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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

MIAMA KROMAH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001294

SUPPLEMENTAL APPENDIX

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COUNTY OF RICHLAND)	05-GS-40-8139
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THE STATE OF SOUTH CAROLINA,)	
)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
MIAMA KROMAH,)	
)	
DEFENDANT,)	

December 19th, 2007
Lexington, South Carolina

BEFORE:

THE HONORABLE JAMES W. JOHNSON, JR., JUDGE.

APPEARANCES:

KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
Attorney for the State

TARA DAWN SHURLING, ATTORNEY AT LAW
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

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DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Affidavit, Miama Kromah	4	
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1 (WHEREUPON, State's Exhibits Nos. 1, 2, 3 were marked
2 for identification only.)

3 THE COURT: All right. This is a Richland County
4 case.

5 MS. SHURLING: Oh, sorry. These are the affidavits.

6 THE COURT: Ms. Campbell represents the state.

7 MS. CAMPBELL: Thank you, Judge.

8 (Pause).

9 MS. SHURLING: Would Your Honor like me to proceed?

10 THE COURT: Yes, ma'am. Let me get the date so I can
11 make a record.

12 MS. SHURLING: June 16th, '06.

13 THE COURT: All right, Ms. Shurling.

14 MS. SHURLING: Thank you, Your Honor. For the
15 record, I am Tara Shurling. I am retained counsel for
16 Miama Kromah.

17 Your Honor, Ms. Kromah was convicted of infliction of
18 great bodily injury upon a child and unlawful neglect of a
19 child before Your Honor back on June 15th, 2006.

20 At that time, she was represented by James P. Rogers,
21 known as Jimmy to most of us. Jimmy Rogers filed -- the
22 following day filed a motion to reconsider sentence which
23 has been pending before this court since that time.

24 I was subsequently hired by the family to perfect a
25 direct appeal on behalf of Ms. Kromah, and in gathering

1 records for this case discovered that there was this
2 pending motion for reconsideration of a sentence.

3 THE COURT: I would note that until I was notified by
4 your office, I don't think this Court had been served with
5 a copy of that.

6 MS. SHURLING: And again, my apologies for that, Your
7 Honor. I am sorry that Mr. Rogers' office had not served
8 you. However, as I said, that was fortunately, this time,
9 not my mistake. I was not counsel of record at that time.

10 THE COURT: Yes, that's correct.

11 MS. SHURLING: Your Honor, since the time I was
12 hired, I've had the opportunity to spend a good deal of
13 time with Ms. Kromah.

14 I've had several meetings with her at the Women's
15 Center and have had the benefit of some discussions with
16 her concerning the incident in question in light of some
17 intervening counseling that she has had.

18 I have discussed with her at great length the
19 potential pros and cons of presenting testimony before
20 Your Honor today in support of her motion to reconsider
21 sentence.

22 I apologize for taking a few minutes of the court's
23 time to make sure the record is clear on several points:
24 One is that I have made certain that she understands that
25 anything she might choose to tell Your Honor under oath

1 here today could subsequently, arguably, be used against
2 her in the event I were to win a new trial at some
3 juncture for her either in a direct appeal or in P.C.R.

4 If she had made statements under oath here today,
5 there is a possibility that those might be sought by the
6 state to be used against her at a later time.

7 I've also told her that there is at least the
8 possibility to the extent anything she might say today
9 were inconsistent with her original testimony that I
10 certainly was aware that the solicitor's office would have
11 the option of pursuing a charge of perjury against her to
12 the degree her testimony were inconsistent with her
13 original trial testimony.

14 I've gone over that with her very carefully to be
15 certain that she understands the ramifications of such a
16 variance between her trial testimony and her testimony
17 here today.

18 Notwithstanding those factors, I have also made
19 certain that she understands that in evaluating a motion
20 for reconsideration of sentence that Your Honor has at
21 liberty to consider many factors, including the particular
22 facts of the case but also the particularized background
23 of the defendant and her attitudes toward the offense
24 itself. For that reason, I believed her forthright
25 testimony here today might be relevant and valuable on the

1 question of reconsideration.

2 I have also advised her that anytime a defendant
3 chooses to make a motion to reconsider sentence, that it
4 leaves the door open for His Honor to either lower the
5 sentence, leave it the way it was or potentially raise the
6 penalty.

7 I am, you know, always certain that my clients
8 understand that not unlike sports where there is no pain,
9 no gain, that you don't win the opportunity to beg for
10 mercy of the court and a potential lowering of a penalty
11 unless you're willing to at least risk that Your Honor
12 might conclude that a more lengthy term is appropriate and
13 raise the sentence.

14 I told her that in my experience as a defense
15 attorney such an action by a Circuit Court judge would be
16 extremely rare, but that it was certainly within your
17 authority as presiding circuit court judge to do and that
18 she needed to understand that before she made the decision
19 to go forward here today.

20 Your Honor, at this time, I would like to call Miama
21 Kromah to present some information to the court under oath
22 which I believe to be germane to the penalty in this case.

23 THE COURT: Is this material that was not presented
24 at the hearing --

25 MS. SHURLING: It is, Your Honor.

1 THE COURT: -- or the sentencing portion of the
2 trial?

3 MS. SHURLING: It is, Your Honor.

4 THE COURT: Before she comes up, of course, this is a
5 Richland County case. You have requested the hearing.
6 We're in the 11th circuit in Lexington. I'm presuming
7 that she is waiving her right to have this heard over
8 there?

9 MS. SHURLING: She is, Your Honor, and it was my
10 intent to ask her concerning that waiver after she was
11 placed under oath so that the record would be abundantly
12 clear on that point.

13 THE COURT: All right. Come up and be sworn, please.
14 Do I have a clerk down here?

15 THE BAILIFF: No.

16 THE COURT: I'll swear her, if you have the Bible.
17 If you'll come over and as best you can, put your left
18 hand on the Bible.

19 (Pause).

20 Over here.

21 MIAMA KROMAH, after being duly sworn,
22 testified as follows:

23 THE COURT: All right. Come up and have a seat,
24 please.

25 THE DEPUTY: Watch your step.

1 THE BAILIFF: Watch your step.

2 MS. SHURLING: Your Honor, before we begin, I would
3 like to introduce the Court to Jeremy Thompson, my new
4 associate present.

5 THE COURT: All right. How are you?

6 MS. SHURLING: And ask that Mr. Thompson go
7 downstairs and see if you can locate the rest of her
8 family.

9 MR. THOMPSON: Okay.

10 MS. SHURLING: I'm afraid that they're wondering
11 around in the courthouse not knowing where to go. All
12 right. Thank you.

13 THE COURT: You may also check the fourth floor which
14 is where a lot of the criminal activity in court takes
15 place. I don't know if they may have gone up there. They
16 may have locked that courtroom. I do not know.

17 MS. SHURLING: Thank you. Ms. -- her mother is in a
18 wheelchair.

19 MR. THOMPSON: Okay.

20 MS. SHURLING: She should be easy to spot.

21 MR. THOMPSON: Okay.

22 MS. SHURLING: Thank you, Your Honor.

23 DIRECT EXAMINATION:

24 BY MS. SHURLING

25 Q Will you state your full name for the record?

1 A Miama Rebecca Kromah.

2 Q Okay. I'm going to note that madam court reporter
3 has been given the spelling of your name on a document, so
4 you don't have to go over it with her.

5 Now, Miama, in my discussions with you, you are
6 extremely soft spoken, and I need you to remember that His
7 Honor has to understand what you're saying.

8 It won't do us any good to be here today if he can't
9 understand you, and the nice court reporter sitting in
10 front of you has to write down every word we say. Once
11 again, if she can't understand it and she can't hear it,
12 she can't transcribe it, okay.

13 A (Nods in the affirmative).

14 Q So I know you're reserved, and I know you're soft
15 spoken, but you need to make a real effort to speak up and
16 speak clearly, okay.

17 A Okay.

18 Q How old are you today?

19 A Twenty-six.

20 Q Twenty-six?

21 A Yes, ma'am.

22 Q Okay. At the time you originally went to court in
23 this case was a couple of years ago, right?

24 A Yes, ma'am.

25 Q So you were 24?

1 A Yes, ma'am.

2 Q At that time, how long had you been married?

3 A A year and some, I think.

4 Q Four years?

5 A No, a year and some, not a long time.

6 Q Okay. At the time this incident happened with your
7 stepson, how long had you been married?

8 A I would say a year.

9 Q A year?

10 A If not a year, close to a year.

11 Q Okay. And where were you and your husband originally
12 from?

13 A Liberia.

14 Q Were you married in Liberia or here in the United
15 States?

16 A Here.

17 Q Here?

18 A Yes, ma'am.

19 Q Did you meet here?

20 A We got married here, but we didn't actually meet
21 here.

22 Q You met in Liberia?

23 A Yeah.

24 Q Okay. Was he already here in the United States
25 before you became engaged?

- 1 A We got together in the United States.
- 2 Q Okay.
- 3 A That's what you mean?
- 4 Q Yes.
- 5 A Okay.
- 6 Q You met in the United States?
- 7 A No. We got together like as a couple in the United
8 States.
- 9 Q Okay. So you originally met in Liberia, but you
10 became a couple, a romantic dating couple, in the United
11 States?
- 12 A Yes, ma'am.
- 13 Q And then got married?
- 14 A Yes, ma'am.
- 15 Q Now, your stepson was not with you when you first got
16 married, was he?
- 17 A No, ma'am.
- 18 Q How long were you married before he joined your
19 family?
- 20 A A couple of months, I think.
- 21 Q A couple of months?
- 22 A Yes, ma'am.
- 23 Q And where did the child live before that time?
- 24 A Minnesota, United States.
- 25 Q With whom?

1 A His -- his mom's cousin.

2 Q His mother's cousin?

3 A Yes, ma'am.

4 Q The child's biological mother's cousin?

5 A Yes, ma'am.

6 Q So after you had been married for a couple of months,
7 he came to join your family?

8 A Yes, ma'am.

9 Q I keep calling him "he". Will you pronounce his name
10 for me?

11 A Minor .

12 Q Minor ?

13 A Yes, ma'am.

14 Q Okay. Was it a difficult transition for you to be a
15 mother?

16 A It was -- you can say that because it was my first
17 experience at, you know, parenting.

18 Q Okay. How many brothers and sisters do you have?

19 A I have four sisters, two brothers.

20 Q And where in the age order are you?

21 A I'm in the middle.

22 Q You're in the middle?

23 A Yes, ma'am.

24 Q How much younger than you was the youngest of the
25 siblings?

1 A Two years.

2 Q Okay. So you never were in the position as a young
3 girl of caring for a sibling that was a baby?

4 A No, ma'am.

5 Q Or even a toddler?

6 A No, ma'am.

7 Q Okay. So this was your first experience being the
8 primary caregiver for a young child?

9 A Yes, ma'am.

10 Q And at the time, he was how old?

11 A Three, I think.

12 Q Three years old, okay.

13 A Two or three.

14 Q Now, your culture in Liberia is very different from
15 the United States in a lot of ways, isn't it?

16 A Yes, ma'am.

17 Q In Liberia, as compared to the United States, would
18 you say that the men in the family have more authority
19 over the women than they appear to here?

20 A Yes, ma'am.

21 Q In your relationship with your husband --

22 A Uh-huh --

23 Q -- were you controlled by him?

24 A No.

25 Q No?

1 A No, ma'am.

2 Q But did you feel he had the ultimate authority in the
3 family?

4 A Yes, ma'am.

5 Q Okay. And you obeyed him?

6 A Yes, ma'am.

7 Q Okay. Now, when all of this happened --

8 A Uh-huh.

9 Q -- when you were very first questioned --

10 A Uh-huh.

11 Q -- who did you talk to first right after it happened?

12 A I talked to him.

13 Q To him, your husband?

14 A Yes, ma'am.

15 Q And then would the people at the hospital have been
16 next?

17 A Yes. Actually --

18 THE COURT: Is -- is this the little boy that was
19 cut --

20 MS. SHURLING: Yes, sir.

21 THE COURT: -- in the bathtub?

22 MS. SHURLING: Yes, sir.

23 BY MS. SHURLING

24 Q Your husband would have been first?

25 A Yes, the first family member that I talked to.

1 Q Okay.

2 A And my sister.

3 Q Okay. And then the folks at the hospital?

4 A Yes, ma'am.

5 Q Okay. And then ultimately the police?

6 A Yes, ma'am.

7 Q Okay. And you testified at your trial, too, didn't
8 you?

9 A Yes, ma'am.

10 Q Did you tell your husband, Musa, the truth about how
11 this happened?

12 A No.

13 Q You told him and everybody after that that you didn't
14 know exactly how this happened, didn't you?

15 A Yes, ma'am.

16 Q Was that the truth?

17 A No, ma'am.

18 Q Why did you lie?

19 A I was scared.

20 Q You were scared. Once you didn't tell the truth,
21 were you afraid to change your story and tell the truth?

22 A Yes, ma'am.

23 Q I know this is hard to talk about. I've come to your
24 institution and talked to you a few times about this,
25 haven't I?

1 A Yes, ma'am.

2 Q And you have been taking part in group therapy and
3 counseling sessions there at the women's prison, as well?

4 A Yes, ma'am.

5 Q Miama, this is very important. Have I ever told you
6 what to say in court?

7 A No, ma'am.

8 Q What have I always told you?

9 A To tell the truth.

10 Q Okay. I've never suggested to you any particular
11 thing to say in court, have I?

12 A Yes, ma'am.

13 Q Okay. "Yes, ma'am" I have or haven't?

14 A You haven't.

15 Q Okay. That's important.

16 All right. Now, I know this is hard, and I know
17 you're scared, but can you please tell us -- the night
18 that the little boy got cut, tell us how it happened.

19 A Okay. I got off work after 11. I went to my
20 sister's house to pick him up. He was sleeping, so I got
21 him and put him in the car. You know, when we got to our
22 home, I took him up and carried him to where we stayed,
23 and I sat him down in the chair. I was eating plantain.
24 I gave him some. You know, he didn't want to eat some.

25 Anyway, I realized it was getting late, so I said,

1 "Let's go give you a shower. You got to go to school in
2 the morning."

3 He didn't want to go. He was making faces, and I
4 said, "You have to go to school in the morning. You know,
5 you have got to get your shower."

6 I took him to the bathroom, helping him to take down
7 his clothes, told him to take off his clothes, and he was
8 not cooperating with me. I was not at my -- like normally
9 I'm -- I'm quiet, but I was agitated with him anyway.

10 Q Let me stop you for a minute. He was three years old
11 at the time?

12 A Yes, ma'am.

13 Q It was -- you said he was being uncooperative. Was
14 he angry about you making him take a bath?

15 A Yes.

16 Q And I say bath, his shower.

17 A Yes, ma'am.

18 Q And he was fighting you, basically?

19 A He didn't want to take a shower.

20 Q Okay. So resisting taking a shower?

21 A Yes, ma'am.

22 Q Okay. Pick up from there. You say you were
23 agitated, and then what happened?

24 A I told him he had to take the shower anyway. I took
25 him to the bathroom. I ran the water. I was sitting

1 there talking to him. I was bathing him, but I was upset
2 with him. So I was most likely handling him roughly,
3 and...

4 Q Now, when you say you were bathing him, did you have
5 a washcloth --

6 A Yes, ma'am.

7 Q -- and soap?

8 A Yes, ma'am.

9 Q And you bathed him all over?

10 A Uh-huh, yes.

11 Q Including his genitals?

12 A Yes, ma'am.

13 Q Okay. Now -- now that you're in S.C.D.C., your nails
14 are cut way down --

15 A Yes, ma'am.

16 Q -- almost to the quick --

17 A Uh-huh.

18 Q -- but did you have long fingernails back then?

19 A Yes, ma'am. I wore them sometimes.

20 Q And they were not natural fingernails, were they?

21 A No, ma'am.

22 Q Did you have acrylic fingernails like me?

23 A Yes, ma'am.

24 Q Were the acrylic fingernails kind of sharp on the
25 edges?

1 A Huh?

2 Q You don't know?

3 A I don't know.

4 Q Okay. Tell us what happened. You were bathing him.
5 You said you were probably a little rough with him?

6 A Yes. I was impatient and you know, he wasn't
7 cooperating in the tub. So I started, you know, talking
8 to him and bathing him, not paying attention to him.

9 Q Okay.

10 A Anyway, I was very upset. When I looked down in the
11 water and saw blood, I grabbed him out of the tub, and I
12 got -- I called my sister, and I took him to the hospital.

13 Q Okay. When you looked down and saw blood, was it
14 after you had been washing his private areas with your
15 hand?

16 A Yes, ma'am.

17 Q And you have said, but you have got to say it to the
18 judge, you believed then that the edge of your acrylic
19 fingernail had cut him?

20 A Yeah. I believed I caused it.

21 Q Okay. Why didn't you tell the truth back then,
22 Miama?

23 A I was -- I was -- I was scared. I don't know. I
24 just -- I mean, I never have been the type of person to be
25 in trouble or you know, hurt anyone. So I was just afraid

1 of what people might think of me or say. I just said the
2 first thing that came to my mind, but it wasn't
3 intentional.

4 Q Were you a little bit afraid of your husband?

5 A Yeah, that too.

6 Q And this was your husband's son?

7 A Yes, ma'am.

8 Q And you hadn't been married very long?

9 A Yes, ma'am.

10 Q And you were pretty new to the whole business of
11 being a mother?

12 A Yes, ma'am.

13 Q Once you lied to Musa about how it happened --

14 A Uh-huh.

15 Q -- why did you keep lying to all of the other people?

16 A The same reason why I said earlier. I just -- I
17 don't -- I don't know what else to do. I just -- because
18 I already started it, so I just continued.

19 Q You had already started so you just continued?

20 A That's what I said so I just, you know, continued
21 saying it.

22 Q You didn't know how to go about changing your story?

23 A Not by myself.

24 Q Okay. Now, that's an important thing. You say "not
25 by yourself".

1 A Uh-huh.

2 Q In your sessions at S.C.D.C. in the women's group,
3 have they talked a lot about taking responsibility for
4 your actions?

5 A Yes, ma'am.

6 Q Did they help you to understand that you can't ask to
7 be forgiven for something unless you're willing to admit
8 your role in it?

9 A Yes, ma'am.

10 Q And have I talked with you about the fact that it's
11 important, when you're trying to ask a judge to decide
12 what the fair and appropriate thing to do is, that he have
13 all of the correct information before him?

14 A Yes, ma'am.

15 Q Now, I warned you, didn't I, that coming to court
16 today and telling the truth could actually end up hurting
17 you down the road, didn't I?

18 A Uh-huh.

19 Q And I told you that there was at least a possibility
20 that somewhere down the line, having gotten up on the
21 stand and admitted this, could end up coming back to haunt
22 you?

23 A Yes, ma'am.

24 Q Okay. Did you hurt Minor intentionally?

25 A No, ma'am.

1 Q Do you admit that you were handling him, as you say,
2 roughly and not using the degree of care with him that you
3 should have?

4 A Yes, ma'am.

5 Q Did you use any kind of object, any kind of stick or
6 knife or scissors or anything other than your own hand
7 with acrylic fingernails?

8 A No, ma'am.

9 Q At the time you were getting ready to go to trial and
10 you were working with Jimmy Rogers --

11 A Uh-huh.

12 Q -- did you ever tell Jimmy Rogers the truth?

13 A No, ma'am.

14 Q You didn't, did you?

15 A (The witness shakes in the negative).

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

18 A No, ma'am.

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

20 A No, ma'am.

21 Q Okay. Miama, prior to your trial when you were
22 getting ready for trial --

23 A Uh-huh.

24 Q -- did you know in advance when your husband took
25 your stepson out of the jurisdiction of South Carolina?

1 Did you know he was going to do it?

2 A No, ma'am.

3 Q Did you ask him to take the child away so that he
4 couldn't be a witness in your case?

5 A No, ma'am.

6 Q Was that little boy pretty much exclusively in your
7 husband's control?

8 A Yes, ma'am.

9 Q You didn't have any say so about him, did you?

10 A Yes, ma'am.

11 Q You did have say so about him or your --

12 A No, he was in his custody, not mine.

13 Q Okay. Would you have wanted little Minor to be at
14 your trial?

15 A Yes, ma'am.

16 Q Now, the jury saw a videotape of him being
17 questioned.

18 A I don't think they did.

19 MS. CAMPBELL: They didn't.

20 MS. SHURLING: Oh, I'm sorry. I meant --

21 MS. CAMPBELL: There was a videotape. It was
22 submitted to the court. The court ruled he was not old
23 enough to testify, basically --

24 MS. SHURLING: That's right. I apologize.

25 MS. CAMPBELL: -- and that he named her as the person

1 that harmed him.

2 MS. SHURLING: I apologize. I have gotten the record
3 mixed up. But there was a tape present in the court that
4 the judge saw?

5 MS. CAMPBELL: He had to review it for admissibility.

6 BY MS. SHURLING

7 Q That's right. So -- but the child himself was not
8 there for anyone to observe, was he?

9 A Yes, ma'am.

10 Q Was the little boy there?

11 A No, he wasn't.

12 Q Okay. So nobody had a chance to observe him
13 firsthand or talk to him firsthand?

14 A Yes, ma'am.

15 Q Okay. Would you have wanted His Honor, and even the
16 jury, to have been able to see little Minor if it had
17 been your say so?

18 A Yes, ma'am.

19 Q Again, did you deliberately hurt this little boy?

20 A No, ma'am.

21 Q Are you sorry that he got hurt?

22 A Yes, ma'am.

23 Q Have you taken classes --

24 A Yes, ma'am.

25 Q -- and group therapy designed to help you understand

1 what happened and how you could be a better mother if you
2 were ever given the chance again?

3 A Yes, ma'am.

4 Q Now, since this trial you have given birth, haven't
5 you?

6 A Yes, ma'am.

7 Q You have a little girl?

8 A Yes, ma'am.

9 Q How old is she?

10 A (Crying).

11 Q It's okay. There's some tissues right there in front
12 of you.

13 How old is your baby girl?

14 A Fifteen months.

15 Q All right. And who has had your baby since it was
16 born?

17 A My mom.

18 Q Your mom. Do you get to visit with her at the
19 prison?

20 A Every weekend.

21 Q Okay. Miama, are you sorry that you didn't tell
22 everyone the truth in the beginning?

23 A Yes, ma'am.

24 Q I need you to listen real carefully to whatever
25 questions Ms. Campbell asks you and answer them

1 truthfully, okay.

2 A Okay.

3 THE COURT: All right. Ms. Campbell?

4 CROSS-EXAMINATION:

5 BY MS. CAMPBELL

6 Q Just a couple of questions. These are your family
7 members. They were present for your trial, too, your
8 mother?

9 A My mom was, and Musa.

10 Q And up until the point of when your trial was
11 actually called, you were out on bond; is that correct?

12 A Yes, ma'am.

13 Q And who were you living with?

14 A Who was I was living with?

15 Q Who were you living with?

16 A My mom.

17 Q You were living with your mother. You weren't living
18 with your husband?

19 A I was back -- I was in school. I was down here. I
20 was in Columbia.

21 Q Okay. You were living in Columbia, South Carolina.

22 A Uh-huh.

23 Q Were you married to Musa?

24 A Uh-huh.

25 Q And were you living with Musa prior to the trial?

1 A No. I was in Columbia.

2 Q Okay. And at that point, were you supposed to have
3 any contact with the child?

4 A No, ma'am.

5 Q So you weren't even allowed contact with the child,
6 were you?

7 A Yes, ma'am.

8 Q You mentioned also in your -- you're upset here
9 today; is that correct? You're crying.

10 A Yes, ma'am.

11 Q Because it's very difficult for you to talk about
12 this, right?

13 A Yes, ma'am.

14 Q And in all the times you talked to the police, did
15 you ever cry?

16 A No, I don't think so.

17 Q Okay. And when you got up in court, did you ever
18 cry?

19 A No, ma'am.

20 Q But it's upsetting here today now that you have been
21 incarcerated for two years?

22 A It's not just because I'm incarcer--- I've been
23 incarcerated for two years.

24 Q And your child is living with your mother?

25 A Not just that. I've taken three parenting classes

1 for newborn kids and teenagers. I've taken anger
2 management to learn like when you are getting angry, you
3 know, your signs and symptoms, how to control it and what
4 to do, and preventive measures, all those classes. You
5 know, it has helped me.

6 Q Okay. And your testimony is today you want to take
7 responsibility for this now?

8 A Yes, ma'am.

9 Q Okay. And the only difference really between your
10 testimony at trial and this is now you're talking about
11 your fingernails. Before you said you just put pressure
12 on his scrotum. Do you remember the doctors that
13 testified at trial?

14 A No.

15 Q Do you remember how big the cut was that caused his
16 testicle to actually come out of the scrotum?

17 A They said three inches.

18 Q And your testimony is here today that you're now
19 saying that was caused by your fingernail?

20 A Ma'am --

21 Q Is that your testimony?

22 A -- it was caused by me.

23 Q By your fingernail is that what you're saying?

24 A Yes, my body, yes.

25 Q By your body or your fingernails --

1 A Yeah, my...

2 Q Or do you care?

3 A What are you saying?

4 Q I'm asking you what caused the almost three-inch cut
5 to this child's scrotum that caused the testicle to
6 actually fall out of the scrotum?

7 A I'm telling you.

8 Q Tell me.

9 A (There was no response).

10 Q Do you know?

11 A Can you ask me again --

12 Q Yes, ma'am.

13 A -- because I'm lost.

14 Q The child, Minor --

15 A Yes, ma'am.

16 Q -- his scrotum, among some other injuries I'm going
17 to talk about --

18 A Uh-huh.

19 Q -- was cut in a linear incision so precise the doctor
20 even testified that it was as good as he could do with his
21 scalpel. What caused that two to three-inch cut to his
22 scrotum?

23 A My hands.

24 Q Your hands?

25 A Yes, ma'am.

1 Q And you want this judge to believe that you did this
2 with your fingernail?

3 A Ma'am, that's what happened. I was there. I mean,
4 I'm not saying for anybody to believe me or not to believe
5 me. I'm just saying the truth.

6 Q And that's the cut we're talking about right there,
7 right?

8 A Yes, ma'am. I didn't use my --

9 Q How did he get the cut to his lip?

10 A He was biting his lip.

11 Q He was biting his lip from the pain? How did he get
12 the abrasion to his forehead?

13 A Ma'am --

14 Q Do you know?

15 A -- I'm telling you what happened.

16 Q Do you know how he got the bruising to his abdomen,
17 such is consistent with someone holding him down?

18 A (There was no response).

19 Q Do you know how he got the bruising to his abdomen?

20 A Do I know he got a bruise to his abdomen?

21 Q Uh-huh. Did you do that to him, too?

22 A I was handling him roughly, but I don't -- I don't
23 know exactly what caused the bruising to his abdomen.

24 Q And you're admitting here today that you were
25 agitated?

1 A Yes, ma'am, I was.

2 Q That you were angry with him because he wasn't
3 cooperating.

4 A Yes, ma'am.

5 Q And that you handled him roughly, I think were your
6 words.

7 A Yes, ma'am.

8 Q And that as a result of however you handled him or
9 did whatever --

10 A Uh-huh.

11 Q -- to him that day, he ended up with his scrotum --
12 with a two-inch cut to his scrotum.

13 A Yes, ma'am.

14 Q Bruises to his abdomen?

15 A (There was no response).

16 Q Yes or no.

17 A (There was no response).

18 Q To his stomach, did he have bruising to his stomach?

19 A Ask the question again.

20 Q Do you know what a bruise is?

21 A Yes, ma'am.

22 Q Did you apply force so significant to cause bruising
23 to his stomach?

24 A I probably did, yes.

25 Q And the abrasion on his head, the cut on his head,

1 you caused that, too?

2 A Ma'am.

3 Q But your testimony is he bit his own lip and that's
4 what caused that bleeding.

5 A Yes, ma'am.

6 Q And you admit that you lied on -- under oath, and you
7 lied to the police every single time?

8 A I only saw the police one time.

9 Q Okay. Whenever you spoke to the police, did you lie
10 to them about what happened?

11 A Yes, because I told them I didn't know.

12 Q And when you took the stand in defense of your own
13 case, did you lie about what happened?

14 A Yes because I said I didn't know.

15 Q No. You said you -- you testified before that you
16 placed pressure on his scrotum, and that's what caused the
17 injury. Do you remember your testimony before?

18 A I said I didn't know.

19 Q You also mentioned that you hadn't had many parenting
20 skills; that he had only been living with you a few
21 months.

22 A Yes, ma'am.

23 Q Do you remember your testimony at trial when you
24 talked about how you had taken him in, that you had potty
25 trained him, that you taught him his A.B.C.'s, and you had

1 no ill will towards him?

2 A Yes, ma'am. That's what I was doing.

3 Q That's what you were doing?

4 A Up until that moment. I know I had gotten agitated
5 or upset with him before, so since I took him -- took him
6 in, I said to him his A.B.C.'s and potty training and
7 stuff like that, but I have never gotten upset with him
8 like -- before.

9 Q Okay. And you said that you didn't have any ill
10 feelings for him. You felt good about him.

11 A That's what I felt for him.

12 Q When you first got to the hospital, was Musa there
13 yet?

14 A Huh-uh.

15 Q And Musa is your husband, correct?

16 A Yes, ma'am.

17 Q So you lied to the people at the hospital about what
18 happened, as well?

19 A Yes, ma'am.

20 Q And the first time you became upset about this is
21 here today in public, at least?

22 A No.

23 MS. CAMPBELL: Thank you. I don't have any further
24 questions.

25 THE COURT: Redirect?

REDIRECT EXAMINATION:

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BY MS. SHURLING

Q Miama?

A Ma'am.

Q Minor was an active little, three-year-old little boy, wasn't he?

A Yes, ma'am.

Q Did he frequently play rough around the house and in the yard?

A Uh-huh.

Q Was it uncommon for him to have scrapes and bangs and bruises?

A No.

Q Like most children.

A No, ma'am. It was not uncommon.

Q Okay. It was not uncommon for him to have scrapes and bangs and bruises. You don't know when any of these other abrasions or bruises or anything happened, do you?

A No, ma'am.

Q Okay. So you're only surmising about what -- how those may or may not have happened?

A Yes, ma'am.

Q Okay. Now, this is the real important part --

A Uh-huh.

Q -- when you were bathing the child's private parts --

1 A Yes, ma'am.

2 Q -- his penis and his scrotum --

3 A Uh-huh.

4 Q -- did you have anything in your hand other than a
5 washcloth?

6 A Huh-uh, no, ma'am.

7 Q A soapy washcloth?

8 A Yes, ma'am.

9 Q But you had your fingers around that washcloth?

10 A Yes, ma'am.

11 Q And your fingers had acrylic fingernails on them at
12 the time?

13 A Yes, ma'am.

14 Q And you're bathing him. You're making strokes with
15 your hand bathing the child, and you looked and you see
16 blood, correct?

17 A Yes, ma'am.

18 Q Correct? So you are assuming, you're inferring from
19 those facts, that the sharp edge on your fingernail must
20 be what cut the tender flesh of his scrotum?

21 A Yes, ma'am.

22 Q And you were just ashamed and embarrassed and afraid
23 to admit that to anyone?

24 A Yes, ma'am.

25 Q And if I understand you correctly, once you lied, you

1 didn't know how to get out of lying. You just stuck to
2 the same story?

3 A Yes, ma'am.

4 Q Until I helped you understand how important it was
5 for you to tell the truth?

6 A Yes, ma'am.

7 MS. SHURLING: Okay. Nothing further, Your Honor.

8 THE COURT: All right. Any recross?

9 MS. CAMPBELL: Just one question.

10 RECROSS-EXAMINATION:

11 BY MS. CAMPBELL

12 Q At trial you testified that he had a swollen scrotum,
13 and that's why you put pressure on it, because that's what
14 your mother taught you to do.

15 A What do you --

16 Q That was your story then.

17 A When he first came from Minnesota, it used to happen
18 to him, but on the night it didn't.

19 Q But that's what --

20 A And I said that because it used to happen to him
21 frequently but that night, no.

22 MS. CAMPBELL: Thank you.

23 THE COURT: All right.

24 MS. SHURLING: Nothing further.

25 THE COURT: You may --

1 MS. SHURLING: Please come down.

2 THE COURT: You may step down.

3 MS. SHURLING: Your Honor, before we go any further
4 I'd like to take a somewhat unusual step.

5 For the record, I am defense counsel in this case,
6 but I'd like the Court to take judicial notice I've just
7 had, four days ago, a fresh manicure with acrylic nails
8 applied, and they are moderately long, not extremely long.
9 I'd ask Your Honor to feel the edges of the acrylic nails
10 on my hands.

11 THE COURT: Now, how am I supposed to know whether
12 this is in any way --

13 MS. CAMPBELL: Relevant.

14 THE COURT: -- the shape of her hands --

15 MS. SHURLING: Well, it -- she has testified that she
16 had acrylic false nails.

17 THE COURT: All right.

18 MS. SHURLING: And for the record, almost virtually
19 all false fingernails at this point in history are either
20 gel or acrylic tips. Acrylic tips are uniform in the
21 industry, and that's what's on my fingernails at the
22 moment.

23 Thank you.

24 Your Honor, at this time, I'd call Miama's husband,
25 Musa, to the stand, please.

1 THE COURT: Place your left hand on the Bible and
2 raise your right.

3 MUSA KROMAH, after being duly sworn,
4 testified as follows:

5 All right. Come up and have a seat, please.

6 THE BAILIFF: Watch your step.

7 DIRECT EXAMINATION:

8 BY MS. SHURLING

9 Q Musa, would you state your full name --

10 A Sure.

11 Q -- for the record, please?

12 A It's Ollusu Musa Kromah.

13 Q It's Musa Kromah, and the spelling of the Kromah is
14 the same as Miama's?

15 A Yes, ma'am.

16 Q And spell your first name, please.

17 A It's O-L-L-U-S-U and my middle is M-U-S-A.

18 Q Thank you. You're legally married to Miama Kromah
19 who just testified?

20 A Yes, ma'am.

21 Q And the child involved in this case, Minor , is your
22 little boy?

23 A Yes, ma'am.

24 Q Prior to your wife's jury trial, you took him out of
25 South Carolina so he couldn't be subpoenaed for her trial,

1 didn't you?

2 A Yes, I did.

3 Q Was that your decision?

4 A Yes, that was my decision.

5 Q Okay. And I remind you you're under oath. Did Miama
6 ask you to take him away so he couldn't testify?

7 A No, ma'am.

8 Q Did she have any active involvement in the decision
9 to take him out of South Carolina where he would not be
10 available as a witness?

11 A No, ma'am.

12 Q Did you discuss it with her attorney, Jimmy Rogers,
13 before taking this rash step?

14 A No, ma'am.

15 Q Why did you do it, Musa?

16 A I felt -- I felt -- excuse me. I felt it was just
17 time for him to be out of the whole thing because he was
18 already hurt.

19 Prior to me taking him out of South Carolina, we had
20 people coming by just about every time to talk to him. He
21 was just about three-and-a-half at the time, and I
22 didn't -- I just didn't want him to be part of this whole
23 investigation and interview. I felt he was too young.

24 Q Okay. At my request, have you brought him to my law
25 firm on more than one occasion?

1 A Yes, I did.

2 Q Have I been able to question him at length in your
3 presence?

4 A Yes, you did.

5 Q And I've also questioned him in private, haven't I?

6 A Sure.

7 Q With your permission, of course.

8 A Exactly so.

9 Q Okay. Has your son ever relayed to you any
10 information, any statement, that is inconsistent with what
11 Miama says today is the truth of how this incident
12 happened?

13 A No, not that I recall.

14 Q Has he ever talked to you or told you about her using
15 a knife or scissors or any kind of instrument to hurt him?

16 A No, he didn't tell me nothing like that.

17 Q Pardon?

18 A No, he didn't.

19 Q Nothing like that?

20 A Nothing like that.

21 Q In a few moments I'm going to ask for permission from
22 the court to call him to the stand. Do I have your
23 permission to do that?

24 A Yes, ma'am.

25 MS. SHURLING: No further questions.

1 THE COURT: Cross-examine?

2 CROSS-EXAMINATION:

3 BY MS. CAMPBELL

4 Q You are aware that he went to the A.R.C. right after
5 this happened?

6 A Excuse me?

7 Q You are aware that he was examined by professionals
8 at the Assessment Resource Center right after this
9 happened to him, that there was a videotape of it?

10 A Nobody told me about a videotape.

11 Q Okay.

12 A I knew about the videotape in the courtroom.

13 Q You found out about the video in the courtroom?

14 A At the court, yeah. They told me I had a --

15 Q Are you aware of what's on the video?

16 A No.

17 Q Were you aware your son implicated your wife as being
18 the person that had hurt him?

19 A That's what I heard in court, and that's what I heard
20 also in here.

21 Q Well, let me ask you this: Why on earth did you send
22 him out of the country?

23 A Like I said previously, it was just about time for
24 him to be out of the whole thing.

25 Q Okay.

1 A His biological -- his biological -- biological mom is
2 in Africa back home and so...

3 Q I thought she was in Minnesota.

4 A That's what she had represented, represented in the
5 court at trial.

6 Q So you didn't send him out of the country so that he
7 couldn't testify against her?

8 A Oh, no.

9 Q And during this time period prior to her trial,
10 Mr. Rogers was her lawyer?

11 A (There was no response).

12 Q Was her lawyer?

13 A Yeah, Mr. Rogers.

14 Q Did you meet with him?

15 A Yes, I did meet Mr. Rogers.

16 Q And, in fact, you were fully cooperative with the
17 defense, were you not? You cooperated with your wife's
18 lawyers?

19 A Oh, yeah.

20 Q And, in fact, at some point didn't you tell me, "Why
21 do we Americans make such a big deal out of things like
22 this?"

23 A (There was no response).

24 Q Do you remember saying that to me?

25 A Where, in court?

1 Q To me and Ms. Hall.

2 A No.

3 MS. CAMPBELL: I don't have anything further.

4 THE COURT: Any redirect?

5 MS. SHURLING: Nothing further, Your Honor.

6 THE COURT: Pardon, anything further?

7 MS. SHURLING: Yes, sir, Your Honor. At this time, I
8 would request permission to call the young man to the
9 stand.

10 THE COURT: But you're through with --

11 MS. SHURLING: I'm through with --

12 THE COURT: All right. You may step down,
13 Mr. Kromah.

14 THE BAILIFF: Watch your step, please. Watch your
15 step.

16 MS. SHURLING: And Your Honor, the examination I
17 would propose for the minor child is very, very simple,
18 but I believe it will be beneficial for the court to hear
19 it.

20 THE COURT: Well...

21 MS. SHURLING: The premise being, Your Honor, that
22 had he not been absented from the court without my
23 client's involvement or permission, this would have been
24 available to Your Honor at the time of trial. If not on
25 the question of guilt or innocence, certainly on the

1 question of punishment.

2 THE COURT: All right. I think under the rule, every
3 witness is presumed to be competent, but I think we need
4 to cross that threshold before I consider anything the
5 child might say.

6 MS. SHURLING: Yes, sir.

7 THE COURT: Now, what I'm wondering -- I don't recall
8 independently. I just heard the solicitor say that the
9 tape was not admitted on the grounds that the child was
10 not competent; is that right?

11 MS. CAMPBELL: Yes, sir. Yes, sir.

12 THE COURT: Okay.

13 MS. CAMPBELL: You found he was three --

14 THE COURT: That would have been at the time that the
15 video was taken, which was, I assume, immediately after
16 this incident; is that right?

17 MS. CAMPBELL: Shortly, within a few days after the
18 incident.

19 MS. SHURLING: However, Your Honor, the child was not
20 available at that time for a traditional colloquy on
21 competence to testify. The Court was only able to go by
22 the appearance of the child on the video without any
23 colloquy with the bench.

24 MS. CAMPBELL: And I believe he would have only been
25 about three-and-a-half at the time of trial.

1 THE COURT: All right. So that we will have a full
2 record, go ahead and call him.

3 MS. SHURLING: Thank you.

4 Minor , come on around here.

5 THE BAILIFF: Do you want me to swear him in?

6 MS. SHURLING: I'm going to show you where to sit,
7 okay. You're going to sit right up here and be a big boy
8 in front of everybody.

9 THE COURT: I think I'm going to have to --

10 MS. CAMPBELL: He can stay wherever, Judge.

11 THE COURT: All right.

12 MS. CAMPBELL: I don't have a problem.

13 MS. SHURLING: Would you rather sit up in that big
14 box, or do you want to stand down here?

15 THE WITNESS: (indicating).

16 MS. SHURLING: Stay right here? Okay. Why don't we
17 do that.

18 THE COURT: We're going to have to get a microphone
19 so he can speak into it.

20 MS. SHURLING: Yeah. It might be better --

21 THE COURT: There's one at counsel table right there.

22 MS. SHURLING: Okay.

23 THE COURT: If it is working. I don't know if it is
24 or not.

25 (Testing the microphone).

1 I don't think it's on.

2 Okay. That's good.

3 MS. CAMPBELL: There you go.

4 MS. SHURLING: Okay. Come here, big boy.

5 (Complies).

6 THE COURT: Set that microphone in front of him.

7 MS. SHURLING: Okay. I'm going to get down like this
8 so you can see me, okay?

9 Do you want to tell us all your name?

10 THE WITNESS: Yes.

11 MS. SHURLING: What's your name?

12 THE WITNESS: Minor .

13 MS. SHURLING: And what's your last name?

14 THE WITNESS: Kromah.

15 MS. SHURLING: How old are you now?

16 THE WITNESS: Five.

17 MS. SHURLING: Five years old. Where do you live?

18 THE WITNESS: Whitehall Forest.

19 MS. SHURLING: Is that in Atlanta?

20 THE WITNESS: Yeah.

21 MS. SHURLING: Who do you live with?

22 THE WITNESS: My daddy.

23 MS. SHURLING: Is your daddy here in the courtroom?

24 THE WITNESS: Yes.

25 MS. SHURLING: Did he just get up in that big box and

1 testify?

2 THE WITNESS: Yes.

3 MS. SHURLING: Okay. Now, are you in school now?

4 THE WITNESS: Yes.

5 MS. SHURLING: What grade are you in? Are you in
6 kindergarten?

7 THE WITNESS: Yes.

8 MS. SHURLING: How do you like school?

9 THE WITNESS: Good.

10 MS. SHURLING: Good. You have been to my office to
11 talk to me twice, haven't you?

12 THE WITNESS: Yes.

13 MS. SHURLING: What do you remember about coming to
14 my office?

15 THE WITNESS: Nothing.

16 MS. SHURLING: Pardon? Nothing? Okay.

17 Do you remember me talking to you about how important
18 it is to tell the truth?

19 THE WITNESS: Nope.

20 MS. SHURLING: Okay. Well, do you know that it's
21 important to tell the truth?

22 THE WITNESS: Yes.

23 MS. SHURLING: Okay. I want you to look at me,
24 honey, instead of your daddy, okay. Right now your daddy
25 is very important, but you need to look at me when I'm

1 talking to you, okay?

2 All right. Do you understand how important it is to
3 tell the truth?

4 THE WITNESS: Yes.

5 MS. SHURLING: And do you understand that telling a
6 lie would be -- well, you tell me. Would telling a lie be
7 a good thing or a bad thing?

8 THE WITNESS: Bad.

9 MS. SHURLING: Bad thing. And what happens when you
10 tell lies?

11 THE WITNESS: I go to jail.

12 MS. SHURLING: You go to jail, okay. And you get in
13 trouble if you told a lie, wouldn't you?

14 THE WITNESS: (Nods in the affirmative).

15 MS. SHURLING: Okay. And have you talked to me at my
16 office a little bit about when you got hurt?

17 THE WITNESS: Yes.

18 MS. SHURLING: Okay. And do you remember still about
19 when you got hurt?

20 THE WITNESS: Yes.

21 MS. SHURLING: Okay. And would you be willing to
22 tell His Honor what you remember about that night? That's
23 the judge. When I say "His Honor", I mean the judge.
24 Will you tell him --

25 THE WITNESS: No.

1 MS. SHURLING: -- if I ask you simple questions?

2 (The witness nods in the affirmative).

3 And will you remember to tell the truth because
4 telling a lie would be a bad thing?

5 THE WITNESS: Yes.

6 MS. SHURLING: Your Honor, I submit he's qualified.

7 THE COURT: All right. At this time, I'll permit him
8 to go ahead and testify.

9 Go ahead.

10 DIRECT EXAMINATION:

11 BY MS. SHURLING

12 Q Okay. Minor , do you remember when you were living
13 your dad and with Miama?

14 A Yes.

15 Q Did you call her "Mommy"?

16 A Yes.

17 Q You did. Do you remember when you got hurt?

18 A Yes.

19 Q Who hurt you?

20 A My mommy.

21 Q Your mom, and you told me that, didn't you?

22 A (Nods in the affirmative).

23 Q Okay, your mommy hurt you. When your mommy hurt you,
24 did she have anything in her hands?

25 A No.

1 Q Did she have anything like a pencil?

2 A No.

3 Q A pen?

4 A No.

5 Q How about scissors?

6 A No.

7 Q A knife?

8 A No.

9 Q A plastic cup?

10 A No.

11 Q Nothing?

12 A (Indicates in the negative).

13 Q Did she have long fingernails like mine?

14 A Yes.

15 Q What did she hurt you with when she was bathing you?

16 A I didn't see what -- what she hurt me with.

17 Q You didn't see what she hurt you with.

18 A (Nods in the affirmative).

19 Q You just felt it?

20 A (Nods in the affirmative).

21 Q And did it happen while she was bathing your little

22 private area?

23 A Yeah.

24 Q Was she using soap and washing your little penis and

25 testicles?

1 A Yes.

2 Q And that's when you got hurt?

3 A (Indicates in the affirmative).

4 Q It hurt bad, didn't it?

5 A Yes.

6 Q Did it hurt real bad?

7 A Yes.

8 Q And you got real mad, didn't you?

9 A Yeah.

10 Q Did you bite your lip?

11 A Yes.

12 Q You did, because it hurt real bad? And you got mad,

13 too, didn't you?

14 A (Nods in the affirmative).

15 Q I would be mad, too, if that happened to me. But you

16 didn't see her with anything in her hand at all?

17 A (The witness shakes in the negative).

18 Q Okay. Did she hold you down?

19 A No.

20 Q She was just giving you a bathie?

21 A Yeah.

22 Q Okay. Will you do me another big favor?

23 A (Nods in the affirmative).

24 Q See this nice lady, her name is Ms. Campbell.

25 A Okay.

1 Q This lady right there, and she needs to ask you a few
2 questions, too.

3 MS. CAMPBELL: No questions.

4 MS. SHURLING: Then I guess we're all through unless
5 His Honor might want to ask you something.

6 THE COURT: No. I don't have any questions for the
7 little boy.

8 MS. SHURLING: Okay. Nothing further. Then you get
9 to go sit back down with your daddy.

10 Thank you, Your Honor. That would be all our
11 testimony.

12 THE COURT: All right. Solicitor, any evidence that
13 you want to present?

14 MS. CAMPBELL: No, sir. Of course, we would
15 incorporate everything from the trial.

16 THE COURT: All right.

17 MS. SHURLING: Your Honor, my client takes no -- oh,
18 I apologize. I did neglect one thing, Your Honor.

19 In closing arguments in this case, Ms. Campbell sort
20 of took the negative approach by assuring the jury or
21 stating to the jury that she didn't think this -- she
22 didn't know what the motive was. She didn't think this
23 was anything to do with female genital mutilation or
24 genital mutilation or something to that effect.

25 MS. CAMPBELL: No.

1 MS. SHURLING: That was an attribution that I didn't
2 take particularly seriously until I filed a motion for an
3 appeal bond in this case, which I freely admit was
4 processed by the Office of the Attorney General, not
5 Ms. Campbell. It was filed by Shawn Reeves.

6 Pardon me. I apologize, Your Honor. I've got the
7 wrong document.

8 A moment's indulgence.

9 (Pause).

10 The return to the motion to stay appeal and remand to
11 the Court of General Sessions was filed by Shawn Reeves,
12 and at one point that office filed documentation asserting
13 that my client should not be allowed out on bond in part
14 because she was due to give birth shortly and that the
15 facts of this case taken in tandem with the fact that she
16 came from a country and a culture where genital mutilation
17 was a common part of their societal norms made her a
18 danger to her potential unborn child.

19 For that reason, I took the liberty of obtaining an
20 affidavit, Your Honor, from Dr. Deborah Davis, M.D. with
21 the state's consent, and again, I'd like to state for the
22 record, I'm sure Ms. Campbell questions the relevancy of
23 these, but I appreciate her being kind enough to accept an
24 affidavit from the good doctor rather than forcing the
25 doctor to take time away from her clinic.

1 These affidavits which I have had premarked as
2 exhibits for the defendant, they're marked as one, two,
3 and three, document Dr. Davis' position that she has done
4 gynecological exams on Miama Kromah, her mother who is
5 present in the courtroom, and another sister who cannot be
6 with us here today because she is the primary caregiver
7 for Miama's 15-month-old daughter, and someone had to keep
8 the baby.

9 These affidavits document that each of these women
10 have submitted themselves for gynecological examination
11 and that the good doctor has found no evidence whatsoever
12 that the women in this family have ever been the victims
13 of and taken part in any kind of genital mutilation
14 ritual.

15 THE COURT: These will be made a part of the record.

16 MS. SHURLING: Thank you.

17 Your Honor, we would respectfully ask that Your Honor
18 reconsider the sentence imposed in this case.

19 THE COURT: Now, let -- let me cut you off. How are
20 we going to get these to Richland County? That's where
21 they need to go.

22 (Ms. Campbell indicates in the affirmative).

23 Solicitor, you will take them?

24 MS. SHURLING: Thank you.

25 THE COURT: File them in Ms. Scott's office.

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: Go ahead.

3 MS. SHURLING: Your Honor, I have just realized that
4 I did not keep my word. I said I was going to question
5 Miama about her waiver on the jurisdiction issue.

6 Will you stand in place, please?

7 (Complies).

8 Ms. Kromah, do you realize that you're still under
9 oath?

10 THE WITNESS: Yes, ma'am.

11 MS. SHURLING: In preparing for this hearing, did I
12 advise you that it had to be held in front of the original
13 presiding judge, Judge Johnson?

14 THE WITNESS: Yes, ma'am.

15 MS. SHURLING: And did I tell you that Judge Johnson
16 was not scheduled to be holding General Sessions court in
17 Richland County any time soon?

18 THE WITNESS: Yes, ma'am.

19 MS. SHURLING: Did I tell you that we had the
20 opportunity to finally get this motion heard, but that in
21 order to do it, we would have to agree to do it in
22 Lexington County, and that that would require your being
23 willing to waive your right to have the motion heard in
24 Richland County?

25 MS. SHURLING: Yes, ma'am.

1 THE COURT: Did I also explain to you that if you
2 were not comfortable waiving jurisdiction, if you
3 preferred to have it heard in Richland County, we could
4 just wait until however long it took for Judge Johnson to
5 be back in Richland County?

6 THE WITNESS: Yes, ma'am.

7 MS. SHURLING: And did you give me permission on your
8 behalf to waive your right to have this motion heard in
9 Richland County?

10 THE WITNESS: Yes, ma'am.

11 MS. SHURLING: And you're very specifically
12 acquiescing to this matter being heard here today in
13 Lexington County in the 11th Judicial Circuit?

14 THE WITNESS: Yes, ma'am.

15 MS. SHURLING: Is that accurate -- I mean adequate,
16 Ms. Campbell?

17 (Ms. Campbell nods in the affirmative.)

18 Thank you. You may have a seat.

19 THE COURT: All right. You may have a seat.

20 Go ahead, Ms. Shurling.

21 MS. SHURLING: Thank you.

22 Your Honor, my client takes -- she is greatly
23 embarrassed and humbled by the fact that she did not tell
24 the truth from the beginning.

25 She has -- I can only tell the Court in her early

1 meetings with me been very reserved and controlled, but
2 when the dam broke, it broke, and I saw a broken, deeply
3 remorseful woman who had been holding in a lot for a long
4 time, and basically once she got in it didn't know how to
5 get out of it.

6 She felt, you know, once she had lied about how it
7 happened, that she was stuck with that. She didn't know
8 how to go about changing and telling the truth. She is
9 not proud of the fact that she lied to her husband and to
10 everyone that came after.

11 She took the risk today of telling the truth despite
12 my advice to her that she could very well be handing Luck
13 Campbell the very ammunition she would need to convict her
14 again one day if I were to succeed in winning her a new
15 trial either on direct appeal or in a post conviction
16 relief case.

17 I would submit, however, that she was convicted of
18 infliction of great bodily injury upon a child and
19 unlawful neglect of a child.

20 She is not disputing that this child was seriously
21 injured. She does admit that as a young bride with very
22 little parenting experience that she got frustrated and
23 agitated; that she was angry, and that she was bathing the
24 child in a manner that did not exercise the kind of care
25 she should have been taking, certainly not gently enough

1 bathing the very tender private areas of the child's body.

2 She acknowledges that in bathing his scrotum in anger
3 that it appears that she must have been the one to -- must
4 have inflicted the cut with her acrylic fingernails.

5 I can only tell the court as an officer of the court
6 that I have worn acrylic false fingernails for close to 20
7 years now, and that when I get a new manicure and I have a
8 new set, if I am not careful to have them properly filed
9 on the edges, they are indeed sharp.

10 I have seriously scratched myself and inflicted small
11 cuts myself on many occasions. They are -- they are,
12 indeed, sharp if they're not properly filed and cared for.

13 When comparing the edges of this kind of fingernail
14 with the very tender tissue of a scrotal sac, particularly
15 one of a small child, it's easy to understand, for me at
16 least, how even the smallest snag on one of these acrylic
17 nails could inflict a cut just like that.

18 I would ask the Court to consider that there is an
19 enormous difference between bathing a child in anger and
20 in haste and bathing perhaps in a way that was too rough
21 for the area of the body that was being bathed. There is
22 an enormous difference between that and deliberately
23 cutting the genital sac of a child.

24 Little Minor is adorable. I have talked to him on
25 more than one occasion, and he has always said, "Mommy

1 hurt me, and I am mad at mommy," but he has also, I submit
2 as an officer of the court, always been consistent with,
3 "Mommy hurt me. I was in the bath when it happened, but
4 mommy didn't have anything in her hands."

5 He has frankly been more consistent and forthright in
6 his testimony than many adults I've attempted to
7 interview. He has not waivered in that regard one bit.

8 I believe that his recollections reflect that my
9 client has finally unburdened her soul and told the truth
10 here today.

11 I would ask that Your Honor respectfully reconsider
12 the sentence imposed and ask that Your Honor consider
13 giving her a substantially less severe penalty.

14 Your Honor knows from your many, many years on the
15 bench we all hate cases like this, because if someone
16 deliberately hurts a child, we want them to be punished.

17 I believe that Miama Kromah's biggest mistake was not
18 being candid and honest with the court and with her
19 husband. She knows that now.

20 I also believe that for her to have an 18-year
21 sentence when many people get sentences of that and a good
22 deal less for killing someone in sudden heat of passion,
23 on the facts of this case, simply would not be a just
24 result, and I urge Your Honor to please reconsider and
25 give her a substantially less severe sentence.

1 Alternatively, Your Honor, if Your Honor does not
2 feel that we have made a case for a significant reduction
3 in her sentence, I would ask at this time that Your Honor
4 grant her a new trial on the basis of the new evidence
5 before the court today.

6 It is clear that this young child was capable of
7 testifying; that he does recall the events; that he's
8 capable of conveying the information in a courtroom, and
9 that he was removed from the jurisdiction of South
10 Carolina by a well-intentioned husband but not in concert
11 with Miama Kromah or her attorney, Jimmy Rogers.

12 I know Jimmy Rogers well. I know that Ms. Campbell
13 does, as well, as does Your Honor. I do not believe that
14 Jimmy Rogers would be party to any decision to
15 deliberately remove that child from the jurisdiction of
16 the South Carolina courts.

17 I believe that Ms. Kromah is being truthful when she
18 says that this was something that was done by her husband,
19 and her husband confirms it; that it was done by him
20 without involvement by Ms. Kromah or her attorney.

21 I believe that she would have benefited substantially
22 from the jury's ability to see that this is a healthy,
23 happy, well-adjusted young child versus the only images
24 they had of him being on a videotape -- and they didn't
25 get to see the videotape, so I take that back.

1 The only images they had were the grotesque ones in
2 the photos that were shown at trial. I believe that if
3 nothing else, if they had been able to see the happy,
4 healthy, well-adjusted child and seen that this had not
5 been a permanently traumatizing event in the life of this
6 young boy, that it may have impacted the outcome of the
7 case.

8 For all those reasons, Your Honor, we would ask -- as
9 I said, initially our prayer is for Your Honor to
10 substantially reduce the sentence. If, in your judgment
11 that is not appropriate, we would move for a new trial
12 based on the new evidence and information presented here
13 today, not the least of which being the testimony of the
14 minor child whose testimony was not available to my client
15 at the time of the original proceeding due to actions
16 taken by her spouse beyond her control.

17 Thank you, Your Honor.

18 THE COURT: Now, has that motion been made before?
19 It's not in the written motion that Mr. Rogers filed.

20 MS. SHURLING: No, sir. It has not been made before.
21 The Assistant Attorney General -- and I apologize, the
22 Assistant Solicitor. I apologize, I cannot remember the
23 young man's name, who showed up for the hearing last time,
24 Your Honor, when Ms. Kromah had not been transported was
25 put on notice that it was my intent to alternatively move

1 for a new trial.

2 THE COURT: All right. Ms. Campbell?

3 MS. CAMPBELL: Your Honor, I would submit that the
4 defendant is still not forthcoming. Her testimony here
5 today is self-serving.

6 There were numerous experts that testified in this
7 trial. As you may remember, Dr. Erid, who was the actual
8 surgeon, Dr. Fields, Dr. Amarol, Dr. Able, all testified
9 about the nature of the cut and everything. They all said
10 it had to be caused by some sharp object such as a knife
11 or a scalpel-type razor blade type instrument.

12 Your Honor, she talks about her fingernails having
13 problems, as she was grabbing it up, I would note that the
14 shape of the fingernail on top of that, Your Honor -- this
15 was not a -- and this isn't the actual -- I didn't bring
16 in the evidence.

17 This was not just a little cut on the surface of the
18 skin. This cut through several layers of skin and into
19 the scrotum itself, into the sac that actually holds the
20 testicle in place.

21 It is linear in nature, as was testified to by
22 multiple experts, and that it would be -- I think one
23 expert -- the surgeon actually testified that it was as
24 good as he could do with his scalpel.

25 To say that this is a random jabbing or mishandling,

1 your Honor, I think this is just again her attempting to
2 prey, I guess, on the sympathy of the Court that she is
3 now a mother that doesn't have her child.

4 I see no new evidence. Even in her own admission,
5 she admits to intentionally inflicting harm to this child.
6 In addition to that injury, there were multiple injuries
7 to the child, indicating some type of mishandling,
8 including the bruising across the abdomen, which was
9 consistent with the child having been held down while he
10 was cut.

11 The child's testimony today is that he doesn't know
12 what she had in her hand, how she cut him. I think that
13 is consistent with everything that could have or would
14 have been presented at trial.

15 His testimony was he didn't see what she cut him
16 with. So as far as the motion for a new trial, there is
17 no new thing.

18 In addition, I believe everyone that has testified is
19 that Mr. and Mrs. Kromah were in contact on good terms
20 speaking to each other. No one in this courtroom alleges
21 that Mr. Rogers in any way sent the child out of the
22 country for any reason.

23 However, I think it's indisputable that the two of
24 them, the wife and the husband, were in constant contact
25 and made decisions on -- however they make decisions, they

1 were aware of what was going on.

2 Your Honor, we would respectfully ask that you leave
3 the sentence in place. It was appropriate at the time. I
4 feel like it's even more appropriate here today.

5 In addition to that, Your Honor, I don't see any new
6 evidence or any reason why a new trial would be
7 appropriate.

8 MS. SHURLING: Your Honor, Madam Court Reporter can
9 play the testimony back if you feel it's necessary, but
10 the child was expressly asked if she had anything in her
11 hand when she was bathing him, and the child said no.

12 He was asked if he was hurt while the mother was
13 bathing his testicles and penis area, and he said yes. He
14 was asked when she was bathing him in that private area
15 she had anything in her hands, and he said no
16 specifically. The record will speak for itself.

17 With regard to the linear nature of the cut, Your
18 Honor, we all know that when you're bathing a child -- I
19 don't -- I don't have any desire to be graphic here, but
20 it's -- the standard way that you're bathing a child in
21 that region that you're going in an up and down motion
22 with a soapy hand or a soapy washcloth cleaning that area.

23 If on the up stroke or down stroke a ragged sharp
24 edge of a nail could easily slice in a linear pattern just
25 that quick with a hand stroke going down with a sharp edge

1 of a fingernail.

2 There is no reason why that is not consistent with
3 the testimony. The testimony of the doctors is that it
4 appeared to be inflicted with some sharp object.

5 What we have today is consistent testimony from Miama
6 and from the little boy that she didn't have a foreign
7 object in her hand, but she did have a very common thing
8 for women to have, which is synthetic fingernails attached
9 to her fingers that were sharp enough to inflict this kind
10 of injury, Your Honor.

11 Thank you.

12 Oh, and it should be noted, Your Honor, and I believe
13 the trial record is clear on this point, that at the time
14 the child was absented from South Carolina, Miama was out
15 on bond and had been ordered to stay away from the child.

16 She was living with her mother separate and apart
17 from her husband and the child at the time that the
18 husband made the decision to absent him from South
19 Carolina.

20 Thank you, Your Honor.

21 THE COURT: Okay. Refresh my memory, did the state
22 not seek to have the video put into evidence, and it was
23 not admitted? It wasn't the defense trying to put it in.
24 It was the state trying to put it in, right?

25 MS. CAMPBELL: It was us trying to put it in

1 evidence.

2 MS. SHURLING: That's correct, Your Honor.

3 THE COURT: All right. All right. I'll try to get
4 you folks a decision in the next week or ten days.

5 MS. SHURLING: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Ms. Campbell, you can take this back, and I've got
8 what I need off of the motion, Ms. Shurling. You can have
9 it back.

10 MS. CAMPBELL: Your Honor, for the court, it might be
11 good for you to have a transcript. I don't have one, but
12 she --

13 MS. SHURLING: Well, this is my only one. I mean --

14 THE COURT: I don't -- I don't need that. I have got
15 my notes --

16 MS. CAMPBELL: Okay.

17 THE COURT: -- that I'll be relying on any way.

18 MS. SHURLING: Okay.

19 MS. CAMPBELL: Okay.

20 MS. SHURLING: I mean, I'll be happy to get Your
21 Honor a copy. I just wanted to give you the --

22 MS. CAMPBELL: I'll get these filed.

23 THE COURT: Get these filed.

24 MS. CAMPBELL: I'm going to take these and file them,
25 Tara.

1 MS. SHURLING: Pardon me?

2 MS. CAMPBELL: I'll take these with me.

3 MS. SHURLING: Oh, please. Thank you very much.

4 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 MIAMA KROMAH)
 SCDC # 316117,)
 Applicant,)
)
 vs.)
)
)
 STATE OF SOUTH CAROLINA,)
 Defendant.)

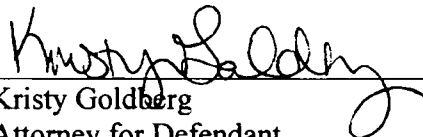
IN THE COURT OF COMMON PLEAS
 2013-CP-40-895

AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of counsel regarding plea negotiations.
- (b) Ineffective assistance of counsel due to the fact that Defendant was not sufficiently placed on notice that the State would be proceeding against her on two indictments.
- (c) Ineffective assistance of counsel by failure to object to qualification of forensic interviewer as an expert witness.
- (d) Ineffective assistance of counsel by failure to object to introduction of testimony regarding findings and custody orders by the Department of Social Services and Family Court.



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