development." And I asked him why. And he said, "I have
10 another indictment."

11 And I said, "What that means?"

12 And he said, "Well, it's the same things. Both
13 warrants read the same. It's just that this one is --
14 instead of ten years, it's from zero to twenty years. And
15 they're going to compound it."

16 And so I said, "But we're going to court on Tuesday,
17 so what you think we should do?"

18 And he said he was ready; we should go ahead and go to
19 court. And that was it.

20 Q He did explain to you that the new indictment carried
21 more possible jail time, the 20 years?

22 A Yeah. He told ---

23 Q That ---

24 A --- yeah. That was under -- he talking about -- yeah.

25 Q Did he tell you that the new indictment -- the 20-year

1 sentence would be considered a violent charge?

2 A No.

3 Q Did he ever say anything to you about the difference
4 between violent charges and nonviolent charges?

5 A No. We didn't discuss that.

6 Q Did you know anything prior to -- to court about
7 nonviolent or violent charges? Had you ever heard that
8 before?

9 A No.

10 Q When did you find out about the difference between
11 violent and nonviolent charges?

12 A When I got to Camilla Griffin Graham. When you go to
13 the process -- evaluation process, you see different
14 counselors and they do mental health and all those things
15 on you. And that's when I was told that I -- my sentence
16 fell under the 85 percent bracket and I was -- then they
17 explained to me that it mean I'm a violent offender; I have
18 to do 85 percent of my time. That's when I discovered the
19 85 and ---

20 Q Okay. When you learned of the new indictment, did you
21 ask Mr. Rogers at that point if you should consider a plea?

22 A No. I just asked him what -- what -- what's his
23 opinion, what he think what we should do and if he was
24 ready -- because I was -- I was shocked. It was
25 unexpected, you know.

DIRECT EXAMINATION BY MS. GOLDBERG - MIAMA KROMAH 16

1 Q Was it your decision to go to trial versus a guilty
2 plea or how was that decided?

3 A That was what he advised me to do.

4 Q Did Mr. Rogers ever tell you that there is a
5 possibility of getting a lower sentence at a guilty pleas
6 versus a trial?

7 A No. We didn't discuss that.

8 Q Just because of the fact that you'd be taking
9 responsibility and admitting guilt? Did you discuss that
10 at all?

11 A No.

12 Q Did you ever go to court and have the new indictment
13 presented to you and served on you?

14 A No.

15 Q Did you have a -- ever have a new bond hearing on the
16 new indictment?

17 A No.

18 Q Did you ever see the new indictment?

19 A That Friday before we went to court on Tuesday when I
20 was in his office, that's when he show it to me and he told
21 me about it.

22 Q Okay.. Knowing what you know about your -- the charges
23 you were convicted of, do you -- what do you think Mr.
24 Rogers -- what do you think should've happened in this
25 case?

1 A I think he should have advised me closest on the
2 option that I had and kind of like encouraged me to, like,
3 go back to talk to the persecutor, see if they wanted to
4 make a plead or something like that.

5 Q Okay. Do you know if he ever had information that the
6 solicitors were asking for a specific amount of time if you
7 had pled guilty?

8 A No. He didn't give me no time. All he told me was,
9 "They want you to go to prison." That's all he told me.

10 Q Okay. That was all you knew?

11 A Uh-huh. Yes, ma'am.

12 Q If there had been a plea offer made in this case,
13 would you have pled guilty?

14 A Yes, ma'am.

15 Q Even if it involved a prison sentence?

16 A Yes, ma'am.

17 Q Okay.

18 MS. GOLDBERG: No further questions at this time.

19 MS. HARRIGAN: And, Your Honor, may I approach? The
20 clerk of court brought the indictments with the back and
21 front. They're on there.

22 THE COURT: Thank you.

23 CROSS-EXAMINATION

24 BY MS. HARRIGAN:

25 Q Good morning, Ms. Kromah.

CROSS-EXAMINATION BY MS. HARRIGAN - MIAMA KROMAH

18

1 A Good morning.

2 Q You testified that you retained Mr. Rogers shortly
3 after you were arrested, correct?

4 A Uh-huh. Yes, ma'am.

5 Q And you testified you met with him several time. Do
6 you recall an approximate number of times you met with him?

7 A Not many.

8 Q Not many?

9 A Regarding the case, it was probably like one -- one or
10 two time we had a discussion. But I saw him more -- more
11 than those times because I had a -- I made payments to him.
12 So I just drop payments off.

13 Q When you dropped these payments off at his office, did
14 you ever talk about the case with him?

15 A No, not really.

16 Q How many times would you say you sat down and
17 discussed the substance of your charges with him?

18 A Probably two or three times.

19 Q And then, you testified you also would meet with him
20 at the family court and discuss your case. Do you recall
21 how many times you discussed your charges then with him?

22 A I think I went to family court twice and he was there.
23 That's when I -- we talked.

24 Q And the family court charges were stemming from this
25 same incident, correct?

1 A Yes, it was.

2 Q Do you recall reviewing discovery with Mr. Rogers?
3 The evidence the state had against you, did you review that
4 with him?

5 A We had a -- yeah. We had a discussion about the
6 forensic thing. That's the only discovery thing we did,
7 the forensic report.

8 Q Do you recall discussing possible defenses with Mr.
9 Rogers?

10 A When I -- yeah. When I call him and ask him about the
11 plea situation.

12 Q And what specific defenses did you discuss with Mr.
13 Rogers?

14 A I ask him can he talk to the solicitor so -- to see if
15 they can work out plea with me.

16 Q But you didn't discuss any defenses that you'd set
17 forth at trial? You only talked about plea negotiations?

18 A Defenses at trial -- we talk about, like, the forensic
19 report because he say he was going to get an expert
20 witness. And after the report came back, he said it's not
21 necessary. You know, that was that.

22 Q Did you give Mr. Rogers any potential witnesses that
23 you wanted him to go talk to in preparation for trial?

24 A No.

25 Q He called witnesses on your behalf at your trial,

CROSS-EXAMINATION BY MS. HARRIGAN - MIAMA KROMAH

20

1 correct?

2 A Yes.

3 Q I believe he called your husband and your sister. Do
4 you recall that?

5 A My ex-husband, yeah, and my sister.

6 Q And you also testified in your defense, correct?

7 A I did.

8 Q And you had the -- did he have the contact information
9 for those three people, your family members?

10 A He did.

11 Q Did he meet with your husband ahead of time, before
12 your trial?

13 A You mean, like, did he set up a meeting with him?

14 Q Did he discuss the case with your husband ---

15 A Yeah. He ---

16 Q --- and then ---

17 A --- saw him and family and when we went to court. But
18 I don't know if they had, like, a private meeting.

19 Q And I believe you testified to this at trial, but you
20 were the only adult home with the three-year-old child at
21 the time this event occurred, right?

22 A I was.

23 Q And you testified -- you testified at trial -- trial,
24 correct? In your defense you took the witness stand?

25 A Can you repeat the question?

1 Q You testified at trial, correct?

2 A I did.

3 Q And at trial your testimony was that you were washing
4 the minor child when you noticed blood in the bathtub,
5 correct?

6 A Yes.

7 Q But at your motion to reconsider, you testified
8 differently, correct?

9 A Yes.

10 Q You testified that your acrylic fingernails actually
11 cut the three-year-old while you were roughly giving him a
12 bath, correct?

13 A Yes.

14 Q And you testified that your being rough with him
15 caused the other various injuries, correct?

16 A Yes.

17 Q The injury to the abdomen and the injury to his head
18 and to ---

19 A Yes.

20 Q --- his body, correct?

21 A Yes.

22 Q You admitted that it was your conduct that did that,
23 correct?

24 A Yes.

25 Q And you testified at your motion to reconsider that

CROSS-EXAMINATION BY MS. HARRIGAN - MIAMA KROMAH

22

1 you lied to your husband about this, correct?

2 A Yes.

3 Q And you lied to law enforcement about this, correct?

4 A Yes.

5 Q You also testified that you lied to the hospital and
6 medical personnel and doctors, correct?

7 A I did.

8 Q You also testified that you lied to your attorney, Mr.
9 Rogers, about this, correct?

10 A Yes.

11 Q And you admitted during your motion to reconsider that
12 you lied under oath when you testified at trial, correct?

13 A Yes.

14 Q You're under oath here today, correct?

15 A I am.

16 Q Are you being truthful today, or are you lying again?

17 A I'm being truthful.

18 Q Okay. But you just weren't truthful at the trial?

19 A No.

20 Q Is your testimony today that it was your actions that
21 caused all these injuries to the child, like you testified
22 at the motion to reconsider?

23 A Yes. That's my testimony.

24 Q And your first allegation is that Mr. Rogers was
25 ineffective regarding plea negotiations, correct?

1 A Yes.

2 Q But you conceded, both at your motion to reconsider
3 and here today, that you were not honest with your
4 attorney; you lied to him, correct?

5 A I did.

6 Q And you told Mr. Rogers that your actions had never
7 injured the child, correct? You told him you were just
8 washing the child ---

9 A Yes.

10 Q --- and that's ---

11 A Yes.

12 Q --- when the injured occurred?

13 So you never admitted to him that you, accidentally or
14 otherwise, were the source of all these injuries to the
15 child, correct?

16 A Yes.

17 Q And you never admitted to him before trial that you
18 had caused these injuries, correct?

19 A Yes.

20 Q You had always insisted you didn't do anything,
21 correct?

22 A Yes.

23 Q Why weren't you honest with your attorney who was
24 helping to prepare your defense?

25 A At the time I was afraid. So I just say I didn't know

CROSS-EXAMINATION BY MS. HARRIGAN - MIAMA KROMAH

24

1 or I lie about it. And because I was afraid of what might
2 happen to me or other people opinion of me. So I just lie.
3 It was out of fear.

4 Q Your second allegation is that Mr. Rogers was
5 ineffective for not informing you about the two indictments
6 the state would be proceeding you against, correct?

7 A Yes.

8 Q And I believe you testified before it was the Friday
9 before trial that you learned about this?

10 A Yes.

11 Q And your trial didn't start until Tuesday, correct?

12 A Yes.

13 Q So you knew from Friday on that the state would be
14 seeking twenty years instead of ten against you, correct?
15 That was your possible exposure?

16 A Yes.

17 Q So you thought up until that point you were only being
18 charged for unlawful neglect of a child, correct?

19 A Yes.

20 Q Do you recall Mr. Rogers objecting to the state
21 proceeding on these two indictments at the beginning of
22 your trial?

23 A I can't really say. He had some objection, but I
24 don't know if -- I can't remember exactly what it was
25 about.

1 Q Do you have a copy of the transcript?

2 A Not on me.

3 MS. HARRIGAN: May I approach with a copy of the
4 transcript?

5 THE COURT: Yes.

6 Q If you'll read pages 8 and 9 to yourself briefly.

7 A Uh-huh.

8 Q Do you see Mr. Rogers there objecting to the state
9 proceeding against those two indictments against you?

10 A Yes.

11 Q I'll take that back from you.

12 A Uh-huh.

13 Q Thank you. Do you recall Mr. Rogers renewing this
14 objection when the state finished calling all of their
15 witnesses? Making that same argument again to the Court
16 that you shouldn't be indicted twice for the same conduct?

17 A Yes.

18 Q Do you recall sentencing at the end of trial before
19 Judge Johnson?

20 A Yes.

21 Q Do you recall Judge Johnson stating that he wasn't
22 going to punish you twice for the same conduct and that was
23 why he was giving you concurrent sentences?

24 A Yes.

25 Q And he did, in fact, give you concurrent sentences,

1 correct?

2 A He did.

3 Q One of your other allegations is that Mr. Rogers was
4 ineffective for not objecting to testimony from the
5 Department of Social Services in family court, correct?

6 A Yes.

7 Q Do you recall volunteering this information during
8 your testimony, bringing this up yourself?

9 A No.

10 MS. HARRIGAN: May I approach again, Your Honor?

11 THE COURT: Yes, ma'am.

12 Q I'm going to hand you the transcript again, Ms.
13 Kromah. I'll get to the correct page for you. Ms. Kromah,
14 I'm showing you page 391. If you'll look at lines 10 and
15 11, do you bring up ---

16 A Uh-huh.

17 Q --- DSS voluntarily there?

18 A I don't know what was asked prior to this -- this
19 point in this case, so I can't say I brought it up
20 voluntarily.

21 Q Were ---

22 A I said: That's what the DSS caseworker told me.

23 Q Were you ---

24 A I wasn't there.

25 Q Were you asked by the solicitor anything about DSS, if

1 you'll look at the lines ahead?

2 A The lines -- the questions ahead was talking about a
3 entire incident that -- the hospitals, the nurses, Minor ,
4 and everything else.

5 Q And then, in those two lines, 10 and 11, you mentioned
6 DSS, correct? That's in your response?

7 A Yeah. The question was -- yeah. Did you take more
8 than one person to administer the vital sign when ---

9 Q Okay. I'm going to turn a few pages now to page 392
10 -- actually, 393. I apologize. If you'll again read that
11 two yourself because I have a few questions for you about
12 the highlighted portions.

13 A Uh-huh. Okay.

14 Q Do you see on page 393, lines 3 through 6, where you
15 again volunteer information about DSS? That highlighted
16 portion.

17 A Yeah. I don't -- I -- I wouldn't say I volunteer
18 information. It was along the question she was asking me.

19 Q Does the assistant solicitor ask you anything directly
20 about DSS on that following page that you reviewed?

21 A She asked me what happened after the hospital, who
22 talked to me, and -- and after surgery where was I. And I
23 told her I talked to Inspector Livingston and a DSS worker
24 because they came together. So they talked to me the next
25 morning. It was following along the same line.

REDIRECT EXAMINATION BY MS. GOLDBERG - MIAMA KROMAH 28

1 Q All right. And do you -- if you'll look a little
2 further down, lines 20 through 24, do you also, in your
3 response, mention DSS actions as well?

4 A Yes.

5 MS. HARRIGAN: And, Your Honor, if I may approach one
6 more time.

7 Q I'm going to turn the page to 394. If you'll read 394
8 as well, particularly lines 6 and 7, to yourself.

9 A Yes. We ---

10 Q Do you again mention DSS in your response in lines 6
11 and 7?

12 A Answering the question that she asked me. Yes, I did.

13 MS. HARRIGAN: May I approach to retrieve the
14 transcript, Your Honor? No further questions at this time.

15 Q Thank you.

16 A Thank you.

17 THE COURT: Any redirect?

18 MS. GOLDBERG: Just one follow-up question, Your
19 Honor.

20 REDIRECT EXAMINATION

21 BY MS. GOLDBERG:

22 Q Ms. Kromah, during your conversations with your
23 attorney, what did he tell you would be the result -- the
24 sentence result of your trial if you were convicted?

25 A He said because I had no prior records, I would either

RECROSS-EXAMINATION BY MS. HARRIGAN - MIAMA KROMAH 29

1 have probation or a -- a -- a little bit of time.

2 Q If you were convicted at trial?

3 A Yeah.

4 MS. GOLDBERG: No further questions.

5 MS. HARRIGAN: Very briefly, Your Honor.

6 RECROSS-EXAMINATION

7 BY MS. HARRIGAN:

8 Q You testified, Ms. Kromah, that on the Friday before
9 trial, your attorney informed you that you had a twenty-
10 year exposure, correct?

11 A Yes. Friday after 4 p.m.

12 Q Okay.

13 A Yes.

14 Q So on Friday before you trial, you knew you faced up
15 to twenty years in prison if you were convicted at trial,
16 correct?

17 A Yes.

18 MS. HARRIGAN: No further questions, Your Honor.

19 THE COURT: You may step down. Thank you.

20 THE WITNESS: All right.

21 (Whereupon, the witness exited the witness stand.)

22 THE COURT: You may call your next witness.

23 MS. GOLDBERG: Thank you, Your Honor. At this time
24 the applicant will call Jimmy Rogers.

25 (Whereupon, the witness came forward.)

DIRECT EXAMINATION BY MS. GOLDBERG - JAMES ROGERS

30

1 JAMES ROGERS, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. GOLDBERG:

5 Q Good morning, Mr. Rogers.

6 A Good morning.

7 Q Ms. Kromah, when she came and hired you, she was
8 charged with unlawful neglect; is that correct?

9 A That's correct.

10 Q Okay. What is your understanding of the sentencing
11 parameters for that charge?

12 A Ten years.

13 Q Violent or nonviolent?

14 A Nonviolent.

15 Q She was indicted for that charge, correct?

16 A That's correct.

17 Q Later she was indicted for a subsequent charge; is
18 that right?

19 A Yes.

20 Q What was the new charge?

21 A Great bodily injury to a child.

22 Q And what's your understanding of the sentencing for
23 that charge?

24 A Twenty years.

25 Q Violent or nonviolent?

- 1 A Violent.
- 2 Q Prior to the solicitors getting that indictment, did
3 you know that they were going to? Did they tell you?
- 4 A I don't remember if we had a conversation that they
5 were going to amend the indictment.
- 6 Q The indictment states that it was issued April 18th of
7 2006. Do you -- do you -- do you dispute that?
- 8 A No.
- 9 Q Okay. The trial was June 13th of 2006; is that
10 correct?
- 11 A Yes.
- 12 Q So the new indictment was two months prior to the
13 trial?
- 14 A Right.
- 15 Q When the indictment was issued, did the solicitors let
16 you know about that?
- 17 A No.
- 18 Q Okay. At what point did you find out about the new
19 indictment?
- 20 A The week before trial.
- 21 Q So for two months the solicitor's office knew about
22 the new indictment and did not tell you about it?
- 23 A That's correct.
- 24 Q The week before trial, did they provide you with a
25 copy of it?

DIRECT EXAMINATION BY MS. GOLDBERG - JAMES ROGERS 32

1 A Yes. Well, I'm not sure. I think she -- Luck had
2 called and said, "We have a new indictment." And I
3 perceived it to be an amended indictment.

4 Q You believed that it was going to replace the old
5 indictment?

6 A That's correct.

7 Q And I believe that's what you -- you stated in the
8 record when you were objecting to the fact that they were
9 going forward on two indictments?

10 A Yes. I didn't think that that was what was happening.
11 And I made the argument that the government -- I mean, the
12 solicitor's office would have to elect ---

13 Q Right. When you made that argument at trial, it
14 wasn't an argument about insufficient notice or due
15 process?

16 A No. I didn't feel that at all because the allegations
17 were essentially the same.

18 Q The -- the -- the allegations were the same?

19 A Yes.

20 Q Although the sentences not ---

21 A No.

22 Q --- the same?

23 A That's correct.

24 Q And -- and the classification of the sentence was also
25 not the same?

1 A That's correct.

2 Q Do you know if -- or do you recall if the solicitor's
3 office ever had Ms. Kromah brought to the Court to serve
4 the new indictment on her?

5 A No, they didn't.

6 Q Did they ever have a new bond setting on the new
7 indictment?

8 A They didn't.

9 Q Do you know how she was -- how she found out about the
10 new indictment?

11 A When I told her.

12 Q She didn't know prior to that?

13 A No.

14 Q Prior to the new indictment, what do you recall about
15 plea negotiations in this case?

16 A She was only charged with neglect. I went to discuss
17 the case with Luck. I can't remember if she was alone or
18 was with someone else. And Luck was adamant that they
19 wanted jail time on the neglect case. I told Ms. Kromah
20 that: that I had tried to negotiate something -- we wanted
21 probation, of course -- and they were adamant that
22 probation was not an option.

23 You have to understand: All along, my conversations
24 with Ms. Kromah were she was adamant that she hadn't done
25 it. And I, you know, tried to explain to her that if we

DIRECT EXAMINATION BY MS. GOLDBERG - JAMES ROGERS 34

1 did this plea offer, she was going to have to say she did
2 something. So it was all of that that was involved in the
3 negotiation.

4 And after we knew that there was only jail time on the
5 table, there were no more plea negotiations because she
6 wanted a trial.

7 Q Did you ever ask Ms. Campbell specifically how much
8 time she would be asking for if Ms. Kromah had pled guilty?

9 A That's vague. I'm -- I'm guessing maybe three years,
10 something in that line. I -- I -- I really don't remember.
11 But I -- I'm -- I'm clearly sure that they wanted time and
12 Ms. Kromah was not going to plead guilty for time.

13 Q If they had given you a specific number -- I
14 understand your recollection is ---

15 A Okay.

16 Q --- not clear. But if they had, would you have
17 relayed that ---

18 A Of course.

19 Q --- number to Ms. Kromah?

20 A Of course.

21 Q After -- did you ever explain to Ms. Kromah with the
22 one charge that it would be classified as nonviolent or
23 what that means?

24 A I'm sure we discussed violent versus nonviolent, the
25 85 percent requirement. Yes. I think we did.

1 Q Okay. And you would've had that conversation again
2 after the new indictment?

3 A That's right.

4 Q Because that was ---

5 A Was ---

6 Q --- was classified differently?

7 A That's right.

8 Q After you found out about the new indictment, creating
9 -- even if it replaced the old one, creating much more
10 exposure as it was a violent charge for twenty years, did
11 you have new discussions about plea negotiations with the
12 solicitor?

13 A Oh, with the solicitor?

14 Q Uh-huh.

15 A No. No, I didn't.

16 Q You never went back to the solicitor and ---

17 A No.

18 Q --- asked for an offer?

19 A No.

20 Q Did you have new discussions about the decision to
21 plea or trial with Ms. Kromah?

22 A Only to the extent that I knew that she was not going
23 to say that she did it. So, you know, I told her that the
24 new charge exposed her to greater jail time, potentially.
25 And I thought she understood that. But it was clear to me

1 that she was not going to be able to say that she did
2 something wrong. So there was no point in trying to
3 discuss plea with her.

4 Q Given the fact that the new charge carried more time
5 and was classified differently, do you think additional
6 time would've been helpful to work out a plea negotiation
7 in this case?

8 A Certainly. Yes.

9 Q Okay. If Ms. Kromah had more than just three days'
10 notice, maybe there -- something more could've happened
11 with the decision to plea and a plea ---

12 A That's a ---

13 Q --- and ---

14 A --- possibility. Yes.

15 Q And a plea offer could've been explored?

16 A Yes. Absolutely.

17 Q During the trial a -- the state offered a forensic
18 interviewer to testify; is that correct?

19 A Yes.

20 Q And there was an appeal as a result of this case; is
21 that right?

22 A I was not involved in it, so I'm not aware. I mean, I
23 knew that someone -- Ms. Shurling was handling the appeal.

24 Q You didn't handle it?

25 A I did not.

1 Q And there was a -- a -- a published opinion by the
2 Supreme Court issued as a result of that appeal. Have you
3 seen that opinion?

4 A No.

5 Q Okay. Do you have the transcript with you right now?

6 A Yes.

7 Q If you could turn to page 199, please, sir.

8 A Yes.

9 Q This page is where the state offers to have the
10 forensic interviewer offered as an expert ---

11 A Yes.

12 Q --- generally?

13 You did not object to the state's request, correct?

14 A To offer her as an expert?

15 Q Yes ---

16 A No.

17 Q --- specifically?

18 A No.

19 Q What does it mean for someone to be offered as an
20 expert at trial?

21 A That means that they have specific knowledge in a
22 certain area, based on their experience and training, that
23 they are qualified to give an opinion.

24 Q Do you believe that jurors hold the testimony of
25 experts -- have -- let that carry a little bit more weight

1 than they do regular witnesses?

2 A Yes.

3 Q Do you think jurors are more likely to believe an
4 expert than they are a regular witness?

5 A Yes.

6 Q Do you recall why you didn't object to their being
7 classified as an expert?

8 A I didn't think I had a basis.

9 Q Do you have any opinion about that today?

10 A In light of recent case-law, yes.

11 Q Okay. And what is that?

12 A That a forensic expert cannot be qualified as an -- as
13 -- as an expert -- a forensic psychologist ---

14 Q So ---

15 A --- to testify in this area of abuse and neglect.

16 Q In light of recent case law ---

17 A Right.

18 Q --- looking back on this, do you believe you should've
19 objected to their classification as an expert?

20 A Yes.

21 Q Do you think it's likely the jury believed their
22 testimony because of that expert classification?

23 A I can't answer that.

24 Q Okay. You represented Ms. Kromah on the DSS case
25 also, correct?

1 A Yes.

2 Q So you were very involved in what was going on in the
3 family court?

4 A Yes.

5 Q If you could turn now to page 274, the section of the
6 transcript that I've directed you to is the -- it states at
7 the top it's the direct examination of Ms. Kromah's ex-
8 husband by the solicitor. Start -- beginning on line 7,
9 it's -- the solicitor was directly asking Mr. Kromah about
10 DSS involvement, correct?

11 A I'm not sure. Just a minute.

12 Q Actually -- and ---

13 A Is that my -- my direct or ---

14 Q It may have -- was it your -- no. It says by Campbell
15 ---

16 A Okay.

17 Q --- up at the top ---

18 A Okay.

19 Q --- of mine.

20 A All right.

21 Q You may have a different one. Actually, if you'll
22 just read over page 274 through 276 to yourself briefly and
23 then I can ask you general questions, it'll be quicker.

24 A Okay.

25 Q Thank you, sir. In these pages the solicitor had Mr.

DIRECT EXAMINATION BY MS. GOLDBERG - JAMES ROGERS 40

1 Kromah verify that DSS had the child in custody for five to
2 six months.

3 A Yes.

4 Q And also confirmed that DSS had his -- had given Mr.
5 Kromah visitation rights but did not allow Ms. Kromah to
6 have any visitation with the child; is that right?

7 A Yes.

8 Q The solicitor also had Mr. Kromah confirm that a
9 condition of getting custody back of his son was that Ms.
10 Kromah was to have no contact with the child; is that
11 right?

12 A Yes.

13 Q There's no objection noted by you in the transcript,
14 correct?

15 A Correct.

16 Q Do you agree that it would be prejudicial for jurors
17 to hear that another court has also reviewed the facts of
18 this case and made a ruling accordingly?

19 A I agree that I should've objected.

20 Q You believe you should've objected?

21 A Yes.

22 Q Do you agree it'd be prejudicial?

23 A Yes.

24 MS. GOLDBERG: No further questions.

25 Q Thank you, sir.

CROSS-EXAMINATION

1
2 BY MS. HARRIGAN:

3 Q Good morning, Mr. Rogers.

4 A Good morning.

5 Q Mr. Rogers, how long have you been practicing law?

6 A Close to 30 years.

7 Q And you're in private practice?

8 A No. I'm with the Office of the Federal Public
9 Defender.

10 Q At the time of the trial, were you ---

11 A Oh, yes.

12 Q --- in private practice?

13 A I'm sorry. Yes, I was in private practice.

14 Q But federal public defender's office now?

15 A Yes. For the last six years.

16 Q At the time of trial what percentage of your practice
17 was criminal-defense work?

18 A 99 percent.

19 Q And now it's 100 percent, I would ---

20 A Yes.

21 Q --- assume?

22 Okay. Do you recall when you were retained by Ms.
23 Kromah?

24 A I think in either September or October of 2005.

25 Q And I believe you testified that at that time Ms.

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

42

1 Kromah was only indicted for the unlawful neglect of a
2 child, correct?

3 A Yes.

4 Q How many times did you meet with Ms. Kromah before her
5 trial?

6 A I'd -- I know more than five. And there were many
7 conversations over the phone. I would talk to Musa.
8 Sometimes Musa would bring -- bring a payment by. We would
9 discuss the case. But I -- I know more than five times.
10 Because I knew we were going to trial.

11 Q And Musa is her ex-husband ---

12 A Yes.

13 Q --- correct? Okay.

14 A I'm sorry. Yes.

15 Q Did you meet with any other members of her family?
16 her sister perhaps?

17 A Her sister. And I believe her mother came with her
18 once or twice.

19 Q Did you file any *Brady*, or Rule 5, motions in this
20 case?

21 A Yes.

22 Q Did you review that discovery material with Ms.
23 Kromah?

24 A Yes, I did.

25 Q Do you recall how many times you reviewed it with her?

1 A No, not really. I mean, we discussed the case every
2 time she came to the office.

3 Q And you heard Ms. Kromah's testimony earlier this
4 morning, correct?

5 A Yes.

6 Q Did you hear her testify that she would often drop off
7 payments and never discuss the case with you?

8 A I don't -- I don't recall that happening. If she came
9 by and saw me, we discussed the case. Now, there may have
10 been once or twice that she left money up front and I
11 didn't -- wasn't there or didn't know. But if I knew she
12 was there, we'd discuss the case.

13 Q What evidence was provided in discovery by the state?

14 A It was the investigator's report of his investigation
15 in talking with the nurses, the people that performed the
16 surgery on Minor , their discussions with the sister and
17 her ex-husband, and also the statement provided by the
18 forensic psychologist of her interview of Minor .

19 Q And that was by tape, correct?

20 A Yes.

21 Q And I believe you testified that it was the Friday
22 before trial that you learned the state would be proceeding
23 on infliction of great bodily injury upon a child, correct?

24 A No. I -- it was sometime that week. I probably told
25 her the Friday she came by. But, I mean, I knew sometime

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

44

1 that week that Luck was going to amend the indictment.

2 Q And the other indictment, the unlawful neglect of a
3 child, the date was actually amended on that indictment,
4 correct?

5 A Yes.

6 Q So to the best of your recollection, Friday is when
7 you told Ms. Kromah the state would be proceeding on two
8 indictments ---

9 A Yeah.

10 Q --- correct?

11 A Yes.

12 Q Did you discuss with her at that time that she's
13 facing twenty years' exposure?

14 A I'm sure we did.

15 Q And you testified that you recall you also discussed
16 violent versus nonviolent and ---

17 A Yes.

18 Q --- 85 percent with her?

19 And I believe you testified before that you think you
20 didn't reapproach the solicitor regarding any pleas at that
21 time; that you think additional time would've helped Ms.
22 Kromah to decide whether to plead guilty.

23 A Well, if she had said to me at that time, "Look, Mr.
24 Rogers, I'm now facing twenty years; I need more time to
25 think about this," then I certainly would've gone and asked

1 for a continuance. But that -- she was always adamant that
2 she was going to trial. So I didn't think more time to
3 work out a plea negotiation would've been fruitful, when
4 she had all along said she hadn't done this and she wanted
5 a trial.

6 Q Throughout your representation of Ms. Kromah, she
7 always admitted her conduct hadn't caused these serious
8 injuries ---

9 A That's ---

10 Q --- correct?

11 A --- right.

12 Q What ---

13 A I'm ---

14 Q --- did she tell you happened to cause these injuries?

15 A She didn't know.

16 Q Okay. Did she tell you a similar story that she told
17 law enforcement and medical personnel: that she was
18 washing the child and saw blood?

19 A Yes.

20 Q In preparation for today's hearing, did you have an
21 opportunity to read the transcript from her motion to
22 reconsider or for a new trial?

23 A Yes.

24 Q Did you read her testimony, where she admitted that
25 she lied to you about causing the minor child's injuries?

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

46

1 A Yes.

2 Q And you'd never heard that information before?

3 A No.

4 Q She never indicated to you her nails might've caused
5 injury?

6 A No.

7 Q Never indicated to you that she was being rough -- I
8 think was her word -- with ---

9 A No.

10 Q --- the minor child?

11 A No.

12 Q Did she ever tell you how the minor child got these
13 various head injuries or the bruising to his abdomen?

14 A No. I think she just said, you know, rough playing --
15 kids play rough, but was nothing that she had done
16 intentionally or that anybody had done that was abusive.

17 Q And she ---

18 A She ---

19 Q --- never told you it was anything she'd done
20 accidentally?

21 A Oh, absolutely not.

22 Q Okay. Did you discuss possible -- possible defenses
23 with Ms. Kromah?

24 A Yes.

25 Q What defenses did you discuss with her?

1 A Accident and that -- and poking holes in the -- in the
2 state's case.

3 Q When you say "accident," accident is what Ms. Kromah
4 ultimately testified to at her motion to reconsider,
5 correct?

6 A Yeah -- yes.

7 Q But she would never tell you that it was an accident
8 before trial ---

9 A That's ---

10 Q --- correct?

11 A That's correct. I mean, we discussed accident because
12 I said if the jury found that she -- if it -- it was done
13 by accident, then they could not find her guilty because
14 she didn't have the intent to do anything. Now, they
15 could've found maybe guilty of the neglect. But, you know,
16 we -- we discussed that.

17 Q And what was Ms. Kromah's response to these
18 discussions?

19 A She wanted to go to trial.

20 Q And she didn't want to set forth a defense of
21 accident? She didn't want to admit that her nails or
22 anything else ---

23 A No.

24 Q --- had caused these injuries?

25 A No. Because at that time I was thinking an --

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

48

1 something in the tub caused it; you know, that she
2 inadvertently -- or -- I mean, you know, that I thought
3 that might have been an explanation. But that still
4 would've been an accident. But it also could've been
5 considered neglect.

6 But had she said, "Yeah, that's what happened," then
7 we would've gone forward with that.

8 Q In your 30-year legal career -- career, do you often
9 have clients that admit to lying to you ---

10 A No.

11 Q --- after the fact?

12 A No.

13 Q Would you briefly characterize the state's evidence
14 against Ms. Kromah? There were -- there was testimony from
15 numerous doctors, correct?

16 A Yes.

17 Q And do you recall what the testimony is in -- from
18 these doctors in regards to the particular type of cut that
19 was on the scrotum? Was it a clean cut or more of a rough
20 and jagged cut?

21 A The doctors didn't know.

22 Q You don't recall any testimony that it looked like it
23 had been cut by a scalpel or other sharp object?

24 A Yeah. But -- I think you're right. That was the
25 testimony. But it -- but I -- I thought I had elicited on

1 cross that even though that was the doctors' conclusion,
2 they still had no opinion as to what caused that injury or
3 how it was made. Yes, they were able to say that it was a
4 smooth cut. But I believe on cross I tried to explore
5 that.

6 MS. HARRIGAN: May I approach, Your Honor?

7 THE COURT: Yes.

8 Q Mr. Rogers, do you have -- oh, you have ---

9 A Yes.

10 Q --- a copy of the transcript. If you ---

11 A What ---

12 Q --- would please turn to page 164 and this is during
13 the direct testimony of Dr. Jennifer Amrol, who was an --
14 admitted as expert in pediatrics. If you would read for
15 the Court lines 13 through 16.

16 A (As read): Okay. How was this wound? How would you
17 characterize it?

18 This is a very clean cut, very straight line across
19 the scrotum.

20 Let me ask you this: Is there any condition that
21 might cause swollen testicles?

22 There are infectious diseases, elephantitis [sic],
23 where you can get severe swelling of the scrotum.

24 Q I'm sorry. Lines 13 through 16, the: "Okay. How was
25 this wound? How would you characterize it?" And then, the

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

50

1 response there?

2 A (As read): This is a very keen -- clean cut, very
3 straight line across the scrotum.

4 Q Okay.

5 MS. HARRIGAN: Moment's indulgence, Your Honor..

6 Q Mr. Rogers, if you'll please turn to page 291 in the
7 transcript. And this is during the direct testimony by Ms.
8 Campbell of the pediatric urologist, Jeffrey Ehreth.

9 A Okay.

10 Q If you'll please read lines 5 through 18 into the
11 record.

12 A (As read): Can you basically tell the jury: Was this
13 a fairly superficial laceration or what type of laceration
14 was this, the 2-inch?

15 Answer: It was about 4 centimeters long.

16 Question: Four centimeters?

17 Answer: Yes. Just -- just a hair under 2 inches. It
18 is very -- it was very sharp. It looked like a scalpel
19 incision. I'm very familiar with scalpel incisions, and it
20 went through the skin and also through what's called the
21 "cremasteric muscle."

22 There is a muscular layer right under the scrotum. So
23 when it's cold, everything kind of shrinks up. And it has
24 gone through both of those layers.

25 He was actually quite fortunate that he had -- hadn't

1 injured his testicle.

2 Q So based on those two passages that you just read into
3 the record, there was testimony presented by the state that
4 it was a very ---

5 A Yes.

6 Q --- clean cut ---

7 A I recall ---

8 Q --- correct?

9 A --- now. Yes.

10 Q And I believe your testimony was that you thought on
11 cross-examination you were able to elicit that they didn't
12 know what exactly had caused this or that it might not have
13 been as clean as this ---

14 A Yes.

15 Q --- is saying?

16 A I think so.

17 Q Okay. There were other injuries to the three-year-old
18 child, correct?

19 A Yes.

20 Q Do you recall a large knot or injury on his forehead?

21 A Yes.

22 Q Do you recall a cut and bruising on his lip?

23 A Yes.

24 Q And do you recall significant bruising on his abdomen?

25 A There was -- was bruising, I believe.

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

52

1 Q And I believe you testified before that you entered
2 into plea negotiations on Ms. Kromah's behalf with Ms.
3 Campbell, correct?

4 A Yes.

5 Q And this is before she told you that she had caused to
6 the injuries, either -- either accidental or otherwise?
7 She had always maintained she didn't ---

8 A That's correct.

9 Q --- know what caused them?

10 Would this new information, the testimony that she's
11 given here today and the testimony for her motion to
12 reconsider, would that have impacted your plea negotiations
13 with the state?

14 A Absolutely.

15 Q Is it more difficult to advocate on your client's
16 behalf when they're lying to you?

17 A Yes.

18 Q And I believe you testified to the best of your
19 recollection, you couldn't recall a numerical sentence
20 given by Ms. Campbell but that she was seeking jail time,
21 correct?

22 A That's correct.

23 Q And I believe you testified that yourself and Ms.
24 Kromah were seeking probation, correct?

25 A Yes.

1 Q And you had presented Ms. Kromah with the information
2 from Ms. Campbell that the state was seeking prison time,
3 correct?

4 A Yes.

5 Q Was it her decision to turn down plea offers and
6 proceed to trial at that time?

7 A Yes.

8 Q Regarding Allegation No. 2, that you were ineffective
9 for not informing Ms. Kromah about the two indictments, you
10 learned just the week before that Ms. Kromah was indicted
11 for both, correct?

12 A Yes.

13 Q Did this change your preparation or defense for trial?

14 A No.

15 Q Why not?

16 A Because as I said, my defense would've covered both
17 charges.

18 Q Were you ready to proceed to trial ---

19 A Yes.

20 Q --- and under both indictments?

21 A Yes.

22 Q If you were not, would you have moved for a
23 continuance?

24 A Absolutely.

25 Q At the beginning of the trial, the state moved to

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

54

1 amend one of the allegations to change the date by two
2 days, correct?

3 A Yes.

4 Q Do you recall objecting at this time, stating that you
5 were unaware if the state would be proceeding on both
6 indictments?

7 A Yes.

8 Q Do you recall what Judge Johnson ultimately ruled at
9 the beginning of the trial during pretrial?

10 A I think he ruled that they could proceed on both
11 indictments.

12 Q Do you recall him making any comments that he would
13 not punish your client twice for the same conduct?

14 A Yes.

15 Q Do you recall renewing this objection at the close of
16 the state's case when you moved for a directed verdict?

17 A Yes.

18 Q And do you recall the Court's ruling at that time?

19 A Yes.

20 Q Was it similar to the ruling before trial?

21 A Yes, it was.

22 Q Do you recall sentencing before Judge Johnson?

23 A Yes.

24 Q Do you recall Judge Johnson saying he was taking into
25 consideration that he would not punish your client for the

1 same conduct when deciding to give concurrent sentences?

2 A Yes. That's what he said.

3 Q And he did indeed give concurrent sentences, correct?

4 A Yes.

5 Q Okay. Regarding the allegation of DSS and family
6 court records, do you recall Ms. Kromah volunteering this
7 information during her testimony?

8 A Yes.

9 Q And you were here for Ms. Kromah's testimony before
10 when those passages were highlighted ---

11 A Yes.

12 Q --- correct?

13 A Yes, I was.

14 Q But your testimony today is that when this information
15 came out before Ms. Kromah's husband on direct examination,
16 that you should've objected, correct?

17 A Yes.

18 Q Do you recall testimony from numerous medical
19 personnel and doctors, all testifying that the injuries
20 were nonaccidental and appeared to be child abuse without
21 using the words DSS?

22 A Yes.

23 Q Okay. Do you recall that testimony coming out during
24 Dr. Jennifer Amrol?

25 A Yes.

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

56

1 Q So the jury was aware that numerous doctors had
2 characterized this as child abuse without hearing the term
3 DSS ---

4 A That's correct.

5 Q --- is that correct?

6 A Yes.

7 Q All right. Do you also recall testimony from Dr. Anne
8 Abel, the forensic pediatrician?

9 A Yes.

10 Q She also testified that these injuries were
11 nonaccidental and child abuse, correct?

12 A Yes. I believe so.

13 Q Regarding the allegation that you failed to object to
14 the qualification of the forensic examiner as an expert,
15 have you -- had you at this point had any cases with
16 forensic examiners prior to this trial?

17 A Yes, I did. There was a case in Orangeburg where the
18 defendant had been charged with criminal sexual conduct
19 with a minor, and there had been a forensic expert that did
20 the interview of the child in that case.

21 Q Did that ---

22 A There ---

23 Q --- case ---

24 A --- there, too, I was provided a video and so it was
25 the same ---

1 Q Did that case proceed to a trial?

2 A No, it didn't. The defendant ended up dying before
3 trial. So the issue was never -- I never ---

4 Q Tried?

5 A --- I never had to -- to face it.

6 Q Understandable. Were you aware as to whether or not
7 it was a common practice at that time for the state to seek
8 to admit forensic interviewers as expert witnesses?

9 A Yes. I thought it was.

10 Q And you testified that while you don't recall reading
11 Ms. Kromah's Supreme Court opinion, you recall a line of
12 cases that have come out since with the Court of Appeals
13 and Supreme Court advising that these experts are not to --
14 or these witnesses are not to be qualified as experts,
15 correct?

16 A Yes.

17 Q But these cases all came out after Ms. Kromah's case,
18 correct?

19 A Right.

20 Q And Ms. Kromah was tried in June of 2006, correct?

21 A Right. At the time the strategy was going to be to
22 keep the forensic expert from testifying based on the fact
23 that there had been no determination that Minor -- Minor
24 was competent.

25 Q And ---

CROSS-EXAMINATION BY MS. HARRIGAN - JAMES ROGERS

58

1 A And ---

2 Q --- do you ---

3 A --- and I thought that we could keep that testimony
4 out. That was my plan. But the judge overruled me.

5 Q And you voiced that objection several times throughout
6 the trial, correct?

7 A Yes.

8 Q And you preserved all those issues for appeal,
9 correct?

10 A Yes.

11 MS. HARRIGAN: Moment's indulgence, Your Honor.

12 Q Do you recall -- you testified that since Ms. Kromah's
13 trial in June of 2006, you read cases saying that forensic
14 interviewers should not be qualified as experts. Do you
15 recall when you first read one of these cases?

16 A Maybe 2 -- 2 1/2 years ago.

17 Q So well after this case in 2006 ---

18 A Yes.

19 Q --- correct?

20 Okay. And to the best of your recollection, back in
21 2006, this was a pretty standard practice ---

22 A I was ---

23 Q --- correct?

24 A --- aware that it -- it was being used by various
25 solicitor's offices.

1 Q And I believe you testified that at that time 99
2 percent of your practice was comprised of criminal defense

3 ---

4 A Yes.

5 Q --- correct?

6 A That's right.

7 MS. HARRIGAN: No further questions, Your Honor.

8 THE COURT: Any redirect?

9 MS. GOLDBERG: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. GOLDBERG:

12 Q Mr. Rogers, just because something's the standard
13 practice doesn't mean you can't object to it, correct?

14 A That's right.

15 Q At -- as -- as you've established earlier, during the
16 bulk of your representation of Ms. Kromah, she was only
17 charged with the neglect charge, correct?

18 A Right.

19 Q And you anticipated going to trial?

20 A Yes.

21 Q And as you understood it, you -- the defense was going
22 to be this testimony regarding accident; is that correct or
23 is that wrong?

24 A Well, it was going to be -- the defense was the
25 government couldn't prove their case.

REDIRECT EXAMINATION BY MS. GOLDBERG - JAMES ROGERS 60

1 Q Okay.

2 A Because they couldn't show how it had -- how it had
3 occurred.

4 Q But you also anticipated that she would be testifying
5 regarding it -- it possibly being an accident?

6 A What -- well, I -- I thought she was -- at -- based on
7 our discussions, she was going to testify that she didn't
8 know how it had happened.

9 Q Okay. And am I correct in that you testified on
10 direct that even given that testimony, a jury could've
11 convicted her of neglect?

12 A Yes.

13 Q So you believed that there was a likelihood that she
14 would be convicted of the neglect charge at trial?

15 A No.

16 Q Okay. Give me -- go ahead and elaborate ---

17 A Well, because ---

18 Q --- on that.

19 A --- the whole defense was that the -- the state could
20 not show beyond a reasonable doubt who did it and how it
21 occurred -- and when it occurred, for that matter. And I
22 thought -- and we discussed -- that there would be enough
23 reasonable doubt for the jury to acquit.

24 Q So you believed that it was likely that she would be
25 acquitted of that charge?

1 A I thought we had a good chance. Yes.

2 Q Okay. Thank you very much.

3 MS. HARRIGAN: No further questions.

4 THE COURT: You may step down. Thank you.

5 (Whereupon, the witness exited the witness stand.)

6 THE COURT: Any further witnesses by the applicant?

7 MS. GOLDBERG: No, Your Honor.

8 THE COURT: Any further -- any witnesses by the
9 respondent?

10 MS. HARRIGAN: No, Your Honor.

11 THE COURT: I'll be happy to hear closing arguments.

12 But I -- I -- I'm sure that I will probably ask you for
13 proposed orders. So if you want to incorporate your
14 arguments into the proposed order, that would be fine ---

15 MS. HARRIGAN: That's ---

16 MS. GOLDBERG: That --- that's fine ---

17 THE COURT: --- unless ---

18 MS. GOLDBERG: --- with -- with me.

19 THE COURT: --- you want to just state them on the
20 record. I don't ---

21 MS. GOLDBERG: If that -- I don't know that there's
22 any need for them to be on the record as long as they're in
23 writing. So if that saves the Court time, I've got no
24 objection ---

25 THE COURT: Okay.

REDIRECT EXAMINATION BY MS. GOLDBERG - JAMES ROGERS 62

1 MS. GOLDBERG: --- to that.

2 MS. HARRIGAN: No objection from the state as well,
3 Your Honor.

4 MS. GOLDBERG: I guess if we could just make sure that
5 both of our proposed orders are -- instead of just sending
6 them to Your Honor, somehow get them to the clerk's files
7 so that they're preserved.

8 MS. HARRIGAN: No objection from ---

9 THE COURT: That's fine. I don't ---

10 MS. GOLDBERG: Yeah.

11 THE COURT: --- have a ---

12 MS. GOLDBERG: However we need ---

13 THE COURT: I don't ---

14 MS. GOLDBERG: --- to do it.

15 THE COURT: I don't have a problem doing that. I
16 mean, I don't have a problem having it clocked in, in the
17 clerk's office.

18 MS. GOLDBERG: Okay.

19 MS. HARRIGAN: Wonderful.

20 THE COURT: How about April 4th? It's a Friday.

21 MS. HARRIGAN: That should be enough time for the
22 state, Your Honor.

23 THE COURT: And -- and my practice is generally to
24 just have you put all your arguments in there and not worry
25 about making counter-arguments.

1 MS. GOLDBERG: Okay.

2 THE COURT: I -- I presume that whatever -- since
3 you've heard all of her arguments, you will anticipate kind
4 of what the arguments would be. And if you send it to me
5 in electronic format, in Word -- Word format, not a PDF.

6 MS.. HARRIGAN: Certainly, Your Honor.

7 THE COURT: And you need to send it to my law clerk's
8 e-mail address.

9 MS. HARRIGAN: Okay.

10 MS. GOLDBERG: Thank you, Your Honor.

11 MS. HARRIGAN: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 (Whereupon, the proceeding was concluded at 10:53 a.m.)

14 --- END OF TRANSCRIPT OF RECORD ---

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE EXCERPT OF TRANSCRIPT OF RECORD IN THE
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN
THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA,
ON THE 18TH DAY OF MARCH, 2014.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 11, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Miama Kromah, #316117,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Docket No. 2013-CP-400895

ORDER OF DISMISSAL

JEFFREY M. MCBRIDE
C.C. R. & G.S.

2014 JUN -9 PM 2:29

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief filed February 13, 2013; this application was completely blank and failed to state any ground on which relief was sought. Respondent made its Return and Motion to Dismiss for failure to state a claim. A Conditional Order of Dismissal was signed on July 30, 2013, giving Applicant twenty days to show why the dismissal should not become final. In response, Applicant filed an amended application, alleging ineffective assistance of counsel. An Order Vacating the Conditional Order of Dismissal and Setting the Matter for an Evidentiary Hearing was signed on September 16, 2013. Thereafter, Applicant, through counsel, filed an amended application on January 6, 2014. An evidentiary hearing into the matter was convened March 18, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Kristy G. Goldberg, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the September 2005 term of the Richland County Grand Jury for Unlawful Neglect of a Child (2005-GS-40-8139) and during the April 2006 term of the Richland County Grand Jury for Infliction of Great Bodily Injury upon a Child (2006-GS-40-2991). James P. Rogers, Esquire, represented Applicant. On June 13, 2006, Applicant proceeded to a jury trial where she was convicted as indicted on both counts. On June 15, 2006, The Honorable James W. Johnson, Jr. sentenced Applicant to eighteen years imprisonment for Great Bodily Injury upon a Child and ten years imprisonment for Unlawful Neglect of a Child, with the sentences to be served concurrently.

Thereafter, Applicant filed a motion to reconsider her sentence and a motion for a new trial based on newly discovered evidence. A hearing on these motions was heard on December 19, 2007 before Judge Johnson. Applicant was present at the hearing and represented by Tara D. Shurling, Esquire. Judge Johnson declined to amend her sentence or grant a new trial.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tara D. Shurling, Esquire. After briefing and argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Kromah, Op. No. 2009-UP-322 (Ct. App. filed June 15, 2009). A subsequent Petition for Rehearing was denied on August 25, 2009. A Petition for Writ of Certiorari to the Supreme Court was filed on Applicant's behalf. Following briefing and argument, the South Carolina Supreme Court affirmed the Court of Appeals ruling. State v. Kromah, 402 S.C. 340, 737 S.E.2d 490 (2013). The Remittitur was sent on February 8, 2013.

In her amended application for post-conviction relief, Applicant alleged the following claims of ineffective assistance of counsel:

1. Ineffective assistance of counsel regarding plea negotiations;
2. Ineffective assistance of counsel for failure to sufficiently place defendant on notice that the State would be proceeding against her on two indictments;
3. Ineffective assistance of counsel for failure to object to the qualification of the forensic examiner as an expert witness; and
4. Ineffective assistance of counsel for failure to object to the introduction of testimony regarding findings and custody orders by DSS and Family Court.

Applicant proceeded on these four grounds at the evidentiary hearing.

SUMMARY OF FACTS ADDUCED AT TRIAL

Applicant is the stepmother of the minor victim. In the early morning hours of August 16, 2005, Applicant gave the minor victim a bath. During his bath, the minor victim's scrotum was cut, resulting in such a severe injury that his testicle became exposed. Applicant was charged with unlawful neglect of a child and infliction of great bodily injury upon a minor as a result of the cutting of the scrotum.

Applicant took the minor victim to Lexington Medical Center's emergency room. Instead of demanding treatment, she waited in the waiting room until she was seen by the triage nurse. (Tr. p. 72-74). At trial, the triage nurse testified Applicant was calm and did not seem to

consider the injury an emergency. The nurse testified the first time Applicant showed a reaction or became anxious was when the nurse called the ER to rush the child to a room for evaluation and treatment. (Tr. p. 76-78). Applicant testified that she went to the emergency room at Lexington Medical Center and told them her child needed to see a doctor. She was instructed to give the name and then sit down and wait for them to call. She did not scream or yell. She does not know how long they waited because the waiting room was full. (Tr. P. 384-385).

Applicant told the nurses and doctors that she noticed the minor victim's scrotum was swollen when she undressed him for a bath. She put him in warm water and placed a warm washcloth on the scrotum to try and reduce the swelling. She indicated she placed pressure on the scrotum with the warm washcloth and then noticed blood. (Tr. p. 91; 136; 163; 233-234).

The minor victim was transferred to Palmetto Health Richland in order to obtain the services of a pediatric urologist and to place the minor victim in their pediatric ICU. Dr. Erin Fields-Harris testified she examined the minor victim upon his arrival to Palmetto Richland. She indicated the minor victim had a "four to five centimeter 'V' shaped clean, linear laceration" with the testicle outside the scrotum. (Tr. p. 141). She further testified that the laceration "did not appear that it was consistent with the pressure that [Applicant] had initially told me she applied." Dr. Fields-Harris indicated the laceration was consistent with "traumatic injury" and appeared "the child had been injured intentionally." (Tr. p. 148-149).

Dr. Jennifer Amrol, the attending physician in the Department of Pediatrics for the University of South Carolina School of Medicine, testified she examined the minor victim, and the most common "cause of this type of injury would be non-accidental trauma." (Tr. p. 163). She further testified that the scrotum does not just burst, but that it has to be cut in order for the testicle to come out of the scrotum. (Tr. p. 164). She also testified that a typical accidental trauma would result in a ragged edge, but the minor victim's laceration was a "clean cut, very straight line across the scrotum." (Tr. p. 164). Finally, Dr. Amrol testified the injury to the minor victim was not consistent with Applicant's story, and the injury was caused by non-accidental trauma or child abuse. (Tr. p. 166).

Dr. Anne Able, the Director of the Violence Intervention and Prevention Program in the Department of Pediatrics at the Medical University of South Carolina, was qualified as an expert in forensic pediatrics. Dr. Able examined the minor victim approximately sixteen hours after he presented with his injuries. (Tr. p. 237-238). She testified the minor victim had a large bruise on

his abdomen which was still tender to the touch. She explained the bruise was consistent with being held down by a foot or hand. (Tr. p. 238; p. 245). Dr. Able diagnosed the injury to the minor victim's scrotum and other bruises as the result of non-accidental, physical abuse. (Tr. p. 245-246). She opined the incision was made with a sharp object such as a scalpel, razor, or box cutter. (Tr. p. 246-247). Finally, Dr. Able indicated Applicant's story regarding how the injury occurred was not consistent with the medical facts because if the scrotum had burst or popped, then it would have had a rough or star-shaped opening instead of the clean, single cut that was present. (Tr. p. 249-250).

Finally, Dr. Jeremy Ehreth, one of two pediatric urologists in South Carolina, performed the surgery to repair the scrotum of the minor victim. (Tr. p. 287-288). He noted the injury was not consistent with a pressure injury or similar traumatic event. (Tr. p. 290-292). Specifically, Dr. Ehreth testified "it looked like a scalpel incision" and that the instrument causing the laceration "had to be something sharp, and we're talking scalpel, razor blade, steak knife, something very sharp." (Tr. p. 291-292). Finally, he testified there was no possibility the injury was accidental. (Tr. p. 294).

Investigator Roy Livingston testified he took Applicant's statement. In the statement, she relayed a similar story to the one told to the medical professionals. (Tr. p. 325-326). Investigator Livingston indicated he spoke with Applicant, her husband, and the minor victim. As a result of the investigation, he testified he placed Applicant under arrest. (Tr. p. 330-331).

The minor victim did not testify at trial because he was relocated to Liberia by his father, Applicant's husband. Applicant's husband, Musa Kromah, testified he sent the minor victim to Liberia to be with Musa's mother. He stated he sent him to Liberia around May 20, roughly three weeks before trial because he "did not want him being involved in this whole case." (Tr. pp. 277-278). He testified it was a "family decision" to send the child back because it would be cheaper and because Applicant could not live with the minor victim. (Tr. p. 279).

Applicant testified consistently with her story to the medical professionals and to Investigator Livingston. She stated she noticed the minor victim's scrotum was swollen and tried to put pressure on it with a warm washcloth. (Tr. p. 378-384). Applicant said she noticed the blood and took the minor victim to the hospital. (Tr. p. 384-385).

End
#4

Applicant was convicted on both counts and was sentenced to eighteen years imprisonment for Infliction of Great Bodily Injury upon a Child and ten years for Unlawful Neglect of a Child. (Tr. p. 525-530).

SUMMARY OF TESTIMONY PRESENTED AT POST-TRIAL HEARING

Following her conviction, Applicant filed a post-trial motion for reconsideration and a new trial based on newly discovered evidence. A hearing on these motions was convened December 19, 2007 before Judge Johnson. At this hearing, Applicant testified on her own behalf. Applicant's testimony at this hearing was wholly inconsistent with her trial testimony, and she testified that it was her rough handling of the minor child that caused his injuries and in particular, that her acrylic fingernails caused the severe injury to the child's scrotum. (Dec. 19, 2007 Tr. pp. 16-19). She testified that she purposefully lied to everyone about the injuries including counsel. Specifically, Applicant testified:

Q: At the time you were getting ready to go to trial and you were working with Jimmy Rogers –

A: Uh-huh.

Q: -- Did you ever tell Jimmy Rogers the truth?

A: No, ma'am.

Q: You didn't, did you?

A: (Witness shakes head in the negative).

Q: Okay. So Mr. Rogers didn't really know what he was dealing with, did he?

A: No, ma'am.

Q: Okay. That's not his fault, is it?

A: No, ma'am.

(Dec. 19, 2007 Tr. p. 22 lines 9-20). Applicant also called her husband at the time, Musa Kromah, to testify on her behalf, as well as the minor child. Following the hearing, Judge Johnson declined to grant Applicant a new trial or amend her sentence.

SUMMARY OF TESTIMONY PRESENTED AT THE PCR HEARING

At the PCR evidentiary hearing, Applicant testified on her own behalf and presented testimony from trial counsel, James P. Rogers (hereinafter "Counsel"). This Court also had before it Applicant's trial and motion for reconsideration and/or a new trial transcripts, the records from the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified she was convicted of Great Bodily Injury upon a Child and Unlawful Neglect of a Child. She did not know that Infliction of Great Bodily Injury upon a Child required service of 85% of the sentence until she entered SCDC. She hired Counsel shortly after her arrest in the fall of 2005 for Unlawful Neglect of a Child. She did not know of any other pending charges at that time, including the Great Bodily Injury of a Child charge for which she was later indicted. She was also the subject of an on-going Department of Social Services (DSS) investigation and family court action at the same time and that Counsel represented her in those cases as well. Applicant met with Counsel in his office and during court proceedings, but that most of these meetings were only to drop off payments and not to discuss her case. Counsel reviewed discovery, including the forensic report, with her. She was the only person at home with the minor child when his injuries occurred and acknowledged that because of this, there were no additional witnesses for Counsel to interview or investigate. Defenses were discussed with Counsel and she always consistently denied causing the injuries to the child; this was the planned defense at trial.

She discussed pleading guilty with Counsel and asked Counsel to seek a favorable plea agreement with the State for a probationary sentence. Counsel told her that he spoke with the State regarding a plea offer but that the State informed him that it was seeking imprisonment and would not agree to a probationary sentence. Counsel informed her that she should proceed to trial if she did not want to accept a plea offer requiring a term of imprisonment. She moved to the United States from Liberia when she was fifteen years old and attended Columbia High School. This was her first experience with the United States legal system. She trusted Counsel and the advice he gave her, so she elected to proceed to trial. She believes counsel should have encouraged her to plead guilty and that she would have pled guilty if the State had made her a plea offer.

Shortly before trial, Counsel informed her that she had been indicted for Infliction of Great Bodily Injury upon a Child. Counsel did not discuss with her whether this new indictment was for a violent offense. She also did not discuss with Counsel re-approaching the State to seek a plea offer on this new indictment. No bond hearing or preliminary hearing for this new indictment was held. She discussed the sentencing range for the new indictment with Counsel the Friday before her trial began and was aware that she was facing up to 20 years imprisonment. Counsel objecting to the second indictment at the beginning of her trial, as well as at the close of

and
8/6

the State's case. The trial court stated that it was considering this when sentencing her to concurrent time rather than consecutive terms of imprisonment.

Applicant testified that she took the stand in her defense at trial, which she had discussed with Counsel before trial. Her testimony at trial was that she was washing the child with a washcloth when she noticed blood in the water, but that her testimony at her post-trial motions hearing was completely different. At the post-trial hearing, she testified that her acrylic fingernails cut the child while she was roughly giving him a bath. She also acknowledged that at the post-trial hearing she testified that the other injuries were caused by her being excessively rough with the child. At that hearing she testified that she had previously lied to her husband, law enforcement, hospital and medical personnel, doctors, and her attorney regarding the source of the child's injuries. She acknowledged that she testified that she was never truthful with Counsel regarding how the injuries occurred. She testified that she caused all of the injuries to the minor child due to her roughness in handling and bathing him. The reason she consistently lied to all persons associated with the case, including Counsel, was because she was afraid of what might happen to her and how others' opinions of her might be negatively impacted. She testified that she is indeed guilty and did cause the injuries to the child.

During her trial testimony, she volunteered information regarding the DSS and family court action, but that she only brought up this information in response to questions asked by the State. She would not have mentioned these other actions if not questioned by the State.

Following Applicant's testimony, Jimmy Rogers, trial counsel testified. He has been practicing law for close to thirty years and is currently employed as a Federal Public Defender. He was in private practice when he was retained to represent Applicant. Approximately 99% of his practice was criminal defense at the time of Applicant's trial. He was retained shortly after her arrest in September or October of 2005. He met with Applicant and her family "many, many times" and spoke with her frequently on the phone regarding her case. He also represented Applicant on her DSS and Family Court actions stemming from the same incident. Every time he saw Applicant, he discussed her case and any new developments with her.

Counsel filed all appropriate Rule 5, SCRCrimP and Brady motions and reviewed the materials with her. The discovery consisted of investigative reports, discussions with medical personnel and doctors who treated the minor child, the forensic report and videotape. Counsel also spoke with her husband, sister, and mother regarding the case. Applicant was the only

ad
#7

person at home with the minor child, there were no other witnesses to interview or investigate in preparation for trial. Applicant was consistently adamant that she had in no way whatsoever contributed to the minor child's injuries. She maintained that she only applied a washcloth while bathing the child. In preparation for the PCR evidentiary hearing, Counsel reviewed the transcript from the post-trial motions hearing, including Applicant's testimony. He was shocked to read Applicant's testimony admitting she lied to him and that her actions caused the minor child's injuries. In his thirty year career, he has never had another client admit to blatantly lying to him throughout his representation. He testified that it is harder to represent a client who is not being honest and who is purposefully deceitful.

Applicant always indicated that she was innocent and wanted to proceed forward to trial. He did speak with the State about a plea offer and sought a probationary sentence, but the State refused. When he discussed this with Applicant, she was adamant that she wanted to proceed to trial and would not accept any offer requiring prison time. His plan for the defense was "poking holes in the government's theory." He discussed with Applicant before trial her right to testify in her own defense and that it was her decision to testify.

When he was retained, Applicant was only charged with Unlawful Neglect of a Child. He learned of the second indictment for the infliction of great bodily injury upon a child a week before trial. Upon learning of the second indictment, he informed Applicant of the second indictment and reviewed the elements and possible sentence with her, as well as violent versus non-violent nature of the offenses. He thought the second indictment for Infliction of Great Bodily Injury upon a Child would replace the first indictment for Unlawful Neglect of a Child and was surprised at the start of trial when the State indicated that it was proceeding forward on both. This did not change his defense at all because the allegations were virtually the same and both covered the same conduct. He argued to the trial court that the State should not be allowed to proceed forward on both indictments, which was overruled by the trial court. This objection was renewed at the close of the State's case and at the end of the trial. The trial court noted it would not punish Applicant twice for the same crime and gave her concurrent sentences. He did not approach the State about a plea offer upon learning of the new indictment because Applicant was adamant that she had not caused the minor child's injuries and she was not willing to admit that she caused the injuries.

and
#8

Following the trial, Applicant retained Tara Shurling, Esquire, to represent her on her appeal and post-trial motions. He has not read the South Carolina Supreme Court opinion regarding Applicant's case. He did not object to the forensic interviewer's qualifications as an expert because at the time of the trial he did not believe he had any grounds to do so. He testified that now, in light of appellate opinions following Applicant's case, he would object. At the time of Applicant's trial, it was not uncommon for a forensic interviewer to be qualified as an expert. His strategy in regards to the forensic interviewer was that she should not be allowed to testify at all, as the minor child was unavailable and incompetent to testify.

Counsel testified that he also represented Applicant on her DSS and Family Court proceedings and recalled the State asking Applicant's husband about these proceedings during his testimony. He testified that he did not find the testimony to be objectionable during the trial or he would have so objected, but now thinks that he could have objected to this testimony and did not object. He testified that Applicant did volunteer information regarding DSS and family court actions during her testimony. He also testified that the testimony from several doctors revealed that the injuries to the child clearly indicated abuse and were intentionally inflicted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds that Counsel's testimony is credible and that Applicant's testimony lacks credibility.¹ 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).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

¹ It is important to note that Applicant admitted that she lied previously while under oath during her trial, as well as lied to law enforcement, medical personnel and doctors involved in the case, and her own counsel numerous times.

The proper measure of performance is whether an 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. 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. Where there is overwhelming evidence of guilt, an applicant cannot show that but for counsel's alleged errors, the result of the proceeding would have been different. Harris v. State, 377 S.C. 66, 79-80, 659 S.E.2d 140, 147 (2008).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry her burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel:

Allegation that counsel was ineffective regarding plea negotiations

Applicant alleges that Counsel was ineffective for failing to secure a favorable plea offer on her behalf and advising her to proceed to trial. The uncontroverted testimony before this Court is that before her trial, Applicant adamantly denied causing the multiple injuries to the minor child and repeatedly told Counsel that she wanted to proceed to trial. Applicant admitted both during her post-trial testimony and at the evidentiary hearing that she lied to Counsel about the cause of the minor child's injuries. (See Dec. 19, 2007 Tr. p. 22 lns 9-20). Counsel testified that based on Applicant's repeated assertions that she had not caused the injuries and wanted to proceed to trial, he did not re-approach the State for further plea negotiations beyond the initial discussion where the State indicated it would seek imprisonment if she pled guilty. This Court finds that Counsel's performance was within the range of competency required and was prudent based on the information Counsel received from his client. This Court finds that Counsel's performance was not deficient.

ad
#10

Additionally, this Court finds that Applicant has failed to establish any resulting prejudice from Counsel's alleged deficiency. Counsel's credible testimony is that Applicant repeatedly insisted that she did not want to plead guilty. Counsel testified that he informed Applicant that the State was seeking a term of imprisonment in exchange for a guilty plea and that Applicant was insistent that she would not accept a plea offer that would require the service of any term of imprisonment. However, at the evidentiary hearing, Applicant, who admitted that she had lied during previous court proceedings while under oath, now insisted that she would have pled guilty to any offer from the State, regardless of the terms. As discussed above, Applicant's testimony lacks credibility. Furthermore, Applicant could have pled guilty without any negotiation or recommendation from the State and achieved the same result. Applicant elected not to do so and proceeded to trial. Applicant has failed to prove both deficiency and prejudice, this Court finds that this allegation must be denied and dismissed with prejudice.

Allegation that counsel failed to place Applicant on sufficient notice that the State would be proceeding against her on two indictments

Applicant alleges that trial counsel was ineffective for failing to sufficiently advise her that the State would be proceeding against her on both indictments for Infliction of Great Bodily Injury upon a Child and Unlawful Neglect of a Child. The undisputed testimony before this Court is that Counsel was not informed by the State that it would be proceeding forward on the Infliction of Great Bodily Injury upon a Child indictment until a week prior to trial. Counsel testified and Applicant confirmed that Counsel reviewed the elements of this charge, the potential sentences, and the specifics of the charge (violent versus non-violent) upon learning the State would be proceeding on this indictment. Counsel's credible testimony reveals, and the record confirms, that Counsel was not informed that the State would be proceeding on both indictments until the day of trial. (See Trial. Tr. p. 8-11.) Upon learning that the State would be proceeding on both indictments, Counsel objected and renewed his objection at all appropriate times to preserve this issue for appellate review. Counsel testified that this did not affect his trial strategy, as both indictments pertained to the same conduct and required the same defense. This Court finds that Counsel's performance was reasonable in light of the circumstances of this case and finds that he performed competently in accordance with professional standards.

Furthermore, this Court finds that Applicant has failed to meet her burden of establishing any resulting prejudice from this alleged deficiency. Applicant was informed prior to trial that

the State would be proceeding on an indictment for the Infliction of Great Bodily Injury Upon a Child and advised by Counsel as to potential sentences and elements of the offense. Counsel testified that Applicant consistently insisted she wanted to proceed to trial, even in light of this new indictment. Applicant has failed to satisfy her burden of establishing that her actions would have been any different if she had been provided more notice from Counsel regarding this second indictment. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to object to qualifications of the forensic interviewer as an expert witness

Applicant alleges that Counsel was ineffective for failing to challenge the qualifications of the forensic interviewer as an expert witness. (See p. 198-200). In support of this position, Applicant relies on her South Carolina Supreme Court decision where the Court states that it "can envision no circumstance where [forensic examiners'] qualification as an expert at trial would be appropriate." Kromah, 402 S.C. at 357 n. 5, 737 S.E.2d at 499. In making this determination, the Kromah Court cites to State v. Douglas, a 2009 case where the Court also expressed concern over the qualifications of forensic interviewers as expert witnesses. 380 S.C. 499, 500, 671 S.E.2d 606 (2009). Counsel testified that he did not object to the forensic interviewer's qualifications as an expert because at the time of the trial he did not believe he had any grounds to do so. He testified that now, in light of appellate opinions following Applicant's case, he would object. He testified that at the time of Applicant's trial, it was not uncommon for a forensic interviewer to be qualified as an expert. He testified that his strategy in regards to the forensic interviewer was that she should not be allowed to testify at all, as the minor child was unavailable and incompetent to testify.

This Court finds that Counsel's performance was reasonable in light of the case law at the time of Applicant's trial. The South Carolina Supreme Court has stated, "[w]e have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial." Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). See also Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993); see also Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992); Arnette v. State, 306 S.C. 556, 413 S.E.2d 803 (1992); Kirkpatrick v. State, 306 S.C. 359, 412 S.E.2d 389 (1991). In the present case, Applicant was tried in 2006, well before Douglas and clearly before the Supreme Court opinion in Applicant's own case. Both

ad
*12

Douglas and Kromah, address the expert qualification of forensic interviewers as a matter of first impression for the Court and is not part of a longstanding precedent challenging such qualifications. The practice of qualifying forensic interviewers as expert witnesses was widespread and commonplace at the time of Applicant's trial. See Douglas, 380 S.C. at 503 n. 2, 671 S.E.2d at 609-610. This Court finds that Counsel's performance in regards to this allegation was competent based on professional standards and case law at the time of Applicant's trial, and therefore, he was not deficient.

Additionally, this Court finds that Applicant has failed to meet her burden of establishing any resulting prejudice from this alleged deficiency. In Kromah, the Supreme Court addresses the issue of Smith's qualification as an expert witness despite noting that no objection was made to her qualifications. Kromah, 402 S.C. at 357 n. 5, 737 S.E.2d at 499. As the Court addressed this issue, rather than simply determining that the issue was not preserved for appellate review, Applicant can show no prejudice from Counsel's failure to object. Furthermore, Applicant can show no prejudice based on the overwhelming evidence of her guilt. See Harris v. State, 377 S.C. 66, 79-80, 659 S.E.2d 140, 147 (2008) (where there is overwhelming evidence of guilt, an applicant cannot show that but for counsel's alleged errors, the result of the proceeding would have been different). In Kromah, the Court determined that any errors made were harmless due to the overwhelming evidence of Applicant's guilt. Id. at 361-62, 401 S.E.2d 501. Specifically, the Court determined:

Smith testified in camera that the Child told her he had been hurt and that Kromah was the perpetrator. However, Smith's challenged testimony before the jury was that child abuse occurred in this case, the essential portion of which was outlined above, and it did not go so far as to indicate that Kromah was the perpetrator of the injuries. Rather, Smith restated what the overwhelming evidence had already indicated, that the injury was the result of physical abuse. Cf. Jennings, 394 S.C. at 480, 716 S.E.2d at 94-95 (finding error in the admission of hearsay evidence and the forensic interviewer's report making a "compelling finding" of child abuse, interpreted to mean the interviewer found the children believable; the error was not harmless where "[t]here was no physical evidence presented in this case" and "[t]he only evidence presented by the State was the children accounts of what occurred and other hearsay evidence of the children's accounts").

According to her own testimony, Kromah was alone with the Child in the bathroom when the bleeding incident occurred, and he had

ad
#13

not been bleeding prior to this time. Numerous medical experts testified that the Child's genital wound could not have been caused by an accidental injury. They reached this conclusion based on the pattern of the wound and the circumstances of the Child's injury (spontaneous bleeding along with straight-edged lacerations in a V-shape that were consistent with the Child being cut by a razor, knife, box cutter, or other sharp instrument). Thus, Kromah's statements that the Child spontaneously started bleeding after she applied a warm washcloth while giving him a bath and that she had no idea how the Child's testicle came to be protruding from the Child's scrotum are inconsistent with the overwhelming expert medical evidence in the record that the wound resulted from physical abuse.

In addition, there was evidence of other injuries to the Child, such as an abrasion on the forehead, lip lacerations, and abdominal bruising, all of which were recently inflicted and indicative of physical abuse. Based on the entire record, including the physical evidence documented in this case, the challenged testimony could not reasonably have affected the result of the trial, so any error in its admission was harmless beyond a reasonable doubt.

Id. Based on the foregoing, Applicant has failed to satisfy her burden of establishing prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to object to testimony regarding the findings and custody orders by DSS and Family Court

Applicant alleges that Counsel was ineffective for failing to object to the introduction of testimony from various witnesses pertaining to the findings and custody orders by DSS and the Family Court. Specifically, Applicant alleges that any testimony or evidence indicating that Applicant was prevented from living with or having any visitation with the minor child was prejudicial to her and that Counsel was ineffective for failing to object to such testimony. Counsel testified he did not find the testimony objectionable at the time or he would have posed such an objection, but now, looking back at the testimony, could have objected to such testimony and failed to do so. He testified that Applicant did volunteer information regarding DSS and Family Court actions during her testimony. He also testified that the testimony from several doctors revealed that the injuries to the child clearly indicated abuse and were intentionally inflicted.

and #24

This Court finds that Counsel was not deficient for failing to object to such testimony. The United States Supreme Court has warned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, reviewing courts must be wary of second-guessing trial counsel's tactics. Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (citing Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992)). Counsel testified that at the time of trial, he did not think such testimony was objectionable or he would have objected. It is only now looking back and reviewing the trial transcript that he believes such testimony to be objectionable. This Court finds that Counsel's performance was reasonable and not deficient.

Moreover, this Court finds that Applicant has failed to meet her burden of proof of establishing prejudice. Applicant brought up the DSS and Family Court actions voluntarily during her trial testimony without any provocation from the State. (See Tr. p. 391 ln. 10-11); p. 393 ln. 3-6 & ln. 20-24; p. 394 ln. 6-7). There was also testimony from several medical experts that the injuries to the minor child were consistent with child abuse and were intentionally inflicted. (See Tr. p. 163 lns. 5-16; p. 246-247). Any reasonable juror would conclude that such intentionally inflicted injuries would require the intervention of both DSS and the Family Court. Furthermore, as discussed above in detail, there is overwhelming evidence of Applicant's guilt. Harris, supra. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

end
#15

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit

June 6, 2014
Columbia, South Carolina.

ad
8/16

WITNESSES

WMA
(S) Inv. Roy Livingston, RCSD

DOCKET NO. 2U06-GS-40-2991

The State of South Carolina

County of Richland

42

COURT OF GENERAL SESSIONS

APRIL TERM 2006

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

THE STATE
vs.

MIAMA KROMAH

ACTION OF GRAND JURY

TRUE BILL

Forperson of Grand Jury
Date: APR 18 2006

VERDICT

INFILCTION OF GREAT BODILY
INJURY UPON A CHILD

SC Code: 16-3-95(A)

CDR Code: 2766

Class: FEL/C

Forperson of Petit Jury
Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 11 2007
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 19, 2006, the Grand Jurors of Richland County present upon their oath:

INFLICTION OF GREAT BODILY INJURY UPON A CHILD

That MIAMA KROMAH did in Richland County on or about August 16, 2005, inflict great bodily injury upon a child to wit: did cut the scrotum of victim, three-year old stepson, with very sharp object. All in violation of S.C. Code Section 16-3-95(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR

1-973637

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE
against

Miana R Kromah

Address: Andrews Rd

Columbia, SC 29210-

Phone: SSN:

Sex F Race: Height 5 Weight 150

DL State: DL #:

DOB: Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Roy Livingston

Offense: Unlawful Conduct Toward A Child

Offense Code: 2481

Code/Ordinance Sec: 20-07-0050

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be
dealt with according to the law. The accused

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Miana R. Kromah
on

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

AFFIDAVIT

☒ County/ ☐ Municipality of

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

Personally appeared before me the affiant

Roy Livingston

violate the criminal laws of the

who

being duly sworn deposes and says that defendant

Miana R Kromah

State of South Carolina (or ordinance of

did within this county and state on

08/18/2005

)

State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

)

in the following particulars:

DESCRIPTION OF OFFENSE:

Unlawful Conduct Toward A Child

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on 08/16/2005 while at St Andrews Rd. APT in the Dutch Fork Magisterial District of Richland
County, one Miana R. Kromah did commit the crime of Unlawful Conduct Toward A Child in that she did cut the
scrotum of her three year-old stepson with a very sharp object. The victim gave a statement identifying the defendant
as that person who injured him. The defendant was the only person with the victim at the time the injury was
sustained. The victim was transported to Lexington Medical Center and then to Palmetto Richland Children Hospital
for surgery. The victim was also taken into Emergency Protective Custody And TOT DSS. Affiant and others are
witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 8/18/2005

defendant Miana R Kromah

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Richland Bond Court

) as set forth below.

DESCRIPTION OF OFFENSE:

Unlawful Conduct Toward A Child

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me
on 08/18/2005

Signature of Issuing Judge (L.S.)

Central Court

Judge Code: 5469

7p27

Judge's Address 1400 Huger Street

Columbia, SC 29201-3012

Judge's Telephone (803)576-2300

Issuing Court ☒ Magistrate ☐ Municipal

CERTIFIED TRUE COPY
OF ORIGINAL FILED
08/19/2005
C.C.C.P.86-S

RICHLAND COUNTY
SOUTH CAROLINA

ORIGINAL

ORIGINAL

ORIGINAL

Judge

Shuster

on

8-18-05

Type and Amount:

\$ 10,000 SB.

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

WITNESSES

⑤ Roy Livingston, RCSD

DOCKET NO. 2005-GS-40-8139

The State of South Carolina
County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

Defendant

ARREST WARRANT NUMBER
1973637

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

MIAMA KROMAH

ACTION OF GRAND JURY

TRUE BILL

Indra Phung
Foreperson of Grand Jury
SEP 14 2005

VERDICT

Indictment for

UNLAWFUL NEGLECT OF A CHILD

SC Code: 20-7-50
CDR Code: 2481
Class: E/FELONY

Foreperson of Petit Jury
Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED
James H. Lurges
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

UNLAWFUL NEGLECT OF A CHILD

At a Court of General Sessions, convened on September 14, 2005 the Grand Jurors of Richland County present upon their oath:

UNLAWFUL NEGLECT OF A CHILD

That MIAMA KROMAH did in Richland County on or about August 16¹⁶, 2005 while having charge or custody of a child, or who is the parent or guardian of a child who is responsible for the care and support of a child three year old stepson:

1. place the child at unreasonable risk of harm affecting the child's life, physical or mental state, or safety, or
2. do or cause to be done unlawfully or maliciously and bodily harm to the child so that the life or health of the child was endangered or likely to be endangered, or
3. willfully abandon the child

to wit: the defendant did cut the scrotum of victim with very sharp object resulting in surgery. All in violation of S.C. Code of Laws § 20-7-50.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR