

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James W. Johnson, Jr., Circuit Court Judge

RECEIVED
MAR 10 2010
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

MIAMA KROMAH,

PETITIONER.

APPENDIX

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MAR 10 2010
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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Miama Kromah,

Appellant.

Appeal From Richland County
James W. Johnson, Jr., Circuit Court Judge

Unpublished Opinion No. 2009-UP-322
Heard May 12, 2009 – Filed June 15, 2009

AFFIRMED

Tara Shurling, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Assistant Attorney General William M. Blich, Jr.,
and Solicitor Warren B Giese; all of Columbia, for
Respondent.

PER CURIAM: Miama Kromah appeals her convictions and sentences for unlawful neglect of a child and infliction of great bodily injury upon a child. She argues the trial court erred in (1) permitting the State's witnesses to testify as to the actions they took as a result of hearsay statements made by the three-year old victim who would have been incompetent to testify at trial; (2) allowing the State to argue during closing argument that the victim was deliberately hidden away from the State, implying the victim would have testified Kromah committed this crime; and (3) denying Kromah's new trial motion based on after-discovered evidence. We affirm.

1. We find Kromah's argument that the trial court erred in permitting the State's witnesses to testify unpreserved for review. With regards to Heather Smith's testimony, the objection did not specifically pertain to her reliance on the victim's statements, but rather addressed the form of the State's question. See State v. Turner, 373 S.C. 121, 126 n.1, 644 S.E.2d 693, 696 n.1 (2007) (holding in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court); State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (holding an objection should be addressed to the trial court in a sufficiently specific manner that it brings attention to the exact error). Similarly, the objection lodged during Investigator Roy Livingston's direct-examination did not address any alleged hearsay statement.

2. We find Kromah's argument that the trial court erred in allowing the State's closing argument unpreserved for review because the objection addressed the lack of evidence to support the State's arguments, not the implications of the argument. Additionally, Kromah did not make a contemporaneous objection to the closing argument based on its insinuations. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."); In the Matter of the Care & Treatment of McCracken, 346 S.C. 87, 93, 551 S.E.2d 235, 238-39 (2001) (holding the proper course is to object immediately to an improper argument).

3. We find the trial court properly denied Kromah's new trial motion because the alleged after-discovered evidence is not such that it would probably change the result if a new trial was granted and the evidence could have been discovered and presented during her trial. See State v. Spann, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999) (holding that in order to prevail on a new trial motion based on after-discovered evidence, the appellant must show the evidence: "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching").

AFFIRMED.

SHORT, WILLIAMS, and LOCKEMY, JJ., concur.

RECEIVED

JUN 30 2009

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

James W. Johnson, Jr., Circuit Court Judge

Case Nos. 05-GS-40-8139 & 06-GS-40-2991

THE STATE OF SOUTH CAROLINA, ... RESPONDENT,

v.

MIAMA KROMAH, ... APPELLANT.

PETITION FOR REHEARING

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ATTORNEY FOR APPELLANT.

NOW COMES the Appellant in the above-captioned action, acting by and through her undersigned counsel, seeking rehearing on this Court's unpublished opinion affirming her sentences and convictions. State v. Miamia Kromah, Op. No. 09-UP-322 (S.C. Ct. App. filed June 15, 2009). Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by the Court in the opinion in question. In support of this position, she would show unto this Honorable Court the following:

The Appellant alleged that the lower court erred in permitting several witnesses to testify regarding statements that the victim had made to them and the actions that they took in response to those statements. The Appellant also alleged that the lower court erred in permitting the solicitor to argue that the victim had been deliberately removed from the jurisdiction of South Carolina and implying that the victim would have testified that the Appellant committed the crime. Finally, the Appellant also alleged that the lower court erred in refusing to grant a new trial based on the victim's testimony. This Court affirmed all of the lower court's challenged decisions. The Appellant will address each contention in turn.

A. Testimony of Heather Smith and Investigator Roy Livingston

The Appellant was charged with unlawful neglect of a child and infliction of great bodily injury upon a child stemming from an incident where her husband's three-year old victim's scrotum was cut. He was taken to the hospital where surgery was performed. The victim did not testify at trial because he was not within the jurisdiction of South Carolina due to his father's removal of him from the state. However, the victim had spoken to both Heather Smith ("Smith"), a forensic interviewer who met with him after his surgery, and Investigator Roy Livingston, who interviewed him at the hospital.

At the outset of the trial, the Appellant moved *in camera* to prohibit the State from presenting witnesses who would testify about what the victim had told them. ROA p. 2, line 17-p. 5, line 1. The trial court indicated it would rule on the issue when it arose during the trial. ROA p. 12, line 24-p. 13, line 6.

Smith testified *in camera* that “Miama hurt me” and that based on that statement, she made a finding of compelling physical abuse. ROA p. 78, lines 14-22. Prior to the jury returning to the courtroom, the Appellant argued that this testimony was impermissible. ROA p. 96, line 2-p. 97, line 7; p. 101, line 25.¹ Those objections were overruled.

Investigator Livingston testified that he spoke with the Appellant and her husband, Musa Kromah, a couple of days after the incident. ROA p. 187, line 5-p. 188, line 9. The Appellant was not under arrest nor was she a suspect at that point in time. ROA p. 188, line 19-p. 189, line 2. Investigator Livingston then testified that he met with the victim later that day, and subsequently arrested the Appellant. ROA p. 194, line 19-p. 195, line 24. The Appellant objected to that testimony but the objection was overruled. ROA p. 195, line 25-p. 196, line 8.

On appeal, the Appellant argued that the testimony of Smith and Investigator Livingston was improperly admitted as impermissible hearsay and prior bad act testimony. The Court found that the rulings were not preserved for review. State v. Kromah, *supra*. Additionally, this Court did not rule on the prior bad act issue. *Id.* The Appellant would petition for rehearing on the grounds that the objections were preserved and that the testimony was improperly admitted.

1. Preservation

The Appellant agrees that the objection lodged by defense counsel during Smith’s testimony was to the form of the question and not to the substance of the testimony. However,

¹ When the State attempted to introduce the testimony in front of the jury, defense counsel objected. A bench conference was held and the trial court stated that “[t]he objection is sustained as to the form of that question.” ROA p. 107, lines 2-11.

while defense counsel did not lodge a specific objection during Smith's testimony, he had already done so *immediately prior* to her testimony in front of the jury. When a motion to exclude evidence is made outside the presence of the jury but immediately prior to the admission of the testimony, the objection is preserved for appellate review. See State v. Wiles, Op. No. 26674 (S.C. Sup. Ct. filed June 22, 2009) (Davis Adv. Sh. No. 28 at 29). In this case, defense counsel made his objection immediately prior to the admission of the improper testimony in front of the jury. Therefore, this issue is preserved for appellate review.

Additionally, the objection to Investigator Livingston's testimony also preserves the issue for appellate review. It is important to note the exact language used by the State in its question to Investigator Livingston and the exact language used by defense counsel in objecting to the testimony:

Q: And based on your investigation at that point, the next day did you arrest Miama Kromah?

A: Yes, I did.

Mr. Rogers: Objection, Your Honor. That is an improper question, *based on that information. We've already discussed this.*

May we approach the bench?

The Court: Yes, sir. Come up.

(Whereupon, a bench conference was held in the presence, but not within the hearing, of the jury.)

The Court: All right. The objection is overruled. You may continue, solicitor.

ROA p. 195, line 22-p. 196, line 8 (emphasis added). It is clear from the language used by defense counsel—"[w]e've already discussed this"—that he was referring back to his original motion *in limine* to exclude the hearsay testimony. Consequently, the objection to Investigator Livingston's testimony is also preserved for appellate review.

2. Hearsay

"Hearsay" is a statement, other than one made by the declarant while testifying at the

trial, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible unless it falls within one of several enumerated exceptions. Rule 802, SCRE.

An out-of-court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was taken. State v. Brown, 317 S.C. 55, 451 S.E.2d 888 (1994); see also German v. State, 325 S.C. 25, 478 S.E.2d 687 (1996). However, the statements must not be entered for the truth of the matter asserted for this exception to apply. Brown at 63, 451 S.E.2d at 894.

In this case, the statements were admitted for the truth of the matter asserted. Investigator Livingston and Heather Smith were permitted to testify that they took certain actions against the Appellant based on the statements made to them by the victim. Allowing the testimony improperly permitted the State to get in the back door what they could not get in through the front door, and the testimony was highly prejudicial. Their testimony was improper hearsay and should have been excluded. Consequently, the Appellant contends that the lower court improperly erred in permitting the witnesses to give the impermissible hearsay testimony. Accordingly, the Appellant is entitled to a new trial.

3. *Prior Bad Acts*

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

“[I]dentification of an individual as the suspect of a criminal investigation, based upon speculation and effectively calling into question that individual’s character, is [inadmissible].” State v. Jones, 343 S.C. 562, 575, 541 S.E.2d 813, 820 (citing German, *supra*). Statements which specifically refer to the defendant as the suspect of a criminal investigation are improper.

German, *supra*, at 27, 478 S.E.2d at 688.

In this case, Heather Smith's and Investigator Livingston's testimony regarding what information they were provided and who became the target of the police's investigation clearly violated the mandates of German and Jones. The testimony was highly improper and should have been excluded. Consequently, the Appellant is entitled to a new trial on this ground as well.

B. State's Closing Argument

As noted above, the victim was not within the jurisdiction of South Carolina's courts at the time of the trial. During the solicitor's closing argument, the following exchange occurred regarding the victim was not present at trial:

[Ms. Campbell:] Why make that up? But more than that, he gets custody of his child back. She can't have him. He gets custody back in February. He moves to Atlanta immediately thereafter.

And I believe he—he didn't even know his own son's birthday by the way. I believe in caring for the child or maybe because it was going to save him money, approximately three or four weeks prior this [sic] trial, he sends the child to Liberia. He knew, ladies and gentlemen—

Mr. Rogers: Your Honor, I hate to interrupt, but there was no evidence that Musa knew when the trial was coming up such that this was something intentional on his part. He testified that he sent the child because of monetary reasons.

The Court: All right. Again, I can't comment on the evidence. The jury has to remember what the evidence has been according to their recollection of what has been presented.

Mr. Rogers: Yes, sir.

The Court: You may continue, Solicitor.

Ms. Campbell: Thank you, Your Honor.

You can recall, ladies and gentlemen. He knew this trial was

coming up, and he chose right before this trial to send the child to Liberia. He told you specifically that I couldn't have any contact with the child. The child was not to be involved in these proceedings and as his guardian, that was his right, but, I submit, ladies and gentlemen, why? I just ask you that question. *Why doesn't he want us, anyone, to hear from [the victim]?*

ROA p. 287, line 12-p. 288, line 17 (emphasis added).

Following the State's closing argument and the trial court's jury charge, defense counsel placed his specific objection on the record:

Mr. Rogers: Nothing from the Defendant on the charge, Your Honor. I would like to put on an objection *nunc pro tunc* to two items in Ms. Campbell's closing.

The Court: All right.

Mr. Rogers: When she argued that sending the child to Africa was an attempt to protect the wife, of course, *that implies that the child would have said something implicating the wife, and secondly when she said [the victim] was not allowed to be here for the same reason, that the implication is that had he been here he would have implicated her*, and that is just not the state of the evidence. He may have been found competent or he may not have been. To say that in that manner, I think, put that implication in the jury's mind.

The Court: All right. Your objection is noted. I would overrule. I think the arguments—other than what I ruled on during the arguments and objections that were made were appropriately within the rules.

ROA p. 295, line 19-p. 296, line 13 (emphasis added).

On appeal, the Appellant argued that the lower court improperly found that the State's closing argument was permissible. Specifically, the Appellant argued that the lower court impermissible permitted the State to argue that the victim would have implicated the Appellant had he been present to testify at the trial. This Court found that her argument was not preserved for review "because the objection addressed the lack of evidence to support the State's arguments, not the implications of the argument." State v. Kromah, *supra*. This Court also

found that the Appellant “did not make a contemporaneous objection to the closing argument based on its insinuations.” Id.

“[W]hile [the prosecutor] may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” Berger v. United States, 295 U.S. 78, 88 (1935). The standard of review is “is whether the prosecutors' comments ‘so infected the trial with unfairness as to make the resulting conviction a denial of due process.’” Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974)); see also Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002). The State’s closing argument must be limited to the evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007).

The Appellant would respectfully submit that this issue was preserved for appellate review. Defense counsel clearly levied an objection during the State’s closing argument to the propriety of the State’s argument and then expounded upon that objection after the argument had finished. This Court should consider both portions of defense counsel’s objection as one objection. During the latter portion of this objection, defense counsel clearly and repeatedly argued that the implications of the State’s argument were improper. Consequently, this Court should deem this issue preserved for appellate review.

Furthermore, the Appellant was prejudiced by the State’s closing argument. The State was permitted to repeatedly argue to the jury that the victim would have implicated the Appellant had he testified at trial. Such an argument was obviously not based on the evidence presented at trial nor was it a fair inference drawn from the evidence at trial. The State’s argument was

undeniably highly improper and prejudicial and resulted in a denial of due process. Consequently, the Appellant is entitled to a new trial on this ground.

C. New Trial Based on the Victim's Testimony

The State's theory of the case was that the Appellant held the victim down and used a sharp object, such as a razor, to slice open the victim's scrotum. The Appellant's defense was that the injury accidentally occurred. Following the Appellant's trial, she filed a motion for a new trial based on after-discovered evidence. At a hearing on that motion, the Appellant presented the testimony of the victim, who testified that the Appellant did not have anything in her hands while he was being bathed and when he was hurt. ROA p. 341, lines 23-25. He also testified that he was not held down while he was being bathed or when he was hurt. ROA p. 341, line 23-p. 342, line 23. Based on this testimony, the Appellant argued that she was entitled to a new trial. The lower court denied this motion. ROA p. 362.

A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilty or innocence; and (5) is not merely cumulative or impeaching. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983).

This Court found that the lower court properly denied the Appellant's motion for a new trial because it would not change the outcome of the trial and that "the evidence could have been discovered and presented during her trial." State v. Kromah, *supra*. The Appellant contends that both of this Court's rulings on this issue are in error.

First, the testimony clearly could not have been procured prior to the trial and presented

to the trial court.² The victim was outside of the jurisdiction of South Carolina and could not be subpoenaed to court by either party, despite considerable efforts by both parties to have him present for the trial. Furthermore, the child was taken from South Carolina by his biological father; the Appellant's husband. He alone had custody and control over this child. There was no evidence that the Appellant had any input in the decision to remove him from the jurisdiction of the Court or that she had any authority to have him returned to South Carolina. Consequently, this evidence is properly considered as being discovered after the conclusion of the trial.

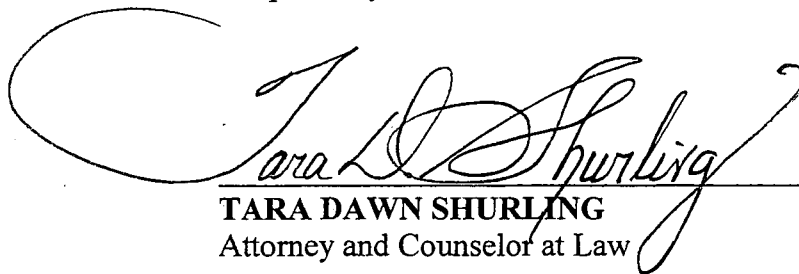
Furthermore, the victim's testimony warrants the grant of a new trial. The victim clearly testified that the Appellant was not holding anything when she bathed him, nor did she restrain him. This testimony is *completely contrary* to the State's theory of the case. Additionally, the victim's testimony is consistent with the Appellant's contention that the injury occurred accidentally while she was bathing him. Had this testimony been presented at trial, the result of the trial would have unquestionably been different. Accordingly, the Appellant is entitled to a new trial on this ground as well.

² The Appellant would note that while the State argued that the victim's testimony was not new evidence and would not change the outcome of the trial, the State did not argue that the evidence could have been discovered prior to trial. See Brief of Respondent at 16-17

CONCLUSION

WHEREFORE, having set forth her grounds, the Appellant, Miama Kromah, asks that this Court rehear her appeal and grant appropriate relief.

Respectfully submitted,



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This th30 day of June, 2009.

RECEIVED
JUN 30 2009
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
The Honorable James W. Johnson, Jr., Circuit Court Judge

Case No. 05-GS-40-8139 & 06-GS-40-2991

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

MIAMA KROMAH,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Petition for Rehearing in the above-entitled case has been served upon opposing counsel, William M. Blitch, Jr., Assistant Attorney General, P. O. Box 11549, Columbia, SC, by depositing in the U. S. Main, postage prepaid, this 30th day of June, 2009.

Sharon McCollister
Sharon McCollister
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 30th day
of June, 2009.

Dunnette Shakara (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/12/2013

The South Carolina Court of Appeals

The State,

Respondent,

v.

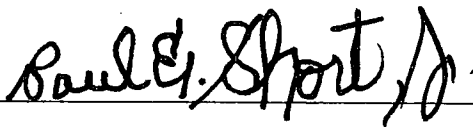
Miama Kromah,

Appellant.

The Honorable James W. Johnson, Jr.
Richland County
Trial Court Case No. 2005-GS-40-08139
2006-GS-40-02991

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



J. Short



J. Williams



J. Lockemy

Columbia, South Carolina

August 25, 2009

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

16872
APPEAL FROM RICHLAND COUNTY
Court of General Sessions
James W. Johnson, Circuit Court Judge

Case No. 05-GS-40-8139 & 06-GS-40-2991

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

MIAMA KROMAH,

APPELLANT.

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State's Exhibits 8-10, 15, and 17 (Photographs) are part of the Record on Appeal and have been transferred to the Court of Appeals for viewing.	

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
) 05-GS-40-8139 and
) 06-GS-40-2991

THE STATE)
)
VS.) TRANSCRIPT OF RECORD
)
MIAMA KROMAH,)
DEFENDANT.)
)

JUNE 13, 2006
COLUMBIA, SOUTH CAROLINA

BEFORE:

HONORABLE JAMES W. JOHNSON, JR., JUDGE; AND A JURY

APPEARANCES:

KATHRYN LUCK CAMPBELL, 1ST ASST. SOLICITOR
NIKKI HALL, ASST. SOLICITOR
ATTORNEYS FOR THE STATE

JIMMY ROGERS, ESQ.
ATTORNEY FOR THE DEFENSE

KAREN TRACY
OFFICIAL COURT REPORTER

1 JUROR WHO WAS SELECTED. BASED ON THAT NOTE -- AND I
2 HAVE REVIEWED AND WILL MAKE IT A PART OF THE COURT'S
3 EXHIBIT -- THAT JUROR HAS BEEN EXCUSED. WE WILL SEAT
4 ONE OF THE ALTERNATES. THE ALTERNATE IS SELECTED BY
5 BALLOT. PAT, IF YOU WILL DRAW ONE OF THE TWO NAMES.

6 (WHEREUPON, COURT'S EXHIBIT 1 WAS MARKED FOR
7 IDENTIFICATION ONLY.)

8 THE CLERK: JAY PARK.

9 THE COURT: JAY PARK, JUROR NUMBER 177, THE FIRST
10 ALTERNATE SELECTED, WILL BE SEATED AS A MEMBER OF THE
11 JURY PANEL.

12 ALL RIGHT. ANY OTHER MATTERS WE NEED TO TAKE UP
13 BEFORE THE JURY IS BROUGHT IN AND WE GET STARTED?
14 ANYTHING FROM THE STATE?

15 MS. CAMPBELL: NOTHING FROM THE STATE, YOUR HONOR.

16 THE COURT: ALL RIGHT. MR. ROGERS?

17 MR. ROGERS: YES, YOUR HONOR. AS WE DISCUSSED
18 YESTERDAY IN CHAMBERS, IT IS MY UNDERSTANDING THAT THE
19 STATE IS GOING TO ATTEMPT TO INTRODUCE STATEMENTS OF
20 THE VICTIM, *VICTIM*, THROUGH OTHER WITNESSES.

21 AS I INDICATED YESTERDAY, I THOUGHT THE RULES
22 PREVENTED THAT. IN LOOKING AT THE ASSESSMENT AND
23 RESOURCE CENTER TAPE, I HAD SERIOUS QUESTIONS AS TO THE
24 COMPETENCY OF *Victim* DURING THAT INTERVIEW. HE WAS
25 ASKED ON A COUPLE OF OCCASIONS IF HE WAS HURT, DID HE

1 GO TO THE DOCTOR. HE SAID "NO" TO BOTH OF THOSE
2 QUESTIONS, WHICH WE OBVIOUSLY KNOW THAT THE ANSWER IS
3 YES. SO IT WAS ON THAT BASIS THAT I FEEL THAT *victim*
4 IS NOT A COMPETENT WITNESS.

5 THE CASE I HAVE JUST HANDED UP IS THE CASE OF
6 SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES VS.
7 JOHN DOE. IT WAS A CASE THAT IS EXACTLY ON POINT. IF
8 I CAN DIRECT THE COURT'S ATTENTION TO THE NEXT TO THE
9 LAST PAGE, NOTE NUMBER FIVE, THE COURT OF APPEALS HERE
10 SAID THAT AN ADMISSION OF HEARSAY UNDER AN EXCEPTION TO
11 THE RULE PRESUPPOSES THE DECLARANT IS POSSESSED OF THE
12 QUALIFICATIONS OF A WITNESS IN REGARDS TO COMPETENCY --

13 THE COURT: WHERE ARE YOU READING FROM THERE?

14 MR. ROGERS: PARAGRAPH FIVE -- NOTE FIVE -- ON THE
15 NEXT TO THE LAST PAGE OF THE OPINION.

16 THE COURT: OKAY. GO AHEAD.

17 MR. ROGERS: -- THE RIGHT TO COMPETENCY, PERSONAL
18 KNOWLEDGE, AND THE LIKE. THUS, THE DECLARANT'S
19 COMPETENCY IS A PRECONDITION TO THE ADMISSION OF HIS
20 HEARSAY STATEMENT ON THE GROUND OF UNAVAILABLE, SO THE
21 COURT WOULD FIRST HAVE TO MAKE A FINDING THAT *victim*
22 WAS COMPETENT AS A WITNESS BEFORE ANY HEARSAY
23 STATEMENTS COULD BE ADMITTED IN THIS TRIAL OF HIS, EVEN
24 THOUGH IS A 1987 CASE. I WOULD SHEPARDIZE IT IS STILL
25 THE LAW. THE COURT OF APPEALS RECENTLY UPHELD THAT

1 PREMISE, THAT HOLDING IN ANOTHER CASE, SOUTH CAROLINA
2 DEPARTMENT OF SOCIAL SERVICES VS. WEEKS. I CAN PASS
3 THAT CASE UP IF NECESSARY, BUT I HAVE NOT SEEN THAT
4 THAT REQUIREMENT HAS BEEN OVERRULED OR REVERSED, SO
5 THAT IN ORDER FOR THE STATE TO INTRODUCE ANY PURPORTED
6 STATEMENTS MADE BY Victim, THIS COURT WOULD HAVE TO
7 MAKE A PRELIMINARY FINDING OF HIS COMPETENCY AS A
8 WITNESS.

9 AS THE COURT IS AWARE, THOSE FINDINGS CONSIST OF
10 THE WITNESS'S ABILITY TO PERCEIVE THE EVENTS WITH A
11 SUBSTANTIAL DEGREE OF ACCURACY, REMEMBER THE EVENT,
12 COMMUNICATE ABOUT THE EVENT INTELLIGENTLY, AND BE
13 MINDFUL OF THE DUTY TO TELL THE TRUTH IN COURT OR UNDER
14 OATH.

15 I DON'T THINK, IN THIS CASE, THE COURT CAN MAKE
16 THAT FINDING WITH REGARD TO THIS WITNESS. THE WITNESS
17 IS UNAVAILABLE AND IS NOT GOING TO BE CALLED, IS OUT OF
18 THE COUNTRY, AS I RECENTLY LEARNED, SO THERE WOULD BE
19 NO WAY FOR THIS COURT TO MAKE A FINDING OF COMPETENCY,
20 THAT WOULD HAVE TO BE A PREDICATE FINDING BEFORE THE
21 ADMISSION OF ANY SO-CALLED CHILD ABUSE EXCEPTION TO THE
22 HEARSAY EVIDENCE.

23 I UNDERSTAND THERE WOULD BE MORE THAN ONE WITNESS,
24 I THINK, TO REPORT STATEMENTS MADE BY Victim. IT IS
25 ON THAT BASIS, YOUR HONOR, WE ARE MOVING TO EXCLUDE

1 SUCH STATEMENTS.

2 THE COURT: ALL RIGHT. SOLICITOR?

3 MS. CAMPBELL: MAY IT PLEASE THE COURT, YOUR
4 HONOR. HE IS REFERRING TO A 1987 CASE, THE D.S.S.
5 CASE. SINCE THEN THERE HAVE BEEN SOME OTHER CASES THAT
6 CAME OUT. ONE THAT I WOULD HAND UP IS STATE VS.
7 MANDELL SIMS. I'M SORRY, BUT I ONLY HAVE ONE COPY OF
8 THIS. IN THAT CASE, IT WAS A CASE WHERE THE CHILD WAS
9 CALLED TO THE STAND AND ANSWERED SOME PRELIMINARY
10 QUESTIONS AND THEN WAS NO LONGER ABLE TO SPEAK. AT
11 THAT POINT, THE STATE CONTINUED WITH THE TRIAL AND
12 THERE WAS NO FINDING OF COMPETENCY. THEY CONTINUED
13 WITH THE TRIAL AND OFFERED SOME HEARSAY STATEMENTS THAT
14 HE MADE THE MORNING AFTER THIS MURDER OCCURRED, THAT HE
15 HAD WITNESSED, OF HIS MOTHER. IN THAT CASE, THE COURT
16 ALTHOUGH NOT ADDRESSING THE SPECIFIC ISSUE, SAID THE
17 STATEMENTS WERE ADMISSIBLE EVEN THOUGH THERE WAS A 12
18 TO 24 HOUR PERIOD AFTER THE STARTLING EVENTS OCCURRED.

19 IT DOES ADDRESS HEARSAY TESTIMONY AT LENGTH, YOUR
20 HONOR, AND THAT WAS INVOLVING THE CASE WITH A FIVE YEAR
21 OLD WITNESS. THIS IS A 2001 SUPREME COURT CASE, YOUR
22 HONOR. I BELIEVE IT WAS DECIDED IN JANUARY OF 2002.
23 CAN I GIVE YOU THE CITE OR HAND UP MY RATHER MARKED UP
24 COPY?

25 THE COURT: ALL RIGHT. I'LL HAVE TO TAKE A LOOK

1 AT THAT.

2 WHAT EXACTLY IS IT -- WHAT STATEMENTS OF THE CHILD
3 IS THE STATE SEEKING TO INTRODUCE THROUGH SOME OTHER
4 SOURCE?

5 MS. CAMPBELL: YOUR HONOR, ONE, IT'S NOT A
6 STATEMENT. WE WOULD EVEN SAY IT IS NON-TESTIMONIAL.
7 THERE IS -- IN THE HOSPITAL, WHEN THE CHILD IS
8 TRANSFERRED FROM LEXINGTON HOSPITAL OVER TO RICHLAND
9 MEMORIAL, ONE OF THE DOCTORS THAT'S TREATING HIM,
10 DR. ERIN FIELDS WHO WILL BE TESTIFYING, INDICATES AT
11 ONE POINT THE MOTHER IS IN THE ROOM, AND SHE WAS
12 LOOKING AT ~~victim~~. SHE WILL DESCRIBE HIS DEMEANOR.
13 SHE ASKED ~~victim~~, "WHO DID THIS TO YOU, WHO DID THIS
14 TO YOU?" HE STARTS TO MOUTH SOMETHING, AT WHICH POINT
15 THE DEFENDANT INTERCEDES AND STARTS TELLING HIM
16 SOMETHING, WHICH -- I CAN'T REMEMBER THE EXACT WORDS,
17 SO THERE'S NO TESTIMONY THERE, YOUR HONOR.

18 THE ONLY OTHER TIME THAT WE THINK THAT WE WOULD BE
19 ABLE TO GET INTO THE EXCITED UTTERANCE IS ON THAT SAME
20 TIME PERIOD, WHEN THE INVESTIGATOR IN THE CASE, ROY
21 LIVINGSTON, GOES TO SEE THE CHILD AFTER HIS OPERATION,
22 AFTER HE HAS COME OUT OF SURGERY -- AND THIS WAS
23 CONSIDERED TO BE FAIRLY MAJOR SURGERY, YOUR HONOR.
24 ONCE HE WAS AWAKE, HE DOES GO TO HIM AND ASKED HIM
25 AGAIN, "WHO DID THIS, WHO DID THIS?", AND THE CHILD WAS

1 ABLE TO ANSWER, "MIAMA DID IT."

2 THAT IS THE EXTENT OF THE STATEMENT. THERE IS AN
3 A.R.C. INTERVIEW, YOUR HONOR, I BELIEVE SOME TEN DAYS
4 LATER, WE ADMIT, I DON'T THINK THERE IS ANY HEARSAY
5 EXCEPTION AT THIS POINT. THEY ACTUALLY SIGNED A BILL
6 ABOUT HEARSAY EXCEPTION THAT WOULD MAKE THE VIDEOTAPE
7 ADMISSIBLE, HOWEVER, THAT DOESN'T GO INTO EFFECT UNTIL
8 JULY 1ST AND ONLY APPLIES TO CASES THAT OCCURRED AFTER
9 THAT DAY. WE WOULD ADMIT, EVEN THOUGH THE TESTIMONY IS
10 TO THE FINDINGS IN THIS CASE, THAT WE WOULD NOT BE ABLE
11 TO GET INTO THE SPECIFICS UNLESS THE DOOR IS OPENED AS
12 TO WHAT THE CHILD ACTUALLY SAID. WE WILL BE SAYING
13 THAT HE DID IDENTIFY WHO DID IT, BUT WE WILL CAUTION
14 THE WITNESS THAT SHE WILL NOT BE ABLE TO SAY WHAT HE
15 SAID.

16 THE COURT: ALL RIGHT. IF YOU'LL GET A COPY OF
17 THAT CASE. I'LL BE GLAD TO HEAR FROM YOU, MR. ROGERS.

18 MR. ROGERS: WELL, YOUR HONOR, FIRST OF ALL, I
19 DON'T THINK THEY COULD INTRODUCE -- WELL, THE PREMISE
20 STANDS THAT IN ORDER TO INTRODUCE ANY STATEMENT OF
21 ~~victim~~, THIS COURT HAS TO FIND THAT ~~victim~~ IS
22 COMPETENT AS A WITNESS TO MAKE ANY STATEMENTS
23 WHATSOEVER. THIS PURPORTED ASSERTION THAT THE DOCTOR
24 WAS ASKING ~~victim~~ WHO DID IT AND HE WAS ABOUT TO
25 ANSWER, THAT'S CLEARLY SPECULATIVE, YOUR HONOR. WE

1 DON'T KNOW IF *Victim* WAS ABOUT TO ANSWER OR NOT.
2 THAT GOES TO THE HEART OF MY OBJECTION WITH REGARD TO
3 HIS COMPETENCY. IF YOUR HONOR WOULD LIKE TO VIEW THE
4 A.R.C. TAPE AND DRAW CONCLUSIONS AS TO WHY I'M RAISING
5 HIS COMPETENCY -- WE DON'T KNOW WHAT HE WOULD HAVE
6 SAID, AND THE STATE WANTS TO TAKE THE POSITION THAT HE
7 WAS ABOUT TO ANSWER WHO DID IT AND THEN MIAMA STOPPED
8 HIM. I MEAN, THAT'S CLEARLY SPECULATION, YOUR HONOR.

9 WITH REGARD TO THE STATEMENT MADE TO INVESTIGATOR
10 LIVINGSTON, THAT'S A STATEMENT THAT I HAVE NOT SEEN,
11 NUMBER ONE. MS. CAMPBELL AND I HAVE DISCUSSED THIS,
12 WHERE THAT STATEMENT WAS. I HAVE GONE THROUGH THE
13 DISCOVERY MATERIAL. I HAVE GONE THROUGH INVESTIGATOR
14 LIVINGSTON'S NOTES SEVERAL TIMES, SPECIFICALLY LOOKING
15 FOR THAT. NONETHELESS, IF IT DOES EXIST, IT IS STILL
16 THE SUBJECT OF -- OKAY. (PAUSE) I DID MISS THIS. I
17 APOLOGIZE, BUT THE COURT WILL STILL HAVE TO MAKE A
18 FINDING, YOUR HONOR, THAT *Victim* WAS COMPETENT TO
19 EVEN MAKE THAT STATEMENT TO INVESTIGATOR LIVINGSTON.

20 YOUR HONOR, IF I MAY.

21 THE COURT: YES, SIR.

22 MR. ROGERS: THERE'S ANOTHER CASE, STATE VS.
23 CAMELE C-A-M-E-L-E REPORTED AT 293 SC302 WHERE THE
24 JUDGE IN THAT CASE DID EXACTLY WHAT THE STATE IS ASKING
25 YOU TO DO HERE. THEY WERE ATTEMPTING TO INTRODUCE A

1 HEARSAY VIDEOTAPE OF THE VICTIM, AND WITHOUT -- AND THE
2 COURT IN THAT CASE DID SO. THE SUPREME COURT OF SOUTH
3 CAROLINA SAID IN THAT CASE THAT THE INTRODUCTION OF THE
4 VIDEOTAPE WAS IMPROPER WITHOUT THE JUDGE FIRST MAKING A
5 FINDING AS TO THE CHILD WHO TESTIFIED ON THE VIDEOTAPE
6 AS BEING COMPETENT.

7 IN THAT CASE, THE JUDGE ONLY HAD THE ASSERTIONS OF
8 THE SOLICITOR'S OFFICE THAT THE CHILD WAS COMPETENT,
9 AND THE SUPREME COURT SAID THERE THAT THAT WOULD NOT BE
10 ENOUGH, THAT THE COURT WOULD HAVE TO CONDUCT ITS OWN
11 HEARING AND MAKE A SPECIFIC FINDING OF THE COMPETENCY
12 OF THE CHILD IN ORDER TO ALLOW THIS HEARSAY EXCEPTION.
13 THAT'S EXACTLY WHAT WE HAVE HERE.

14 MS. CAMPBELL: YOUR HONOR, IF I MIGHT HAND UP
15 SIMS.

16 THE COURT: YES. WHAT IS THE DATE OF THAT LAST
17 CASE YOU CITED, MR. ROGERS?

18 MR. ROGERS: 1987, YOUR HONOR, BUT AGAIN I
19 SHEPARDIZED AND IT HAS NOT BEEN OVERRULED.

20 THE COURT: WELL, IN THE SIM'S CASE LISTED ON PAGE
21 TWO IN THE TOP RIGHT HAND COLUMN, IT SAYS, "AFTER BEING
22 FOUND COMPETENT TO TESTIFY, THEN THE BOY WAS PERMITTED
23 TO TESTIFY," SO THE COMPETENCY THERE WAS AN ISSUE AND
24 THE CHILD WAS FOUND TO BE COMPETENT AT THAT POINT IN
25 TIME.

1 I GUESS ONE THING I'M STRUGGLING WITH IS RULE 601,
2 WHICH WAS ADOPTED AFTER THESE '87 CASES, SUBSECTION (A)
3 SAYS EVERY PERSON IS COMPETENT TO BE A WITNESS EXCEPT
4 AS OTHERWISE PROVIDED BY STATUTE. IN THE NOTES IT SAYS
5 THAT THIS CHANGES THE LAW IN SOUTH CAROLINA. THE PRIOR
6 SOUTH CAROLINA LAW PROOF OF COMPETENCY TO CHILDREN
7 UNDER THE AGE OF 14 WAS REQUIRED UNLESS THE CHILD WAS A
8 VICTIM OF ABUSE OR NEGLECT AS DEFINED IN THE CHILDREN'S
9 CODE AS TESTIFYING CONCERNING THE ABUSE OR NEGLECT. IT
10 CITES D.S.S. VS. DOE.

11 UNDER THIS RULE, CHILDREN ARE PRESUMED TO BE
12 COMPETENT UNLESS IT IS SHOWN OTHERWISE. IT SEEMS TO ME
13 THAT STARTING OFF UNDER 601 ALL WITNESSES ARE PRESUMED
14 COMPETENT AND THERE HAS TO BE SOME SHOWING FOR THE
15 COURT TO MAKE A DETERMINATION THAT, IN FACT, A WITNESS
16 IS NOT COMPETENT. THAT'S THE WAY I'M READING THAT
17 RULE.

18 MR. ROGERS: WELL, YOUR HONOR, I'M ATTEMPTING TO
19 MAKE THAT SHOWING.

20 THE COURT: ALL RIGHT.

21 MR. ROGERS: I GUESS --

22 THE COURT: IT'S GOT TO BE MORE THAN COUNSEL'S
23 ARGUMENT, JUST LIKE IT HAD TO BE MORE THAN THE STATE'S
24 ARGUMENT IN THAT CASE THAT WAS CITED.

25 MR. ROGERS: THEN I WOULD ASK THE COURT TO REVIEW

1 THE A.R.C. TAPE AND MAKE A DETERMINATION FROM THAT,
2 BECAUSE THAT'S WHAT MY BASIS IS, THAT EVEN THOUGH THE
3 CHILD DID EVENTUALLY SAY THAT MIAMA DID IT, IT'S VERY
4 -- THE TAPE TAKES ABOUT AN HOUR, AND HE WAS ASKED
5 REPEATEDLY, AND I THINK THE COURT HAS TO CONSIDER
6 WHETHER THERE WAS A TAINING SITUATION INVOLVED. I'LL
7 BE MORE THAN HAPPY TO GET THE TAPE FOR THE COURT.

8 MS. CAMPBELL: YOUR HONOR --

9 THE COURT: MY UNDERSTANDING IS THAT THE STATE
10 WASN'T GOING TO INTRODUCE THAT TAPE.

11 MS. CAMPBELL: WE AREN'T INTRODUCING THE TAPE.

12 MR. ROGERS: BUT WHAT I'M SAYING TO YOUR HONOR IS
13 THE TAPE IS OUR BASIS FOR CONCLUDING -- MY ASSERTION
14 THAT THE CHILD WAS NOT COMPETENT.

15 THE COURT: WAS THE TAPE MADE IN THE SAME TIME,
16 THE SAME GENERAL TIMEFRAME AS THE ALLEGED STATEMENT
17 THAT WAS MADE TO THE OFFICER?

18 MR. ROGERS: DAYS LATER.

19 THE COURT: THE TAPE WAS AFTER --

20 MR. ROGERS: THE TAPE WAS AFTER THE STATEMENT TO
21 THE OFFICER. NOT ONLY THAT, YOUR HONOR, IT IS MY
22 UNDERSTANDING THAT THE CHILD WAS GIVEN MORPHINE WHEN HE
23 WAS TREATED AT PALMETTO LEXINGTON. OF COURSE, THAT
24 WOULD ALSO HAVE SOME BEARING ON HIS ABILITY TO BE A
25 COMPETENT WITNESS. I MEAN, IF WE HAD THE CHILD, THE

1 COURT COULD ASK THE QUESTIONS TO MAKE THE
2 DETERMINATION.

3 THE COURT: I UNDERSTAND. THAT'S PART OF THE
4 PROBLEM THAT I'VE GOT. I DO THINK UNDER THE LAW I DO
5 HAVE TO MAKE A DETERMINATION OF THE COMPETENCY OF THE
6 CHILD BEFORE THE STATEMENTS YOUR TALKING ABOUT COULD BE
7 INTRODUCED.

8 NOW, AS TO THE STATEMENT MADE TO THE DOCTOR, IT'S
9 REALLY NOT A STATEMENT. IT'S CONDUCT AND IT'S NOT
10 CONDUCT REALLY OF THE CHILD. IT'S CONDUCT OF THE
11 DEFENDANT. FOR THAT REASON, I WILL PERMIT THAT TO BE
12 DESCRIBED. I DON'T KNOW WHETHER IT CAN BE DESCRIBED AS
13 HE WAS ATTEMPTING TO SAY SHE DID IT, BECAUSE FROM WHAT
14 YOU FOLKS ARE TELLING ME, THAT'S NOT WHAT WAS SAID. IT
15 WAS WHENEVER HE WENT TO RESPOND TO THE QUESTION, THERE
16 WAS AN INTERRUPTION AND THAT WAS IT.

17 MS. CAMPBELL: AND PRIOR TO THAT WITNESS
18 TESTIFYING WE WOULD LIKE TO MAKE A PROFFER TO MAKE SURE
19 THAT'S EXACTLY -- MY UNDERSTANDING WAS IN INTERVIEWING
20 DR. FIELDS IS THAT SHE IS ASKING THE CHILD, "WHO DID
21 THIS TO YOU, WHO DID THIS TO YOU?" HE STARTS TO MOUTH
22 SOMETHING LIKE THIS, AT WHICH POINT THE DEFENDANT THEN
23 INTERCEDES.

24 THE COURT: THAT'S NOT A STATEMENT FROM ANYBODY,
25 AND THAT COULD BE TESTIFIED TO. WHAT I WOULD SUGGEST

1 AT THIS TIME IS RATHER THAN MY TAKING AN HOUR TO LOOK
2 AT A TAPE RIGHT NOW, IS LET ME RESERVE RULING ON THAT.
3 IT IS AN ISSUE I'M GOING TO HAVE TO DETERMINE AND
4 SIMPLY INSTRUCT COUNSEL NOT TO MENTION THAT STATEMENT
5 DURING OPENING STATEMENTS. DOES THAT CREATE ANY
6 PROBLEM?

7 MR. ROGERS: NO, YOUR HONOR.

8 THE COURT: AND I'LL MAKE A RULING ON THAT LATER
9 ON THIS AFTERNOON. IS THAT GOING TO BE ONE OF YOUR
10 FIRST WITNESSES THAT YOU'RE GOING TO CALL?

11 MS. CAMPBELL: NO, SIR, THIS IS DOWN THE ROAD.

12 THE COURT: PARDON ME?

13 MS. CAMPBELL: IT'S THE INVESTIGATOR WHO WOULD BE
14 TOWARDS THE END OF THE CASE.

15 THE COURT: ALL RIGHT. MR. ROGERS.

16 MR. ROGERS: YOUR HONOR, AS I UNDERSTAND IT, THERE
17 WILL BE SOME -- FROM THE MEDICAL RECORDS THERE WOULD BE
18 SOME TESTIMONY REGARDING SOME OTHER ALLEGED INJURIES, A
19 BRUISE TO THE LIP, A CUT ON THE HEAD.

20 I WOULD ASK THE COURT TO LIMIT THE TESTIMONY TO
21 ONLY SURROUNDING THE SCROTUM THAT WAS CUT.

22 THE ALLEGATIONS OF BOTH INDICTMENTS ARE ON FOR
23 AUGUST 16TH, 2005, AND IT STATES SPECIFICALLY THAT THE
24 SCROTUM WAS CUT WITH A VERY SHARP OBJECT.

25 WE FEEL THAT ANY REFERENCE TO OTHER BRUISES WOULD

1 HOSPITAL." SHE TOOK HIM TO LEXINGTON, TO PALMETTO
2 LEXINGTON, AND FOR WHATEVER REASON, PALMETTO LEXINGTON
3 HOSPITAL COULDN'T TREAT HIM AND THEN HE WAS TRANSPORTED
4 TO PALMETTO RICHLAND.

5 MIAMA WILL TELL YOU THAT SHE DID NOT DO THIS
6 THING. SHE DOESN'T KNOW WHAT HAPPENED, BUT YOU HAVE TO
7 LISTEN TO ALL THE EVIDENCE. ON BEHALF OF MIAMA, I WANT
8 TO THANK YOU FOR YOUR ATTENTION THAT YOU'RE GOING TO
9 PAY IN THIS CASE. THIS IS AN IMPORTANT DAY FOR THE
10 STATE OF SOUTH CAROLINA, AND IT'S AN IMPORTANT DAY FOR
11 MIAMA. I THINK THAT ONCE YOU HEAR ALL THE EVIDENCE IN
12 THE CASE, YOU WILL HAVE A DOUBT ABOUT WHO DID THIS. IF
13 YOU HAVE THAT KIND OF DOUBT, YOU HAVE TO RETURN A
14 VERDICT OF NOT GUILTY.

15 THE COURT: ALL RIGHT. THANK YOU, MR. ROGERS.

16 SOLICITOR, CALL YOUR FIRST WITNESS, PLEASE.

17 MS. CAMPBELL: MAY IT PLEASE THE COURT. THE STATE
18 CALLS DONNA SHARPE.

19 THE BAILIFF: PLACE YOUR LEFT HAND ON THE BIBLE,
20 RAISE YOUR RIGHT HAND, FACE THE CLERK.

21 DONNA SHARPE,

22 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
24 NAME FOR THE RECORD.

25 THE WITNESS: MY NAME IS DONNA SHARPE.

DIRECT EXAMINATION

1
2 BY MS. CAMPBELL:

3 Q MS. SHARPE, WHERE ARE YOU EMPLOYED?

4 A AT LEXINGTON MEDICAL CENTER.

5 Q AND HOW LONG HAVE YOU BEEN WORKING AT LEXINGTON
6 MEDICAL CENTER?

7 A JUST RIGHT AT THREE YEARS.

8 Q AND WHAT DO YOU DO --

9 THE COURT: I KNOW THE LAWYER IS GETTING CLOSER TO
10 YOU AND YOU SOUND LIKE YOUR TALKING LOUD, BUT I'VE GOT
11 TO BE ABLE TO HEAR YOU, EVERYBODY IN THE COURTROOM HAS
12 TO HEAR YOU, AND ALL THE JURORS HAVE GOT TO BE ABLE TO
13 HEAR YOU, SO SPEAK UP PLEASE, MA'AM.

14 THE WITNESS: JUST SHORT OF THREE YEARS.

15 THE COURT: THANK YOU.

16 BY MS. CAMPBELL:

17 Q WHAT DO YOU DO AT THE LEXINGTON MEDICAL CENTER,
18 MA'AM?

19 A I'M AN E.R. NURSE.

20 Q CAN YOU TELL THIS JURY A LITTLE ABOUT YOUR
21 EDUCATION AND TRAINING AS A NURSE? DID YOU RECEIVE A
22 DEGREE?

23 A I DID. I RECEIVED A DEGREE, I'VE HAD SOME
24 CLINICAL NURSING COURSES, AND ALSO DOING SOME ON-SITE
25 TRAINING IN CLASSROOM EDUCATION.

1 Q AND IN THE LAST THREE YEARS AT LEXINGTON MEDICAL
2 CENTER, YOU HAVE BEEN THERE AS AN E.R. NURSE?

3 A THAT'S CORRECT.

4 Q I WANT TO TURN YOUR ATTENTION BACK TO LAST YEAR,
5 AUGUST 16TH, THE EARLY MORNING HOURS. WERE YOU WORKING
6 THAT EVENING?

7 A I BELIEVE THAT WAS THE RIGHT DATE, YES.

8 Q AND WHAT SHIFT WERE YOU WORKING THAT NIGHT?

9 A I WORKED 7:00 P.M. TO 7:00 A.M.

10 Q SO YOU WOULD HAVE ACTUALLY COME TO WORK ABOUT
11 AUGUST 15TH AT 7:00 P.M.?

12 A THAT'S RIGHT.

13 Q AND THEN WORK UNTIL THE NEXT MORNING AT 7:00 A.M.,
14 CORRECT?

15 A YES, THAT'S CORRECT.

16 Q DURING THE COURSE OF THAT EVENING, DID SOMEONE
17 RUSH A THREE YEAR OLD CHILD NAMED *victim* IN TO
18 THE E.R.?

19 A YES, MA'AM.

20 Q CAN YOU DESCRIBE TO THE JURY HOW IT WAS PRESENTED,
21 HOW YOUR FIRST CAME IN CONTACT WITH LITTLE *victim*?

22 A FROM WHAT I REMEMBER, SHE BROUGHT HIM IN THROUGH A
23 WALK-IN, THROUGH THE FRONT, NOT BY AN AMBULANCE. WE
24 GET BOTH. SHE WALKED HIM IN, AND HAD HIM, FROM WHAT I
25 RECALL, SITTING IN HER LAP. I REMEMBER HIM HAVING A

1 DIAPER ON. I REALLY DON'T REMEMBER THE REST OF HIS
2 CLOTHING.

3 Q WHEN YOU SAID HE WAS SITTING IN HER LAP, WHERE
4 WERE THEY WHEN YOU FIRST CAME IN CONTACT WITH : Victim
5 AND THE WOMAN?

6 A THEY NORMALLY REGISTER THROUGH THE E.R. AND THEN I
7 CALL PATIENTS AS THEY COME IN ORDER. IT CAME TIME FOR
8 ME TO CALL HER NAME OR THE CHILD'S NAME, AND WE WALKED
9 THEM TO THE TRIAGE ROOM AND WE SIT THEM IN THE CHAIR IN
10 MY TRIAGE ROOM.

11 Q AND IF A PERSON PRESENTS WITH AN EMERGENCY
12 SITUATION, I MEAN, WHAT THEY PERCEIVE TO BE AN
13 EMERGENCY SITUATION, WOULD YOU TAKE THEM OUT OF ORDER?

14 A IF IT'S OBVIOUS THAT IT'S AN EMERGENCY. SOMETIMES
15 WE HAVE THINGS THAT ARE APPARENT, SHORTNESS OF BREATH
16 OR CHEST PAINS, THINGS LIKE THAT THAT ARE APPARENT.

17 Q IN THIS CASE, THE WOMAN HAD NOT MADE ANY
18 ALLEGATIONS THAT THIS WAS AN EMERGENCY SITUATION?

19 A NOTHING THAT MADE IT APPARENT TO ME, NO.

20 Q SO WHEN YOU FIRST CAME IN CONTACT WITH THEM,
21 THEY'RE IN THE WAITING ROOM AND SHE HAS THE CHILD
22 SITTING IN HER LAP?

23 A NO, I DON'T RECALL EXACTLY IN THE WAITING AREA. I
24 JUST CALL THE NAME AND THEY COME WALKING TOWARD ME FROM
25 SOME DIRECTION IN THE LOBBY, AND I THEN PUT HER IN MY

1 CHAIR AND THAT'S WHERE I SEE HER SITTING IN THE CHAIR.

2 SHE SITS THE CHILD IN HER LAP.

3 Q WHAT IS THE CHILD DOING?

4 A HE'S CRYING, BUT KIND OF STARING AT HER, THE BEST
5 I REMEMBER, KIND OF -- HE KEEPS LOOKING TOWARD HER LIKE
6 LOOKING UP.

7 Q AND HE'S CRYING?

8 A YES, HE'S CRYING. HE LOOKS SCARED AND CONFUSED.

9 Q WHAT IS SHE DOING?

10 A SHE IS JUST SITTING THERE THE BEST I REMEMBER.
11 IT'S A QUICK VISIT.

12 Q AT SOME POINT AFTER SHE GOT BACK INTO THE AREA
13 WHERE YOU WERE TREATING HER, DID YOU ASK HER WHAT THE
14 PROBLEM WAS?

15 A WE GO THROUGH A NORMAL SET OF QUESTIONS. WE SAY
16 WHAT'S THE NAME, HOW OLD IS HE, ARE HIS SHOTS UP TO
17 DATE, HAS HE BEEN HERE IN THE LAST MONTH. WE GO
18 THROUGH A SET OF QUESTIONS BEFORE WE REALLY ASK WHAT
19 THE PROBLEM IS UNLESS IT'S AN APPARENT OBVIOUS
20 EMERGENCY. I ASKED HER THOSE SET OF QUESTIONS. WE
21 KIND OF WENT THROUGH THOSE, AND WE WEIGHED THE CHILD
22 AND THAT SORT OF THING.

23 I THEN PROCEED TO ASK HER WHAT IS WRONG AND THEN
24 SHE PROCEEDS TO TELL ME. FROM WHAT I RECALL I REMEMBER
25 SHE MENTIONED THE SWELLING. SHE TALKED ABOUT PUTTING A

1 CLOTH ON IT. THEN SHE SAID IT -- I'M NOT SURE WHAT
2 WORD SHE USED, BUT THAT IT BUSTED OPEN OR TORE OPEN. I
3 THINK I WROTE TORE OPEN OR SOMETHING AND I THEN
4 PROCEEDED TO EXAMINE HIM AT THAT POINT.

5 Q AT THAT POINT THE ONLY INFORMATION YOU HAD WAS
6 WHAT SHE HAD GIVEN YOU, AND SHE HAD GIVEN YOU THE
7 HISTORY OF THE CHILD, THE SHOTS AND SUCH?

8 A UH-HUH.

9 Q I BELIEVE YOU EVEN MENTIONED THAT YOU WEIGHED THE
10 CHILD?

11 A UH-HUH.

12 Q SO SHE WASN'T EXPRESSING ANY CONCERN OVER --

13 A I'M NOT -- I DON'T RECALL WEIGHING HIM, BUT IT'S
14 ON THE CHART, SO I KNOW THAT'S LISTED ON THERE WHEN WE
15 GO THROUGH AND THAT'S ON THERE. I'M ASSUMING THAT'S
16 WHAT I DID WITH THE WEIGHT.

17 Q OKAY. BUT AT ANY POINT DURING THIS, DID SHE ALERT
18 YOU THAT THERE WAS A MAJOR PROBLEM GOING ON?

19 A NO, NOT UNTIL AFTER WE WERE TALKING ABOUT THE
20 EXACT PROBLEM.

21 Q AND THAT WAS AFTER YOU BROUGHT IT UP?

22 A RIGHT, WHEN I PROCEEDED TO THAT PART OF THE
23 QUESTIONING.

24 Q AND WHEN YOU GOT TO THAT PART OF THE QUESTIONING,
25 AGAIN THE CHILD IS STILL CRYING?

1 A UH-HUH.

2 Q DID YOU ASSESS -- DO AN ASSESSMENT YOURSELF TO
3 FIGURE OUT WHAT WAS GOING ON WITH THE CHILD?

4 A WHEN SHE SAID THAT ABOUT HIS TESTICLE, I LIFTED
5 THE DIAPER DOWN BECAUSE HE WAS STILL SITTING IN HER
6 LAP.

7 Q DO YOU REMEMBER WHAT KIND OF DIAPER IT WAS?

8 A FROM WHAT I RECALL IT WAS ONE WITH THE TABS, I
9 BELIEVE, BECAUSE I REMEMBER FLAPPING IT DOWN. IF IT
10 HAD BEEN A PULL-UP OR SUCH, YOU COULDN'T -- I WOULD
11 HAVE HAD TO PULL THE WHOLE DIAPER OFF, BUT I REMEMBER
12 PULLING IT FORWARD WHILE HE SAT IN HER LAP.

13 Q AT THAT POINT WHAT DID YOU SEE?

14 A MY ASSUMPTION WAS WHEN SHE SAID IT -- SOME PEOPLE
15 COME INTO THE E.R. AND THEY SAY THEY HAVE -- AND IT'S
16 JUST A SCRATCH. SO MY ASSUMPTION WAS THAT IT WAS GOING
17 TO BE A LITTLE SCRATCH OR SOMETHING. I KIND OF PULLED
18 THE DIAPER DOWN AND LOOKED AND I IMMEDIATELY COVERED IT
19 BACK UP BECAUSE I SAW BLOOD AND SOMETHING. I WAS
20 STARTLED. SO I KIND OF COVERED IT BACK UP FOR A
21 SECOND. I SAT THERE AND I WAS LIKE, OKAY. I LOOKED A
22 SECOND TIME TO REALLY EXAMINE WHAT I SAW, AND WHAT I
23 SAW WAS THE TESTICLE WITH WHAT I DESCRIBED AS A BIG
24 LOOP OR SOMETHING, A BIG HALF CIRCULAR KIND OF
25 PROTRUSION FROM IT AND BLOOD ALL OVER IT.

1 Q AND YOU'RE FAMILIAR WITH THE TERMS SCROTUM AND
2 TESTICLE?

3 A UH-HUH.

4 Q AND WHAT IS THE SCROTUM, JUST TO DESCRIBE FOR THE
5 JURY?

6 A THE SCROTUM IS THE SKIN THAT SURROUNDS AND WHAT
7 HOLDS IN THE TESTICLES, AND THERE IS ONE ON EACH SIDE.
8 THE TESTICLE WAS TO ONE SIDE, AND THE TESTICLE WAS
9 STICKING OUT.

10 Q SO THE SCROTUM ITSELF WAS OPENED UP, AND THE
11 TESTICLE HAD ACTUALLY COME OUT OF THE SCROTUM; IS THAT
12 CORRECT?

13 A YES, COME OUT AND WAS LYING IN THE DIAPER CLOSE TO
14 THE SCROTUM.

15 Q AND YOU MENTIONED BLOOD?

16 A UH-HUH.

17 Q WHAT KIND OF BLOOD WERE YOU SEEING?

18 A BRIGHT RED.

19 Q ONCE YOU LOOKED THE SECOND TIME TO MAKE SURE YOU
20 SAW WHAT YOU SAW, WHAT DID YOU DO?

21 A I PICKED UP THE PHONE AND CALLED MY FLOOR MANAGER
22 IMMEDIATELY.

23 Q AND WHY WOULD YOU DO THAT IMMEDIATELY?

24 A WE HAVE EMERGENCIES THAT COME IN. IF THEY'RE NOT
25 EMERGENCIES, I CODE THEM A CERTAIN WAY. IF IT'S AN

1 EMERGENCY, I IMMEDIATELY PICK UP A PHONE AND CALL A
2 NURSING COORDINATOR THAT IMMEDIATELY PUTS SOMEONE IN
3 THE ROOM, AND THEN WE RUSH PEOPLE BACK FOR FURTHER
4 EVALUATION AND TREATMENT. I CONSIDERED THAT TO BE AN
5 EMERGENCY.

6 Q ONCE THAT HAPPENED, WHAT HAPPENED?

7 A WE IMMEDIATELY TOOK HER BACK TO A TREATMENT ROOM.
8 SHE CARRIED THE CHILD BACK, AND WE TOOK HER BACK TO A
9 TREATMENT ROOM.

10 Q AND ONCE SHE GOT BACK TO THE TREATMENT ROOM, DID
11 YOU CONSULT WITH A DOCTOR?

12 A I EXPLAINED WHAT I -- FROM WHAT I RECALL, I
13 EXPLAINED QUICKLY WHAT WAS GOING ON AND I LEFT TO GO
14 BACK TO MY TRIAGE AREA.

15 Q AND I BELIEVE, AT THAT TIME, DR. AMARA AND ANOTHER
16 NURSE, MELANIE --

17 A PORILLA.

18 Q PORILLA, OKAY. THEY ACTUALLY TOOK OVER THE
19 TREATMENT AT THAT POINT?

20 A UH-HUH.

21 Q WERE YOU AWARE THAT LATER, SOON AFTER, HE WAS
22 TRANSPORTED TO THE CHILDREN'S HOSPITAL AT RICHLAND
23 MEMORIAL?

24 A I CAME BACK TO SEE IF THEY WERE KEEPING HIM OR
25 SENDING HIM OUT.

1 Q BECAUSE OF THE SEVERITY OF WHAT HAD HAPPENED TO
2 HIM?

3 A EXACTLY.

4 Q AT ANY POINT, DID YOU CONTINUE TO SEE THE WOMAN --
5 AND THE WOMAN YOU SAW, DO YOU SEE HER IN THE COURTROOM
6 TODAY?

7 A YES, AT THE TABLE.

8 Q SITTING AT THE TABLE NEXT TO HER LAWYER?

9 A UH-HUH.

10 MS. CAMPBELL: YOUR HONOR, MAY THE RECORD REFLECT
11 THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT.

12 THE COURT: YES, GO AHEAD.

13 BY MS. CAMPBELL

14 Q AT ANY POINT -- YOU MENTIONED THAT SHE WAS CALM
15 WHEN SHE FIRST CAME IN?

16 A SHE WAS KIND OF CALM AND AS I -- I THINK MY
17 PERCEPTION WAS THAT SHE APPEARED TO SEE ME GET A LITTLE
18 MORE EXCITED, I GUESS, AND SHE STARTED LOOKING A LITTLE
19 MORE WIDE-EYED, KIND OF PAID MORE ATTENTION, THAT SORT
20 OF THING, TO MY REACTION AND SEEMED TO GET A LITTLE
21 MORE ANXIOUS AT THAT POINT, MAYBE FEEDING OFF OF MY
22 BEHAVIOR.

23 Q DID YOU EVER SEE HER BECOME TEARFUL OR UPSET AT
24 ANY TIME?

25 A NO.

1 MS. CAMPBELL: THANK YOU, MA'AM.

2 I DON'T HAVE ANYTHING FURTHER OF THIS WITNESS,
3 YOUR HONOR.

4 THE COURT: ALL RIGHT. MR. ROGERS.

5 MR. ROGERS: MAY IT PLEASE THE COURT.

6 THE COURT: YES, SIR.

7 CROSS-EXAMINATION

8 BY MR. ROGERS:

9 Q MS. SHARPE, DID YOU GENERATE THIS REPORT FROM
10 LEXINGTON MEDICAL?

11 A I GENERATED THE TOP PORTION OF THAT REPORT.

12 Q AND WHAT ABOUT THIS ONE?

13 A I DIDN'T GENERATE -- OTHER THAN WRITING THE VITAL
14 SIGNS ACROSS THE VERY TOP, I DIDN'T WRITE ANYTHING ON
15 THAT PORTION.

16 Q ALL RIGHT. DO YOU HAVE YOUR COPIES WITH YOU, THE
17 COPIES OF YOUR REPORT?

18 A THEY'RE IN MY --

19 Q WELL, SINCE YOU DON'T HAVE IT WITH YOU, WHAT TIME,
20 DID YOU INDICATE THAT THE TRIAGE BEGAN?

21 A IT LOOKS LIKE I WROTE DOWN 0223, WHICH IS
22 2:23 A.M.

23 Q SO THAT WAS 2:23 THE MORNING OF THE 16TH?

24 A I'M LOOKING AT THE DATE HERE. I DON'T REMEMBER
25 THE DATE. YES, IT LOOKS LIKE IT WAS ON THE 16TH.

1 Q OKAY. SO *victim* -- THE CHILD WASN'T BROUGHT TO
2 THE EMERGENCY ROOM IN AN AMBULANCE, MIAMA BROUGHT HIM,
3 CORRECT?

4 A THAT'S WHAT I REMEMBER.

5 Q AND DO YOU HAVE ANY IDEA HOW LONG SHE SAT THERE
6 BEFORE 2:23?

7 A I DON'T.

8 Q OKAY.

9 A USUALLY AT 2:23 IT'S NOT VERY CROWDED. I WOULD
10 ASSUME IT WAS NOT FOR A VERY LONG TIME, BUT I DON'T
11 KNOW THAT.

12 Q THAT WAS GOING TO BE MY QUESTION, HOW MANY OTHER
13 PATIENTS WERE IN THE EMERGENCY ROOM AT THAT TIME; DO
14 YOU KNOW?

15 A I DON'T HAVE ANY RECOLLECTION OF THAT.

16 Q YOU DON'T REMEMBER?

17 A NO.

18 Q OKAY. NOW, WHEN A PERSON FIRST COMES IN THE E.R.
19 ROOM, ARE THEY SEEN BY A PHYSICIAN OR A NURSE OR DO
20 THEY JUST --

21 A DO YOU MEAN ONCE I BROUGHT THEM BACK TO A
22 TREATMENT ROOM?

23 Q NO, BEFORE THAT. BEFORE.

24 A YOU'RE TALKING ABOUT TO SEE ME?

25 Q I'M SORRY. LET ME REPHRASE THE QUESTION. WHEN A

1 PERSON BRINGS SOMEONE IN LIKE MIAMA DID THAT NIGHT, WHO
2 WOULD SHE SEE FIRST?

3 A SHE WOULD WALK TO THE DESK AND ASK TO BE SEEN OR
4 TO HAVE HER CHILD SEEN.

5 Q OKAY.

6 A AND THEY WOULD --

7 Q AND THEY WOULD HAVE TOLD HER TO HAVE A SEAT AND
8 WAIT TO --

9 A THEY WOULD HAVE WRITTEN THE NAME ON THE CHART.
10 THEY WOULD HAVE WRITTEN HER NAME AT THE TOP -- PUT HER
11 NAME AT THE TOP AND FLIPPED IT OVER ON THE DESK, THEN I
12 WOULD SEE THAT THERE'S A PATIENT, GOTTEN UP AND GOTTEN
13 THE PAPER.

14 Q IS THERE ANY NOTATION MADE OF WHEN THAT PERSON
15 ARRIVES IN THE EMERGENCY ROOM?

16 A NO.

17 Q THE FIRST NOTATION OF TIME IS WHEN YOU TOOK THE
18 PERSON TO TRIAGE?

19 A THAT'S CORRECT.

20 Q SO WE HAVE NO IDEA FROM YOUR RECORDS HOW LONG
21 MIAMA WAS WAITING THERE WITH Victim BEFORE YOU CAME
22 AT 2:23?

23 A I HAVE NO RECOLLECTION OF IT.

24 Q BUT YOU SAY THAT Victim WAS CRYING THE ENTIRE
25 TIME?

1 A HE WAS CRYING WHEN HE WAS IN MY ROOM.

2 Q OH, IN YOUR ROOM. WERE YOU OUT THERE VIEWING THE
3 PEOPLE THAT WERE WAITING?

4 A I HAVE A ROOM THAT SITS RIGHT BEHIND THE
5 REGISTRATION DESK. IT HAS A WINDOW AND I CAN LOOK OUT
6 AND SEE PEOPLE. IF I SEE SOMEONE COMING IN CLUTCHING
7 THEIR THROAT CHOKING OR SOMETHING LIKE THAT, I WOULD
8 SEE THAT.

9 Q SO YOU DON'T KNOW OF YOUR OWN KNOWLEDGE IF
10 Victim WAS CRYING THE ENTIRE TIME?

11 A WELL, HE WAS CRYING THE ENTIRE TIME HE WAS IN MY
12 ROOM.

13 Q I UNDERSTAND THAT, BUT NOT IN THE LOBBY, RIGHT?

14 A IN THE LOBBY, I DON'T KNOW.

15 Q YOU WOULDN'T KNOW THAT, RIGHT?

16 A NO

17 Q SO WHEN YOU BEGAN YOUR EXAMINATION AT 2:23, YOU
18 ASKED MIAMA WHAT HAPPENED, CORRECT?

19 A THAT'S CORRECT.

20 Q AND SHE TOLD YOU THAT THE CHILD HAD SWELLING, IT
21 WAS WORSE THAN NORMAL, CORRECT?

22 A I DON'T REMEMBER HER TELLING ME WORSE THAN NORMAL.
23 SHE SAID HE HAD SWELLING, AND SHE APPLIED A RAG OR
24 CLOTH TO IT AND APPLIED PRESSURE.

25 Q DID YOU MAKE -

1 A THE NOTES AT THE BOTTOM ARE NOT MY NOTES.
2 Q THE NOTES ARE NOT YOURS. OKAY.
3 A THE TOP HALF OF THE FORM IS MINE.
4 Q OKAY. BUT YOU DO SEE THERE ON THE NOTES THAT IT
5 SAYS --
6 A THAT'S SOMEBODY ELSE'S NOTE.
7 Q I SAID, BUT DO YOU SEE THAT?
8 A YES, I DO.
9 Q AND IT'S REFERRING THIS CASE?
10 A IT IS. I'M JUST TELLING YOU THAT I DIDN'T WRITE
11 THAT.
12 Q I UNDERSTAND.
13 A OKAY.
14 Q BUT IT WAS A PART OF A DOCUMENT THAT YOU DID WRITE
15 ON?
16 A THAT'S CORRECT.
17 Q OKAY. HAVE YOU SEEN THIS DOCUMENT SINCE?
18 A I HAVEN'T..
19 Q NOW, SO THIS POPPING OUT BUSINESS THAT YOU SAY SHE
20 SAID, DID YOU TAKE ANY NOTES WITH RESPECT TO THAT
21 SPECIFIC FACT?
22 A NO, BECAUSE ONCE SHE STARTED -- ONCE I ASKED ALL
23 THESE OTHER QUESTIONS, AS SOON AS I STARTED WRITING MY
24 NOTES SHE SAID THAT IT TORE. I WROTE A QUICK NOTE,
25 "TEAR TO THE RIGHT TESTICLE." I IMMEDIATELY REALIZED

1 THAT I NEEDED TO EXAMINE HIM QUICKLY AND WE MOVED ON.

2 I DIDN'T CONTINUE WITH THE NOTES.

3 Q HAD SHE SAID PRIOR TO THAT TIME THAT SHE SAW
4 BLOOD?

5 A I DON'T RECALL.

6 Q YOU DON'T RECALL?

7 A I DON'T RECALL THAT.

8 Q OKAY. SO ONCE SHE SAID THAT THERE WAS A TEAR OR
9 SHE SAW BLOOD, THEN YOU EXAMINED *Victim*?

10 A YES.

11 Q AND WHEN YOU EXAMINED *Victim* WAS WHEN YOU SAW
12 THE TESTICLE PROTRUDING?

13 A (NODS IN THE AFFIRMATIVE)

14 Q OKAY. YOU HAVE NO WAY OF KNOWING THAT THAT WAS
15 NOT THE FIRST TIME MY MIAMA SAW THE TESTICLE
16 PROTRUDING, CORRECT?

17 A I ASSUME WHEN SHE TOLD ME IT TORE.

18 Q OKAY. THAT'S WHAT I'M SAYING. YOU'RE MAKING AN
19 ASSUMPTION. OKAY. MY QUESTION WAS: YOU HAVE NO WAY OF
20 KNOWING THAT WHEN YOU SAW THE TESTICLE PROTRUDING THAT
21 WAS NOT THE FIRST TIME SHE SAW IT?

22 A I WOULD HAVE NO WAY OF KNOWING THAT.

23 Q YOU HAVE NO WAY OF KNOWING THAT. AND THAT IT WAS
24 FROM THAT POINT ON THAT YOU SAY MIAMA'S EYES GOT BIG,
25 SHE GOT MORE INVOLVED AND SEEMED TO BE A LITTLE MORE

1 NERVOUS AT THAT TIME, CORRECT?

2 A AFTER SHE SAW ME CALLING THE NURSE TO GET A ROOM
3 AND ALL THAT.

4 Q AFTER SHE SAW THE PROTRUDING TESTICLE?

5 A I DID IT THE FIRST TIME AND BACKED UP AND SHE
6 DIDN'T DO IT THEN. THE SECOND TIME AFTER I LOOKED AND
7 MADE THE PHONE CALL, THAT'S WHEN SHE STARTED GETTING
8 MORE ATTENTIVE.

9 Q AND YOU REMEMBER THAT?

10 A I DO.

11 Q OKAY.

12 A I CAN EXPLAIN TO YOU THE REASON WHY I NOTICED
13 THAT.

14 Q NO. SHE CAN ANSWER THAT.

15 A NO, I MEAN, MY PERCEPTION.

16 Q I SAID, SHE CAN ANSWER THAT QUESTION. WAS THERE
17 ANY OTHER PERSON THAT SAW Victim. THAT NIGHT, AS FAR
18 AS HOSPITAL PERSONNEL?

19 A THERE WOULD HAVE BEEN PROBABLY A TECH OUT IN THE
20 E.R., IN THE TRIAGE ROOM WITH ME, THE DOCTOR, ANY NURSE
21 THAT WOULD HAVE CAME IN THE ROOM.

22 Q ANYONE ELSE?

23 A THE SECOND NURSE AND THE DOCTOR COULD PROBABLY
24 TELL THAT BETTER THAN I COULD BECAUSE I WASN'T BACK
25 THERE.

1 MR. ROGERS: THANK YOU, MS. SHARP.

2 THE WITNESS: YOU'RE WELCOME.

3 THE COURT: ALL RIGHT. ANY REDIRECT?

4 REDIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q JUST A COUPLE OF QUESTIONS. MS. SHARPE, YOU
7 MENTIONED THAT YOU REMEMBERED THIS FOR A REASON?

8 A LIKE I SAID, YOU GET A LOT OF PEOPLE COME INTO THE
9 E.R. WHAT WE USUALLY HAVE IS WE HAVE PEOPLE COME IN
10 AND SAY MY CHILD IS REALLY SICK. HE HAS THIS SEVERE
11 BURN OR THIS SEVERE CUT, BUT WHAT IT TURNS OUT IS WHAT
12 THEY USUALLY ARE --

13 MR. ROGERS: YOUR HONOR, I'M GOING TO OBJECT.

14 THE COURT: WAIT JUST A MINUTE.

15 MR. ROGERS: I'M GOING TO OBJECT TO THIS QUESTION
16 AND ANSWER THAT WHAT USUALLY HAPPENS IN THE E.R. IS NOT
17 RELEVANT TO WHAT HAPPENED THIS NIGHT. SHE CAN TESTIFY
18 AS TO WHAT SHE OBSERVED THAT NIGHT, BUT MAKING A
19 COMPARISON TO WHAT IS USUAL, I DON'T THINK IS PROPER OR
20 RELEVANT.

21 THE COURT: WELL, SHE IS EXPLAINING AN ANSWER THAT
22 WAS GIVEN ON CROSS-EXAMINATION. I'M GOING TO PERMIT
23 IT. GO AHEAD.

24 BY MS. CAMPBELL:

25 Q I'M SORRY FOR THE INTERRUPTION. GO AHEAD.

1 A WHAT USUALLY HAPPENS IS THE OPPOSITE. YOU HAVE
2 PARENTS THAT ARE HYSTERICAL OVER SOMETHING THAT IS VERY
3 MINOR IN THE END, AND SO THE REASON I REMEMBERED THAT I
4 THOUGHT SHE WAS NOT VERY EXCITABLE OR CRYING OR THAT
5 SORT OF THING WAS BECAUSE COMPARED TO WHAT WE USUALLY
6 GET, IT'S THE OPPOSITE. THEY'RE VERY PANICKED NORMALLY
7 OVER A VERY MINOR THING. THIS SEEMED TO BE A VERY
8 MAJOR THING, AND SHE DIDN'T SEEM VERY EXCITED ABOUT IT.
9 NORMALLY SOMEBODY IN THE E.R. LOBBY IS YELLING, "WHEN
10 ARE YOU GOING TO SEE MY PATIENT. IT'S TAKING TOO LONG.
11 IT'S TAKING TOO LONG." SHE WAS CALM IN MY CHAIR AND
12 SHE DIDN'T GET EXCITED UNTIL AFTER SHE SAW ME EXITED.
13 THAT'S WHY I REMEMBER THAT IMPRESSION.

14 MS. CAMPBELL: THANK YOU, MA'AM.

15 THE COURT: ANYTHING FURTHER MR. ROGERS?

16 MR. ROGERS: NO.

17 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP
18 DOWN, MA'AM.

19 GO AHEAD, CALL YOUR NEXT WITNESS, MS. CAMPBELL.

20 MS. CAMPBELL: MAY IT PLEASE THE COURT. THE STATE
21 CALLS DR. O'MEARA.

22 DR. SEAN O'MEARA

23 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
25 NAME FOR THE RECORD.

1 ATTENTION.

2 Q AND ONCE HE WAS IN THE TREATMENT ROOM, DID YOU
3 ACTUALLY MAKE CONTACT WITH Victim?

4 A YES.

5 Q AND WAS HIS STEPMOTHER, MIAMA KROMAH, ALSO THERE
6 THAT EVENING?

7 A YES.

8 Q AND AS A PHYSICIAN IN THIS CASE, AS IN EVERY CASE,
9 WHAT DO YOU DO IMMEDIATELY, WHAT ARE YOU TRYING TO
10 ESTABLISH?

11 A I'M TRYING TO DETERMINE WHY THE PATIENT HAS COME
12 INTO THE EMERGENCY DEPARTMENT AND WHAT NEEDS TO BE
13 ADDRESSED AS FAR AS THE PATIENT'S PRIMARY COMPLAINT.

14 Q AND IN EVERY CASE, IS IT IMPORTANT TO GET A
15 HISTORY FROM THE ADULT IN THE CASE, SINCE THIS WAS A
16 SMALL CHILD?

17 A YES.

18 Q WHAT WAS THE Demeanor OF THE CHILD WHEN YOU FIRST
19 CAME IN CONTACT WITH HIM, DO YOU RECALL?

20 A HE WAS CRYING.

21 Q AND THE STEPMOTHER THAT YOU CAME IN CONTACT WITH,
22 WHAT WAS HER Demeanor LIKE?

23 A SHE SEEMED TO BE A LITTLE BIT ANXIOUS ABOUT THE
24 SETTING.

25 Q THE SETTING?

1 A UH-HUH.

2 Q BY SETTING --

3 A BY SETTING, I MEAN AS FAR AS BEING IN THE
4 EMERGENCY DEPARTMENT.

5 Q ONCE YOU MADE CONTACT WITH HER, DID YOU ATTEMPT TO
6 GET A HISTORY OF WHAT HAD HAPPENED TO THE CHILD?

7 A I DID.

8 Q WHAT DID SHE TELL YOU THAT NIGHT?

9 A I'LL JUST REFER TO MY NOTES --

10 Q YES.

11 A -- BECAUSE MY RECOLLECTION CAN BEST BE DESCRIBED
12 BY THE NOTES. BASICALLY, SHE SAID THAT SHE WAS BATHING
13 THE CHILD, AND HIS SCROTUM APPEARED ENLARGED, AND SHE
14 APPLIED PRESSURE TO THE SCROTUM, USING A TOWEL AND THE
15 PATIENT DEVELOPED BLEEDING, AND WHEN SHE LOOKED AT THE
16 SCROTUM, SHE SAID THERE WAS BLEEDING FROM THE RIGHT
17 SIDE OF THE SCROTUM.

18 Q AND THAT WAS THE HISTORY SHE GAVE TO YOU; IS THAT
19 CORRECT?

20 A THAT'S CORRECT.

21 Q AND DID YOU MAKE -- AT THAT POINT DID YOU MAKE
22 OBSERVATIONS YOURSELF AS TO THE CHILD'S CONDITION?

23 A YES.

24 Q WHAT DID YOU OBSERVE, SIR?

25 A IN TERMS OF THE SCROTUM OR IN GENERAL?

1 Q IN TERMS OF SCROTUM FIRST AND THEN IN GENERAL.

2 A OKAY. THE SCROTUM APPEARED TO HAVE A DEFECT OR A
3 TEAR OR A CUT OR SOME SORT OF OPENING IN THE RIGHT SIDE
4 OF THE SCROTUM AND THERE WAS BLOOD AROUND THAT ON THE
5 TISSUES. THERE WAS TISSUE THAT WAS EXTERNAL TO THE
6 SCROTUM AND AT THAT APPEARED TO BE THE TESTICLE ON THE
7 RIGHT SIDE.

8 Q SO THE TESTICLE WAS ACTUALLY HANGING OUT OF THE
9 SCROTUM WHEN YOU SAW IT?

10 A THAT'S CORRECT.

11 Q DID YOU NOTICE -- AND LIMIT THIS JUST TO BRUISING
12 -- DID YOU NOTICE ANY BRUISING ON THE CHILD?

13 A WELL, THE SCROTUM APPEARED BRUISED, AND IT ALSO
14 APPEARED SWOLLEN.

15 Q AS FAR AS -- AND LIMIT THIS JUST TO ANY BRUISING
16 YOU SAW ON OTHER PARTS OF CHILD, SPECIFICALLY AS TO HIS
17 MOUTH, DID YOU NOTE ANY BRUISING?

18 A THERE WAS A SMALL AMOUNT OF WHAT APPEARED TO ME TO
19 BE DRIED BLOOD ON THE MOUTH.

20 Q WOULD THAT BE CONSISTENT WITH HAVING RECENTLY HAD
21 AN INJURY TO THE MOUTH AREA?

22 A THAT COULD BE, YES.

23 Q AND DID YOU NOTICE ANY OTHER BRUISING AT THAT
24 POINT?

25 A I DID NOT.

1 Q ONCE YOU MADE AN ASSESSMENT OF THE INJURIES TO THE
2 CHILD, DID YOU THEN REFER HIM TO ANOTHER HOSPITAL, TO
3 PALMETTO RICHLAND?

4 A YES.

5 Q WHY WAS THAT, SIR?

6 A I FELT THAT IT WOULD REQUIRE A PEDIATRIC
7 UROLOGIST, AND WE DO NOT HAVE A PEDIATRIC UROLOGIST AT
8 LEXINGTON MEDICAL CENTER.

9 Q AND BECAUSE OF THE NATURE OF THE ACTUAL INJURY?

10 A THAT'S CORRECT.

11 Q AND AT THAT POINT, DID YOU REFER HIM OVER TO
12 RICHLAND MEMORIAL WHERE THERE'S A CHILDREN HOSPITAL?

13 A WE DID. I SPOKE TO DR. EHRETH AND ALSO TO THE
14 PEDIATRIC SERVICES AT PALMETTO RICHLAND AND THEY
15 ACCEPTED HIM TO BE TRANSFERRED OVER THERE.

16 Q WHY WAS THIS SOMETHING THAT YOU COULDN'T HANDLE AS
17 AN EMERGENCY ROOM DOCTOR?

18 A IT WAS REALLY TWO FACTORS THERE, THE FIRST BEING
19 THAT WE DIDN'T HAVE A PEDIATRIC UROLOGIST, AND ONCE THE
20 SCROTUM WAS EXPOSED -- THE TESTICLES WERE EXPOSED OUT
21 OF THE SCROTUM, I FELT THAT WOULD REQUIRE SURGICAL
22 INTERVENTION BY A PEDIATRIC UROLOGIST.

23 THE SECOND ISSUE IS THAT WHEN YOU HAVE A CHILD
24 THAT'S INJURED, YOU WOULD LIKE A PEDIATRIC ADMISSION TO
25 THE HOSPITAL TO ASSESS WHETHER THERE ARE ANY OTHER

1 INJURIES THAT MAY NOT BE EVIDENT, WHETHER THERE ARE ANY
2 PROBLEMS AS FAR AS THERE BEING THE POTENTIAL FOR CHILD
3 ABUSE OR THAT SORT OF THING.

4 Q THE INJURY THAT YOU OBSERVED THAT MORNING -- AND
5 APPROXIMATELY WHAT TIME WAS IT WHEN YOU CAME IN CONTACT
6 WITH THE CHILD, DO YOU RECALL?

7 A ACTUALLY, WHEN I ENTERED THE ROOM I NOTED THE TIME
8 OF 2:35.

9 Q WHEN YOU CAME IN CONTACT WITH THE CHILD, WOULD YOU
10 DESCRIBE THIS AS GREAT BODILY INJURY?

11 A YES.

12 Q AND WHY IS THAT, SIR?

13 A CONCERN ABOUT POTENTIAL FOR STERILITY, WITH THE
14 LOSS OF THE TESTICLE AND THE LOSS OF THE CAPABILITY TO
15 REPRODUCE.

16 Q AND I BELIEVE THE E.M.T.'S ACTUALLY RESPONDED TO
17 THE HOSPITAL AND TRANSPORTED HIM TO PALMETTO RICHLAND
18 THAT MORNING ; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q OTHER THAN THAT EXPLANATION WHEN YOU TALKED TO
21 MS. KROMAH, DID SHE GIVE YOU ANY OTHER EXPLANATION AS
22 TO HOW THIS INJURY OCCURRED?

23 A NONE THAT I RECALL, NO.

24 MS. CAMPBELL: THANK YOU, SIR. PLEASE ANSWER ANY
25 QUESTIONS DEFENSE MAY HAVE.

1 A YES.

2 Q CAN YOU TELL THIS JURY A LITTLE ABOUT YOUR
3 EDUCATION AND TRAINING IN THE FIELD OF MEDICINE?

4 A YES. I ATTENDED MEDICAL SCHOOL AT THE UNIVERSITY
5 OF SOUTH CAROLINA SCHOOL OF MEDICINE AND HAVE BEEN
6 DOING RESIDENCY AT RICHLAND SINCE THAT TIME.

7 Q AND WHEN YOU WENT TO MEDICAL SCHOOL, HOW MANY
8 YEARS OF MEDICAL SCHOOL DID YOU ACTUALLY GO?

9 A FOUR YEARS.

10 Q AND ONCE YOU GRADUATED FROM MEDICAL SCHOOL, DID
11 YOU ACTUALLY BECOME A DOCTOR AT THAT POINT?

12 A YES.

13 Q SO THEN YOU ARE ACTUALLY AN M.D., A MEDICAL
14 DOCTOR?

15 A YES.

16 Q SUBSEQUENT TO BECOMING A MEDICAL DOCTOR, DID YOU
17 IN FACT DO SOME FURTHER TRAINING IN THE FIELD OF
18 PEDIATRICS?

19 A I'M SORRY, CAN YOU REPEAT THAT?

20 Q AFTER RECEIVING YOUR MEDICAL DEGREE, DID YOU DO
21 SOME FURTHER TRAINING IN THE FIELD OF PEDIATRICS?

22 A YES.

23 Q CAN YOU TELL THE JURY ABOUT THAT?

24 A YES. I'M DOING A THREE YEAR RESIDENCY IN
25 PEDIATRICS.

1 WE WILL CONTINUE AT THIS TIME. SOLICITOR, CALL
2 YOUR NEXT WITNESS.

3 MS. CAMPBELL: MAY IT PLEASE THE COURT, YOUR
4 HONOR, THE STATE CALLS DR. ERIN FIELDS-HARRIS.

5 DR. ERIN FIELDS-HARRIS,

6 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
8 NAME FOR THE RECORD.

9 THE WITNESS: ERIN FIELDS-HARRIS.

10 DIRECT EXAMINATION

11 BY MS. CAMPBELL

12 Q DR. HARRIS, WHERE ARE YOU EMPLOYED?

13 A PALMETTO HEALTH RICHLAND.

14 Q WHAT DO YOU DO THERE?

15 A I'M A SECOND YEAR PEDIATRIC RESIDENT.

16 Q AS A SECOND YEAR PEDIATRIC RESIDENT, CAN YOU TELL
17 THIS JURY WHAT YOUR JOB INCLUDES?

18 A MY JOB INCLUDES ADMITTING PATIENTS, ASSESSING THEM
19 WHEN THEY ARRIVE, AND MAKING PLANS AND WRITING ORDERS
20 ON THEM.

21 Q AND TYPICALLY IN A CASE, YOU MAY SEE A PATIENT
22 THAT COMES IN INITIALLY?

23 A YES.

24 Q AND ARE THERE OTHER DOCTORS THAT CONSULT IN A
25 CASE?

1 Q AND YOU'RE CURRENTLY IN YOUR SECOND YEAR OF THAT?

2 A THAT'S CORRECT.

3 Q AND WHAT IS THE FOCUS WHEN YOU DO A RESIDENCY IN
4 PEDIATRICS, WHAT TYPES OF THINGS ARE YOU TRYING TO
5 LEARN IN ADDITION TO BECOMING A MEDICAL DOCTOR?

6 A I'M LEARNING ABOUT PEDIATRICS IN GENERAL, AS WELL
7 AS SOME OF THE SPECIALTIES THROUGHOUT.

8 Q AND PEDIATRICS IS ACTUALLY THE MEDICAL TREATMENT
9 OF CHILDREN?

10 A THAT'S CORRECT.

11 MS. CAMPBELL: YOUR HONOR, AT THIS TIME, WE WOULD
12 OFFER HER AS AN EXPERT IN THE FIELD OF PEDIATRICS.

13 MR. ROGERS: NO OBJECTION.

14 THE COURT: WITHOUT OBJECTION, SHE WILL BE
15 PERMITTED TO TESTIFY AS AN EXPERT WITNESS.

16 BY MS. CAMPBELL

17 Q DR. HARRIS, I WANT TO TURN YOUR ATTENTION BACK TO
18 AUGUST 16TH OF LAST YEAR, WERE YOU WORKING IN THE EARLY
19 MORNING HOURS THAT NIGHT?

20 A YES.

21 Q AND WHAT SHIFT WERE YOU ACTUALLY WORKING AT THAT
22 NIGHT?

23 A I WAS ON CALL.

24 Q AND WHEN YOU'RE ON CALL IN THE PEDIATRIC UNIT,
25 WHAT TYPES OF CALLS -- WHEN DO YOU GET CALLED INTO THE

1 EMERGENCY ROOM OR IN TO SEE A PATIENT?

2 A WE GET CALLED BY OUTLYING FACILITIES FOR TRANSFER
3 PATIENTS -- WHEN THEY WANT TO TRANSFER PATIENTS TO OUR
4 EMERGENCY ROOM THAT NEED ADMISSION TO THE HOSPITAL.

5 Q OKAY. THAT NIGHT SPECIFICALLY, DID YOU RECEIVE A
6 PHONE CALL FROM LEXINGTON MEDICAL CENTER REQUESTING
7 TRANSFER OF A PATIENT FOR EMERGENCY PEDIATRIC CARE
8 THERE?

9 A I DID.

10 Q DOES PALMETTO RICHLAND, OR RICHLAND MEMORIAL IT
11 USED TO BE CALLED, DOES IT HAVE A SPECIALIZED
12 CHILDREN'S HOSPITAL?

13 A YES.

14 Q AND IN THAT THERE'S ACTUALLY A PEDIATRIC INTENSIVE
15 CARE UNIT?

16 A THAT'S CORRECT.

17 Q AS WELL AS, I BELIEVE, A PEDIATRIC UROLOGIST ON
18 CALL THERE?

19 A YES, MA'AM.

20 Q AND SO FOR SPECIALIZED CARE OF CHILDREN IN THE
21 MIDLANDS, IS IT PRETTY MUCH THE LEADING FACILITY?

22 A YES, MA'AM.

23 Q WHAT TIME -- DO YOU REMEMBER APPROXIMATELY WHAT
24 TIME IT WAS WHEN YOU WERE CONTACTED BY LEXINGTON THAT
25 THEY WERE TRANSFERRING A PATIENT FOR YOUR CARE?

1 Q CAN YOU POINT HER OUT TO THE JURY?

2 A SHE IS SITTING RIGHT THERE.

3 Q BESIDE HER LAWYER?

4 A YES, MA'AM.

5 Q WAS SHE ABLE TO GIVE YOU HER VERSION OF WHAT
6 HAPPENED DURING THAT EVENING?

7 A YES, MA'AM.

8 Q AND CAN YOU TELL THE JURY, BASICALLY, WHAT HER
9 ACCOUNT WAS TO YOU?

10 A YES, MA'AM. I WAS TOLD THAT SHE HAD PICKED THE
11 PATIENT UP FROM HER SISTER'S HOUSE AT 11:00 P.M., TAKEN
12 THE PATIENT HOME, WENT TO PLACE HIM INTO THE BATHTUB AT
13 WHICH TIME HER -- ACTUALLY, I THINK SHE PUT HIM INTO
14 THE BATHTUB AND REALIZED THAT HE HAD SOME SWELLING IN
15 THE SCROTAL AREA. SHE SAID SHE APPLIED PRESSURE WITH A
16 WASHCLOTH AND THEN NOTICED THE BLEEDING, AFTER WHICH
17 TIME SHE TOOK THE PATIENT TO THE LEXINGTON EMERGENCY
18 ROOM.

19 Q DID SHE MAKE ANY REPORT ABOUT THE PATIENT'S
20 APPETITE ON THE EVENING BEFORE?

21 A SHE DID. SHE SAID THAT HER SISTER COMMENTED THAT
22 HE HAD A DECREASED APPETITE.

23 Q DID YOU ASK HER SPECIFICALLY ABOUT ANY KIND OF
24 TRAUMA OR ACCIDENT OR ANY KIND OF INJURY THAT COULD
25 HAVE HAPPENED TO THE CHILD?

1 A I DO NOT REMEMBER THE TIME.

2 Q DO YOU REMEMBER APPROXIMATELY WHAT TIME YOU CAME
3 IN CONTACT WITH Victim ?

4 A I BELIEVE IT WAS AROUND 6:00 A.M.

5 Q AND YOU HAVE SOME NOTES IN FRONT OF YOU, I
6 BELIEVE?

7 A I DO.

8 Q YOU CAN REFER TO THOSE IF YOU NEED TO.

9 A OKAY.

10 Q WHEN YOU FIRST CAME IN CONTACT WITH Victim, TELL
11 THIS JURY WHAT YOU DID INITIALLY IN ASSESSING HIS
12 SITUATION?

13 A INITIALLY I WENT INTO THE ROOM AND SPOKE WITH THE
14 STEPMOTHER WHO WAS THERE AND I EXAMINED THE PATIENT, AS
15 WELL.

16 Q AND WHEN YOU SPOKE WITH THE STEPMOTHER WHO WAS
17 THERE, WHAT TYPE OF INFORMATION DID YOU TRY TO GET AT
18 THAT POINT AS FAR AS MAKING AN ASSESSMENT OF THE
19 INJURIES TO THE CHILD?

20 A I WAS JUST TRYING TO GET MORE INFORMATION
21 REGARDING THE EVENTS AND WHAT HAD LED UP TO THE CHILD
22 BEING TRANSFERRED TO OUR FACILITY.

23 Q AND THE STEPMOTHER, DO YOU SEE HER HERE IN THE
24 COURTROOM TODAY?

25 A YES, MA'AM.

1 A I DID, YES, MA'AM. SHE SAID OTHER THAN THE
2 PRESSURE WITH THE WASHCLOTH, THAT THERE WAS NO OTHER
3 TRAUMA.

4 Q ONCE YOU HAD GOTTEN THAT HISTORY, DID YOU ACTUALLY
5 DO AN EXAMINATION YOURSELF OF THE CHILD?

6 A I DID.

7 Q AND WHAT DID YOU NOTE ON YOUR EXAMINATION OF THE
8 CHILD INITIALLY?

9 A INITIALLY HE WAS LYING IN THE BED AND HIS SCROTUM
10 WAS INITIALLY WRAPPED IN GAUZE FROM HIS TRANSPORT. HE
11 HAD SEVERAL BRUISES OR SEVERAL LACERATIONS AND
12 ABRASIONS NOTED THROUGHOUT HIS EXAM, AND THEN ONE OF
13 NURSES CAME IN AND UNWRAPPED THE SCROTAL AREA, AND I
14 NOTICED THE TESTES, THE RIGHT TESTICLE WAS OUTSIDE OF
15 THE SCROTUM.

16 Q AND YOU NOTICED THAT THERE WAS SOME -- WHEN YOU
17 INITIALLY CAME IN CONTACT WITH HIM, HE WAS LYING ON THE
18 BED?

19 A YES, MA'AM.

20 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
21 EXHIBIT NUMBER --

22 MS. CAMPBELL: BEG THE COURT'S INDULGENCE.

23 BY MS. CAMPBELL

24 Q WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 29.
25 IS THAT HOW VICTIM PRESENTED THAT MORNING WHEN YOU

1 CAME IN CONTACT WITH HIM?

2 A YES.

3 Q AND IS THAT ACTUALLY THE BED HE WAS LYING IN WHEN
4 YOU MADE YOUR INITIAL EXAMINATION?

5 A YES.

6 Q I'M GOING TO SHOW YOU ANOTHER SERIES OF
7 PHOTOGRAPHS, WHICH IS GOING TO INCLUDE STATE'S EXHIBIT
8 NUMBER 1, 2, 4, 7, 3, 8, 9 AND 10 AND JUST ASK YOU,
9 FIRST OF ALL, JUST TO LOOK AT THOSE AND SEE IF YOU
10 RECOGNIZE THOSE?

11 A (PAUSE) I DO.

12 Q DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY DEPICT
13 HOW THE CHILD PRESENTED TO YOU WHEN YOU WERE DOING YOUR
14 EXAMINATION AROUND 6:30 A.M. THAT MORNING?

15 A YES.

16 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE OFFER
17 THEM INTO EVIDENCE.

18 THE COURT: HAVE YOU SEEN THESE?

19 MR. ROGERS: YES, YOUR HONOR.

20 MS. CAMPBELL: THEY WERE TURNED OVER.

21 MR. ROGERS: NO OBJECTION.

22 THE COURT: WITHOUT OBJECTION, STATE'S 1, 2, 3, 4,
23 7, 8, 9 AND 10 AND 29 ARE ADMITTED.

24 (WHEREUPON, STATE'S EXHIBITS 1, 2, 3, 4, 7, 8, 9,
25 10, AND 29 WERE ADMITTED INTO EVIDENCE.)

1 MS. CAMPBELL: THANK YOU.

2 BY MS. CAMPBELL:

3 Q BEFORE I -- REFERRING TO PAGE TWO OF YOUR NOTES,
4 DID YOU GO THROUGH, BASICALLY DID YOU NOTICE ANY
5 SPECIFIC BRUISING TO THE FACE AREA?

6 A I DID.

7 Q AND WHAT BRUISES -- LIMITING IT TO -- WHAT DID YOU
8 SEE?

9 A HE HAD AN ABRASION ON THE MIDDLE OF HIS FOREHEAD.

10 Q THE MIDDLE OF HIS FOREHEAD?

11 A UH-HUH. HE HAD A PETECHIAL RASH ON HIS CHIN.

12 Q A RASH ON HIS CHIN?

13 A UH-HUH, AND HE ALSO HAD SOME LACERATIONS ON HIS
14 UPPER AND LOWER LIP, AS WELL.

15 Q OKAY. AND AS FAR AS DIFFERENT OTHER PARTS OF HIS
16 BODY, SPECIFICALLY AS TO HIS ABDOMEN, DID YOU NOTICE
17 ANY BRUISING THERE?

18 A I DIDN'T. HE HAD A RED AREA ALONG THE INGUINAL
19 CREASE ON HIS ABDOMEN.

20 Q WHAT DOES THAT MEAN?

21 A THAT COULD GO ALONG WITH THE SWELLING.

22 Q OKAY. WHEN YOU SAY A CREASE, WHERE IS THAT ON THE
23 BODY?

24 A RIGHT DOWN IN THE LOWER ASPECT OF THE ABDOMEN.

25 Q TOWARDS THE GENITAL AREA?

1 THAT ABRASION?

2 A IT IS.

3 Q AND YOU ALSO MENTIONED THAT HIS LIPS HAD SOME
4 SCRATCHES?

5 A UH-HUH.

6 Q I SHOW YOU STATE'S EXHIBIT NUMBER 4. WHAT DOES
7 THAT SHOW?

8 A IT SHOWS SCRATCHES ON HIS UPPER AND THE LOWER
9 ASPECT OF HIS LIPS.

10 Q AS A MEDICAL DOCTOR, DO YOU HAVE ANY OPINION OF
11 WHAT THAT COULD BE CONSISTENT WITH?

12 A IT COULD BE CONSISTENT WITH HIM BITING HIS OWN LIP
13 POSSIBLY.

14 Q SOME KIND OF TRAUMA TO THAT?

15 A SOME KIND OF TRAUMA.

16 Q AND I SHOW YOU STATE'S EXHIBIT NUMBER 7, WHICH
17 JUST SHOWS THE UPPER LIP A LITTLE BIT BETTER. I NOTICE
18 THERE IS SOME REDNESS THERE. WHAT IS THAT?

19 A THAT WOULD BE CONSISTENT WITH THE SCRATCH AND THEN
20 THERE'S REDNESS ALSO.

21 Q WOULD THAT BE CONSISTENT WITH BLOOD?

22 A ON THE LIP, YES.

23 Q STATE'S EXHIBIT NUMBER 3, WE MENTIONED THE
24 LACERATION. IS THAT JUST A CLOSER UP OF THAT, THE
25 ABRASION?

1 A YES, THE ABRASION ON HIS FOREHEAD.

2 Q YOU MENTIONED IN THE ABDOMEN AREA IN THE CREASE
3 THERE WAS SOME REDNESS NOTED?

4 A UH-HUH.

5 Q I SHOW YOU STATE'S EXHIBIT NUMBER 8. DOES THAT
6 DEPICT THE REDNESS OR BRUISING YOU WERE REFERRING TO?

7 A IT DOES.

8 Q AND THE COLOR OF THE BRUISING CAN BE SIGNIFICANT,
9 CAN'T IT?

10 A IT CAN.

11 Q AND RED BRUISES SUCH AS THIS WOULD BE CONSISTENT
12 WITH --

13 MR. ROGERS: OBJECT TO LEADING.

14 THE COURT: SUSTAINED AS TO THE FORM OF QUESTION.

15 MS. CAMPBELL: I'M SORRY, YOUR HONOR. I WILL
16 REPHRASE. I APOLOGIZE.

17 BY MS. CAMPBELL:

18 Q WHAT WOULD THE REDNESS INDICATE?

19 A MORE OF AN ACUTE INJURY.

20 Q WHEN YOU SAY AN ACUTE INJURY, WHAT DOES THAT MEAN
21 IN LAYMAN'S TERMS?

22 A ONE THAT JUST RECENTLY OCCURRED.

23 MR. ROGERS: I'M SORRY. I DIDN'T HEAR THAT
24 ANSWER.

25 THE COURT: I DIDN'T HEAR IT EITHER. I'M HAVING

1 TROUBLE HEARING. I KNOW YOU'RE TALKING IN FRONT OF THE
2 JURY, BUT COUNSEL NEEDS TO BE ABLE TO HEAR AND I NEED
3 TO BE ABLE TO HEAR, TOO.

4 MS. CAMPBELL: I APOLOGIZE, JUDGE.

5 BY MS. CAMPBELL:

6 Q WHAT WOULD THAT INDICATE?

7 A SOMETHING THAT HAD HAPPENED MORE RECENTLY.

8 Q AND HERE IS STATE'S EXHIBIT NUMBER 9, WHAT DOES
9 THAT SHOW?

10 A ON WHAT?

11 Q OH, IN STATE'S EXHIBIT NUMBER 10.

12 A THAT SHOWS THE REDNESS ON THE ABDOMEN, AS WELL.

13 Q AND FINALLY, STATE'S EXHIBIT NUMBER 15, IS THAT
14 HOW HE PRESENTED THAT MORNING TO YOU AS FAR AS HIS
15 INJURY TO THE SCROTUM?

16 A YES, IT IS.

17 Q AND THEN STATE'S EXHIBIT NUMBER 17?

18 A THAT'S, YES --

19 Q A CLOSE UP?

20 A THAT IS, YES.

21 Q OKAY. YOU CAN BE SEATED ON THE STAND NOW. THANK
22 YOU.

23 ONCE YOU WERE ABLE TO DO YOUR EXAMINATION OF THE
24 PATIENT INITIALLY, DID YOU FEEL IT WAS APPROPRIATE TO
25 BRING IN OTHER DOCTORS IN THIS CASE?

1 A I DID.

2 Q AND WHAT OTHER DOCTORS ACTUALLY WERE CALLED IN
3 THAT MORNING?

4 A DR. EHRETH, THE PEDIATRIC UROLOGIST, MY ATTENDING
5 DR. JENNIFER AMROL.

6 Q DR. AMROL AND DR. EHRETH?

7 A YES, MA'AM.

8 Q DURING THE COURSE OF THIS EXAMINATION, ARE YOU
9 STILL HAVING CONTACT WITH MIAMA KROMAH?

10 A SHE REMAINED IN THE ROOM THROUGHOUT THE
11 EXAMINATION.

12 Q AT SOME POINT DURING YOUR EXAMINATION, DID YOU
13 ATTEMPT TO ASK -- WAS THE CHILD RESPONSIVE -- DESCRIBE
14 THE CHILD'S DEMEANOR THAT MORNING.

15 A INITIALLY, HE WAS SOMEWHAT SLEEPY. HE HAD
16 RECEIVED MORPHINE AT THE OUTLYING FACILITY BEFORE HE
17 WAS TRANSFERRED TO US, BUT HE WOULD RESPOND
18 APPROPRIATELY. WELL, HE WOULD ATTEMPT TO RESPOND, I
19 GUESS, APPROPRIATELY TO QUESTIONS.

20 Q OKAY. DURING THE COURSE OF TREATING THE CHILD
21 THAT MORNING AND DOING YOUR ASSESSMENT PRIOR TO CALLING
22 THE OTHER DOCTORS, DID YOU ATTEMPT TO FIND OUT FROM THE
23 CHILD WHAT HAD HAPPENED TO HIM?

24 A I DID.

25 Q WHAT DID YOU ASK HIM?

1 A I ASKED THE PATIENT, AFTER EXAMINING HIM AND
2 NOTING THE INJURIES, I ASKED HIM WHAT HAD HAPPENED TO
3 HIM, IF SOMEONE HAD DONE THIS TO HIM, AND COULD HE TELL
4 ME WHO DID THIS TO HIM.

5 Q YOU ASKED HIM WHO DID THAT TO HIM?

6 A I DID.

7 Q AND WHAT HAPPENED THEN?

8 A HE STARTED TO MOUTH SOMETHING AND THEN HIS
9 STEPMOTHER CAME OVER FROM ACROSS THE ROOM AND STARTED
10 INTERRUPTING AT THAT POINT.

11 Q AND WHAT WAS SHE ASKING HIM? HOW WAS SHE
12 INTERRUPTING HIM?

13 A SHE WAS ASKING HIM IF HE WAS OKAY, IF HE WAS OKAY.

14 Q PRIOR TO THAT HAD SHE COME OVER TO ASK HIM IF HE
15 WAS OKAY OR ANYTHING OF THAT NATURE?

16 A I DO NOT RECALL.

17 Q WAS HE ABLE TO ANSWER YOU?

18 A AS FAR AS --

19 Q DID HE ANSWER YOU?

20 A NO, HE DID NOT.

21 Q DID THE STEPMOTHER STAY IN THE ROOM THE ENTIRE
22 TIME?

23 A YES, MA'AM.

24 Q DID YOU ASK HER ANY MORE QUESTIONS THAT MORNING
25 ABOUT WHAT HAD HAPPENED? DID YOU GIVE HER ANY MORE

1 INFORMATION AND ASK HER QUESTIONS?

2 A I DID.

3 Q EXPLAIN TO THE JURY WHAT ELSE YOU WERE ASKING HER
4 AND WHAT INFORMATION YOU GAVE HER AND WHAT SHE
5 RESPONDED.

6 A AFTER EXAMINING THE PATIENT AND NOTING THE CLEAN
7 LINEAR LESION ON THE SCROTUM, IT APPEARED TO ME THAT
8 THIS WAS NOT A COMMON -- IT HAD BEEN DONE TO THE
9 PATIENT, POSSIBLY -- I'M SORRY, CAN I START OVER?

10 Q SURE.

11 A I APOLOGIZE. AFTER EXAMINING THE PATIENT AND
12 NOTING THE LACERATION TO THE SCROTUM, IT DID NOT APPEAR
13 THAT IT WAS CONSISTENT WITH THE PRESSURE THAT SHE HAD
14 INITIALLY TOLD ME SHE APPLIED AS PART OF THE STORY, SO
15 I ASKED HER AGAIN WHAT HAD HAPPENED, AS FAR AS HER
16 STORY AS TO WHAT HAD HAPPENED TO THE PATIENT. SO I
17 ASKED HER AGAIN IF SHE KNEW WHO HAD DONE THIS TO HIM,
18 BECAUSE IT APPEARED TO BE SOME TRAUMATIC INJURY TO THE
19 PATIENT.

20 Q AND WHAT DID SHE REPLY WHEN YOU ASKED HER WHAT HAD
21 HAPPENED?

22 A THAT SHE DID NOT KNOW.

23 Q WHAT WAS HER DEMEANOR LIKE THAT MORNING,
24 MS. KROMAH'S?

25 A SHE DIDN'T APPEAR TO HAVE MUCH OF A RESPONSE OR

1 EMOTION WHEN I TOLD HER THAT, FROM MY EXAM, IT APPEARED
2 THE CHILD HAD BEEN INJURED INTENTIONALLY.

3 Q OKAY. AND DID THE NATURAL FATHER ALSO SHOW UP
4 THAT MORNING?

5 A HE DID.

6 Q THE CHILD -- WELL, LET ME ASK YOU THIS, AN INJURY
7 OF THIS TYPE, WOULD IT BE PAINFUL?

8 A YES.

9 Q AN INJURY OF THIS TYPE, A LACERATION AS YOU
10 OBSERVED, WOULD IT BLEED IMMEDIATELY?

11 A YES, MA'AM.

12 Q AT ANY TIME WHEN YOU WERE IN THERE WITH THE CHILD,
13 DID HE EVER REACH OUT FOR HIS MOTHER OR FOR ANYONE
14 ELSE?

15 A NO.

16 MS. CAMPBELL: THAT'S ALL I HAVE OF THIS WITNESS,
17 YOUR HONOR. THANK YOU.

18 THE COURT: ALL RIGHT. CROSS-EXAMINATION,
19 MR. ROGERS?

20 MR. ROGERS: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION

22 BY MR. ROGERS

23 Q DR. HARRIS, IF I CAN REFER YOU TO PAGE TWO OF YOUR
24 NOTES ABOUT ONE, TWO, THREE, FOUR, FIVE LINES DOWN
25 WHERE IT SAYS "CHILD TRANSPORTED BY AMBULANCE." DO YOU

1 SEE THAT PART?

2 A IF I --

3 Q LET ME -- I CAN SHOW YOU WHAT I HAVE AND YOU CAN
4 FIND IT.

5 A NO, THOSE ARE NOT MY NOTES. THAT'S SOMEONE ELSE'S
6 NOTES.

7 Q ARE THESE YOUR NOTES?

8 A YES, THOSE ARE MINE.

9 Q BUT THESE ARE NOT?

10 A NO, SIR.

11 Q SO HOW MANY PAGES OF NOTES DO YOU HAVE?

12 A I HAVE THREE.

13 Q ARE THESE YOUR NOTES?

14 A YES.

15 Q DOCTOR, DO YOU SIGN THE BOTTOM OF EACH PAGE OF
16 YOUR NOTES?

17 A I DO.

18 Q OKAY. SO YOU HAVE -- REFERRING TO PAGE ONE OF
19 YOUR NOTES THAT DICTATION STARTED WITH -- OR THE
20 NOTATION BEGINS WITH AN ENTRY THAT SAYS 6:30 A.M.,
21 CORRECT?

22 A THAT'S CORRECT.

23 Q YOU TESTIFIED THAT YOU FIRST SAW 'Victim' AT 6:00
24 A.M.?

25 A WE --

1 Q I'M JUST TRYING TO GET AT --

2 A WE WRITE THE NOTES AFTER WE SEE THE PATIENT, SO I
3 ALWAYS GO IN AND EXAMINE THE PATIENT AND THEN WRITE THE
4 NOTES.

5 Q OKAY. THAT'S WHAT I THOUGHT. SO DO YOU KNOW WHAT
6 TIME Victim ARRIVED AT PALMETTO RICHLAND?

7 A I DO NOT HAVE THAT RECORDED.

8 Q BUT YOU DIDN'T SEE HIM UNTIL 6:00 O'CLOCK?

9 A I APOLOGIZE. I THINK IT WAS ABOUT 6:00 O'CLOCK.
10 I DO NOT HAVE THE EXACT TIME.

11 Q THERE WAS NO NOTATION OF THE TIME THAT YOU BEGAN
12 YOU'RE --

13 A AS SOON AS HE ARRIVED AT THE FLOOR WHEN I WAS
14 CALLED, AND I CAME DOWN IMMEDIATELY FOLLOWING THAT.

15 Q NOW, WHEN YOU WERE IN THE ROOM WITH Victim, IT
16 WAS YOU, Victim, MIAMA AND MUSA, THE FATHER; IS THAT
17 CORRECT?

18 A INITIALLY IT WAS Victim MYSELF, AND MIAMA.

19 Q THERE CAME A TIME LATER THAT MUSA CAME IN?

20 A THAT'S CORRECT.

21 Q AND MUSA IS THE FATHER?

22 A YES.

23 Q DID THE CHILD REACH OUT FOR MUSA?

24 A I DO NOT RECALL HIM REACHING FOR MUSA.

25 Q NOW, YOU DON'T HAVE AN OPINION, DO YOU,

1 DR. HARRIS, THAT THE INJURIES THAT YOU DESCRIBED, THE
2 LACERATION TO THE SCROTUM, THE ABRASION TO THE LIP, AND
3 FOREHEAD OCCURRED AT THE SAME TIME, DO YOU?

4 A THEY ARE ALL ACUTE INJURIES. I CANNOT SAY THEY
5 OCCURRED AT THE EXACT SAME TIME, BUT THEY ARE ALL VERY
6 RECENT INJURIES.

7 Q OKAY. AND WHEN YOU SAY VERY RECENT, WHAT, BASED
8 ON YOUR OBSERVATION OF THE INJURIES, WHAT TIMEFRAME ARE
9 YOU SAYING IS VERY RECENT? TWO HOURS, THREE HOURS,
10 FOUR HOURS, TWELVE HOURS? DO YOU HAVE AN OPINION AT
11 ALL ABOUT THE TIMEFRAME?

12 A I THINK THEY WOULD ALL HAVE TO HAVE OCCURRED
13 WITHIN THE PAST 24 HOURS, BUT THAT IS MY OPINION.

14 Q OKAY. NOW YOU SAID SOMETHING ABOUT NO EVIDENCE OF
15 BLUENESS. I DIDN'T QUITE HEAR WHAT THE ANSWER WAS AS
16 TO WHAT THAT MEANT.

17 A THAT WAS WITH RESPECT TO THE TESTICLE ACTUALLY
18 BEING VIABLE, IF IT HAD BEEN BLUE, THAT WOULD HAVE
19 INDICATED THAT IT DID NOT HAVE AN ADEQUATE BLOOD
20 SUPPLY. THAT WAS DOCUMENTED -- BLUENESS IS CYANOSIS,
21 WHICH IS THE TERM I USED IN MY DOCUMENTATION --

22 Q I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU. SO
23 THE FACT THAT THERE WAS NO BLUENESS MEANT THAT THE
24 INJURY WAS MORE CLOSER TO WHEN YOU SAW IT OR MORE
25 FARTHER BACK IN TIME, OR DOES IT MEAN ANYTHING?

1 A NO. I THINK NOT SEEING THE BLUENESS WOULD HAVE
2 MEANT THE TESTICLE STILL HAD A BLOOD SUPPLY TO IT AND
3 IT WAS STILL CONSIDERED A VIABLE TESTICLE.

4 Q OKAY. NOW, WERE YOU IN THE ROOM WHEN Victim's
5 VITAL SIGNS WERE BEING TAKEN?

6 A I DO NOT RECALL.

7 Q OKAY. NOW, MS. CAMPBELL ASKED YOU ABOUT WHEN YOU
8 WERE ATTEMPTING TO ASK Victim. WHAT HAD HAPPENED TO
9 HIM?

10 A THAT'S CORRECT.

11 Q OKAY. PRIOR TO THAT TIME, HAD YOU AND Victim
12 HAD A DIALOGUE?

13 A PRIOR TO THAT -- WHEN I INITIALLY CAME INTO THE
14 ROOM, I WAS TRYING TO OBTAIN THE HISTORY FROM THE STEP
15 MOM AND ASKING HER WHAT WAS GOING ON, WHAT HAD GONE ON,
16 AND THEN I ASK Victim IF HE WAS OKAY, AND THEN
17 PROCEEDED TO DO THE EXAM.

18 Q SO WAS THAT THE ONLY THING THAT YOU SAID TO
19 Victim BEFORE YOU BEGAN ASKING HIM QUESTIONS ABOUT
20 WHO DID THIS AND WHAT HAPPENED, IF HE WAS OKAY?

21 A I TALK THROUGHOUT THE EXAM TO THE KIDS TO TRY TO
22 KEEP THEM CALM AND TO MAKE THEM FEEL BETTER. I'M NOT
23 SURE EXACTLY WHAT YOU'RE ASKING.

24 Q WELL, I GUESS I'M ASKING DID Victim RESPOND TO
25 YOUR TALKING TO HIM?

1 A YES, HE WOULD MAKE EYE CONTACT WITH ME, THAT'S
2 CORRECT.

3 Q AND --

4 A AND SHAKE HIS HEAD, YES, SIR.

5 Q DID HE SAY ANYTHING?

6 A I DID NOT RECALL HIM SAYING ANYTHING.

7 Q DO YOU KNOW IF Victim EVEN UNDERSTOOD WHAT YOU
8 WERE SAYING TO HIM? WELL, LET ME ASK IT TO YOU THIS
9 WAY, DO YOU KNOW IF Victim SPEAKS ENGLISH --

10 A UH -

11 Q -- OF YOU'RE OWN KNOWLEDGE?

12 A I RECALL HIM SPEAKING WITH AN ACCENT.

13 Q OKAY. SO MY QUESTION IS WHEN YOU WERE ASKING HIM
14 WHAT HAPPENED AND WHO DID THIS TO HIM, WITHOUT HIM
15 RESPONDING, YOU DON'T KNOW IF HE EVEN UNDERSTOOD WHAT
16 YOU WERE ASKING HIM, DO YOU?

17 A I GUESS NOT.

18 Q AND THE STATE IS TRYING TO SAY OR IMPLY BY THESE
19 QUESTIONS THAT Victim --

20 MS. CAMPBELL: OBJECTION, YOUR HONOR, TO WHAT THE
21 STATE IS TRYING TO IMPLY.

22 THE COURT: SUSTAINED. SUSTAINED. IMPROPER FORM
23 OF THE QUESTION.

24 MR. ROGERS: I'LL REPHRASE IT, YOUR HONOR.

25 BY MR. ROGERS:

1 Q WHEN MIAMA CAME AND ASKED ~~TOUCH~~ IF HE WAS DOING
2 OKAY, ISN'T IT POSSIBLE THAT ALL SHE WAS DOING WAS
3 ASKING HIM IF HE WAS OKAY?

4 A I SUPPOSE SO.

5 Q AND YOU HAVE NO WAY OF REALLY KNOWING, DO YOU,
6 CORRECT?

7 A THAT'S CORRECT.

8 Q YOU HAVE NO WAY OF KNOWING THAT WHAT SHE WAS
9 ATTEMPTING TO DO WAS NOT HAVE HIM ANSWER YOUR QUESTION,
10 DO YOU?

11 A NO, I DO NOT.

12 Q NOW, OBVIOUSLY THERE WAS A CUT OF SOME KIND,
13 CORRECT?

14 A THAT'S CORRECT.

15 Q ALL RIGHT. SO IF MIAMA DIDN'T KNOW ABOUT THE CUT,
16 OKAY, AND SHE TOLD YOU THAT WHEN SHE PUT PRESSURE ON
17 THE SCROTUM, THAT'S WHEN SHE SAW BLOOD --

18 A UH-HUH.

19 Q -- ISN'T THAT CONSISTENT WITH HER VERSION THAT ALL
20 SHE SAW WAS BLOOD WHEN SHE PUT THE TOWEL ON HIM IN THE
21 BATHTUB?

22 A SHE -- WHAT I WAS TOLD IS THAT WHEN HE WAS PLACED
23 IN THE BATHTUB --

24 Q TOLD BY?

25 A BY THE STEP MOM.

1 Q OKAY.

2 A HE WAS PLACED IN THE BATHTUB. SHE NOTICED THE
3 SWELLING. THERE WERE NOT SIGNS OF BLEEDING AT THAT
4 TIME AND THAT SHE APPLIED PRESSURE AND THEN SAW THE
5 BLOOD.

6 Q BUT YOU KNEW THERE WAS A CUT THERE, RIGHT, BECAUSE
7 YOU SAW THE CUT?

8 A I SAW THE CUT ON EXAM, BUT IF THAT HAD BEEN
9 PRESENT THERE BEFORE, THEN THERE WOULD HAVE BEEN
10 BLEEDING.

11 Q OKAY. AND SHE SAW BLOOD. SHE TOLD YOU SHE SAW
12 BLOOD?

13 A SHE DID SEE IT, YES.

14 Q OKAY. SO YOU CONCLUDED THAT MIAMA WASN'T TELLING
15 YOU THE TRUTH BY SAYING THAT THE CUT WAS CAUSED WITH
16 PRESSURE, BUT THAT'S NOT WHAT SHE TOLD YOU, CORRECT?

17 A WHAT SHE --

18 Q SHE DIDN'T TELL YOU, RIGHT?

19 A SHE DID NOT MENTION THE CUT TO ME.

20 Q RIGHT.

21 A THE STORY THAT I WAS TOLD IS THAT PRESSURE WAS
22 APPLIED.

23 Q ALL RIGHT.

24 A AND THE BLOOD -- THEN IT WAS NOTED TO START
25 BLEEDING.

1 Q OKAY.

2 A THAT THERE WAS NOT A CUT. THAT'S WHAT I NOTED ON
3 THE EXAM.

4 Q OKAY. AND THAT'S CONSISTENT WITH NOT HAVING SEEN
5 THE CUT. IF YOU DIDN'T SEE A CUT, YOU COULDN'T KNOW A
6 CUT WAS THERE. ALL YOU'D KNOW IS THERE WAS BLOOD,
7 CORRECT?

8 A RIGHT.

9 Q NOW, DID YOU MAKE A NOTATION OF YOUR TESTIMONY A
10 MOMENT AGO WHEN YOU SAID THAT MIAMA DIDN'T SHOW ANY
11 EMOTION WHEN YOU TOLD HER THAT THE INJURY WAS
12 INTENTIONAL? DID YOU MAKE A NOTATION OF THAT IN YOUR
13 NOTES THERE?

14 A I DID NOT.

15 Q AND WAS MUSA IN THE ROOM WHEN YOU WERE ATTEMPTING
16 TO ASCERTAIN FROM VICTIM WHO DID THIS?

17 A I DO NOT RECALL.

18 Q YOU DON'T RECALL?

19 A NO.

20 Q AND YOU DIDN'T MAKE ANY NOTATIONS OF THAT EITHER,
21 OF COURSE, RIGHT?

22 A WELL, THROUGHOUT THE EXAM THE FATHER WAS IN AND
23 OUT OF THE ROOM. I DO NOT KNOW AT WHAT POINT HE WAS IN
24 THE ROOM.

25 MR. ROGERS: THANK YOU, DR. HARRIS.

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

3 MS. CAMPBELL: JUST A COUPLE OF QUESTIONS, YOUR
4 HONOR.

5 THE COURT: REDIRECT, GO AHEAD.

6 MS. CAMPBELL: THANK YOU.

7 REDIRECT EXAMINATION

8 BY MS. CAMPBELL

9 Q JUST FOR THE RECORD, I WANT TO GET THIS STRAIGHT,
10 AT THE TIME -- WHEN THIS CUT OCCURRED, WOULD IT HAVE
11 BLED IMMEDIATELY?

12 A IT WOULD HAVE BLED IMMEDIATELY, YES.

13 Q AND IF SOMEONE WAS UNDRESSING A CHILD AND PUTTING
14 A CHILD IN THE BATHTUB, WOULD THE BLOOD HAVE BEEN
15 NOTICEABLE?

16 A YES.

17 Q HE ASKED YOU ABOUT THAT -- WHEN SHE CAME OVER, HE
18 SAID SHE WAS JUST CHECKING TO SEE IF HE WAS ALL RIGHT.
19 WHEN WAS -- WAS THIS THE ONLY TIME OR HOW MANY TIMES
20 DID SHE COME OVER TO CHECK TO SEE IF THIS CHILD WAS
21 OKAY?

22 A THAT INCIDENT IS THE ONE THAT I RECALL.

23 Q IT WAS JUST THAT ONE TIME?

24 A YES.

25 Q AND WHAT WERE YOU ASKING VICTIM AT THAT POINT

1 BRIGHT SCROTAL LACERATION AND OTHER BRUISES AND
2 ABRASIONS AS DR. HARRIS HAD NOTED IN HER NOTES.

3 Q OKAY. AND THEN FURTHER DOWN, WHERE I BELIEVE IT
4 SAYS IMPRESSION PLANNED, WHAT DID YOU NOTE THERE?

5 A I NOTED THAT HE HAD THE SCROTUM LACERATION WITH
6 THE BULGING OF HIS TESTICLE, MEANING THAT HIS TESTICLE
7 WAS OUTSIDE OF HIS SCROTUM, AND THE MOST -- THE CAUSE
8 OF THIS TYPE OF INJURY WOULD BE NON-ACCIDENTAL TRAUMA,
9 AND SO FROM THAT POINT WE DECIDED TO CONTINUE TO GET
10 DR. EHRETH, THE PEDIATRIC UROLOGIST, INVOLVED SO THAT
11 HE COULD REPAIR THE INJURY AND THEN WE CONSULTED WITH
12 THE FORENSIC PEDIATRICIAN, DR. ABLE, TO COME IN AND
13 EVALUATE THE CASE, AS WELL.

14 Q IS THAT STANDARD TO REFER TO DR. ABLE WHEN YOU
15 SUSPECT CHILD ABUSE OR SOME KIND OF MISCONDUCT?

16 A YES, IT IS.

17 Q OKAY. DID THE DEFENDANT, MIAMA KROMAH, GIVE YOU
18 ANY EXPLANATION, OR DID SHE TELL YOU ANYTHING ABOUT HOW
19 THIS MAY HAVE HAPPENED?

20 A YES. SHE GAVE THE SAME STORY WHERE SHE HAD
21 NOTICED SOME SCROTAL SWELLING, PUT HIM IN THE BATHTUB,
22 APPLIED THE WASHCLOTH AND THEN NOTICED THE BLOOD, BUT
23 SHE HAD NOTHING TO EXPLAIN THE ACTUAL CUT.

24 Q OKAY. AND IN YOUR EXPERIENCE, HAVE YOU EVER SEEN
25 AN EXPLODING SCROTUM OR A SCROTUM THAT MIGHT RUPTURE.

1 WHEN PRESSURE IS APPLIED?

2 A NO. THE SKIN OVER THE SCROTUM IS VERY, VERY
3 DISTENSIBLE, SO THEY CAN SWELL UNTIL LIKE TEN TIMES
4 THEIR NORMAL SIZE AND THE SKIN WILL NOT TEAR, SO YOU
5 REALLY -- YOU NEVER SEE A SCROTUM JUST BURST. IT HAS
6 TO BE CUT IN ORDER FOR THE TESTICLE TO COME OUT LIKE
7 THIS.

8 Q OKAY. AND IF, FOR INSTANCE, SOMEHOW THE CHILD GOT
9 THIS INJURY ROUGH-HOUSING WITH A PLAYMATE, WHAT WOULD
10 THAT WOUND LOOK LIKE?

11 A IT WOULD BE MORE LIKE -- IT WOULD HAVE A RAGGED
12 EDGE, IF IT WAS JUST A TEAR OR SOMETHING.

13 Q OKAY. HOW WAS THIS WOUND? HOW WOULD YOU
14 CHARACTERIZE IT?

15 A THIS IS A VERY CLEAN CUT, VERY STRAIGHT LINE
16 ACROSS THE SCROTUM.

17 Q LET ME ASK YOU THIS, IS THERE ANY CONDITION THAT
18 MIGHT CAUSE SWOLLEN TESTICLES?

19 A THERE ARE INFECTIOUS DISEASES, ONE PARTICULARLY,
20 ELEPHANTIASIS, WHERE YOU CAN GET SEVERE SWELLING OF THE
21 SCROTUM.

22 Q OKAY. DID VICTIM HAVE THAT?

23 A NO. HE DID HAVE A HYDROCELE, WHICH CAN CAUSE
24 SLIGHT SWELLING OF THE SCROTUM.

25 Q OKAY, BUT WOULD YOU SAY THAT WAS ENOUGH SWELLING

1 TO CAUSE THIS INJURY?

2 A NO.

3 Q DR. AMROL, LET ME ASK YOU THIS, WOULD YOU
4 CHARACTERIZE THIS AS A SERIOUS INJURY?

5 A YES.

6 Q MAYBE IF YOU CAN EXPLAIN TO THE JURY WHAT MIGHT
7 HAVE HAPPENED IN THIS CASE WITHOUT MEDICAL TREATMENT?

8 A OKAY. WITHOUT MEDICAL TREATMENT, ANY TIME YOU
9 HAVE AN OPEN WOUND LIKE THIS, YOU WOULD RUN THE RISK OF
10 INFECTION, WHICH COULD HAVE BEEN SPREAD TO THE
11 BLOODSTREAM AND YOU COULD GET WHAT WE CALL BACTEREMIA
12 AND YOU WOULD GET A REALLY HIGH FEVER. YOU WOULD GET
13 REALLY SICK AND YOU COULD DIE FROM THAT. ALSO, WITHOUT
14 TREATMENT HIS TESTICLE COULD HAVE BECOME TWISTED ON THE
15 SPERMATIC CORD THAT WAS HANGING OUT AND THEN HE COULD
16 HAVE LOST REPRODUCTIVE FUNCTION OF THAT TESTICLE, AS
17 WELL.

18 Q OKAY. AND THIS INJURY WAS TREATED WITH SURGERY;
19 IS THAT CORRECT?

20 A YES.

21 Q OKAY. CAN A CHILD -- IS THERE A DANGER OF DEATH
22 WHEN A CHILD HAS TO UNDERGO SURGERY?

23 A YES, ANY SURGERY IS ASSOCIATED WITH RISK. ALSO,
24 WHEN YOU NEED ANESTHESIA, THAT'S ONE OF THE RISKS THEY
25 EXPLAIN TO THE FAMILY BEFORE A CHILD IS TAKEN TO

1 SURGERY.

2 Q IN YOUR EXPERT OPINION, WERE 'Victim's' INJURIES
3 CONSISTENT WITH THE EXPLANATION THAT THE DEFENDANT GAVE
4 YOU?

5 A NO.

6 Q IN YOUR EXPERT OPINION, WHAT CAUSED Victim's
7 INJURIES?

8 A NON-ACCIDENTAL TRAUMA OR CHILD ABUSE.

9 MS. HALL: OKAY. THANK YOU. YOUR HONOR, BEG THE
10 COURT'S INDULGENCE.

11 (PAUSE)

12 MS. HALL: THAT'S ALL WE HAVE, YOUR HONOR.

13 THE COURT: ALL RIGHT. MR. ROGERS.

14 MR. ROGERS: MAY IT PLEASE THE COURT?

15 THE COURT: YES, SIR.

16 CROSS-EXAMINATION

17 BY MR. ROGERS:

18 Q DR. AMROL, IF Victim's INJURIES WERE SO SEVERE
19 AND SO LIFE THREATENING, WHY DID IT TAKE SO LONG FOR
20 HIM TO BE TREATED?

21 A I DON'T THINK THAT IT DID. ACUTELY, IT WAS NOT
22 LIFE THREATENING. HE WAS TAKEN TO THE EMERGENCY ROOM,
23 THE WOUND WAS CLEANED, SALINE GAUZES WERE PLACED ON IT,
24 SO HE WAS NOT AT RISK FOR INFECTION BECAUSE HE RECEIVED
25 MEDICAL CARE.

1 Q WELL, YOU DON'T KNOW WHAT TIME HE ARRIVED AT
2 PALMETTO RICHLAND, DO YOU?

3 A WELL, HE ARRIVED AT LEXINGTON AT 2:30 IN THE
4 MORNING.

5 Q AND HE WASN'T SEEN BY A PHYSICIAN AT PALMETTO
6 RICHLAND UNTIL 6:00?

7 A YES, BUT I'M SURE IT TOOK A COUPLE OF HOURS TO BE
8 SEEN AT LEXINGTON AND THEN HE WAS TRANSPORTED TO
9 PALMETTO RICHLAND.

10 Q WELL, WE'VE HAD THE TESTIMONY AS TO HOW LONG THAT
11 TOOK AND IT WASN'T AS LONG AS YOU MIGHT IMAGINE. SO DO
12 YOU HAVE ANY EXPLANATION FOR THE DELAY IN TREATMENT OF
13 victim?

14 A MY EXPLANATION WOULD BE THAT WHEN PEOPLE GO IN TO
15 THE HOSPITAL IN THE MIDDLE OF THE NIGHT, MAYBE THEY'RE
16 NOT GOING TO BE AWARE OF WHAT TIME IT COULD BE.
17 DR. HARRIS MAY HAVE SEEN HIM AT 5:00 A.M. OR SHE MAY
18 HAVE SEEN HIM AT 5:30. I REALIZE SHE WAS SAYING
19 6:00 A.M., BUT HAVING BEEN A RESIDENT, YOU KNOW THAT
20 YOUR TIME COULD HAVE BEEN OFF BY THIRTY MINUTES PRETTY
21 EASILY.

22 Q SO AT 5:30 THEN?

23 A YES, I THINK THREE HOURS FROM THE TIME HE GOT TO
24 LEXINGTON TO THE TIME HE WAS SEEN AT RICHLAND IS A
25 RELATIVELY QUICK TIME.

1 Q THREE HOURS IS A QUICK TIME?

2 A YES.

3 Q OKAY. NOW, YOU DON'T KNOW HOW THIS INJURY
4 OCCURRED, DO YOU?

5 A NO.

6 Q YOU DON'T KNOW WHAT CAUSED THE INJURY?

7 A NO.

8 Q AND MIAMA TOLD YOU BASICALLY THAT SHE DIDN'T KNOW.
9 SHE TOLD YOU WHAT SHE SAW, RIGHT?

10 A RIGHT.

11 Q OKAY. AND YOU AS AN EXPERT CAN'T TELL THIS JURY
12 WHAT EXACTLY HAPPENED, CAN YOU?

13 A RIGHT.

14 Q OKAY. IT'S IMPOSSIBLE THAT IT COULD HAVE BEEN AN
15 ACCIDENT?

16 A RIGHT.

17 Q IS IT POSSIBLE?

18 A OH, NO.

19 Q IS IT POSSIBLE THAT ~~Victim~~ SOMEHOW INADVERTENTLY
20 DID IT TO HIMSELF?

21 A NOT WITH THIS STORY THAT SHE WAS WITH HIM THE
22 WHOLE TIME AND SAW NORMAL, NO BLOOD, THEN BLOOD AND
23 THAT SHE WAS WITH HIM THE WHOLE TIME.

24 Q WELL, SHE WASN'T WITH HIM THE WHOLE TIME, BUT WHAT
25 I'M ASKING YOU IS, IS IT POSSIBLE THAT SOMEHOW HE

1 INJURED HIMSELF?

2 A NO.

3 Q OKAY. WHEN THE CUT OCCURRED, THERE WOULD HAVE
4 BEEN A LOT OF BLOOD, WOULDN'T THERE?

5 A RIGHT.

6 Q A LOT OF BLOOD?

7 A RIGHT.

8 Q OKAY. IT'S NOT POSSIBLE THAT THE CUT COULD HAVE
9 OCCURRED SOMEHOW, BUT THEN THE TESTICLE DIDN'T PROTRUDE
10 UNTIL LATER? IS THAT POSSIBLE?

11 A NO.

12 Q THAT'S NOT POSSIBLE?

13 A NO.

14 Q OKAY. THANK YOU.

15 THE COURT: ANY REDIRECT?

16 MS. HALL: NOTHING FROM THE STATE.

17 THE COURT: DOCTOR, YOU MAY STEP DOWN.

18 ALL RIGHT, SOLICITOR, CALL YOUR NEXT WITNESS,
19 PLEASE.

20 MS. CAMPBELL: MAY IT PLEASE THE COURT, YOUR
21 HONOR. WE HAVE A COUPLE TO TAKE OUT OF ORDER WITH THE
22 COURT'S PERMISSION.

23 THE COURT: THAT'S FINE.

24 MS. CAMPBELL: THE STATE CALLS HEATHER SMITH.

25 HEATHER SMITH,

1 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
3 NAME FOR THE RECORD.

4 THE WITNESS: MY FULL NAME IS HEATHER MARIE SMITH.

5 MS. CAMPBELL: YOUR HONOR, MAY WE APPROACH?

6 THE COURT: SURE.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
8 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE
9 JURY).

10 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN,
11 THERE MAY BE A MATTER FOR ME TO TAKE UP OUT OF YOUR
12 PRESENCE. I'M GOING TO SEND YOU BACK TO YOUR JURY ROOM
13 FOR A FEW MINUTES. DO NOT DISCUSS THE CASE. WE WILL
14 HAVE YOU BACK IN JUST A FEW MINUTES. YOU FOLKS ARE
15 EXCUSED TO YOUR JURY ROOM AT THIS TIME.

16 (WHEREUPON, THE JURY LEFT OPEN COURT AT
17 APPROXIMATELY 3:08 P.M.)

18 THE COURT: THIS IS A WITNESS WHO MAY OR MAY NOT
19 GET INTO SOME MATTERS THAT THE COURT WOULD HAVE TO RULE
20 ON THE ADMISSIBILITY OF WHAT SHE MIGHT HAVE TO SAY. I
21 THOUGHT IT WOULD BE BETTER TO GET THE JURY OUT AND HAVE
22 THE STATE MAKE A PROFFER AND SEE WHERE WE GO.

23 MS. CAMPBELL: MAY IT PLEASE THE COURT. YOU DON'T
24 WANT ME TO QUALIFY HER AS AN EXPERT AT THIS POINT?

25 THE COURT: FOR PURPOSES OF THIS HEARING, WOULD

1 YOU STIPULATE TO THAT?

2 MR. ROGERS: YES, SIR.

3 THE COURT: ALL RIGHT. THANK YOU. ALL RIGHT, FOR
4 PURPOSES OF THIS HEARING.

5 DIRECT EXAMINATION

6 (IN CAMERA)

7 BY MS. CAMPBELL:

8 Q DID YOU HAVE OCCASION TO COME IN CONTACT WITH

9 Victim ?

10 A YES, I DID.

11 Q WHEN DID YOU MAKE CONTACT WITH HIM?

12 A AUGUST 25TH, 2005.

13 Q WAS HE REFERRED TO YOU FOR A FORENSIC INTERVIEW AS
14 A RESULT OF HIS INJURIES?

15 A HE WAS.

16 Q WHEN DID YOU -- DID YOU ACTUALLY PERFORM THAT
17 INTERVIEW ON AUGUST 25TH?

18 A YES, I DID.

19 Q CAN YOU TELL THE JUDGE JUST BASICALLY WHAT YOU
20 WERE DOING AND THE QUESTIONING YOU WENT THROUGH WITH
21 THE CHILD?

22 A SURE. I PERFORMED A FORENSICALLY -- A CHILD
23 FRIENDLY PROTOCOL FORENSIC INTERVIEW ON Victim
24 KNOWN AS THE RAP BAC RECALL (PHONETIC), AN ACRONYM FOR
25 RAPPORT BUILDING, BELIEF IDENTIFICATION, A TOUCH

1 INQUIRY, AND ABUSE SCENARIO, AND CLOSURE PROCESS.
2 THAT'S THE PROTOCOL THAT WE USE, AND THROUGH CONDUCTING
3 THAT FORENSIC INTERVIEW RAPPORT WAS ACHIEVED WITH
4 Victim, AND HE CONSISTENTLY INFORMED ME THAT HE HAD
5 BEEN HURT AND WHO HURT HIM.

6 Q AND FOR PURPOSES OF THIS HEARING, WHO DID HE
7 INDICATE HAD HURT HIM?

8 A HE INDICATED THAT MIAMA HURT HIM, MORE THAN ONE
9 TIME, AND POINTED TO WHERE HE HAD BEEN HURT ON HIS
10 BODY.

11 Q AND WHEN YOU INTERVIEWED THE CHILD ON THE 25TH,
12 WAS HE ABLE TO SPEAK ENGLISH?

13 A YES, HE WAS.

14 Q AND DURING THE COURSE OF YOUR INTERVIEW WITH THE
15 CHILD -- APPROXIMATELY HOW LONG DID YOUR INTERVIEW
16 LAST, DO YOU RECALL?

17 A APPROXIMATELY AN HOUR.

18 Q AND DURING THE COURSE OF YOUR INTERVIEW, WAS HE
19 ABLE TO RESPOND APPROPRIATELY?

20 A HE WAS.

21 Q AND PART OF THE PURPOSE OF YOUR INTERVIEW WAS TO
22 ASSESS WHETHER OR NOT THERE WAS ACTUAL CHILD ABUSE
23 INVOLVED?

24 A YES.

25 Q AND ALSO WHETHER OR NOT HE COULD REPORT WHO DID

1 IT?

2 A THAT'S RIGHT.

3 Q IN THAT AREA, WERE YOU ABLE TO -- WAS HE ABLE TO
4 GIVE YOU ENOUGH INFORMATION FOR YOU TO THEN FORWARD
5 THOSE FINDINGS TO POLICE?

6 A YES. ACTUALLY POLICE AND CHILD PROTECTIVE
7 SERVICES WERE THERE TO VIEW THE INTERVIEW, SO THEY
8 RECEIVED THAT INFORMATION AS IT WAS BEING TOLD TO ME.

9 Q AND JUST FOR PURPOSES OF THIS HEARING, THE PERSON
10 THAT HE IDENTIFIED AS HAVING HURT HIM -- DID HE
11 ACTUALLY INDICATE WHAT AREA OF HIS BODY HAD BEEN HURT?

12 A HE DID. HE PULLED DOWN HIS PANTS, SHOWED ME, AND
13 HE POINTED TO IT.

14 Q AGAIN, WHO DID HE INDICATE HAD HURT HIM?

15 A HE PULLED DOWN HIS PANTS AND POINTED TO WHAT HE
16 CALLED HIS TUTU AND STATED, "MIAMA HURT ME."

17 MS. CAMPBELL: YOUR HONOR, BUT FOR THE FACT WE
18 WOULD NOT BE GOING INTO WHO HE SAID HURT HIM, THAT
19 WOULD BE THE ESSENCE, AND THAT SHE FORWARDED THIS
20 INFORMATION TO LAW ENFORCEMENT AND THAT HER FINDING WAS
21 ONE OF PHYSICAL ABUSE.

22 THE WITNESS: COMPELLING PHYSICAL ABUSE.

23 THE COURT: CROSS-EXAMINATION AT THIS TIME,
24 MR. ROGERS?

25 CROSS-EXAMINATION

1 (IN CAMERA)

2 BY MR. ROGERS:

3 Q MS. SMITH, IT TOOK YOU AN HOUR WHEN YOU TALKED TO

4 VICTIM, DIDN'T IT?

5 A IT DID.

6 Q HE WASN'T COOPERATING, WAS HE?

7 A NO. HE COOPERATED FOR PART OF IT, AND HE DID NOT

8 WANT TO COOPERATE FOR OTHER PARTS. THAT'S NOT AT ALL

9 UNCOMMON FOR A THREE YEAR OLD.

10 Q HE WAS MORE INTERESTED IN THAT POTATO HEAD TOY

11 THAN IN ANSWERING ANY QUESTIONS YOU ASKED HIM, CORRECT?

12 A HE WAS MORE INTERESTED IN DRAWING BEFORE THAT.

13 Q AND DRAWING BEFORE THAT?

14 A UH-HUH.

15 Q WHEN YOU ASKED HIM, "ARE YOU A BOY OR A GIRL?" HE

16 SAID, "NOBODY," DIDN'T HE?

17 A HE DID.

18 Q WHEN YOU ASKED HIM ABOUT BODY PARTS, HE DIDN'T

19 ANSWER YOU, DID HE?

20 A HE ACTUALLY CALLED, HE POINTED AT -- HE NAMED IT

21 AS HIS TUTU.

22 Q THAT WAS LATER ON. WHEN YOU FIRST ASKED HIM RIGHT

23 THERE AT THE EASEL WHERE YOU ALL WERE DRAWING, HE

24 DIDN'T ANSWER YOU, DID HE?

25 A DURING THE ANATOMICAL IDENTIFICATION PART, HE DID

1 ANSWER ME. HE CALLED HIS -- HE POINTED TO HIS PENIS ON
2 THE DRAWING AND CALLED IT A TUTU.

3 Q OKAY. AND WHEN YOU ASKED HIM, "SOMETHING HAPPENED
4 TO YOUR BODY, Victim," AND HE SAID, "NO", DIDN'T HE,
5 DIDN'T HE?

6 A I'M NOT -- I ASKED HIM DIFFERENT QUESTIONS ABOUT
7 BEING HURT, ABOUT GOING TO THE DOCTOR, ABOUT HAS
8 SOMETHING HAPPENED TO YOU RECENTLY. HE ANSWERED "NO"
9 TO SOME OF THE QUESTIONS. HE ANSWERED "YES" TO OTHERS,
10 BUT HE WAS VERY CLEAR AND CONSISTENT ABOUT BEING HURT
11 AND WHO DID IT.

12 Q ALL RIGHT. THAT WASN'T UNTIL YOU TOLD HIM HE
13 COULDN'T GO OUTSIDE AND PLAY UNTIL HE ANSWERED YOUR
14 QUESTIONS, CORRECT?

15 A EXCUSE ME, I'M SORRY --

16 Q IS THAT CORRECT?

17 A THAT IS NOT CORRECT. DURING FAMILY CIRCLES, WHICH
18 IS THE PART WE DO AS PART OF THE REPORTABILITY PROCESS,
19 HE STATED TO ME DURING -- AFTER ASKING HIM WHO WAS IN
20 HIS FAMILY, HE NAMED HIS DADDY, HE NAMED CICI, AND THEN
21 HE STATED "MIAMA HURT ME."

22 Q AND DIDN'T HE SAY, "MAMA HURT ME"?

23 A MIAMA, MAMA.

24 Q AND YOU WERE AWARE --

25 A I THINK MY REFLECTIONS BACK TO HIM WAS THAT "MAMA

1 HURT YOU."

2 Q AND WERE YOU AWARE THAT HE HAD CALLED THREE PEOPLE

3 MAMA?

4 A I WAS NOT.

5 Q NOW, HE WANTED TO GO OUTSIDE AND THAT DOOR WAS

6 LOCKED, WASN'T IT?

7 A NO, WE DO NOT LOCK THE DOORS.

8 Q HE COULDN'T OPEN IT, RIGHT?

9 A IT WAS --

10 Q IT WAS A HEAVY DOOR?

11 A YES, AND HE COULDN'T TURN THE KNOB.

12 Q AND YOU TOLD HIM HE COULDN'T GO OUT AND PLAY --

13 AND THIS WAS AFTER ABOUT 45 MINUTES OF YOUR TRYING TO

14 GET HIM TO TALK ABOUT THE EVENT, CORRECT?

15 A NO.

16 Q NO, WHAT?

17 A THAT I TOLD HIM HE COULD NOT LEAVE THE ROOM?

18 Q YES.

19 A I DON'T RECALL THAT. THAT'S NOT USUALLY THE

20 PROCESS.

21 Q DIDN'T YOU SAY, "YOU CAN'T GO OUT AND PLAY UNTIL

22 YOU TALK TO ME, THAT THE REASON WE'RE IN HERE IS FOR

23 YOU TO ANSWER QUESTIONS?"

24 A I STATED -- I TOLD HIM THAT THE REASON WAS FOR HIM

25 TO -- THE REASON FOR HIM TO BE IN THE ROOM WAS TO

1 ANSWER QUESTIONS, TO TALK. THIS IS A VERY COMMON
2 STRATEGY THAT WE USE WITH THREE YEARS OLDS JUST TO LET
3 THEM KNOW THAT THERE IS A TASK THAT WE NEED TO
4 COMPLETE. HE WANTED TO LEAVE THE ROOM. AT THAT POINT
5 I ENGAGED HIM IN FURTHER REPORTABILITY BY RETRIEVING
6 MR. POTATO HEAD, THE TOY, AND I ALLOWED HIM TO PLAY.
7 WE BUILT FURTHER RAPPORT. HE STAYED IN THE ROOM WITH
8 ME. HE DIDN'T WANT TO LEAVE.

9 Q DIDN'T HE AT ONE TIME, DIDN'T HE SAY TO YOU, "I
10 HIT MY BACK?"

11 A HE STATED THAT HIS BACK WAS HURT.

12 Q "I HURT MY BACK?"

13 A HE SAID, "MIAMA HURT ME," AND THEN HE STATED, WHEN
14 ASKED WHERE, HE SAID IT WAS HIS BACK.

15 Q ALL OF THAT STUFF DIDN'T COME OUT UNTIL THE LAST
16 FIVE OR TEN MINUTES OF THIS HOUR, CORRECT?

17 A I DON'T REMEMBER THAT AS BEING, YOU KNOW, IT'S ON
18 VIDEO, BUT I DON'T REMEMBER IT BEING THE LAST FIVE
19 MINUTES, ABOUT THE BACK.

20 Q BUT IT WAS TOWARDS THE END OF THE INTERVIEW,
21 WASN'T IT?

22 A MAYBE THE LAST 20 MINUTES, BUT I WOULD HAVE TO SIT
23 IN FRONT OF THE VIDEO AND LOOK AT IT TO BE ACCURATE.

24 Q YOU ASKED HIM, "WHAT DOES CICI LOOK LIKE?" HE
25 DIDN'T ANSWER, DID HE?

1 A I'M NOT -- I'D HAVE TO LOOK AT THE VIDEO. I CAN'T
2 REMEMBER THE DETAILS OF THAT.

3 Q YOU ASKED HIM, "WHO DOES MAMA LIVE WITH?" AND HE
4 ANSWERED "CICI," DIDN'T HE?

5 A HE DID. I DO RECALL THAT.

6 Q YOU ASKED HIM, "DID YOU GO TO THE DOCTOR?" HE
7 SAID "NO."

8 A I ASKED HIM LATER IF HE WENT TO THE DOCTOR AND HE
9 SAID "YES."

10 Q YES, BUT INITIALLY WHEN YOU ASKED HIM DID HE GO TO
11 THE DOCTOR, HE SAID "NO," CORRECT?

12 A I'M NOT SURE IF IT WAS INITIALLY OR IF IT WAS THE
13 SECOND TIME THAT I ASKED HIM. I'D HAVE TO LOOK AT THE
14 VIDEO TO BE COMPLETELY 100 PERCENT ACCURATE ON THAT
15 ANSWER.

16 Q THIS WASN'T A DIFFICULT INTERVIEW FOR YOU?

17 A I WOULD SAY FOR A THREE YEAR OLD, IT WAS NOT AN
18 UNCOMMON INTERVIEW.

19 Q AND YOUR TESTIMONY IS HE PULLED HIS PANTS DOWN AND
20 SHOWED YOU HIS TUTU?

21 A HE INDICATED WHERE HE WAS HURT BY OPENING HIS
22 PANTS AND POINTING TO HIS TUTU.

23 Q DIDN'T YOU POINT AT THE TUTU AND SAY, "DIDN'T YOU
24 GET HURT THERE?"

25 A NO, NO, NO, NO. I DID NOT.

1 MR. ROGERS: JUDGE, I THINK WE NEED TO WATCH THIS
2 VIDEO. I HAVE NO FURTHER QUESTIONS.

3 THE COURT: ALL RIGHT. ANY FURTHER QUESTIONS?

4 MS. CAMPBELL: NO, SIR.

5 MR. ROGERS: JUDGE, MY OBJECTION IS, OF COURSE,
6 THE SAME, THAT ~~VICTIM~~ IS NOT COMPETENT. THEREFORE,
7 ANY HEARSAY TESTIMONY IS --

8 THE COURT: WELL, THAT'S WHAT I'M REQUESTING. MY
9 UNDERSTANDING IS THE STATE IS NOT GOING TO ASK WHO HE
10 SAID DID THIS TO HIM; IS THAT CORRECT, SOLICITOR?

11 MS. CAMPBELL: THE EXTENT OF WHAT WE'RE GOING TO
12 GO THROUGH IS WHEN SHE WENT THROUGH THAT, SHE HAD A
13 CONVERSATION WITH HIM, THAT SHE INTERVIEWED HIM. SHE
14 WON'T BE ABLE TO SAY WHAT HE SAID OR WHO HE SAID DID
15 IT, BUT DID SHE FORWARD THAT INFORMATION TO LAW
16 ENFORCEMENT AND EXTEND THAT AS TO DID SHE MAKE A
17 FINDING IN THIS CASE, AND SHE IS GOING TO SAY THAT IT
18 WAS COMPELLING FOR PHYSICAL ABUSE, CHILD ABUSE.

19 THE COURT: YOU'RE NOT GOING TO ASK AND SHE'S NOT
20 GOING TO RESPOND TO ANY CONVERSATION SHE HAD WITH THE
21 CHILD OTHER THAN THE FACT THAT SHE INTERVIEWED HIM; IS
22 THAT RIGHT?

23 MS. CAMPBELL: THE ONLY THING I'M GOING TO SAY IS
24 YOU CAN'T SAY WHAT HE SAID TO YOU. YOU INTERVIEWED
25 HIM, HE GAVE YOU INFORMATION, AND YOU FORWARDED THAT

1 INFORMATION TO LAW ENFORCEMENT -- OR LAW ENFORCEMENT
2 ACTUALLY OBSERVED WHOLE INTERVIEW.

3 MR. ROGERS: THE IMPLICATION IS THE SAME, JUDGE.

4 MS. CAMPBELL: AND I CAN GET INTO HER TRAINING IN
5 THE FIELD AND EVERYTHING, BUT THIS IS PART --

6 THE COURT: I'M HAVING TROUBLE HEARING --

7 MS. CAMPBELL: I CAN GET INTO HER TRAINING AND
8 EVERYTHING, BUT, I MEAN, SHE IS TRAINED TO DEAL WITH
9 TWO, THREE, FOUR, FIVE YEAR OLDS, INTERVIEW THEM AND
10 MAKE ASSESSMENTS. SHE WAS ABLE TO DO SO IN THIS CASE.
11 HAD SHE NOT FELT COMFORTABLE, SHE WOULDN'T HAVE BEEN
12 ABLE TO MAKE A FINDING ONE WAY OR THE OTHER.

13 MR. ROGERS: THAT'S MY POINT, YOUR HONOR. I DON'T
14 THINK SHE COULD HAVE MADE AN ASSESSMENT BASED ON THIS
15 INTERVIEW. THAT'S WHY I'M REQUESTING THE COURT TO TAKE
16 A LOOK -- I HATE TO BELABOR THE TRIAL, BUT I THINK THIS
17 IS A CRUCIAL ISSUE ON -- BECAUSE IF SHE SAYS I TALKED
18 WITH HIM AND A RESULT OF MY TALK WITH HIM, THEN I
19 TURNED MY FINDINGS OVER TO D.S.S. OR WHOEVER SHE IS
20 GOING TO SAY SHE TURNED IT OVER TO, THE CLEAR
21 IMPLICATION THAT THE JURY IS GOING TO DERIVE IS THAT
22 Victim MUST HAVE TOLD HER SOMETHING THAT FURTHERED
23 THIS INVESTIGATION, THIS PROSECUTION, AND THEY'RE
24 TRYING TO DO BY THE BACK DOOR WHAT THEY CAN'T --
25 THE COURT: ALL RIGHT. DO WE HAVE THE TAPE?

1 MS. CAMPBELL: YES, SIR.

2 THE COURT: I'M JUST NOT SURE WHERE I CAN GO TO
3 WATCH IT.

4 MS. CAMPBELL: DO YOU WANT ME TO HAVE A T.V.
5 BROUGHT TO YOUR CHAMBERS?

6 THE COURT: PARDON ME?

7 MS. CAMPBELL: I CAN GET A T.V. OR V.C.R. BROUGHT
8 TO YOUR CHAMBERS OR BACK HERE?

9 THE COURT: LET'S GET THAT MARKED AS A COURT'S
10 EXHIBIT. YOU'RE NOT PLANNING ON PUTTING THAT IN, ARE
11 YOU?

12 MS. CAMPBELL: I CAN'T -

13 THE COURT: AT THIS POINT IN TIME?

14 MS. CAMPBELL: I DON'T THINK I CAN, JUDGE.

15 THE COURT: I'LL MARK IT AS A COURT'S EXHIBIT SO I
16 HAVE IT IN THE RECORD AND THEN I'LL GO TAKE A LOOK AT
17 IT.

18 (WHEREUPON, COURT'S EXHIBIT 2 WAS MARKED FOR
19 IDENTIFICATION ONLY.)

20 MS. CAMPBELL: CAN I SUPPLEMENT WITH A COUPLE OF
21 QUESTIONS BEFORE YOU SEE THIS, JUDGE?

22 THE COURT: SURE. THAT'S COURT'S 2; IS THAT
23 RIGHT?

24 MS. CAMPBELL: COURT'S 2, I'M SORRY.

25 REDIRECT EXAMINATION

1 (IN CAMERA)

2 BY MS. CAMPBELL:

3 Q MS. SMITH, WOULD YOU CONSIDER *victim*. WHAT WE
4 WOULD CALL A VERBAL CHILD?

5 A HE WAS BELOW AVERAGE VERBALLY.

6 Q DOES THAT MEAN THAT HE IS NOT ABLE TO RESPOND TO
7 OR UNDERSTAND YOUR QUESTIONS?

8 A NO.

9 Q IN YOUR INTERVIEW -- HOW LONG HAVE YOU BEEN DOING
10 THIS?

11 A FOR ALMOST FOUR YEARS.

12 Q AND HOW MANY CHILDREN HAVE YOU INTERVIEWED OVER
13 THE LAST FOUR YEARS?

14 A OVER 500.

15 Q WOULD A THREE YEAR OLD, WOULD HIS RESPONSES OR
16 HIS -- AND PART OF IT WE NEED TO EXPLAIN IS, WOULD YOU
17 SAY A THREE YEAR OLD IS MORE EASILY DISTRACTED THAN SAY
18 AN OLDER CHILD?

19 A YES. THREE YEAR OLDS ARE VERY EASILY DISTRACTED.

20 Q WERE HIS DISTRACTIONS UNUSUAL?

21 A NO.

22 Q IN FACT, IN MAKING YOUR FINDING IN THIS CASE AND
23 BASED ON YOUR TRAINING, DID YOU TAKE IN ALL THE FACTORS
24 THAT ARE BASED ON THIS VIDEOTAPE?

25 A MY INTERVIEW ITSELF WAS BASED ON ALL THOSE

1 FACTORS, SO I WAS MAKING DECISIONS CONSTANTLY DURING
2 THE INTERVIEW PROCESS OF WHAT TO DO NEXT BASED ON HIS
3 DEVELOPMENTAL LEVEL, AGED THREE, AND HIS LANGUAGE, HIS
4 EMOTIONS, HIS BEHAVIOR IN THE INTERVIEW.

5 Q AND A THREE YEAR OLD THAT'S RECENTLY BEEN
6 TRAUMATIZED WITH A FAIRLY PAINFUL INJURY, WOULD IT BE
7 UNUSUAL FOR HIM TO BE RELUCTANT TO TALK ABOUT IT?

8 A NO. ALSO HE WAS PLACED IN FOSTER CARE, SO HE HAD
9 BEEN REMOVED FROM HIS HOME. THAT WOULD ALSO MAKE HIM
10 OPPOSITIONAL.

11 Q WERE YOU ALSO AWARE THAT HE HAD BEEN REMOVED FROM
12 HIS PREVIOUS FOSTER CARE HOME IN MINNESOTA ABOUT A
13 MONTH PRIOR TO ALL OF THIS OCCURRING, TOO?

14 A RIGHT. I ACTUALLY DID NOT HAVE THAT KNOWLEDGE
15 PRIOR, BUT PLACEMENT IN FOSTER CARE CAN BE TRAUMATIC
16 FOR A THREE YEAR OLD, FOR ANY CHILD, BUT ESPECIALLY FOR
17 A THREE YEAR OLD.

18 Q AND YOU HAVE NOT HAD AN OPPORTUNITY TO REVIEW THIS
19 TAPE?

20 A HUH-UH.

21 Q SINCE YOUR ORIGINAL OPINION, HAS IT CHANGED IN ANY
22 WAY?

23 A IT HAS NOT.

24 MS. CAMPBELL: THAT'S ALL WE HAVE, YOUR HONOR.

25 MR. ROGERS: JUST ONE QUESTION, YOUR HONOR.

1 THE COURT: SURE.

2 RECROSS-EXAMINATION

3 (IN CAMERA)

4 BY MR. ROGERS:

5 Q YOU WERE TOLD BEFORE YOU INTERVIEWED Victim ON
6 THE 25TH THAT Victim HAD SAID MIAMA DID THIS, WEREN'T
7 YOU?

8 A I HAD AN A.R.C. INTAKE WHERE A SUMMARY OF
9 ALLEGATIONS WERE LISTED THAT STATED HE HAD STATED IN
10 THE HOSPITAL THAT HIS STEPMOTHER HAD HURT HIM.

11 Q SO YOU KNEW THAT GOING INTO THIS INTERVIEW; IS
12 THAT RIGHT?

13 A I DID.

14 MR. ROGERS: THANK YOU.

15 THE COURT: ALL RIGHT. WE'LL STAND IN RECESS.

16 MS. CAMPBELL: WE'LL GET A T.V. AND TAKE IT TO
17 YOUR CHAMBERS.

18 THE COURT: ALL RIGHT. I'LL VIEW THE VIDEO AND
19 MAKE A RULING FROM THERE. WE'LL STAND IN RECESS FOR --
20 YOU SAY IT'S ABOUT AN HOUR LONG; IS THAT RIGHT?

21 MR. ROGERS: YES, SIR.

22 THE COURT: TELL THE JURY WE ARE GOING TO HAVE AN
23 EXTENDED BREAK WHILE I DEAL WITH A MATTER OF LAW. GET
24 THEM SOME REFRESHMENTS IF YOU HAVEN'T ALREADY.

25 THE BAILIFF: I'VE DONE THAT.

1 THE COURT: YOU MAY STEP DOWN, MA'AM. DON'T
2 DISCUSS YOUR TESTIMONY DURING THE BREAK, OKAY?

3 THE WITNESS: YES, SIR.

4 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

5 THE COURT: ALL RIGHT. I VIEWED THE VIDEO OF THE
6 INTERVIEW WITH THE CHILD IN THE CASE. IT IS
7 APPROXIMATELY AN HOUR LONG, AND I WATCHED EVERY BIT OF
8 IT.

9 BASED ON THAT AND THE CRITERIA, THIS IS COMING
10 FROM D.S.S. VS. JOHN DOE, THE CASE CITED BY MR. ROGERS
11 EARLIER TODAY, 292 SC 211, THE CRITERIA FOR DETERMINING
12 COMPETENCY OF A CHILD. I KNOW I'VE ALREADY CITED THE
13 RULE THAT INDICATES THAT ALL WITNESSES ARE -- LET ME
14 GET THE EXACT LANGUAGE. THIS IS RULE 601. EVERY
15 PERSON IS COMPETENT TO BE A WITNESS EXCEPT AS OTHERWISE
16 PROVIDED BY STATUTE OR THESE RULES. IT GOES THROUGH
17 AND IT EVEN CITES THIS CASE.

18 UNDER THE NOTES, THE FACTORS TO BE CONSIDERED IN
19 DETERMINING WHETHER OR NOT A CHILD IS COMPETENT -- IT
20 USED TO BE A CHILD UNDER 14 YOU HAD TO HAVE A
21 COMPETENCY HEARING BEFORE THAT CHILD TESTIFIED.

22 HERE ARE THE CRITERIA: IF THE CHILD IS MATURE
23 ENOUGH TO UNDERSTAND QUESTIONS AND NARRATE ANSWERS,
24 THAT'S NUMBER ONE. NUMBER TWO, RECEIVE FACTS
25 ACCURATELY DUE TO THE MEDIUM OF THE SENSES. NUMBER

1 THREE, RECALL THEM CORRECTLY. NUMBER FOUR, RELATE A
2 TRUE VERSION OF THE FACTS TO PROCEED. NUMBER FIVE, TO
3 KNOW THE DIFFERENCE BETWEEN RIGHT AND WRONG, GOOD AND
4 BAD. NUMBER SIX, TO UNDERSTAND THAT IT IS RIGHT OR
5 GOOD TO TELL THE TRUTH AND WRONG OR BAD TO LIE. NUMBER
6 SEVEN, TO BE WILLING TO TELL THE TRUTH. NUMBER EIGHT,
7 THE PUNISHMENT IF HE OR SHE LIES. THEN THAT PERSON IS
8 COMPETENT TO TESTIFY. BASED ON WHAT I HAVE OBSERVED,
9 THERE IS NO WAY THAT I CAN MAKE A DETERMINATION THAT
10 THE CHILD IS COMPETENT TO TESTIFY. THERE IS NOTHING IN
11 THE VIDEO TALKING ABOUT THE DIFFERENCE IN RIGHT AND
12 WRONG, UNDERSTANDING WHETHER IT'S RIGHT OR GOOD TO TELL
13 THE TRUTH OR WRONG OR BAD TO LIE, BE WILLING TO TELL
14 THE TRUTH, FEAR OF PUNISHMENT IF A LIE IS TOLD, AND
15 QUITE FRANKLY I'M NOT SURE IF BASED ON THE TAPE THAT
16 IT'S -- THAT I CAN MAKE A FINDING THAT THE CHILD
17 UNDERSTANDS THE QUESTIONS AND CAN NARRATE ANSWERS.
18 THERE WERE QUESTIONS ASKED AND ANSWERS GIVEN.

19 BASED ON MY OBSERVATION OF THE TAPE, I WOULD FIND
20 THAT THE CHILD WOULD NOT BE COMPETENT TO TESTIFY AS A
21 WITNESS.

22 I'M NOT SURE THAT GETS US TO THE ISSUE THAT I
23 STILL HAVE TO DECIDE AND THAT IS WHETHER OR NOT THIS
24 EXPERT CAN TESTIFY BASED ON HER INTERVIEW WITH THE
25 CHILD.

1 AS I UNDERSTAND IT, SOLICITOR, TELL ME IF I'M
2 WRONG, WHAT THE STATE IS TENDERING THE WITNESS FOR IS
3 TO SAY, TO QUALIFY HER AS AN EXPERT IN HER FIELD, THAT
4 SHE HAS APPLIED THE STANDARDS THAT EXPERTS IN THAT
5 FIELD USE AND HAS INTERVIEWED THE CHILD THROUGH ASKING
6 QUESTIONS, AND SHE HAS TAKEN THE INFORMATION THAT SHE
7 HAS GLEANED FROM THAT INTERVIEW AND MADE A
8 DETERMINATION THAT IN HER OPINION CHILD ABUSE HAS
9 OCCURRED AND SHE TURNED THAT OVER TO LAW ENFORCEMENT.

10 IS THAT SORT OF A SUMMARY OF WHAT YOU'RE ELICITING
11 FROM THE WITNESS?

12 MS. CAMPBELL: YES, SIR.

13 THE COURT: RULE -- I'VE GOT IT RIGHT HERE, RULE
14 703, TALKING ABOUT THE BASIS OF OPINIONS OF TESTIMONY
15 BY EXPERTS. THE FACTS OR THE DATA IN A PARTICULAR CASE
16 UPON WHICH AN EXPERT BASES AN OPINION OR INFERENCE MAY
17 BE THOSE PERCEIVED BY OR MADE KNOWN TO THE EXPERT AT OR
18 BEFORE THE HEARING. IF OF A TYPE REASONABLY RELIED
19 UPON BY EXPERTS IN THE PARTICULAR FIELD IN FORMING
20 OPINIONS OR INFERENCES UPON THE SUBJECT, THE FACTS OR
21 THE DATA NEED NOT BE ADMISSIBLE IN EVIDENCE, AND THERE
22 IS AN INHERIT CONFLICT BETWEEN THAT AND THE COURT IN
23 DETERMINING THAT THE CHILD WOULD NOT BE COMPETENT TO
24 TESTIFY BECAUSE WHAT WE ARE LEFT WITH IS, AS I LOOK AT
25 IT, IF THE CHILD WERE HERE, IF I HAD MADE A RULING, HE

1 WOULD NOT BE PERMITTED TO BE PUT ON THE STAND TO
2 TESTIFY.

3 THE STATE WANTS TO USE AN EXPERT WHO HAS TALKED TO
4 THE CHILD AND TAKE THAT INFORMATION PROVIDED BY THAT
5 CHILD AND TESTIFY THAT BASED ON THAT INFORMATION, THEY
6 REACHED THE CONCLUSION THAT CHILD ABUSE OCCURRED AND
7 TURNED THE INFORMATION OR REFERRED THE CASE TO LAW
8 ENFORCEMENT, AND THERE'S SOMETHING TO ME JUST WRONG
9 WITH THAT.

10 IF THE CHILD COULDN'T TESTIFY HIMSELF, HOW
11 COULD -- I MEAN, THE IMPLICATION IS BASED ON WHATEVER
12 HE TOLD THE EXPERT, THAT'S -- I MEAN, THAT'S OBVIOUSLY
13 THE BASIS FOR HER OPINION, BUT ANYWAY, THAT'S WHERE I
14 AM. I JUST WANT YOU ALL -- YOU CAN PICK IT UP FROM
15 THERE. SOLICITOR?

16 MS. CAMPBELL: MAY IT PLEASE THE COURT, YOUR
17 HONOR. I BELIEVE HER SAYING IT WAS A STRONG -- WHAT
18 WAS THE PHRASE YOU USED AS FAR AS INDICATION OF CHILD
19 ABUSE?

20 THE WITNESS: COMPELLING.

21 MS. CAMPBELL: HER TERM IS THAT IT IS COMPELLING
22 FOR CHILD ABUSE BASED ON HER INTERVIEW AND HER REVIEW
23 OF WHAT HAPPENED. IN ADDITION TO THAT, YOUR HONOR, AND
24 LET ME JUST GET THE RECORD STRAIGHT. THE CHILD IS IN
25 LIBERIA NOW. HE WAS SENT THERE BY HIS GUARDIAN. THE

1 GUARDIANSHIP WAS RETURNED FROM D.S.S. TO THE FATHER
2 BACK IN JANUARY OF THIS YEAR. I HAVE SPOKEN TO THE
3 FATHER. HE WILL NOT PRODUCE THE CHILD FOR ME. WHETHER
4 OR NOT THE CHILD IS COMPETENT AT THIS POINT TO TESTIFY
5 WOULD NOT BE BASED JUST ON WHAT THE VIDEOTAPE SHOWED.
6 WE WOULD HAVE TO HAVE A HEARING THAT WOULD EXPLORE THAT
7 FACT.

8 THE STATE IS PROHIBITED -- AND NOT THAT THIS MAKES
9 A DIFFERENCE, BUT THE FATHER IS STILL WITH THE
10 DEFENDANT IN THE CASE. WE DON'T HAVE THE CHILD
11 AVAILABLE AND CANNOT COMPEL A CHILD AS LONG AS THE
12 GUARDIAN SAYS IT CAN'T TESTIFY, NOR CAN WE COMPEL A
13 CHILD TO RETURN FROM LIBERIA.

14 THAT IS THE PLACE WE ARE AT. I DON'T KNOW WHETHER
15 OR NOT THAT CHILD, AT THIS POINT, BECAUSE I HAVEN'T HAD
16 AN OPPORTUNITY TO TALK TO THE CHILD, HAS ANY
17 INDEPENDENT MEMORY, NUMBER ONE, OR NUMBER TWO WOULD BE
18 QUALIFIED TO TESTIFY, BECAUSE I THINK THE FACTORS YOU
19 WENT THROUGH ARE COMPETENCE FACTORS THAT ARE REQUIRED
20 PERHAPS PRIOR TO A CHILD TESTIFYING IN COURT UNDER
21 OATH.

22 I DON'T MEAN TO SAY THAT THIS DOESN'T APPLY THAT
23 THE CHILD MAY NOT BE COMPETENT AT THE TIME AS A THREE
24 YEAR OLD, HOWEVER, YOUR HONOR, I THINK THAT GOES TO ITS
25 WEIGHT, NOT ITS ADMISSIBILITY AS FAR AS WHAT WOULD BE

1 ADMISSIBLE. THE CHILD WAS ABLE TO ARTICULATE TO SOME
2 EXTENT AS TO WHAT WENT ON WITH HIM. WHETHER OR NOT --
3 AND THE CHILD HAS SOME SPEECH DELAYS. THERE IS NO
4 QUESTION ABOUT THAT, BUT BASICALLY YOUR RULING NOW PUTS
5 US IN THE POSITION WHERE THE JURY IS GOING TO BE
6 LOOKING AT US AND GOING, DIDN'T YOU MAKE ANY ATTEMPT TO
7 FIND OUT WHAT THE CHILD SAID HAPPENED. WE AREN'T GOING
8 TO BE ABLE TO ANSWER THAT BECAUSE YOU NOW RULED THE
9 CHILD IS NOT COMPETENT OR EVEN IF WE JUST GET INTO THE
10 FACT THAT WE TRIED TO GET STATEMENTS.

11 I THINK THAT'S AT LEAST SOMETHING WE SHOULD BE
12 ABLE TO SHOW THE JURY SO THEY CAN GET THE FULL PICTURE,
13 WHEREAS THE DEFENSE IS GOING TO ARGUE WE DON'T KNOW WHO
14 DID THIS. I THINK THE CRUX OF THEIR DEFENSE IS WHO DID
15 THIS. THE CHILD STATED ON AT LEAST TWO DIFFERENT
16 OCCASIONS, JUDGE, WHO DID THIS TO HIM AND NOW WE ARE --
17 I UNDERSTAND UNDER HEARSAY EVIDENCE -- WE AREN'T TRYING
18 TO GET IN WHAT HE SAID IN THE INTERVIEW.

19 HOWEVER, WE ARE TRYING TO SHOW THAT THE POLICE AND
20 LAW ENFORCEMENT DID THEIR JOB. WE ATTEMPTED TO GARNER
21 INFORMATION. WHAT LITTLE INFORMATION WE GOT WAS PART
22 OF THIS WHOLE PROCESS. OTHERWISE, THE INFERENCE IS
23 CLEAR TO THE JURY, AND I'M SURE IT WILL BE ARGUED THAT
24 NO ONE WAS THERE, NO ONE SAW WHAT HAPPENED AND NO ONE
25 SAID WHAT HAPPENED, WHICH IS NOT TRUE.

1 THE COURT: OKAY, MR. ROGERS?

2 MR. ROGERS: WELL, I REALLY DON'T KNOW WHAT I NEED
3 TO SAY. I THINK THE COURT CORRECTLY DEDUCED THIS
4 DILEMMA THAT BECAUSE THE WITNESS, UPON WHICH THE EXPERT
5 RELIED ON TO BASE HER OPINION, IS NO LONGER COMPETENT
6 OR IS NOT COMPETENT THEN, OF COURSE, TO ME THAT RENDERS
7 INADMISSIBLE ANY OPINION SHE MAY HAVE BECAUSE IT WOULD
8 BE BASED ON INCOMPETENT EVIDENCE. YOU KNOW, THE FACT
9 THAT THE CHILD IS NOT HERE, THAT'S NOT OUR DOING. WE
10 DIDN'T PROCURE THE CHILD'S ABSENCE. IF THE CHILD WERE
11 HERE, IT WOULD BE MY ASSERTION THAT THE CHILD WOULD NOT
12 BE COMPETENT TO TESTIFY. THE FACT THAT THE CHILD ISN'T
13 HERE JUST PUTS US INTO A HEARSAY SITUATION.

14 BACK TO THIS, MS. SMITH TESTIFYING, RULE 704.5
15 SAYS THAT AN EXPERT MAY IN ANY EVENT BE REQUIRED TO
16 DISCLOSE THE UNDERLYING FACTS OR DATA ON
17 CROSS-EXAMINATION, AND I WOULD BE PRECLUDED IF THE
18 WITNESS WOULD BE ABLE TO TESTIFY THAT SHE CONDUCTED THE
19 INTERVIEW AND AS A RESULT OF THE INTERVIEW MADE A
20 CONCLUSION THAT ABUSE OCCURRED OR FORWARDED IT ON TO
21 THE APPROPRIATE AUTHORITIES. THE IMPLICATION IS THAT
22 ABUSE OCCURRED.

23 THE IMPLICATION IS THAT SHE GOT THAT INFORMATION
24 THROUGH THE INTERVIEW AND THE COURT HAS ALREADY RULED
25 THAT THAT INFORMATION CAME FROM AN INCOMPETENT WITNESS,

1 SO I DON'T SEE HOW THE STATE CAN KIND OF DO WHAT, IN
2 THE BACK DOOR, WHAT WE HAVE RULED THEY CAN'T DO IN THE
3 FRONT DOOR AND THAT IS TO GET IN THE IMPLICATION THAT
4 ~~VICTIM~~ MADE THESE STATEMENTS WHEN THE COURT HAS
5 ALREADY RULED THAT THOSE STATEMENTS CAN'T COME IN, SO
6 WE WOULD ASK THAT MS. SMITH NOT BE ALLOWED TO TESTIFY
7 AS TO HER OPINION.

8 THE COURT: DO YOU INTEND TO ARGUE THAT THE STATE
9 DID NOT DO ITS JOB THOROUGHLY AND DID NOT INTERVIEW THE
10 CHILD OR ATTEMPT TO FIND OUT FROM THE CHILD WHEN IT
11 OCCURRED?

12 MR. ROGERS: NO. I WOULD ARGUE THE INFERENCE FROM
13 THE ABSENCE OF THE TESTIMONY TOTALLY, BUT I WOULDN'T
14 ARGUE THAT THE STATE DIDN'T DO ITS JOB BY NOT
15 PRESENTING -- WELL, I MEAN, IF THE CHILD WERE HERE,
16 THEY WOULD BE ATTEMPTING TO OFFER HIM AS A WITNESS, BUT
17 I'M NOT GOING TO SAY -- WHAT I WOULD LIKE TO BE ABLE TO
18 ARGUE IS THAT THE FACT THAT THE CHILD IS NOT HERE IS
19 SOMETHING THAT THE JURY CAN CONSIDER AND THE JURY IS
20 NOT --

21 THE COURT: BEFORE YOU ARGUE THAT YOU'RE GOING TO
22 HAVE TO BE ABLE TO SHOW IN SOME WAY THE STATE IS
23 RESPONSIBLE FOR THAT CHILD NOT BEING HERE. THAT'S
24 WHERE WE'RE JUMPING THE GUN ANYWAY ON WHAT YOU CAN
25 ARGUE AND WHAT YOU CAN'T ARGUE.

1 MR. ROGERS: YES, SIR. I CAN REVISIT MY --

2 THE COURT: IF, IN FACT, WHAT HAS OCCURRED IS WHAT
3 THE SOLICITOR HAS STATED, THAT THE FATHER WHO HAS
4 CONTROL OVER IT -- IF THE CHILD IS BACK IN -- WHERE DID
5 YOU SAY HE WAS?

6 MS. CAMPBELL: LIBERIA.

7 THE COURT: LIBERIA, AND THE STATE HAD ABSOLUTELY
8 NOTHING TO DO WITH THAT AND DOES NOT HAVE CONTROL OF
9 THE FATHER, THAT'S AN UNFAIR ARGUMENT.

10 MR. ROGERS: IF THE COURT RULES I CAN'T ARGUE IT,
11 I WON'T ARGUE IT.

12 THE COURT: I UNDERSTAND.

13 MS. CAMPBELL: I -- BUT JUDGE, IN ANY EVENT, AND I
14 DON'T WANT TO --

15 THE COURT: GO AHEAD.

16 MS. CAMPBELL: MY DILEMMA IS SOMEWHAT -- THE CHILD
17 WASN'T -- THE NEXT DAY AFTER THIS, RIGHT AFTER SURGERY
18 HE WAS INTERVIEWED, AND HE INDICATED WHO HAD DONE IT.
19 THAT'S ANOTHER -- WE HAVEN'T REACHED THAT ONE YET.
20 THEN A WEEK LATER AS PER PROTOCOL, HE WAS REFERRED FOR
21 ASSESSMENT BY AN EXPERT IN THE FIELD WHO, BASED ON HER
22 EXPERTISE, FOUND THAT THE CHILD PRESENTED WITH
23 COMPELLING PHYSICAL ABUSE OR CHILD ABUSE. WE AREN'T
24 GOING TO TRY TO SAY THAT, YOU KNOW, HE SAID MIAMA DID
25 IT. IT JUST SHOWS -- I MEAN, I THINK WE HAVE THE RIGHT

1 TO AT LEAST SHOW WE DID OUR JOB.

2 THERE'S ALWAYS GOING TO BE THE DILEMMA ANYWAY IF
3 YOU RULE THAT, YOU KNOW, NONE OF THESE DECLARATIONS BY
4 THE CHILD, WHO IS NOT AVAILABLE ANYMORE, COME IN, THEN,
5 YOU KNOW, WE AT LEAST SHOULD BE ABLE TO SHOW WE TRIED.
6 I MEAN, I THINK IT IS NOT UNREASONABLE FOR ANYONE WHO
7 HAS EVER HAD A THREE YEAR OLD THAT THEY CAN SAY WHAT
8 HAPPENED TO THEM TO SOME EXTENT, AND THAT THIS CHILD
9 DIDN'T EVEN WHEN IT'S GOING TO COME OUT THAT HE WAS
10 TAKEN AWAY FROM THEM, I MEAN, AT LEAST WE SHOULD HAVE,
11 YOU KNOW, AN OPPORTUNITY TO SAY WE TRIED BECAUSE
12 OTHERWISE, I MEAN, I DON'T MEAN TO SAY ANYTHING -- I
13 KNOW THERE ARE MANY THINGS THAT ARE EXCLUDED, BUT
14 THAT'S ALMOST PURPORTING TO THE JURY THAT THEY'RE THEN
15 THINKING THAT WE DIDN'T TRY, THAT THE CHILD NEVER SAID
16 ANYTHING.

17 MR. ROGERS: WELL, THAT'S THE STATE OF THE
18 EVIDENCE THAT'S GOING TO BE BEFORE THE JURY; IT'S NOT
19 GOING TO BE A STATEMENT THAT THE CHILD SAID ANYTHING.
20 THEY WON'T HAVE ANY EVIDENCE THAT THE CHILD SAID
21 ANYBODY DID IT.

22 THE COURT: THE STATE CAN SHOW THE EFFORTS THAT
23 THEY MADE IN INVESTIGATING THE CASE.

24 MS. CAMPBELL: THANK YOU.

25 THE COURT: YOU CAN'T GO INTO STATEMENTS THAT WERE

1 MADE. I THINK THE BEST THING TO DO IS TRY TO GET
2 THROUGH IT AS BEST WE CAN. IF YOU FEEL LIKE THERE'S AN
3 OBJECTION TO BE TAKEN, I'LL RULE ON IT AT THAT
4 PARTICULAR POINT IN TIME.

5 MR. ROGERS: YES, SIR. WELL, MAY WE GET STRAIGHT
6 WHAT SHE IS GOING TO SAY NOW?

7 THE COURT: ALL RIGHT. IF THE WITNESS WILL RESUME
8 THE STAND. SOLICITOR, I WANT YOU TO ASK THE QUESTIONS
9 THAT YOU INTEND TO ASK IN THE PRESENCE OF THE JURY SO I
10 CAN GO AHEAD AND TAKE CARE OF THAT.

11 MR. BAILIFF, ONCE SHE HAS BEEN SEATED YOU CAN
12 ADVISE THE JURY THAT I'M GOING TO HAVE THEM OUT OF HERE
13 IN TIME TO VOTE, OKAY?

14 THE WITNESS HAS ALREADY BEEN SWORN. SHE WILL NOT
15 NEED TO BE RESWORN AT THIS TIME. SOLICITOR.

16 MS. CAMPBELL: MAY IT PLEASE THE COURT, YOUR
17 HONOR.

18 FURTHER REDIRECT EXAMINATION

19 (IN CAMERA)

20 BY MS. CAMPBELL:

21 Q MS. SMITH -- AND I WILL QUALIFY HER AS AN EXPERT.
22 MS. SMITH, ON AUGUST 25TH, YOU WERE ABLE TO CONDUCT AN
23 INTERVIEW OF Victim ?

24 A THAT'S CORRECT.

25 Q AND YOU WERE LOOKING AT THE ALLEGATIONS OF ABUSE?

1 A YES.

2 Q AND APPROXIMATELY HOW LONG DID THAT INTERVIEW
3 LAST?

4 A IT WAS APPROXIMATELY AN HOUR LONG.

5 Q AND BASED ON THAT INFORMATION, AS WELL AS OTHER
6 INFORMATION THAT WAS PROVIDED TO YOU, DID YOU COME TO
7 ANY FINDINGS?

8 A I DID.

9 Q AND YOU CAN'T SAY WHAT HE SAID OR IF HE SAID
10 ANYTHING, BUT BASED ON YOUR INTERVIEW OF HIM, WHAT WERE
11 YOUR FINDINGS?

12 A MY FINDINGS WERE THAT BASED ON THE AVAILABLE DATA,
13 I FOUND THE INTERVIEW COMPELLING FOR CHILD ABUSE, FOR
14 CHILD PHYSICAL ABUSE.

15 Q AND THAT WAS YOUR INTERVIEW WITH victim?

16 A YES.

17 Q AND WAS INVESTIGATOR ROY LIVINGSTON ABLE TO
18 OBSERVE AT LEAST PART OF THAT INTERVIEW?

19 A HE WAS.

20 Q AND YOU TURNED OVER YOUR FINDINGS TO HIM AND THE
21 OTHER LAW ENFORCEMENT AGENCY?

22 A YES, I DID.

23 MS. CAMPBELL: THAT WOULD BE IT, YOUR HONOR.

24 THE COURT: THE COURT WILL PERMIT THAT.

25 MR. ROGERS: AND FOR THE RECORD, I JUST OPPOSE.

1 THE COURT: I UNDERSTAND. I UNDERSTAND THAT, BUT
2 I WOULD OVERRULE THAT OBJECTION. IT WOULD BE LIMITED
3 TO WHAT HAS JUST BEEN GONE INTO HERE IN CAMERA.

4 ALL RIGHT. WE GOING TO TRY TO GET THROUGH WITH
5 THIS WITNESS, AND THEN WHAT ARE YOUR PLANS FOR THE
6 AFTERNOON?

7 MS. CAMPBELL: I'D LIKE TO PUT UP ONE MORE
8 WITNESS, A D.N.A. EXPERT, WHO HAS SCHOOL TOMORROW. I
9 DON'T THINK IT'S A CONTESTED WITNESS.

10 THE COURT: OKAY. THAT'S FINE. WE'LL TRY TO GET
11 THAT WITNESS.

12 MS. CAMPBELL: AND I HAVE ONE MORE IF YOU WANT TO
13 TRY TO DO THAT, TOO.

14 THE COURT: ALL RIGHT, LET'S GET THE JURY BACK IN
15 HERE NOW.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
17 APPROXIMATELY 4:49 P.M.)

18 MS. CAMPBELL: YOUR HONOR, WE PROBABLY NEED TO
19 REQUALIFY HER.

20 MR. ROGERS: I DON'T HAVE A PROBLEM WITH THAT.

21 THE COURT: YES. AND WE PROBABLY NEED TO RESWEAR
22 HER IN THE PRESENCE OF THE JURY.

23 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

24 THE COURT: ALL RIGHT. THANK YOU, LADIES AND
25 GENTLEMEN. IF YOU -- WE ARE GOING TO RESWEAR THE

1 WITNESS, PLEASE.

2 HEATHER SMITH,

3 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
5 NAME FOR THE RECORD.

6 THE WITNESS: MY FULL NAME IS HEATHER MARY SMITH.

7 THE COURT: BEFORE YOU BEGIN, SOLICITOR,
8 MR. FOREMAN, LADIES AND GENTLEMEN, LET ME APOLOGIZE TO
9 YOU. IT'S NOT MY DESIRE TO HAVE THE JURY SITTING IN
10 THE JURY ROOM AS LONG AS YOU FOLKS HAVE BEEN BACK
11 THERE. IN NEARLY EVERY CASE, FROM TIME TO TIME, THERE
12 WILL COME UP ISSUES AND MATTERS OF LAW THAT I HAVE TO
13 MAKE A RULING ON. SOMETIMES IT TAKES ME A WHILE TO
14 EVEN CONDUCT RESEARCH. SOMETIMES I HAVE TO TAKE
15 TESTIMONY OUTSIDE OF YOUR PRESENCE AND MAKE A
16 DETERMINATION OF WHETHER IT IS OR IS NOT ADMISSIBLE AND
17 SOMETIMES VIEW OTHER EVIDENCE SUCH AS VIDEOTAPES AND
18 THINGS OF THAT NATURE. I'VE DEALT WITH WHAT I DEALT
19 WITH AND WE'LL NOW CONTINUE. I'LL HAVE YOU FOLKS OUT
20 OF HERE IN TIME TO VOTE. REST ASSURED YOU WILL BE OUT
21 OF HERE IN TIME TO VOTE TONIGHT.

22 ALL RIGHT, SOLICITOR, CONTINUE.

23 DIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q WHERE ARE YOU EMPLOYED?

1 HIM?

2 A IT WAS APPROXIMATELY ONE HOUR.

3 Q WAS ANYONE ELSE ACTUALLY PRESENT IN THE ROOM WHEN
4 YOU WERE DOING THE EVALUATION?

5 A NO.

6 Q WERE THERE OTHER PEOPLE, OTHER LAW ENFORCEMENT
7 AGENCIES WHO WERE ABLE TO OBSERVE THE EVALUATION?

8 A YES, THE CHILD PROTECTIVE SERVICES WORKER WAS
9 PRESENT AND LAW ENFORCEMENT, THE RICHLAND COUNTY
10 SHERIFF'S DEPARTMENT INVESTIGATOR ROY LIVINGSTON WAS
11 PRESENT.

12 Q INVESTIGATOR LIVINGSTON, WHO IS RIGHT HERE?

13 A YES.

14 Q AND ONCE YOU -- AND YOU CAN'T SAY WHAT WAS SAID OR
15 WASN'T SAID DURING THAT EVALUATION, BUT ONCE THE
16 EVALUATION WAS COMPLETE AND YOU GOT SUFFICIENT
17 INFORMATION, WERE YOU ABLE TO MAKE AN ASSESSMENT AS TO
18 WHETHER OR NOT THIS WAS FOUNDED FOR CHILD ABUSE?

19 A YES, I DID.

20 Q AND WHAT WAS YOUR CONCLUSION, BASED ON YOUR
21 EVALUATION OF THE CHILD?

22 A BASED ON THE INTERVIEW THAT I CONDUCTED, AS WELL
23 AS INFORMATION PROVIDED BY LAW ENFORCEMENT AND THE
24 CHILD PROTECTIVE SERVICES WORKER, I MADE A DECISION
25 THAT THE CHILD HAD GIVEN COMPELLING -- A COMPELLING

1 FINDING.

2 MR. ROGERS: OBJECTION.

3 THE COURT: OVERRULED.

4 MR. ROGERS: YOUR HONOR, MAY WE APPROACH? I
5 APOLOGIZE.

6 THE COURT: ALL RIGHT. COME UP.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
8 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE
9 JURY.)

10 THE COURT: THE OBJECTION IS SUSTAINED AS TO THE
11 FORM OF THAT QUESTION. PLEASE REPHRASE YOUR QUESTION,
12 SOLICITOR.

13 MS. CAMPBELL: THANK YOU, SIR.

14 BY MS. CAMPBELL:

15 Q MS. SMITH, YOUR FINDING WAS COMPELLING FOR CHILD
16 ABUSE OR PHYSICAL ABUSE?

17 A FOR CHILD PHYSICAL ABUSE, YES.

18 Q AND WITHOUT SAYING WHAT WAS SAID DURING THE
19 INTERVIEW OR ANYTHING ELSE, DID YOU PASS THAT
20 INFORMATION ALONG TO LAW ENFORCEMENT OFFICERS INCLUDING
21 INVESTIGATOR LIVINGSTON AND OTHER LAW ENFORCEMENT
22 AGENCIES?

23 A YES, YES, I DID.

24 MS. CAMPBELL: THANK YOU, MA'AM.

25 THE COURT: ALL RIGHT. MR. ROGERS.

1 MR. ROGERS: NO QUESTIONS.

2 THE COURT: ALL RIGHT. YOU MAY STEP DOWN,

3 MS. SMITH.

4 THE BAILIFF: WATCH YOUR STEP DOWN.

5 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS,

6 SOLICITOR.

7 MS. CAMPBELL: THE STATE WOULD CALL GRAY AMICK,

8 YOUR HONOR. HE'S ANOTHER WITNESS OUT OF ORDER, I

9 APOLOGIZE.

10 GRAY AMICK,

11 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL

13 NAME FOR THE RECORD.

14 THE WITNESS: MY NAME IS GRAY AMICK.

15 DIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q INVESTIGATOR AMICK, WHERE ARE YOU EMPLOYED?

18 A I'M EMPLOYED AT THE RICHLAND COUNTY SHERIFF'S

19 DEPARTMENT.

20 Q WHAT DO YOU DO THERE, SIR?

21 A I'M THE TECHNICAL LEADER AND SUPERVISOR OF THE

22 D.N.A. DEPARTMENT.

23 Q CAN YOU TELL THIS JURY A LITTLE BIT ABOUT YOUR

24 EDUCATION AND YOUR TRAINING IN THE FIELD OF D.N.A.

25 COMPARISON?

1 A PROBLEM ONE WAY OR THE OTHER. WE'LL TAKE CARE OF
2 THAT.

3 ALL RIGHT. WE WILL CONTINUE. SOLICITOR, YOU MAY
4 CALL YOUR NEXT WITNESS.

5 MS. CAMPBELL: MAY IT PLEASE THE COURT, THE STATE
6 CALLS DR. ANNE ABEL.

7 DR. ANNE ABEL,

8 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
10 NAME FOR THE RECORD.

11 THE WITNESS: MY NAME IS DR. ANNE ABEL.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q DR. ABEL, WHERE ARE YOU CURRENTLY EMPLOYED?

15 A MEDICAL UNIVERSITY OF SOUTH CAROLINA.

16 Q AND WHAT DO YOU DO THERE?

17 A I'M THE MEDICAL DIRECTOR OF THE VIOLENT
18 INTERVENTION AND PREVENTION PROGRAM IN THE DEPARTMENT
19 OF PEDIATRICS.

20 Q CAN YOU TELL THIS JURY A LITTLE ABOUT YOUR
21 TRAINING AND EXPERTISE IN THE FIELD OF MEDICINE?

22 A YES. I GRADUATED FROM MEDICAL SCHOOL FROM INDIANA
23 UNIVERSITY. I DID A PEDIATRIC RESIDENCY AND COMPLETED
24 IT HERE AT PALMETTO HEALTH RICHLAND, AT THE TIME, IT
25 WAS CALLED RICHLAND MEMORIAL HOSPITAL. I PRACTICED

1 CONTACTED YOU TO COME IN AND DO A CONSULTATION IN THIS
2 CASE?

3 A THE DEPARTMENT OF PEDIATRICS.

4 Q AT RICHLAND MEMORIAL OR PALMETTO RICHLAND?

5 A YES.

6 Q OKAY, AND WHEN DID YOU FIRST COME IN CONTACT WITH
7 Victim?

8 A AUGUST 16TH, IN THE EVENING.

9 Q DURING THE EVENING OF AUGUST 16TH?

10 A YES.

11 Q AT THAT POINT HAD Victim HAD SURGERY OR NOT?

12 A YES, HE HAD HAD SURGERY.

13 Q IS IT IMPORTANT FOR YOU TO GET A HISTORY OR TO
14 REVIEW A HISTORY PRIOR TO MAKING THE ASSESSMENT OF A
15 CHILD?

16 A YES. PART OF MY JOB IS TO LISTEN TO WHAT THE
17 FAMILY IS SAYING, REVIEW THE CURRENT MEDICAL RECORD,
18 REVIEW ANY TRANSPORT RECORDS OR EMERGENCY ROOM RECORDS,
19 PAST MEDICAL RECORDS, SO I NEED A TOTAL UNDERSTANDING
20 OF THE CHILD'S HEALTH AND CIRCUMSTANCES AND HOW THEY
21 CAME TO THE ATTENTION OF THE MEDICAL PROVIDERS.

22 Q AND, WERE YOU ABLE TO REVIEW A HISTORY THAT WAS
23 PROVIDED BY THE STEPMOTHER, AS WELL AS THE FATHER IN
24 THIS CASE?

25 A YES.

1 Q IN ADDITION TO THAT, DID YOU ALSO GET TO REVIEW
2 SOME MEDICAL RECORDS FROM MINNESOTA WHERE THE CHILD HAD
3 LIVED JUST PRIOR TO THIS?

4 A YES. COPIES OF THE OUTPATIENT MEDICAL RECORDS
5 FROM MINNESOTA.

6 Q AND BEFORE WE GO ANY FURTHER, WAS THERE ANYTHING
7 REMARKABLE IN THE RECORDS FROM MINNESOTA?

8 A NO. MY NOTES REFLECT THAT THE OUTPATIENT RECORDS
9 REVEALED NORMAL CHILD CARE.

10 Q NORMAL?

11 A NORMAL.

12 Q THE HISTORY, CAN YOU TELL THE JURY WHAT HISTORY
13 WERE YOU PROVIDED IN THIS CASE AS FAR AS WHAT HAD
14 HAPPENED TO THE CHILD?

15 A YES. I GOT ORAL INFORMATION FROM THE REFERRING
16 PHYSICIAN, AND THEN I REVIEWED THE REPORT, AND THEN
17 FINALLY ON THE SECOND DAY I WAS ABLE TO TALK TO THE
18 FATHER DIRECTLY. I HAD NO DIRECT ACCESS TO THE
19 STEPMOTHER.

20 Q OKAY. AND THE HISTORY OF WHAT HAD HAPPENED IN THE
21 EARLY MORNING OF AUGUST 16TH, WHAT WAS PROVIDED? WHAT
22 HISTORY DID YOU HAVE?

23 A THE HISTORY I GOT WAS THAT THE CHILD WAS
24 DISCOVERED BY THE STEPMOTHER TO HAVE BLEEDING IN THE
25 SCROTAL AREA AT THE TIME OF A BATH, AND THAT DIRECT

1 PRESSURE WAS APPLIED.

2 Q BY WHOM?

3 A BY THE STEPMOTHER.

4 Q AND IT WAS SUBSEQUENT TO THAT DIRECT PRESSURE
5 BEING APPLIED IN THE BATHTUB THAT SHE NOTICED THE
6 BLOOD?

7 MR. ROGERS: YOUR HONOR, I'D ASK THAT SHE NOT LEAD
8 THIS WITNESS.

9 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

10 MS. CAMPBELL: I'LL REPHRASE. I'M SORRY, YOUR
11 HONOR.

12 BY MS. CAMPBELL:

13 Q WHEN DID SHE INDICATE THAT SHE NOTICED THE
14 BLEEDING DOWN THERE?

15 A MAY I REFER TO MY RECORDS?

16 Q YES, YOU CAN REFER TO YOUR NOTES.

17 A THANK YOU VERY MUCH.

18 (PAUSE)

19 MY RECORD INDICATES IN MY SUMMARY OF ALL THE
20 REVIEW, THAT THE STEPMOTHER PLACED HIM IN THE BATHTUB
21 AND NOTICED THE SCROTUM WAS SWOLLEN AND APPLIED
22 PRESSURE WITH THE WASHCLOTH, THEN NOTICED BLEEDING DOWN
23 THERE.

24 Q OKAY.

25 A AND THE PATIENT WAS TAKEN TO THE EMERGENCY

1 DEPARTMENT FOR A MEDICAL EVALUATION.

2 Q IN YOUR REVIEW OF THE RECORDS, DID YOU ALSO BECOME
3 AWARE THAT THERE WERE SOME BRUISES AND SCRATCHES ON HIS
4 FACE AND ABDOMEN?

5 A YES. THE RECORDS INDICATED THAT THERE WERE
6 BRUISES ON THE ABDOMEN AND SCRATCHES ON THE LIP AND
7 FOREHEAD.

8 Q OKAY. AND DID YOU ALSO SUBSEQUENTLY -- AND I'LL
9 GET BACK TO THAT, BUT WERE YOU ABLE TO INTERVIEW THE
10 FATHER ABOUT HOW THE CHILD WAS EARLIER IN THE DAY WHEN
11 THIS HAPPENED?

12 A YES. ON THE 17TH WHEN I WENT TO SEE THE CHILD
13 AGAIN, THE FATHER WAS THERE WITH THE UNCLE OR SOME MALE
14 RELATIVE, AND HE TALKED TO ME ABOUT WHAT HE KNEW ABOUT
15 WHAT HAD HAPPENED TO THE BOY.

16 Q AND WHAT DID HE INDICATE HE KNEW HAD HAPPENED TO
17 THE BOY?

18 A HE INDICATED THAT THE CHILD HAD BEEN NORMAL WHEN
19 HE LEFT THE CHILD WITH THE BABYSITTER AND THAT HE KNEW
20 NOTHING ABOUT WHAT HAPPENED UNTIL HE GOT A PHONE CALL
21 FROM THE STEPMOTHER INDICATING SOMETHING ABOUT THE
22 EMERGENCY ROOM, SO HE HAD NO DIRECT KNOWLEDGE.

23 Q DID YOU ALSO REVIEW ANY INFORMATION AS TO WHETHER
24 OR NOT EITHER THE FATHER OR THE STEPMOTHER WERE AWARE
25 OF ANY TRAUMA THAT HAD HAPPENED TO THE CHILD?

1 A YES.

2 Q WHAT WAS THAT?

3 A THE FATHER DIRECTLY TOLD ME HE HAD NO KNOWLEDGE OF
4 ANY TRAUMA TO THE CHILD OTHER THAN IN THE PAST THE
5 CHILD HAD BUMPED INTO THINGS, BUT HE HAD NO KNOWLEDGE
6 OF ANY TRAUMA TO THE CHILD'S GENITALIA. THE RECORD
7 INDICATED THAT THE STEPMOTHER DENIED ANY KNOWN TRAUMA
8 TO THE CHILD, EVEN AT THE TIME THE CHILD WAS BROUGHT TO
9 THE EMERGENCY ROOM.

10 Q OKAY. YOU MADE CONTACT, I BELIEVE IT WAS AROUND
11 7:30 ON THE EVENING OF THE 16TH; IS THAT CORRECT?

12 A YES.

13 Q AND AT THAT POINT, TELL US WHAT YOUR INITIAL
14 INTERACTION WITH Victim WAS. WHAT WENT ON?

15 A OKAY. Victim WAS IN THE PEDIATRIC INTENSIVE
16 CARE UNIT. HE WAS IN HIS BED. HE WASN'T TALKING MUCH.
17 HE DID INDICATE THAT HE WAS HUNGRY. SOMEHOW WE
18 COMMUNICATED, SO WE MADE SURE THAT, YOU KNOW, HE GOT
19 SOME ICE CREAM, AND THEN SHORTLY AFTER THAT HE WAS
20 HUNGRY AND HE WANTED MORE. HE WAS POST SURGICAL, SO HE
21 HAD PAIN MEDICATION IN HIS SYSTEM AND HE WAS COMING OUT
22 FROM THE ANESTHETIC.

23 Q YOU MENTIONED THAT HE WAS DIFFICULT TO UNDERSTAND.
24 IS HE DIFFICULT TO UNDERSTAND?

25 A I WAS ABLE TO TALK TO HIM MORE THE NEXT DAY. YES,

1 HIS SPEECH WAS A LITTLE DIFFICULT TO UNDERSTAND, BUT I
2 DID UNDERSTAND SOME WORDS AND HE DID HAVE SOME ENGLISH
3 WORDS.

4 Q OKAY. SO HE WAS ABLE TO SPEAK SOME ENGLISH?

5 A YES.

6 Q ONCE YOU MADE YOUR INITIAL CONTACT WITH HIM AND HE
7 INDICATED HE WAS HUNGRY, WHAT HAPPENED THEN?

8 A WELL, I MADE SURE THE NURSES GOT HIM A SNACK RIGHT
9 AWAY, AND THEN HE INDICATED HE WAS MORE HUNGRY, SO WE
10 GOT HIM A TRAY, A FULL MEAL. I DID PROCEED TO DO AN
11 EXAMINATION OF HIM, AS WELL.

12 Q OKAY. CAN YOU TELL THE JURY WHAT YOU FOUND, AS
13 FAR AS THIS CASE GOES, AS FAR AS YOUR EXAMINATION OF
14 HIM?

15 A OKAY. HE SEEMED TO BE RATIONAL. HE KNEW WHERE --
16 HE HAD THE GENERAL IDEA OF WHERE HE WAS. HE HAD A
17 SWOLLEN LIP AND A SLIGHT ABRASION OF HIS LIP,
18 ESPECIALLY WHEN YOU TURNED THE LIP UP. ON THE INSIDE
19 HE HAD LIKE AN INJURY TO THE INSIDE OF THE LIP.

20 Q AND I SHOW YOU WHAT'S BEEN MARKED AS STATE'S
21 EXHIBIT NUMBER 7. DOES THAT ACTUALLY SHOW THE INJURY
22 YOU WERE JUST REFERRING TO?

23 A IT DOESN'T SHOW IT VERY WELL, BUT IT SHOWS A
24 SWOLLEN LIP. THE UPPER LIP WAS PRETTY SWOLLEN.

25 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER 4. DOES THAT

1 SHOW IT A LITTLE BIT BETTER?

2 A YES. YOU CAN SEE A LITTLE BIT OF THE BLOOD DOWN
3 ON THE LOWER LIP.

4 Q I'LL GET BACK TO THAT IN A MINUTE. DID YOU NOTICE
5 ANY OTHER AREAS AROUND HIS FACE WITH ANY TYPE OF
6 ABRASION?

7 A YES. HE HAD AN ABRASIONED AREA, RIGHT IN THE
8 MIDDLE OF THE FOREHEAD.

9 Q DID YOU NOTICE ANYTHING ABOUT HIS CHIN AREA?

10 A I DID NOT.

11 Q OKAY. ONCE YOU HAD MADE THAT ASSESSMENT, AS FAR
12 AS HIS HEAD GOES, DID YOU THEN DO AN EXAMINATION OF HIS
13 MID BODY?

14 A YES. I LOOKED AT HIS SKIN. I MADE SURE I SAW --
15 I TURNED HIM OVER SO THAT I SAW HIS SKIN FROM EVERY
16 ASPECT. HIS CHEST WAS FINE. HIS ARMS WERE FINE, BUT
17 ON HIS ABDOMEN HE HAD A LARGE TENDER BRUISE ON THE
18 RIGHT LOWER ABDOMEN, KIND OF OFF TO THE SIDE A BIT.

19 Q ON THE RIGHT LOWER ABDOMEN?

20 A YES.

21 Q AND AGAIN YOU'RE SEEING HIM SOME SIXTEEN HOURS
22 AFTER HE PRESENTED INITIALLY TO THE HOSPITAL?

23 A YES.

24 Q AND IS THAT SHOWN IN STATE'S EXHIBIT NUMBER 8 AT
25 ALL?

1 A YOU CAN SEE A LITTLE BIT OF BRUISING ON THE RIGHT
2 LOWER ABDOMEN.

3 Q AND WHEN YOU SAW HIM SEVERAL HOURS LATER, IT
4 SHOWED UP A LITTLE BIT MORE REMARKABLE?

5 A APPARENTLY THOSE --

6 MR. ROGERS: YOUR HONOR, I'D ASK THE WITNESS NOT
7 TO LEAD -- I'D ASK MS. CAMPBELL NOT TO LEAD THIS
8 WITNESS.

9 THE COURT: ALL RIGHT. REPHRASE YOUR QUESTION,
10 SOLICITOR.

11 BY MS. CAMPBELL:

12 Q HOW DID IT APPEAR?

13 A AT THE TIME I EXAMINED THE CHILD, I'M SEEING
14 BRUISES ON THE RIGHT SIDE, A RATHER LARGE BRUISE AND
15 TENDER AND SWOLLEN.

16 Q OKAY. WHEN YOU SAY A LARGE BRUISE, WHAT SIZE WAS
17 IT?

18 A IT WAS FOUR-AND-A-HALF BY THREE-AND-A-HALF INCHES
19 IN DIAMETER.

20 Q AND IT WAS IN WHAT PART OF HIS ABDOMINAL AREA?

21 A THE RIGHT LOWER -- SLIGHTLY TO THE SIDE, LATERAL.

22 Q SLIGHTLY TO THE SIDE, NEAR HIS HIP OR BELOW HIS
23 HIP?

24 A A LITTLE BELOW.

25 Q RIGHT WHERE I'VE GOT MY HAND, IN THAT GENERAL

1 AREA?

2 A YES.

3 Q AND IT WAS THREE-AND-A-HALF BY FOUR-AND-A-HALF
4 INCHES?

5 A YES.

6 Q AND YOU ALSO MENTIONED SOMETHING ABOUT IT WAS
7 TENDER?

8 A YES, IT WAS TENDER.

9 Q DID YOU NOTICE ANY OTHER INJURIES TO HIS BODY?

10 A YES. NOW HE WAS POST SURGICAL, SO I WAS VERY
11 CAREFUL ABOUT WHAT I WAS DOING WITH THIS WOUND BECAUSE
12 IT HAD BEEN CAREFULLY KEPT FREE OF GERMS IN THE
13 SURGICAL SUITE, SO I SAW THE PENIS AND THE SHAFT OF THE
14 PENIS WAS SWOLLEN, AND I SAW THE SCROTUM, WHICH WAS
15 VERY SWOLLEN, BUT I DID NOT LIFT UP THE BANDAGE TO LOOK
16 AT THE FRESHLY SUTURED SITE. INSTEAD, I CHOSE TO LOOK
17 AT AND REVIEW AT THE PHOTOGRAPHS THAT I SAW THAT HAD
18 BEEN MADE.

19 Q I SHOW YOU STATE'S EXHIBIT 15 AND 17. ARE THOSE
20 THE PHOTOGRAPHS THAT YOU REVIEWED?

21 A YES.

22 Q AND YOU REVIEWED THESE IN HELPING MAKE YOUR
23 DETERMINATION AS TO WHETHER OR NOT THERE HAD BEEN ANY
24 KIND OF PHYSICAL ABUSE IN THIS CASE?

25 A YES.

1 Q WHEN YOU REVIEWED THOSE PHOTOGRAPHS, DID YOU NOTE
2 ANYTHING THAT WAS SIGNIFICANT?

3 A YES. THE SCROTUM HAS A DEEP LACERATION AND THE
4 RIGHT TESTICLE WAS HANGING ON THE OUTSIDE. IT STILL
5 LOOKS LIKE IT'S ALIVE BECAUSE THERE IS BRIGHT RED COLOR
6 TO IT SO IT WASN'T GANGRENOUS OR ANYTHING. IT WAS
7 GETTING A GOOD BLOOD SUPPLY.

8 Q THE ACTUAL TEAR ITSELF, DID YOU NOTICE ANYTHING
9 ABOUT IT AS FAR AS LENGTH AND APPEARANCE? DO YOU WANT
10 ME TO HAND YOU THAT BACK?

11 A YES.

12 Q I'M SORRY. STATE'S EXHIBIT NUMBER 17.

13 A OKAY. THE QUESTION. CAN YOU RESTATE THE
14 QUESTION?

15 Q THE ACTUAL OPENING ITSELF, DID YOU NOTE ANYTHING
16 SIGNIFICANT ABOUT THAT?

17 A THERE IS A "V" SHAPED WOUND, BUT THE EDGES ARE
18 VERY, VERY CLEAN, AND YOU CAN'T SEE THE TOTAL LENGTH OF
19 THE LACERATION BECAUSE THE TESTICLE IS LAYING ON PART
20 OF THE WOUND, SO I CAN'T TELL HOW FAR THIS WOUND
21 EXTENDS, BUT IT'S SEVERAL CENTIMETERS LONG AT LEAST.

22 Q SEVERAL CENTIMETERS?

23 A YEAH.

24 Q AND THE SURGEON WHO ACTUALLY DID THE SURGERY WOULD
25 BE BETTER ABLE TO ADDRESS THAT?

1 A YES, YES.

2 Q DID YOU NOTE ANYTHING ELSE IN YOUR EXAMINATION AS
3 FAR AS RECENT INJURIES TO THIS CHILD?

4 MR. ROGERS: OBJECTION. THERE'S BEEN NO TESTIMONY
5 AS TO TIMEFRAME, SO WHEN SHE SAYS RECENT, THAT'S
6 MISCHARACTERIZING THE EVIDENCE.

7 THE COURT: ALL RIGHT. I'LL OVERRULE. GO AHEAD.
8 ANSWER THE QUESTION IF YOU'RE ABLE.

9 BY MS. CAMPBELL:

10 Q THE INJURIES THAT WE'VE GONE THROUGH, HOW WOULD
11 YOU CHARACTERIZE THEM AS FAR AS TIME PERIOD?

12 A THESE WERE RECENT INJURIES.

13 Q WHEN YOU SAY RECENT, WHAT TYPE OF TIME PERIOD ARE
14 YOU TALKING ABOUT?

15 A AT THE TIME THOSE PHOTOGRAPHS WERE MADE?

16 Q YES.

17 A THEY WOULD HAVE BEEN WITHIN 12 HOURS.

18 Q DID YOU MAKE ANY OTHER FINDINGS AS FAR AS THE
19 GENERAL PHYSICAL HEALTH OF THE CHILD?

20 A THE GENERAL PHYSICAL HEALTH OF THE CHILD APPEARED
21 GOOD.

22 Q DOCTOR, IN YOUR EXPERIENCE, YOU NOTE SEVERAL
23 BRUISES. DO SOME CHILDREN BRUISE MORE EASILY THAN
24 OTHERS?

25 A YES.

1 Q AND WAS THERE ANY INDICATION THAT THIS CHILD
2 BRUISED EASILY?

3 A NO.

4 Q CAN YOU EXPLAIN THAT TO THE JURY?

5 A THE CHILD HAD NORMAL CLOTTING. AT THE TIME OF
6 SURGERY THE CHILD DID NOT HAVE UNUSUAL BLEEDING, SO HE
7 TOLERATED THE SURGICAL PROCEDURE FINE IN THAT RESPECT.
8 THERE WAS NO EVIDENCE OF ANY CLOTTING PROBLEM.

9 Q WHICH WOULD BE A NORMAL CHILD?

10 A A NORMAL CHILD, YES.

11 Q THERE WAS ALSO SOME HISTORY GIVEN TO YOU ABOUT THE
12 SWOLLEN TESTICLES IN THIS CASE?

13 A IN THE HISTORY FROM THE CHART, THERE WAS SOME
14 MENTION THAT THE CHILD HAD HAD SOME SWOLLEN TESTICLE
15 PROBLEM PRIOR TO WHATEVER HAPPENED THAT NIGHT.

16 Q AND CAN YOU TELL WHETHER OR NOT THE CHILD HAD
17 SWOLLEN TESTICLES?

18 A WELL, THE NON -- THE SIDE -- THE TESTICLE THAT DID
19 NOT REQUIRE SURGERY WAS OF NORMAL SIZE, SO I SAW NO
20 EVIDENCE ON THE DAY I SAW THE CHILD OF ANY UNDERLYING
21 TESTICULAR SWELLING PROBLEM.

22 Q DOCTOR, I WANT TO GET BACK TO YOUR ULTIMATE
23 OPINION ON THINGS. STARTING WITH THE LIP OF THE CHILD
24 AS IN STATE'S EXHIBIT NUMBER 4, YOU MENTIONED THAT
25 THERE'S SOME BLOOD HERE AROUND INSIDE OF THE LIP AND

1 ACTUALLY LACERATIONS?

2 A YES.

3 Q CAN YOU TELL THIS JURY, IN YOUR EXPERT OPINION,
4 HOW THAT WOULD BE CAUSED?

5 A YES. THIS IS FROM SOME FORM OF BLUNT FORCE TRAUMA
6 TO THE FACE WHERE THE MOUTH IS CLOSED ENOUGH THAT WHEN
7 THE IMPACT IS AGAINST THE FACE, THE FACE, THE LIP WAS
8 PRESSING AGAINST THE TEETH, WHICH DON'T MOVE, SO IT
9 CAUSES THE LIP TO GET SWOLLEN AND CUT.

10 Q AND WHEN YOU SAY BLUNT FORCE TRAUMA, WHAT KIND OF
11 TRAUMA ARE WE TALKING ABOUT?

12 A A BLOW OR POSSIBLY THE CHILD IN MOTION AND THE
13 CHILD'S FACE HITTING A CORNER OR A BLUNT OBJECT.

14 Q OR COULD BE CONSISTENT WITH HITTING A FIST OR A
15 HAND?

16 A YES, A BLOW.

17 Q THE ABDOMEN AREA, THE BRUISING YOU SAW, I BELIEVE
18 IN YOUR -- AND YOU'VE GOT YOUR NOTES IN THIS CASE, DO
19 YOU HAVE AN OPINION AS TO HOW THAT COULD HAVE BEEN
20 CAUSED?

21 A YES. THAT PART OF THE BODY DOESN'T GET INJURED
22 EASILY BECAUSE THE ABDOMEN -- THERE IS A LOT OF GIVE TO
23 IT. IT'S NOT A PART OF THE BODY THAT TYPICALLY GETS
24 INJURED IN AN ACCIDENT, SO MY OPINION IS THAT'S FROM A
25 BLOW OR FROM SUSTAINED PRESSURE.

1 Q AND WHEN YOU SAY SUSTAINED PRESSURE, DO YOU MEAN
2 SUCH AS HOLDING THE CHILD DOWN?

3 A YES.

4 MR. ROGERS: OBJECTION.

5 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

6 BY MS. CAMPBELL:

7 Q GIVE ME AN EXAMPLE, IF YOU COULD.

8 A HEAVY PRESSURE FROM A HAND OR A FOOT HOLDING THE
9 BELLY DOWN IN A VERY FORCEFUL MANNER.

10 Q YOU TESTIFIED EARLIER IT WAS STILL TENDER WHEN YOU
11 EXAMINED HIM ON THE 16TH?

12 A YES, IT WAS STILL TENDER AT 7:30 AT NIGHT ON THE
13 16TH.

14 Q IS THAT SIGNIFICANT TO YOU AS FAR AS --

15 A YES, IT'S A SIGNIFICANT INJURY, YES.

16 Q IN YOUR REVIEW OF THE ACTUAL INJURY TO THE SCROTUM
17 AREA --

18 A YES.

19 Q -- DO YOU HAVE AN OPINION ON HOW THAT INJURY WAS
20 CAUSED?

21 A WELL, WE HAVE FROM THE FAMILY NO HISTORY OF TRAUMA
22 WHATSOEVER, AND WE HAVE EVIDENCE OF TRAUMA IN THREE
23 DIFFERENT PARTS OF THE BODY. MY DIAGNOSIS IS PHYSICAL
24 ABUSE.

25 Q PHYSICAL ABUSE TO THE CHILD?

1 A YES.

2 Q AND DO YOU HAVE AN OPINION AS TO HOW THE CHILD
3 COULD HAVE INCURRED -- LET ME REPHRASE THAT. DO YOU
4 HAVE AN OPINION AS TO WHETHER OR NOT THE SCROTUM
5 INJURY, WAS THAT ACCIDENTAL OR NON-ACCIDENTAL?

6 A NON-ACCIDENTAL.

7 Q CAN YOU EXPLAIN TO THE JURY WHY YOU CAME TO THAT
8 CONCLUSION?

9 A THE GENITALS, THE PENIS AND THE SCROTUM ARE VERY
10 PROTECTED PARTS OF THE BODY. GENERALLY CHILDREN WEAR
11 CLOTHING TO PROTECT IT. ADULTS DO, TOO. IT'S A PART
12 OF THE BODY THAT ANY INJURY HURTS A LOT, AND SO HUMANS
13 INSTINCTUALLY PROTECT THAT PART OF THE BODY. NOW, THIS
14 KIND OF INJURY WITH NO EXPLANATION IS DIAGNOSTIC OF
15 PHYSICAL ABUSE.

16 Q AND THE FACT OF THE APPEARANCE OF THE CUT ITSELF,
17 WAS THAT SIGNIFICANT TO YOU?

18 A YES, IT WAS.

19 Q AND EXPLAIN TO THE JURY WHAT KIND OF INSTRUMENT
20 WOULD HAVE CAUSED THAT?

21 A THE CLEAN LINEAR CUT, WHICH WHEN SPLIT APART
22 LOOKED LIKE A "V", BECAUSE THE TISSUE NATURALLY
23 RETRACTS A LITTLE BIT, BUT THE CLEAN CUT INDICATED A
24 SHARP LINEAR OBJECT HAD BEEN USED TO CAUSE THE
25 LACERATION ON THE SCROTUM.

1 Q AND THAT WOULD HAVE BEEN AN INTENTIONAL ACT OR
2 NON-INTENTIONAL?

3 MR. ROGERS: OBJECTION.

4 THE COURT: SUSTAINED. REPHRASE YOUR QUESTION,
5 SOLICITOR.

6 BY MS. CAMPBELL:

7 Q WHAT KIND OF ACT WOULD THAT HAVE BEEN?

8 A INFLECTED PHYSICAL TRAUMA WITH A SHARP LINEAR
9 OBJECT.

10 Q CAN YOU GIVE AN EXAMPLE OF WHAT A SHARP LINEAR
11 OBJECT THAT COULD HAVE MADE THIS?

12 A A SHARP KNIFE, A SHARP OBJECT, A SCALPEL LIKE A
13 SURGEON USES, A RAZOR, A BOX CUTTER, SOMETHING VERY
14 SHARP..

15 Q IN THIS CASE, COULD THE CHILD HAVE DONE THIS TO
16 HIMSELF?

17 A FROM WHAT I KNOW OF INTERACTING WITH THE CHILD AND
18 REVIEWING THE RECORD, NO.

19 Q A CUT, AND I WANT TO FOCUS ON THE SCROTUM AREA AT
20 THIS POINT. A CUT SUCH AS THIS, ONCE THE CUT WAS MADE,
21 WOULD IT -- WHAT WOULD HAPPEN? WOULD IT BLEED OR NOT
22 BLEED?

23 A THIS IS A HIGHLY -- BIG BLOOD SUPPLY TO THIS PART
24 OF THE BODY, SO THIS WOULD BLEED RIGHT AWAY.

25 Q IS THERE, IN YOUR EXPERT OPINION, ANY WAY THAT

1 THIS CUT WOULD HAVE BEEN MADE AND NOT BLEED FOR SEVERAL
2 HOURS?

3 A NO.

4 Q OR EVEN SEVERAL MINUTES?

5 A NO.

6 Q I WANT TO ASK YOU A LITTLE BIT ABOUT THE PAIN, THE
7 WOUND TO THE SCROTUM AREA -- AND WE'LL GET BACK TO THE
8 OTHER AREAS, BUT HOW WOULD YOU DESCRIBE THE PAIN TO THE
9 SCROTUM AREA?

10 A SEVERE.

11 Q YOU EXAMINED THIS INJURY TO THE SCROTUM. WOULD
12 THERE HAVE BEEN SOME SCARRING INVOLVED IN THIS?

13 A YES. ANYTIME YOU HAVE A FULL THICKNESS LACERATION
14 THROUGH THE SKIN THAT REQUIRES SURGICAL REPAIR, THERE
15 WILL BE SOME SCARRING.

16 Q AND THIS INJURY, HOW WOULD YOU CHARACTERIZE IT AS
17 FAR AS THE SEVERITY AS FAR AS WHETHER OR NOT IT'S GREAT
18 BODILY INJURY?

19 A THIS INJURY IS A GRAVE BODILY INJURY, WHICH
20 REQUIRED SURGICAL REPAIR.

21 Q COULD THE INCISION, DOCTOR, HAVE BEEN, IN YOUR
22 REVIEW OF THE -- WOULD THE TESTICLE BE ACTUALLY HANGING
23 OUTSIDE THE SCROTUM AT THAT POINT?

24 A YES.

25 Q WOULD THAT HAVE BEEN IMMEDIATE OR COULD THE CUT

1 HAVE BEEN MADE AND THE TESTICLE COME OUT LATER?

2 A THE LACERATION WAS TOTALLY ALL THE WAY THROUGH THE
3 LAYERS OF THE SCROTAL SACK, SO IT DEPENDS ON THE
4 POSITION THE CHILD WAS IN. IF THE CHILD WAS LAYING
5 DOWN AND THERE WAS THIS LACERATION, THE TESTICLE MIGHT
6 HAVE REMAINED IN THE SACK, BUT IF THE CHILD GOT IN A
7 VERTICAL POSITION, STOOD UP, THEN BY GRAVITY, THE
8 SCROTUM -- THE TESTICLE WOULD HANG OUT FROM THE SCROTUM
9 ATTACHED BY ITS LITTLE BLOOD SUPPLY CORD.

10 Q SO IF THE CHILD BECOMES VERTICAL, BEING LIFTED UP
11 OR ANYTHING OF THAT NATURE, IT'S GOING TO BE OUT?

12 A YES, IT WOULD FALL OUT, BEING HELD BY ITS LITTLE
13 PETIOLE.

14 Q DOCTOR, IN YOUR EXPERTISE, IN YOUR EXPERIENCE,
15 HAVE YOU EVER HEAR OF A SCROTUM JUST EXPLODING?

16 A I HAVE NEVER SEEN THAT IN ANY MEDICAL LITERATURE
17 OR IN MY EXPERIENCE.

18 Q AND EVEN IF THERE HAD BEEN, SAY, PRESSURE APPLIED,
19 WOULD YOU EXPECT THIS KIND OF CUT IF IT WERE JUST
20 EXPLODING?

21 A IF THE THEORY OF THE EXPLODING SCROTUM HAD ANY
22 VALIDITY, AN EXPLOSION FROM THE INSIDE WOULD BE LIKE A
23 BOMB GOING OFF ON THE INSIDE IN THE SENSE THAT THE
24 SCROTUM WOULD HAVE STELLATE OR MULTIPLE OPENINGS.

25 Q STELLATE?

1 A STAR SHAPED OR -- INSTEAD OF A CLEAN SINGLE CUT
2 LINE, THERE WOULD HAVE BEEN MULTIPLE CUT LINES AND
3 RAGGED EDGES.

4 Q ONCE YOU HAD REVIEWED ALL THE RECORDS AND MADE
5 YOUR EXAMINATION OF THE CHILD AND THE HISTORY GIVEN BY
6 THE STEPMOTHER, WAS THE INJURY POSSIBLE TO HAVE
7 OCCURRED THAT WAY?

8 A WELL, FIRST OF ALL, THE DESCRIPTION IN THE
9 RECORD --

10 MR. ROGERS: OBJECTION TO THE CHARACTERIZATION OF
11 THAT QUESTION. MS. CAMPBELL HAD JUST SAID THE
12 STEPMOTHER GAVE AN EXPLANATION OF THE INJURY. THAT'S
13 NOT WHAT --

14 MS. CAMPBELL: YOUR HONOR, MAY WE APPROACH?

15 THE COURT: SURE.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
17 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE
18 JURY.)

19 THE COURT: REPHRASE THE QUESTION, SOLICITOR.

20 MS. CAMPBELL:

21 Q YOU GOT A HISTORY?

22 A YES.

23 Q ARE YOUR FINDINGS CONSISTENT OR INCONSISTENT WITH
24 WHAT SHE SAID HAPPENED?

25 A MY FINDINGS ARE INCONSISTENT WITH WHAT THE RECORDS

1 SAY THAT THE STEPMOTHER SAID HAD HAPPENED.

2 Q COULD IT HAVE HAPPENED THAT WAY?

3 A NO.

4 MS. CAMPBELL: BEG THE COURT'S INDULGENCE.

5 THE COURT: ALL RIGHT.

6 (PAUSE)

7 MS. CAMPBELL: THANK YOU, DOCTOR. PLEASE ANSWER
8 ANY QUESTIONS MR. ROGERS MAY HAVE.

9 THE COURT: ALL RIGHT, MR. ROGERS, YOU MAY
10 CROSS-EXAMINE.

11 MR. ROGERS: MAY IT PLEASE THE COURT?

12 THE COURT: ALL RIGHT.

13 CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q DR. ABLE, YOU NEVER INTERVIEWED MS. KROMAH, DID
16 YOU?

17 A THAT'S RIGHT.

18 Q AND YOU NEVER ACTUALLY SAW THE INJURY TO THE
19 SCROTUM LIVE. YOU ONLY VIEWED PHOTOGRAPHS?

20 A I SAW SOME OF THE SCROTUM, BUT I DIDN'T SEE THE
21 LACERATION SITE BECAUSE IT WAS COVERED.

22 Q BECAUSE ACTUALLY YOU DIDN'T SEE Victim UNTIL
23 AFTER THE SURGERY WAS DONE?

24 A THAT'S CORRECT.

25 Q SO YOU NEVER SAW THE ACTUAL OPEN WOUND LIVE?

1 A NOT LIVE.

2 Q RIGHT. OKAY.

3 A THE SCROTUM WOUND THAT IS.

4 Q WHEN YOU SPOKE WITH MUSA, THE FATHER, HE HAD

5 INDICATED THAT 'Victim' PLAYED ROUGH?

6 A YES.

7 Q AND SOME OF THE INJURIES HE THOUGHT WERE AS A

8 RESULT OF HIM PLAYING ROUGH?

9 A THE --

10 Q NOT THE SCROTUM, BUT THE OTHER INJURIES, I'M

11 SORRY.

12 A HIS EXPLANATION TO THAT WAS WHEN I WAS TALKING TO

13 HIM ABOUT THIS ON HIS FOREHEAD.

14 Q RIGHT.

15 Q SO THE INJURY TO THE FOREHEAD IS CONSISTENT WITH

16 SOMEBODY JUST KIND OF BUMPING INTO A TABLE?

17 A IT'S A NONSPECIFIC INJURY.

18 Q AND THE INJURY TO THE LIP COULD BE CONSISTENT WITH

19 'Victim' FALLING DOWN, CORRECT?

20 A CHILDREN DO SOMETIMES INJURE THEIR FACE THAT WAY

21 BY ACCIDENT.

22 Q WOULD IT ALSO BE CONSISTENT WITH BITING OF THE

23 LIP?

24 A NO.

25 Q OKAY. NOW YOU DON'T KNOW HOW THE INJURY WAS

1 CAUSED, CORRECT?

2 A I KNOW THAT I CAN CHARACTERIZE THE INJURY AS A
3 TRAUMATIC LACERATION WITH NO EXPLANATION OF INJURY.

4 Q I UNDERSTAND THAT, DOCTOR, BUT TO ANSWER THE
5 QUESTION, YOU DON'T KNOW HOW THE INJURY WAS CAUSED?

6 A THAT'S HARD FOR ME TO ANSWER. I DON'T KNOW WHAT
7 WE'RE GETTING AT HERE. I WASN'T THERE.

8 Q THAT'S WHAT WE'RE GETTING AT. YOU WEREN'T THERE--

9 A ABSOLUTELY NOT.

10 Q SO YOU DO NOT KNOW HOW THE INJURY WAS CAUSED?

11 A I KNOW THAT HE HAD A LACERATION.

12 Q CORRECT.

13 A WITH NO EXPLANATION.

14 Q CORRECT. YOU DON'T KNOW WHAT CAUSED THE INJURY?

15 A I KNOW IT WAS FROM A SHARP LINEAR OBJECT.

16 Q OKAY.

17 A BUT I CAN'T -- I WAS NOT THERE TO SEE ANY OBJECT.

18 Q AND YOU CAN'T SAY WITH ANY SPECIFICITY THAT ANY
19 PARTICULAR OBJECT CAUSED THIS INJURY.

20 A I CAN GIVE YOU EXAMPLES OF SHARP LINEAR OBJECTS.

21 Q OF COURSE, YOU CAN. OF COURSE, YOU CAN.

22 A THAT'S ALL I CAN DO.

23 Q THAT'S ALL YOU CAN DO?

24 A THAT'S ALL CAN I DO, YES.

25 Q NOW, YOU CANNOT DISPUTE THE INFORMATION ABOUT THE

- 1 TESTICLES BEING SWOLLEN ON A PREVIOUS OCCASION AS
2 INCORRECT, CAN YOU?
- 3 A THAT IS RIGHT.
- 4 Q NOW, DO YOU HAVE -- DO YOU HAVE AN OPINION AS TO
5 THE TIMEFRAME? YOU SAW THESE INJURIES AT WHAT TIME,
6 SEVEN O'CLOCK?
- 7 A 7:30 AT NIGHT ON THE 16TH.
- 8 Q OKAY. DO YOU HAVE AN OPINION AS TO THE TIMEFRAME
9 AS TO WHEN THE INJURY TO THE SCROTUM WAS CAUSED?
- 10 A IT WOULD HAVE BEEN WITHIN A 12 HOUR TIME SPAN,
11 THAT COULD BE A ROUGH GUESS. IT COULD HAVE BEEN TEN
12 HOURS.
- 13 Q COULD IT BE LONGER THAN 12 HOURS, FOR THE SCROTUM?
- 14 A FOR THE SCROTUM ALONE, NOT TOO LIKELY BECAUSE THE
15 PHOTOGRAPHS, I LOOKED AT THE PHOTOGRAPHS, AND THERE WAS
16 NO SIGN OF EARLY HEALING.
- 17 Q AND YOU'RE BASING THIS OPINION ON THE PHOTOGRAPHS,
18 RIGHT?
- 19 A THAT IS CORRECT.
- 20 Q NOW, YOU NEVER ACTUALLY -- I THINK I'VE MENTIONED
21 THIS BEFORE, BUT YOU NEVER REALLY SAW THIS INJURY IN
22 PERSON?
- 23 A NOT IN PERSON.
- 24 Q AND YOU HAVE CONCLUDED THAT THE TRAUMA WAS A
25 SMOOTH CUT, CORRECT?

1 A BY REVIEW OF PHOTOS.

2 Q ALL RIGHT. ISN'T THERE SOMETHING CALLED A
3 BINOCULAR SURGICAL OPERATING MICROSCOPE THAT'S USED TO
4 MICROSCOPICALLY LOOK AT CUTS OR INJURIES TO DETERMINE
5 WHETHER IT'S A CUT OR A TEAR OR A RIP?

6 A THAT IS NOT -- HOW DO I SAY THAT? THAT IS A
7 SURGEON'S TOOL.

8 Q RIGHT. BUT YOU'RE FAMILIAR WITH THAT TOOL?

9 A I AM NOT -- NO, I'M NOT VERY FAMILIAR WITH IT. I
10 KNOW IT EXISTS, BUT IT'S NOT SOMETHING THAT PEOPLE IN
11 MY FIELD USE.

12 Q I UNDERSTAND, AND IF -- WELL, I'LL ADDRESS THAT
13 LATER, BUT YOU ARE FAMILIAR WITH THAT TOOL?

14 A YES.

15 Q NOW, I GUESS WHAT I'M TRYING TO ASK YOU, LET ME
16 SEE IF I CAN ILLUSTRATE IT THIS WAY. LET ME GET A
17 MAGIC MARKER. EXCUSE ME -- MY CRUDE ATTEMPT TO DRAW,
18 BUT IF THIS IS LET'S SAY THE SCROTUM, OKAY. I KNOW
19 IT'S ROUGH, AND WHAT YOU SAW WAS THE RESULT, WHICH WAS
20 SOMETHING LIKE THAT, CORRECT?

21 A THE PHOTOGRAPH HAD A "V" SHAPE.

22 Q A "V" SHAPE. IS IT POSSIBLE THAT IF THE CUT, IF
23 THE ORIGINAL CUT WAS ONLY SAY A CENTIMETER, WOULD THE
24 TESTICLE THEN HANG OUT?

25 A I DOUBT IT.

1 Q AND IF THIS WERE A CUT OR A TEAR, IS IT POSSIBLE
2 THAT OVER TIME IT WOULD INCREASE?

3 A NO.

4 Q IT WOULD NEVER DO THAT?

5 A THIS WAS FULL THICKNESS THROUGH THE WHOLE
6 THICKNESS OF THE SCROTUM --

7 Q I UNDERSTAND WHAT YOU SAW WHEN YOU LOOKED AT --

8 MS. CAMPBELL: OBJECTION, YOUR HONOR. I THINK SHE
9 WASN'T ABLE TO FINISH HER ANSWER.

10 MR. ROGERS: I APOLOGIZE FOR INTERRUPTING.

11 THE COURT: ALL RIGHT.

12 BY MR. ROGERS:

13 Q I'M SORRY, GO AHEAD.

14 A YOUR QUESTION IS IF THE INITIAL CUT WAS ONE
15 CENTIMETER, WOULD IT SPONTANEOUSLY, ON ITS OWN,
16 CONTINUE AND GET TWO OR THREE TIMES AS LONG WITH THE
17 EXACT SAME CHARACTERISTICS OF THE CLEAN LINEAR LINE
18 CUT?

19 Q RIGHT.

20 A AND THE ANSWER IS NO.

21 Q WHAT ABOUT IF THE TESTICLE SACK WAS NOT INTACT?
22 BY THAT I MEAN, IT WAS MOVING OR PRESSURE WAS APPLIED
23 TO IT. COULD THAT ACCOUNT FOR THE INCREASE IN THE
24 SCAR -- INCREASE IN THE CUT?

25 A NO. PRESSURE BEING APPLIED TO IT --

1 Q OKAY.

2 A JUST -- NO.

3 Q OKAY. SO THAT IF A SCROTUM HAD A ONE HALF OR A
4 CENTIMETER CUT, IT COULD NEVER UNDER ANY CIRCUMSTANCES
5 GET BIGGER?

6 A OKAY. WE ARE TALKING ABOUT A CLEAN LINEAR
7 LACERATION, FULL THICKNESS ALL THE WAY THROUGH THE
8 TISSUE. IT COULD BE MANUALLY RIPPED APART, BUT THEN IT
9 WOULD NO LONGER BE A STRAIGHT LINE. IT WOULD BE MORE
10 JAGGED AND MORE RIPPED LOOKING.

11 Q MORE JAGGED, CORRECT?

12 A AND NOT AS LIKELY TO BE IN A PERFECTLY STRAIGHT
13 LINE.

14 Q BUT IT'S POSSIBLE. WOULD YOU SAY IT'S POSSIBLE?

15 A WHAT'S POSSIBLE?

16 Q WOULD YOU SAY IT'S POSSIBLE THAT THE -- UPON
17 MANIPULATION, THE TEAR COULD INCREASE, NO MATTER WHAT
18 THE FORMATION OF THE TEAR, BUT IT'S POSSIBLE THAT THE
19 TEAR COULD INCREASE, RIGHT?

20 A CAN YOU DEFINE MANIPULATION?

21 Q THAT SOME PRESSURE WAS APPLIED TO THE AREA.

22 A NO.

23 Q OR MOVING OF THE CHILD.

24 A NO.

25 Q IT COULD NOT HAVE HAPPENED THAT WAY?

1 A NOT THAT WAY.

2 Q OKAY. BUT -- ALL RIGHT. I'LL LEAVE THAT ALONE.

3 NOW, WHEN AN INJURY OF THIS TYPE WOULD BE MADE,
4 WOULD IT BE YOUR OPINION THAT THE CHILD WOULD SCREAM
5 AND HOLLER?

6 A YES.

7 Q SUCH THAT OTHER PEOPLE COULD HEAR HIM?

8 A THAT WOULD BE THE NORMAL RESPONSE. IF THE CHILD
9 WAS UNDER A FORM OF TERROR, YOU COULD DO A LOT OF
10 THINGS AND THE KID DOESN'T MAKE A PEEP, SO I CAN'T
11 ABSOLUTELY SAY --

12 Q YOU HAVE NO INFORMATION THAT ANY TERROR WAS
13 INVOLVED, RIGHT?

14 A YOU ASKED ME A QUESTION, IF HE WOULD CRY. UNDER
15 NORMAL CIRCUMSTANCES, YES, HE WOULD CRY, BUT
16 OCCASIONALLY THERE ARE UNUSUAL CIRCUMSTANCES.

17 Q WELL, I WAS ASKING YOU IN THE CONTEXT OF THE FACTS
18 THAT YOU KNEW TO BE IN THIS CASE. YOU DON'T KNOW OF
19 ANY FACTS THAT THERE WAS ANY TERROR INVOLVED, DO YOU?

20 A I DON'T KNOW.

21 Q OKAY. NOW, WOULD A DELAY IN SURGICAL TREATMENT
22 ADD TO THE SCAR OR ADD TO THE REHABILITATION PROCESS?

23 A A DELAY IN TREATMENT INDUCES THE POSSIBILITY OF
24 INFECTION SETTING IN, A POSSIBLE PROBLEM WITH THE BLOOD
25 SUPPLY OVER A PROLONGED PERIOD OF THE TESTICLE HANGING

1 OUT OF THE SCROTUM. THAT WOULD BE BAD IF THERE WAS A
2 DELAY IN SURGICAL REPAIR.

3 Q OKAY. I BELIEVE YOU ANSWERED WHEN MS. CAMPBELL
4 ASKED YOU WHETHER THIS COULD HAVE IN ANY WAY BEEN A
5 SELF-INFLICTED WOUND, AND YOUR ANSWER WAS NO BASED ON
6 YOUR INTERACTION WITH THE CHILD.

7 A NO, BASED ON MULTIPLE FACTORS, WHAT THE INJURY
8 LOOKED LIKE IN THE PHOTOGRAPHS, AND DUE TO THE HISTORY
9 I GOT.

10 Q BUT NOT FROM ANYTHING THE CHILD TOLD YOU?

11 A THAT'S RIGHT.

12 Q OKAY. AND YOUR CONCLUSION THAT WHERE THERE WAS NO
13 EXPLANATION FOR THE CAUSE OF THE INJURY, THAT THERE
14 MUST BE AN ABUSIVE SITUATION. IS THAT THE ONLY
15 POSSIBLE CONCLUSION THAT YOU COULD REACH MERELY BECAUSE
16 YOU DON'T HAVE AN ANSWER TO WHAT HAPPENED?

17 A NO.

18 Q OKAY.

19 A MY CONCLUSION IS BASED ON YEARS OF TRAINING AND
20 YEARS OF EXPERIENCE AND YEARS OF LITERATURE REVIEW.

21 Q SO IF I TOOK MY CHILD TO THE DOCTOR, AND I DIDN'T
22 KNOW WHAT HAPPENED, YOU'RE GOING TO AUTOMATICALLY
23 ASSUME THAT I ABUSED HIM?

24 A NO.

25 MR. ROGERS: BEG THE COURT'S INDULGENCE JUST A

1 MOMENT, SIR.

2 THE COURT: ALL RIGHT, SIR.

3 (PAUSE)

4 MR. ROGERS: THANK YOU DOCTOR, NO MORE QUESTIONS.

5 THE COURT: ALL RIGHT. REDIRECT?

6 MS. CAMPBELL: NO, SIR.

7 THE COURT: DOCTOR, YOU MAY STEP DOWN.

8 THE BAILIFF: WATCH YOUR STEP, PLEASE.

9 THE WITNESS: AM I EXCUSED?

10 MS. CAMPBELL: YOUR HONOR, MAY SHE BE EXCUSED?

11 THE COURT: ANY OBJECTIONS?

12 MR. ROGERS: NO OBJECTIONS.

13 THE COURT: ALL RIGHT. YOU'RE EXCUSED. CALL YOUR

14 NEXT WITNESS.

15 MS. CAMPBELL: THE STATE WOULD CALL MUSA KROMAH.

16 MUSA KROMAH,

17 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL

19 NAME FOR THE RECORD.

20 THE WITNESS: I'M MUSA KROMAH.

21 DIRECT EXAMINATION

22 Q MR. KROMAH, HOW OLD ARE YOU?

23 A THIRTY.

24 Q WHERE DO YOU LIVE?

25 A RIGHT NOW I'M IN ATLANTA, GEORGIA.

- 1 Q AND ARE YOU EMPLOYED ANYWHERE?
- 2 A YES, I DO.
- 3 Q WHERE DO YOU WORK?
- 4 A CISCO CORPORATION.
- 5 Q CISCO CORPORATION. YOU'RE GOING TO HAVE TO SPEAK
- 6 UP A LITTLE BIT, OKAY?
- 7 A CISCO CORPORATION.
- 8 Q AND YOU'RE HERE TODAY BECAUSE I HAVE YOU UNDER
- 9 SUBPOENA?
- 10 A YES, I AM.
- 11 Q WHERE DID YOU GROW UP, SIR?
- 12 A MONROVIA, LIBERIA.
- 13 Q MONROVIA, LIBERIA?
- 14 A YES.
- 15 Q WHEN DID YOU ACTUALLY COME TO THE UNITED STATES?
- 16 A 2000.
- 17 Q WHY DID YOU COME TO THE UNITED STATES?
- 18 A SCHOOL.
- 19 Q AND WHERE DID YOU GO TO SCHOOL ONCE YOU GOT HERE?
- 20 A ORANGEBURG, SOUTH CAROLINA. IT'S CALLED SOUTHERN
- 21 METHODIST.
- 22 Q AFTER YOU FINISHED WITH SCHOOL, DID YOU GET
- 23 EMPLOYMENT HERE IN COLUMBIA?
- 24 A YES, I DID.
- 25 Q AND WHERE WERE YOU EMPLOYED?

- 1 A SOUTHEASTERN FRIGHT LINES, WEST COLUMBIA.
- 2 Q DO YOU KNOW THE DEFENDANT?
- 3 A YES, I DO.
- 4 Q AND HOW DO YOU KNOW THE DEFENDANT?
- 5 A I KNOW HER FROM LIBERIA AND FROM COLUMBIA, SOUTH
- 6 CAROLINA.
- 7 Q SO YOU KNEW HER BACK WHEN YOU WERE IN LIBERIA?
- 8 A YES, I DID.
- 9 Q AND DO YOU KNOW WHEN SHE CAME TO THE UNITED
- 10 STATES?
- 11 A PROBABLY DON'T KNOW THE EXACT MONTH, BUT I THINK I
- 12 KNOW.
- 13 Q DO YOU KNOW A YEAR?
- 14 A NOT ANY DATE.
- 15 Q 1998?
- 16 A '98 OR '99.
- 17 Q DID SHE COME OVER HERE ON A STUDENT VISA ALSO?
- 18 A NO, SHE DIDN'T.
- 19 Q DID YOU END UP MARRYING THE DEFENDANT?
- 20 A YES, I DID.
- 21 Q AND WHEN DID YOU GET MARRIED?
- 22 A MARCH 15TH, 2004, 2005.
- 23 Q MARCH 15TH OF 2005?
- 24 A I THINK SO. I DON'T RECALL THAT TIME.
- 25 Q DO YOU HAVE A SON?

- 1 A YES, I DO.
- 2 Q AND HOW OLD IS YOUR SON?
- 3 A HE'S FOUR NOW.
- 4 Q WHAT'S YOUR SON'S NAME?
- 5 A Victim
- 6 Q AND WHO IS Victim's MOTHER?
- 7 A KOUREE DRAPER.
- 8 Q WHAT WAS THE NAME?
- 9 A KOUREE DRAPER. K-O-R-U-E-E.
- 10 Q AND WHERE DOES MS. DRAPER LIVE?
- 11 A SHE IS PRESENTLY IN JAPAN, I THINK.
- 12 Q WHEN WAS YOUR SON BORN?
- 13 A FEBRUARY 2002.
- 14 Q FEBRUARY WHAT?
- 15 A TWENTY-THIRD.
- 16 Q YOU THINK IT WAS THE 23RD?
- 17 A YES.
- 18 Q OF 2002?
- 19 A YEAH.
- 20 Q WHERE WAS HE BORN? WAS HE BORN HERE IN THE UNITED
- 21 STATES?
- 22 A YES, PHILADELPHIA.
- 23 Q PHILADELPHIA?
- 24 A YES.
- 25 Q SO HE IS AN AMERICAN CITIZEN?

1 A YEAH.

2 Q WHERE DID HE LIVE FOR THE FIRST THREE YEARS OF HIS
3 LIFE?

4 A HE -- WHEN SHE HAD HIM, SHE TOOK HIM TO
5 PHILADELPHIA FOR THREE MONTHS AND LET HIM MOVE TO
6 MINNESOTA, TO ST. PAUL, MINNESOTA.

7 Q MINNESOTA?

8 A YES.

9 Q AND THAT'S WHERE HE LIVED FOR MOST OF HIS FIRST
10 THREE YEARS?

11 A YES, HE DID.

12 Q AT SOME POINT, DID CHILD PROTECTIVE SERVICES TAKE
13 THE CHILD FROM HER?

14 A YES, THEY DID.

15 Q AND WHEN DID YOU ACTUALLY GET CUSTODY OF THREE
16 YEAR OLD Victim ?

17 A JUNE 2005.

18 Q JUNE 2005, SO THAT I CAN GET THE TIMELINE RIGHT,
19 YOU WERE MARRIED WHEN?

20 A MARCH.

21 Q AND THEN YOU GOT Victim, THE THREE YEAR OLD IN
22 JUNE; IS THAT CORRECT?

23 A YEAH.

24 Q SO HOW LONG HAD YOU BEEN MARRIED?

25 A THREE MONTHS.

1 Q ONCE YOU GOT CUSTODY OF Victim - AND BY THE
2 WAY, DOES Victim SPEAK ENGLISH?

3 A HE DOES.

4 Q DOES Victim HAVE A SLIGHT SPEECH PROBLEM,
5 THOUGH?

6 A YES, HE DOES.

7 Q AND HE IS SPEECH DELAYED?

8 A YES.

9 Q ONCE YOU GOT CUSTODY OF Victim, WHERE WERE YOU
10 LIVING AND WITH WHOM?

11 A WHEN I GOT CUSTODY OF Victim: --

12 THE COURT: CAN YOU SPEAK UP, PLEASE?

13 BY MS. CAMPBELL:

14 Q GO AHEAD.

15 A WHEN I GOT CUSTODY OF Victim I WAS AT PAVILION
16 TOWERS DOWN IN COLUMBIA, AND THEN I MOVED IN AT THE
17 ST. ANDREWS COMMONS OVER ON ST. ANDREWS ROAD.

18 Q SO YOU MOVED OVER TO ST. ANDREWS COMMON?

19 A YES, MA'AM, AND I WAS WITH MY WIFE RIGHT NOW,
20 MIAMA KROMAH.

21 Q AND WHO ELSE WAS LIVING THERE?

22 A A COUSIN OF MINE CALLED DICK DANN.

23 Q AND WHERE DID DICK DANN WORK?

24 A HE WORKED FOR CISCO, IN COLUMBIA, SOUTH CAROLINA.

25 Q DID YOU, IN FACT, WORK THE SAME SHIFT?

1 A AT THE TIME, YES, WE DID.

2 Q OKAY. SO IN JUNE OF 2005 YOU WERE LIVING IN
3 ST. ANDREWS?

4 A YES, I WAS.

5 Q AND AT THAT POINT IN JUNE, WHAT SHIFT WERE YOU
6 WORKING?

7 A I WAS ON SECOND/THIRD SHIFT.

8 Q WHAT WERE YOUR HOURS?

9 A 6:30 TO WHENEVER WE FINISHED.

10 Q AND SO THAT WOULD BE 6:30 IN THE MORNING OR AT
11 NIGHT?

12 A 6:30 P.M.

13 Q AND THEN YOU WOULD WORK INTO THE EARLY MORNING
14 HOURS, WHENEVER YOU FINISHED?

15 A WHENEVER WE FINISHED.

16 Q WHILE YOU WERE WORKING, WHO WOULD TAKE CARE OF
17 VICTIM THAT SUMMER?

18 A WHEN I'M AT WORK, HE WAS -- MY WIFE WOULD TAKE
19 CARE OF HIM.

20 Q DID HE EVER STAY AT YOUR WIFE'S SISTER'S HOUSE?

21 A YES, HE DID.

22 Q AND THAT SUMMER, DID VICTIM HAVE ANY HEALTH
23 PROBLEMS?

24 A NOT THAT I --

25 Q UP UNTIL AUGUST 15TH?

1 A NOT THAT I KNOW OF.

2 Q HOW WOULD YOU DESCRIBE HIS HEALTH?

3 A HEALTHY EXCEPT FOR THE SWELLING DOWN, DOWN THERE,
4 YOU KNOW, THAT THEY ALREADY TOLD ME ABOUT.

5 Q THEY TOLD YOU ABOUT SWELLING DOWN THERE?

6 A YES.

7 Q YOU NEVER SAW IT?

8 A WELL, HE CAME TO MY HOUSE. HE HAD IT ONE TIME.
9 IT WAS NOT -- IT WAS NOT SOMETHING THAT WAS EVER REALLY
10 ABNORMAL.

11 Q THIS IS THE FIRST TIME YOU HAVE EVER MENTIONED THE
12 SWELLING ; IS THAT CORRECT?

13 A TO WHO, YOU?

14 Q YEAH.

15 A YES.

16 Q BEFORE WHENEVER I ASKED YOU IF HE WAS FINE THAT
17 SUMMER, YOU TOLD ME HE WAS HEALTHY; IS THAT CORRECT?
18 THAT'S WHAT YOU TOLD ME.

19 A ACTIVELY HE'S HEALTHY, BUT IT WAS NOT SOMETHING
20 THAT HAPPENED TO HIM.

21 Q OKAY. SO WHEN YOU FOUND THAT OUT -- WHEN YOU
22 FOUND OUT ABOUT THE SWELLING, DID YOU TAKE HIM TO THE
23 DOCTOR?

24 A WELL, THE PERSON THAT TOLD ME WAS MY COUSIN IN
25 MINNESOTA. SHE SAID SHE ALREADY TOOK HIM TO THE DOCTOR

1 THERE, AND HE SAID IT WAS NOT THAT BIG OF A PROBLEM.

2 THAT'S WHAT SHE TOLD ME.

3 Q OKAY. DID YOU REVIEW HIS MEDICAL RECORDS?

4 THERE'S NO MENTION OF HIS HAVING SWOLLEN TESTICLES.

5 A I ASKED FOR HIS MEDICAL RECORD FROM MINNESOTA AND

6 I HAVEN'T GOT IT SENT TO ME.

7 Q WOULD YOU DISAGREE WITH ME THAT THERE'S NO MENTION

8 OF SWOLLEN TESTICLES IN THE RECORD?

9 A WHAT?

10 MR. ROGERS: OBJECTION, YOUR HONOR, IF HE SAID HE

11 HADN'T SEEN THEM --

12 THE COURT: SUSTAINED.

13 BY MS. CAMPBELL:

14 Q ONCE YOU FOUND -- SO YOU DIDN'T TAKE HIM TO THE

15 DOCTOR THAT SUMMER, DID YOU?

16 A I TOOK HIM, BUT THEY SAID I HAD TO HAVE HIS

17 MEDICAL RECORD FROM MINNESOTA BEFORE I DID ANYTHING.

18 Q WHAT --

19 A THEY SAID I HAD TO HAVE HIS MEDICAL RECORD FROM

20 MINNESOTA BEFORE THEY COULD DO SOMETHING TO HIM.

21 Q BEFORE A DOCTOR WOULD SEE HIM?

22 A FOR HIS SITUATION, BECAUSE I TOLD -- I SAID -- I

23 SAID IT WAS SWOLLEN DOWN THERE, AND THEY SAID THEY HAD

24 TO HAVE HIS MEDICAL RECORD.

25 Q WHO'S THEY?

1 A EVEN THE HOSPITAL IN GEORGIA BEFORE HE GOT SENT
2 HERE, THEY TOLD ME THEY NEEDED A RECORD. THE SCHOOL
3 SAID THEY NEEDED THE MEDICAL RECORD OR SOMETHING LIKE
4 THAT.

5 Q I'M NOT TALKING ABOUT LATER WHEN YOU MOVED TO
6 GEORGIA.

7 A OKAY.

8 Q OKAY. CAN WE TALK ABOUT THE SUMMER? YOU NEVER
9 TOOK HIM TO A DOCTOR?

10 A I DID.

11 Q WHAT DOCTOR DID YOU TAKE HIM TO?

12 A HE WENT TO SOME HOSPITAL IN MINNESOTA, MOUNT --
13 SOMETHING HOSPITAL. I CAN'T REMEMBER RIGHT NOW. I CAN
14 GET IT FOR YOU IF I WANT, IF YOU WANT.

15 Q THAT WOULD BE GOOD. WHEN DID YOU TAKE HIM TO A
16 HOSPITAL IN MINNESOTA THAT YOU NEVER TOLD ME ABOUT
17 BEFORE?

18 A I'VE NOT TOLD YOU ABOUT HIM BEFORE, THOUGH.

19 Q WHEN DID YOU TAKE HIM TO THE HOSPITAL IN
20 MINNESOTA?

21 A I GOT HIM IN JUNE.

22 Q OKAY.

23 A I CAME TO SOUTH CAROLINA. WE WENT BACK IN JULY,
24 ON JULY 26TH.

25 Q JULY 26TH?

1 A YEAH.

2 Q OKAY.

3 A AND I WAS AT MY COUSIN'S HOUSE, MY COUSIN THAT HE
4 USED TO LIVE WITH, AND WE TOOK HIM TO THE HOSPITAL. I
5 HAD TO GET HIS MEDICAL RECORD, ALSO OR THEY STILL
6 WOULDN'T GIVE IT TO ME BECAUSE I DIDN'T HAVE THE LETTER
7 TO STATE THAT I HAVE FULL CUSTODY OF HIM.

8 Q OKAY.

9 A I NEEDED IT.

10 Q LET MOVE ON TO AUGUST 15TH, OKAY?

11 A OKAY.

12 Q THAT MORNING, WHAT DID YOU DO WITH Victim. ON
13 AUGUST 15TH?

14 A OH, OKAY. I GOT HIM DRESSED. BATHED HIM, GOT HIM
15 DRESSED, TOOK HIM TO SCHOOL.

16 Q WHEN YOU GOT HIM DRESSED THAT MORNING, DID HE
17 APPEAR HEALTHY?

18 A YEAH, HE DID APPEAR.

19 Q WHEN YOU TOOK HIM TO SCHOOL, WHAT SCHOOL DID YOU
20 TAKE HIM TO?

21 A ST. STEVEN'S PRESCHOOL, NORTH MAIN.

22 Q AND WHILE HE WAS AT THE PRESCHOOL, DID THEY CALL
23 YOU WITH ANY PROBLEMS HE HAD THAT DAY?

24 A NO, THEY DIDN'T.

25 Q DURING THE COURSE OF THAT DAY, DID YOU SEE

1 Victim ANYMORE?

2 A AFTER I TOOK HIM TO SCHOOL, NO.

3 Q DO YOU KNOW HOW HE GOT HOME FROM SCHOOL THAT
4 AFTERNOON?

5 A YES, I DO.

6 Q AND HOW DID HE GET HOME FROM SCHOOL?

7 A MY WIFE'S SISTER PICKED HIM UP, TAKES HIM ALONG
8 WITH HER SON FROM SCHOOL, TAKES HIM TO HER HOUSE.
9 ELEVEN O'CLOCK MY WIFE GETS OFF WORK AND PICKS HIM UP
10 FROM HIS SISTER'S HOUSE AND TAKES HIM HOME.

11 Q OKAY. WHERE WAS YOUR WIFE WORKING AT THAT TIME?

12 A BRIAN CENTER.

13 Q AND WHAT KIND OF WORK DID SHE DO AT THAT TIME?

14 A NURSING AID.

15 Q A NURSING AID?

16 A (NODS IN THE AFFIRMATIVE).

17 Q SO SHE'S IN THE MEDICAL FIELD?

18 A YES, SHE IS.

19 Q AND DID YOU KNOW WHAT WENT ON THAT EVENING OR WERE
20 YOU JUST TOLD LATER?

21 A I WAS TOLD.

22 Q WHEN IS THE FIRST TIME YOU BECAME AWARE THAT YOUR
23 CHILD WAS AT THE EMERGENCY ROOM OR THAT THERE WAS
24 ANYTHING WRONG?

25 A ABOUT 3:00 A.M., 3:30 OR 4:00 A.M. THAT MORNING.

1 Q 3:30?

2 A 3:30, 4:00 A.M.

3 Q 3:30, 4:00 A.M.?

4 A I WAS AT WORK, YES.

5 Q SO IT WAS SOME TIME AROUND THE TIME YOU WERE
6 GETTING OFF WORK?

7 A THAT'S WHEN I GOT THE MESSAGE ON MY PHONE THAT HAD
8 BEEN LEFT THERE BEFORE.

9 Q OKAY. ONCE -- AND IT HAD BEEN LEFT THERE ABOUT
10 4:00?

11 A TWELVE SOMETHING BECAUSE WE DON'T -- AT WORK, OUR
12 PHONE -- SHE CALLED AND LEFT A MESSAGE. SHE LEFT A
13 MESSAGE AND JUST ON AND ON AND ON AND ON.

14 Q OKAY.

15 A SHE JUST LEFT A MESSAGE.

16 Q SO ONCE YOU GOT THE MESSAGE WHERE DID YOU GO?

17 A WHEN I GOT THE MESSAGE, I CALLED HER AND SHE TOLD
18 ME TO COME TO RICHLAND HOSPITAL, SO I WENT STRAIGHT
19 DOWN THERE.

20 Q SO THE MESSAGE YOU GOT WAS TO GO TO RICHLAND
21 MEMORIAL HOSPITAL?

22 A I CALLED HER. I CALLED HER WHEN I GOT THE
23 MESSAGE.

24 Q I GOT IT. OKAY. I GOT IT, AND THAT'S WHEN SHE
25 TOLD YOU SHE WAS AT RICHLAND?

- 1 A RICHLAND.
- 2 Q DID YOU GO TO THE HOSPITAL?
- 3 A YES, I DID.
- 4 Q DID YOU MEET WITH THE POLICE THAT NIGHT?
- 5 A NO.
- 6 Q DID YOU MEET WITH THE POLICE THE NEXT MORNING?
- 7 A YES, I DID.
- 8 Q DID YOU TELL THEM WHAT YOU KNEW ABOUT WHAT HAD
9 HAPPENED?
- 10 A I DIDN'T KNOW.
- 11 Q YOU DIDN'T KNOW ANYTHING?
- 12 A EXCEPT FOR WHAT I WAS TOLD.
- 13 Q AND WERE YOU AWARE THAT YOUR SON HAD SURGERY THAT
14 DAY?
- 15 A YEAH, I WAS THERE WHEN THE SURGERY TOOK PLACE.
- 16 Q AND THE NEXT NIGHT YOU WENT BACK TO WORK?
- 17 A I DIDN'T WORK THAT WHOLE WEEK. THAT WHOLE WEEK I
18 DIDN'T WORK.
- 19 Q YOU DIDN'T?
- 20 A I DIDN'T WORK THAT WEEK I THINK, IF I REMEMBER
21 THAT RIGHT.
- 22 Q I'M SHOWING YOU STATE'S EXHIBIT 30. IT SHOWS
23 WHERE YOU WENT IN TO WORK ON THE 16TH AND THE 17TH.
- 24 A AND WHAT TIME --
- 25 Q YOU WORKED, I BELIEVE, NINE HOURS ONE NIGHT AND

1 THREE HOURS THE NEXT?

2 A THREE HOURS, YES.

3 Q YOUR SON WAS STILL IN THE HOSPITAL?

4 A WHAT?

5 Q YOUR SON WAS STILL IN THE HOSPITAL?

6 A YEAH, HE WAS IN THE HOSPITAL.

7 Q DID D.S.S. BECOME INVOLVED, CHILD PROTECTIVE
8 SERVICES?

9 A THE NEXT MORNING, YEAH, THE SAME MORNING WHEN HE
10 WAS THERE.

11 Q AND THE POLICE?

12 A THE POLICE CAME THE NEXT MORNING, YEAH.

13 Q WAS YOUR CHILD TAKEN INTO PROTECTIVE CUSTODY?

14 A YES, HE WAS.

15 Q AND IN WHOSE CUSTODY WAS HE FOR THE NEXT FIVE, SIX
16 MONTHS? WHO HAD CUSTODY OF HIM?

17 A SOMEBODY. I FORGOT HER NAME.

18 Q DID YOU HAVE VISITATION WITH HIM WHILE HE WAS IN
19 D.S.S. CUSTODY?

20 A YES, I DID.

21 Q WAS MIAMA ALLOWED AROUND HIM?

22 A NO, SHE WASN'T.

23 Q THE DAY AFTER THIS OCCURRED, DID YOU MEET UP WITH
24 INVESTIGATOR STRANGE AND LET HIM INTO YOUR HOUSE?

25 A YEAH, I MET HIM.

1 Q AND WHEN HE WENT INTO YOUR HOUSE, WAS IT -- DID IT
2 APPEAR AS IT HAD THE DAY BEFORE? HAD YOU CLEANED UP
3 ANYTHING OR ANYTHING?

4 A NO.

5 Q DID YOU NOTICE THE BLOOD IN THE BEDROOM AREA?

6 A YES, I NOTICED IT.

7 Q WHOSE BEDROOM WAS THAT?

8 A MINE.

9 Q AND WHO ELSE SLEPT IN THAT BEDROOM?

10 A MY WIFE.

11 Q AND WHERE DID Victim SLEEP WHEN HE STAYED WITH
12 YOU?

13 A HE SLEPT THERE SOME TIME. HE SLEPT WITH HIS
14 GRANDMA ALSO.

15 Q WHEN HE SLEPT AT YOUR HOUSE, WHERE DID HE SLEEP?

16 A IN MY ROOM.

17 Q IN YOUR ROOM?

18 A YEAH.

19 Q AND HOW MANY BEDROOMS WERE IN YOUR APARTMENT?

20 A TWO BEDROOMS.

21 Q SO DID MR. DICK DANN HAVE THE OTHER BEDROOM?

22 A YES, HE DID.

23 Q EVENTUALLY DID YOU GET CUSTODY BACK OF Victim?

24 A YES, I DID.

25 Q WHEN DID THAT HAPPEN, SIR?

1 A I DON'T KNOW. SOMETIME THIS YEAR, I THINK. I
2 DON'T KNOW.

3 Q SOME TIME THIS YEAR?

4 A FEBRUARY, FEBRUARY.

5 Q FEBRUARY?

6 A OR JANUARY -- I DON'T KNOW.

7 Q WERE THERE CERTAIN CONDITIONS TO YOUR GETTING
8 CUSTODY BACK?

9 A LIKE?

10 Q LIKE WITH REGARD TO YOUR WIFE?

11 A SHE WOULD NOT HAVE CONTACT WITH HIM.

12 Q SHE WHAT?

13 A SHE WOULD HAVE NO CONTACT WITH HIM.

14 Q NO CONTACT WITH YOUR WIFE?

15 A SURE.

16 Q AND THAT ORDER IS STILL IN PLACE.

17 A YEAH.

18 Q ONCE YOU GOT CUSTODY OF Victim, DID YOU MOVE
19 SHORTLY THEREAFTER?

20 A YES.

21 Q WHERE DID YOU GO?

22 A ATLANTA, GEORGIA.

23 Q AND ONCE YOU GOT TO ATLANTA, DID YOU THEN SEND
24 Victim: SOMEWHERE?

25 A YES, I DID.

1 Q WHERE DID YOU SEND Victim?

2 A I SENT HIM TO MY MOM'S IN LIBERIA.

3 Q TO YOUR MOTHER IN LIBERIA?

4 A YEAH.

5 Q AND Victim IS AN AMERICAN CITIZEN?

6 A YES.

7 Q AND YOU CHOSE TO STAY HERE AND SEND YOUR CHILD TO
8 LIBERIA?

9 A SURE.

10 Q WHEN DID YOU SEND HIM? DO YOU REMEMBER?

11 A SOMETIME IN MAY, MAY 20 OR SOMETHING.

12 Q MAY?

13 A IF I'M RIGHT. I KNEW IT WAS AFTER MY BIRTHDAY ANY
14 WAY.

15 Q AFTER YOUR BIRTHDAY?

16 A YEAH, MY BIRTHDAY IS IN MAY.

17 Q DID YOU TELL ANYONE WITH PROTECTIVE SERVICES, LAW
18 ENFORCEMENT OR ANYONE ELSE THAT YOU WERE SENDING THE
19 CHILD TO LIBERIA?

20 A NO. I HAD FULL CUSTODY, SO I FELT I COULD.

21 Q WHEN I TALKED TO YOU, DID YOU EVER TELL ME YOU
22 SENT THE CHILD TO LIBERIA?

23 A YES, I DID.

24 Q WHEN WAS THAT?

25 A WHEN I CAME TO YOUR OFFICE.

1 Q IN THE LAST TWO WEEKS?

2 A YES.

3 Q YOU ARE AWARE THIS TRIAL WAS COMING UP? WHEN WE
4 MET IN THE LAST TWO WEEKS, YOU WERE AWARE THIS TRIAL
5 WAS COMING UP?

6 A WHEN YOU CALLED ME, YES AND TOLD ME, YES.

7 Q AND I ASKED YOU ABOUT WHERE THE CHILD WAS?

8 A YES.

9 Q AND YOU TOLD ME THAT HE WASN'T GOING TO BE
10 INVOLVED IN THIS, RIGHT?

11 A I TOLD YOU --

12 Q THAT YOU WOULD NOT ALLOW ME TO TALK TO HIM?

13 A I TOLD YOU I DID NOT WANT HIM TO BE A PART OF
14 THIS.

15 Q AND WHEN I OFFERED TO GET HIM BACK FROM LIBERIA,
16 YOU TOLD ME NO?

17 A SAY WHAT?

18 Q WHEN I OFFERED TO HAVE HIM FLOWN BACK FROM
19 LIBERIA, YOU REFUSED AS HIS GUARDIAN?

20 A I DID NOT WANT HIM BEING INVOLVED IN THIS WHOLE
21 CASE.

22 Q ARE YOU STILL MARRIED, SIR?

23 A YES, I AM.

24 Q WHOSE IDEA WAS IT TO SEND THE CHILD TO LIBERIA
25 RIGHT BEFORE THIS TRIAL?

1 A IT WAS A FAMILY DECISION.

2 MR. ROGERS: OBJECTION. IT WASN'T RIGHT BEFORE
3 THIS TRIAL.

4 MS. CAMPBELL: I'LL REPHRASE, YOUR HONOR.

5 THE COURT: REPHRASE YOUR QUESTION.

6 BY MS. CAMPBELL:

7 Q WHOSE IDEA WAS IT TO SEND THE CHILD BACK TO
8 LIBERIA?

9 A IT WAS A FAMILY THING. MY MOM FELL, SINCE MY WIFE
10 WOULD NOT LIVE AT THE HOUSE WITH ' VICTIM BEING THERE
11 AND I WOULD SPEND \$300, ALMOST \$200 PLUS A WEEK FOR A
12 BABYSITTER FOR HIM BECAUSE I WORK AT NIGHT, SO WHEN
13 EVER HE IS BABYSIT, HE HAS TO SLEEP THERE AND IT COSTS
14 ALMOST \$200 -- I'M PAYING THE EXACT AMOUNT OF \$220 A
15 WEEK FOR HIM TO BE THERE, SO IT COST ME TOO MUCH. WE
16 SENT HIM THERE FOR SCHOOL. WHEN HE IS ELEMENTARY AGE,
17 OR ELEMENTARY SCHOOL, WE SEND HIM BACK.

18 Q BECAUSE YOU'RE STILL WITH YOUR WIFE, NOT YOUR
19 CHILD?

20 A YEAH, THAT'S HOW WE DO IT. SEND HIM BACK FOR
21 ELEMENTARY SCHOOL AND SEND HIM BACK TO THE U.S. FOR
22 HIGH SCHOOL.

23 MS. CAMPBELL: THANK YOU.

24 THE COURT: LET'S TAKE A BREAK BEFORE YOU
25 CROSS-EXAMINE. WE WILL TAKE ABOUT A TEN MINUTE BREAK.

1 MR. FOREMAN, LADIES AND GENTLEMEN, DON'T DISCUSS THE
2 CASE. I'LL HAVE YOU BACK IN ABOUT TEN MINUTES.
3 EVERYONE ELSE STAY SEATED, PLEASE.

4 (WHEREUPON, THE JURY LEFT OPEN COURT AT
5 APPROXIMATELY 10:53 A.M.)

6 THE COURT: WE'LL TAKE ABOUT TEN MINUTES.
7 MR. KROMAH, YOU MAY STEP DOWN FROM THE WITNESS STAND,
8 BUT YOU CANNOT DISCUSS YOUR TESTIMONY DURING THE BREAK.
9 ALL RIGHT.

10 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

11 THE COURT: ALL RIGHT. MR. KROMAH, YOU CAN COME
12 BACK ON THE WITNESS STAND.

13 IS THE STATE READY TO PROCEED?

14 MS. CAMPBELL: THE STATE IS READY.

15 THE COURT: IS THE DEFENSE READY?

16 MR. ROGERS: THE DEFENSE IS READY.

17 THE COURT: ALL RIGHT. LET'S GET THE JURY BACK.

18 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
19 APPROXIMATELY 11:10 A.M.)

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

21 THE COURT: ALL RIGHT. THANK YOU.

22 CROSS-EXAMINATION, MR. ROGERS.

23 MR. ROGERS: THANK YOU, YOUR HONOR. MAY IT PLEASE
24 THE COURT.

25 THE COURT: ALL RIGHT.

CROSS-EXAMINATION

1
2 BY MR. ROGERS:

3 Q MR. KROMAH, WHY DID YOU SEND ~~Victim~~ TO LIBERIA?

4 A IT WAS EXPENSIVE FOR HIM TO BE HERE, AND IT WOULD
5 COST ME, LIKE I SAID, ALMOST \$220 A WEEK TO KEEP HIM
6 WITH MY WIFE NOT BEING AT HOME, AND ALSO SOME TRAUMATIC
7 MOMENTS HE WAS HAVING JUST BEING WITH ME ALONE.

8 Q ALONE?

9 A YEAH, I WANTED HIM TO GET TO KNOW MY OTHER FAMILY.

10 Q AS A CONDITION OF MIAMA'S BOND IN THIS CASE, SHE
11 CAN'T BE AROUND ~~Victim~~, CAN SHE?

12 A SAY THAT AGAIN.

13 Q AS A CONDITION OF HER BOND, HER BOND THAT GOT HER
14 OUT OF JAIL --

15 A YEAH.

16 Q -- SHE CAN'T BE AROUND ~~Victim~~, CAN SHE?

17 A SHE CANNOT.

18 Q AND IF SHE DID, SHE WOULD BE IN DANGER OF GOING TO
19 JAIL?

20 A YEAH.

21 Q AND THAT'S WHY YOU KEPT ~~Victim~~ AND MIAMA AWAY
22 FROM EACH OTHER?

23 A EXACTLY.

24 Q NOW, DID I HAVE ANYTHING TO DO WITH YOU SENDING
25 ~~Victim~~ TO LIBERIA?

- 1 A NO.
- 2 Q DID I EVEN KNOW ABOUT IT?
- 3 A NO.
- 4 Q DID YOU DO IT IN AN EFFORT TO HELP YOUR WIFE IN
- 5 THIS CASE?
- 6 A NO.
- 7 Q WHO IS HE STAYING WITH IN LIBERIA?
- 8 A MY MOM.
- 9 Q YOUR MOTHER?
- 10 A YES, SIR.
- 11 Q DURING -- DO YOU LOVE Victim?
- 12 A YES, I DO.
- 13 Q HOW HAS ALL OF THIS BEEN ON YOU?
- 14 A REAL HARD.
- 15 Q ARE YOU CONCERNED ABOUT HIS WELFARE?
- 16 A SURE.
- 17 Q DURING THE ENTIRE TIME THAT -- ONCE YOU GOT
- 18 CUSTODY OF Victim AND YOU AND Victim AND MIAMA WERE
- 19 LIVING TOGETHER, DID YOU EVER SEE MIAMA DO ANYTHING
- 20 THAT IN ANY WAY ENDANGERED Victim?
- 21 A NO.
- 22 Q WAS SHE LOVING TOWARD HIM?
- 23 A YES, SIR.
- 24 Q DID SHE RESENT IN ANY WAY THAT YOU HAD GOTTEN THE
- 25 CHILD FROM YOUR FIRST MARRIAGE THAT SHE WAS NOW GOING

1 TO HAVE TO RAISE HIM?

2 A NO, SIR.

3 Q DID SHE TREAT *Victim* LIKE *Victim* WAS HER OWN
4 CHILD?

5 A YES, SIR.

6 Q NOW, DID THERE COME A TIME AFTER YOU GOT CUSTODY
7 THIS TIME THAT *Victim* GOT SICK AND YOU HAD TO GO TO
8 AUGUSTA TO TAKE HIM TO THE HOSPITAL?

9 A YES, SIR.

10 Q WHAT WAS THAT?

11 A HE HAD A STOMACH VIRUS.

12 Q A STOMACH VIRUS?

13 A YES.

14 Q HOW DID *Victim* REACT OR BEHAVE WHEN YOU HAD TO
15 TAKE HIM TO THE HOSPITAL?

16 A *Victim* HE WAS REAL AFRAID TO GO TO THE HOSPITAL
17 WITH ME. I TOLD HIM I WANTED TO TAKE HIM TO THE
18 HOSPITAL. EVERY TIME I DID, HE SAID HE'S OKAY, BUT
19 BECAUSE OF HIM THROWING UP CONSTANTLY, I STILL TOOK
20 HIM.

21 Q SO YOU EVENTUALLY DID TAKE HIM?

22 A YES.

23 Q OKAY. WERE YOU PRESENT AT THE HOSPITAL WHEN THESE
24 PHOTOGRAPHS OF *Victim* WERE TAKEN?

25 A YES, SIR.

1 Q DID THEY -- I DON'T KNOW HOW TO PHRASE IT. DID
2 THEY KIND OF POSE Victim IN THE POSITIONS THAT
3 RESULTED IN THOSE PHOTOGRAPHS OR DID THEY TAKE JUST
4 KIND OF CANDID SNAP SPOTS?

5 A THEY POSED HIM.

6 Q SO THEY POSED HIM AND LAID HIM OUT AND PUT HIM IN
7 THE POSITIONS?

8 Q AND YOU SAW THIS?

9 A YES, I WAS THERE.

10 Q OKAY. NOW, ONE LAST AREA, THIS BUSINESS ABOUT HIS
11 SWELLING SCROTUM PROBLEM, YOU WERE AWARE OF THAT BEFORE
12 AUGUST?

13 A YES, I WAS.

14 Q AND WAS MIAMA AWARE OF THAT, TOO?

15 A SHE KNEW ABOUT IT.

16 Q I'M SORRY?

17 A YES, SHE DID.

18 Q HAD YOU EVER SEEN HIS SWOLLEN SCROTUM WHEN HE WAS
19 IN YOUR CUSTODY BEFORE THIS EVENT HAPPENED?

20 A I DIDN'T SEE IT.

21 Q WHO NORMALLY BATHES AND CHANGES Victim?

22 A MIAMI DOES.

23 Q DO YOU KNOW IF SHE HAD EVER SEEN IT BEFORE?

24 A I THINK SHE DID.

25 Q OKAY. DID SHE TALK TO YOU ABOUT IT?

1 A SHE DID.

2 Q DID YOU ALL ATTEMPT TO SEEK MEDICAL TREATMENT?

3 A YES, WE DID.

4 Q AND YOU COULDN'T, YOU SAY, BECAUSE YOU DIDN'T HAVE
5 HIS MEDICAL RECORDS?

6 A SURE.

7 MR. ROGERS: BEG THE COURT'S INDULGENCE.

8 (PAUSE)

9 MR. ROGERS: NOTHING FURTHER.

10 THE COURT: REDIRECT.

11 MS. CAMPBELL: JUST ONE QUESTION.

12 REDIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q WHEN YOU GOT CUSTODY BACK OF Victim, THERE WAS
15 AN ORDER IN PLACE SAYING THAT SHE COULDN'T COME NEAR
16 HIM?

17 A SURE.

18 Q AND THAT'S DIFFERENT THAN THE OTHER ORDER HE'S
19 TALKING ABOUT. THAT WAS A CONDITION OF YOUR GETTING
20 CUSTODY FROM D.S.S.?

21 A I HAD A COURT ORDER THAT SHE COULDN'T COME AROUND
22 HIM THAT I KNOW OF.

23 Q FROM D.S.S.?

24 A FROM THE BOND COURT THAT NIGHT.

25 Q WERE YOU ALSO AWARE OF A CONDITION OF YOU

1 RECEIVING CUSTODY FROM CHILD SERVICES IS THAT SHE
2 CANNOT GO AROUND THAT CHILD?

3 A I WAS TOLD THAT.

4 MS. CAMPBELL: THANK YOU.

5 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.

6 ALL RIGHT, SOLICITOR, CALL YOUR NEXT WITNESS.

7 MS. CAMPBELL: THE STATE CALLS DR. JEFFERY EHRETH.

8 JEFFREY EHRETH,

9 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
11 NAME FOR THE RECORD.

12 THE WITNESS: JEFFERY THOMAS EHRETH.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL:

15 Q DR. EHRETH, WHERE ARE YOU EMPLOYED?

16 A I'M AT PALMETTO RICHLAND.

17 Q AND WHAT DO YOU DO THERE, SIR?

18 A I'M A PEDIATRIC UROLOGIST.

19 Q YOU MAY HAVE TO SPEAK UP. FOR SOME REASON THE
20 ACOUSTICS ARE AWFUL. CAN YOU TELL THE JURY ABOUT YOUR
21 MEDICAL TRAINING AS A PEDIATRIC UROLOGIST?

22 A I WENT TO COLLEGE AND MEDICAL SCHOOL AT THE
23 UNIVERSITY OF VIRGINIA. I DID MY RESIDENCY IN GENERAL
24 UROLOGY AT THE UNIVERSITY OF ARIZONA. I WAS THERE FOR
25 SIX YEARS. THAT'S HOW LONG THE PROGRAM IS. I DID A

1 FELLOWSHIP AT DUKE IN PEDIATRIC UROLOGY.

2 Q AND -- YOUR HONOR --

3 A AND I'VE BEEN PRACTICING FOR TEN YEARS.

4 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE WOULD
5 OFFER HIM AS AN EXPERT IN PEDIATRIC UROLOGY.

6 THE COURT: ANY OBJECTIONS OR CROSS EXAMINATION?

7 MR. ROGERS: HAVE YOU EVER BEEN QUALIFIED AS AN
8 EXPERT BEFORE, DOCTOR?

9 THE WITNESS: NO, SIR.

10 MR. ROGERS: HAVE YOU HAD ANY PROFESSIONAL
11 TRAINING IN FORENSIC PEDIATRIC UROLOGY?

12 THE WITNESS: NO, SIR.

13 MR. ROGERS: HAVE YOU HAD ANY SPECIAL TRAINING
14 WITH REGARD TO CUTS OR LACERATIONS?

15 THE WITNESS: I PERFORM ABOUT 850 SURGERIES A
16 YEAR, SO I HAVE EXTENSIVE EXPERIENCE IN CUTS AND
17 LACERATIONS.

18 MR. ROGERS: I HAVE NO FURTHER QUESTIONS, YOUR
19 HONOR, NO OBJECTIONS.

20 THE COURT: ALL RIGHT. THE WITNESS IS FOUND TO BE
21 AN EXPERT IN THE FIELD OF PEDIATRIC UROLOGY. YOU MAY
22 CONTINUE, SOLICITOR.

23 MS. CAMPBELL: THANK YOU, YOUR HONOR.

24 BY MS. CAMPBELL:

25 Q DOCTOR, HOW MANY PEDIATRIC UROLOGISTS ARE THERE

1 ACTUALLY IN THIS STATE?

2 A THERE ARE TWO. THERE'S ONE OTHER ONE DOWN IN
3 CHARLESTON.

4 Q I ANT TO TURN YOUR ATTENTION BACK TO AUGUST 16TH
5 OF LAST YEAR. DID YOU HAVE OCCASION TO PERFORM SURGERY
6 ON A CHILD NAMED *victim* ?

7 A I DID.

8 Q JUST TELL THE JURY, BASICALLY, HOW HE PRESENTED TO
9 YOU AND WHAT OPERATION YOU PERFORMED?

10 A I WAS CALLED, I CAN'T RECALL BY WHICH PEDIATRIC
11 PHYSICIAN IN PARTICULAR, BUT CALLED TO EVALUATE A YOUNG
12 BOY WHEN I WAS ON CALL EARLY IN THE MORNING. AGAIN, I
13 CAN'T RECALL A SPECIFIC TIME, BUT IT WAS EARLY IN THE
14 MORNING. HE WAS LAYING THERE IN BED. HIS FATHER WAS
15 IN THE CHAIR RIGHT BESIDE HIM, AND I REMOVED THE COVER
16 AND NOTICED QUITE READILY HIS SCROTUM WAS SLICED OPEN
17 AND HIS TESTICLE WAS HANGING OUT.

18 Q AND I SHOW YOU STATE'S EXHIBIT NUMBER 15 AND
19 NUMBER 17. IS THAT BASICALLY WHAT YOU OBSERVED WHEN
20 YOU CAME IN CONTACT WITH *victim*?

21 A YES, IT WAS.

22 Q AND AT THAT POINT DID YOU DO AN EXAMINATION AND
23 DECIDE THAT SURGERY WAS APPROPRIATE IN THIS CASE?

24 A SURGERY WAS NECESSARY, YES.

25 Q DID YOU CONSULT WITH THE FATHER PRIOR TO DOING

1 SURGERY ON THE CHILD IN ORDER TO GET HIS PERMISSION?

2 A I DID. I DISCUSSED THE SITUATION WITH HIS FATHER
3 TO THE EXTENT I COULD, TRIED TO OBTAIN WHATEVER HISTORY
4 I COULD. IT WAS VERY SKETCHY AT THE TIME AND CONSENTED
5 HIM FOR REPAIR.

6 Q IN FACT, DID YOU OPERATE ON HIM THAT DAY?

7 A YES, I DID.

8 Q CAN YOU DESCRIBE TO THE JURY, BASICALLY, WHAT WAS
9 DONE TO THE CHILD AND WHAT PROCEDURE YOU DID TO CORRECT
10 WHAT HAPPENED TO THE CHILD?

11 A WELL, WHEN I EXAMINED THE CHILD I NOTICED HE HAD
12 ABOUT A FOUR CENTIMETER LACERATION TRANSVERSING ACROSS
13 HIS SCROTUM -- THAT'S A BIG CUT -- AND HIS TESTICLE WAS
14 HANGING OUT. AFTER HE WAS PROPERLY ANESTHETIZED, I
15 EXAMINED HIM EVEN FURTHER. I DIDN'T WANT TO DO A LOT
16 OF MANIPULATION TO HIM ON THE FLOOR. HE WAS IN A LOT
17 OF PAIN AND ANXIETY, BUT ONCE HE WAS ASLEEP, I WAS ABLE
18 TO GET A GOOD LOOK AT EVERYTHING WHEN HE WAS PROPERLY
19 DRAPED AND ANESTHETIZED. THERE'S A LITTLE MEMBRANE
20 AROUND THE TESTICLE THAT'S CALLED THE TUNICA VAGINALIS
21 AND THAT WAS INTACT.

22 AFTER WE HAD PREPPED AND DRAPED AND OPENED UP THE
23 TUNICA VAGINALIS, I FOUND A SMALL AMOUNT OF FLUID
24 AROUND THE TESTICLE, A SMALL HYDROCELE, BUT IT WAS VERY
25 SMALL, CERTAINLY NOT PATHOLOGICAL OR A PROBLEM. I

1 NOTICED THAT THE INSIDE LINING OF THE TUNICA VAGINALIS
2 WAS SMOOTH AND COMPLETELY WITHOUT EVIDENCE OF INJURY,
3 TRAUMA OR PRESSURE. IF THIS WERE A PRESSURE
4 PHENOMENON, FROM SOMEBODY SQUEEZING, YOU WOULD
5 EFFECTIVELY GET LIKE A HICKEY, IT'S CALLED PETECHIAL
6 HEMORRHAGING, ON THE INSIDE LINING OF THE TUNICA
7 VAGINALIS.

8 I'VE SEEN THIS ON OTHER KIDS THAT HAVE VERY LARGE
9 HYDROCELES THAT I HAVE TO MANIPULATE OUT OF A SMALL
10 INCISION IN THE SCROTUM AND THE PRESSURE WILL CAUSE
11 THESE PETECHIAL HEMORRHAGES AND SOMETIMES THE HYDROCELE
12 FLUID WILL BE BLOODY IF IT'S A TRAUMATIC HIGH PRESSURE
13 EVENT, AGAIN KIND OF LIKE A HICKEY. IT'S NOT SOMETHING
14 THAT GOES AWAY IN A MATTER OF HOURS. HICKEYS LAST FOR
15 ABOUT A WEEK ON MOST PEOPLE. SO, THERE WAS NO EVIDENCE
16 OF ANY BLOOD INSIDE THE HYDROCELE FLUID, NO EVIDENCE OF
17 ANY PETECHIAL HEMORRHAGES, NEITHER ON THE TESTICLE
18 ITSELF OR THE MEMBRANE AROUND THE TESTICLE OR THE
19 INSIDE MEMBRANE.

20 ONCE I WAS ASSURED THAT THE TESTICLE WAS PINK AND
21 VIABLE, I SECURED THE TESTICLE BACK INTO THE SCROTUM,
22 CLOSED EVERYTHING UP WITH MULTIPLE LAYERS AND SAW HIM
23 BACK IN POST-OP IN MY OFFICE SEVERAL WEEKS LATER, AND
24 HE HAD HEALED BEAUTIFULLY.

25 Q I WANT TO GO BACK TO -- YOU WERE ABLE TO OBSERVE

1 THE ACTUAL LACERATION TO THE SCROTUM --

2 A YES.

3 Q -- DURING YOUR SURGERY?

4 A YES.

5 Q CAN YOU BASICALLY TELL THE JURY, WAS THIS A FAIRLY
6 SUPERFICIAL LACERATION OR WHAT TYPE OF LACERATION WAS
7 THIS, THE TWO INCH --

8 A IT WAS ABOUT FOUR CENTIMETERS LONG.

9 Q FOUR CENTIMETERS?

10 A YES. JUST A HAIR UNDER TWO INCHES. IT WAS VERY
11 SHARP. IT LOOKED LIKE A SCALPEL INCISION. I'M VERY
12 FAMILIAR WITH SCALPEL INCISIONS, AND IT WENT THROUGH
13 THE SKIN AND ALSO THROUGH WHAT'S CALLED A CREMASTERIC
14 MUSCLE. THERE'S A MUSCULAR LAYER RIGHT UNDER THE
15 SCROTUM SO WHEN IT'S COLD EVERYTHING KIND OF SHRINKS
16 UP, AND IT HAD GONE THROUGH BOTH OF THOSE LAYERS. HE
17 WAS ACTUALLY QUITE FORTUNATE THAT IT HADN'T INJURED HIS
18 TESTICLE.

19 Q AND WAS THE CUT THE SAME FROM ONE END TO THE OTHER
20 AS FAR AS DEPTH?

21 A IT WAS A SMOOTH CUT FROM ONE END TO THE OTHER.
22 THERE WAS NO EVIDENCE OF ANY STELLATE OR LIKE A, YOU
23 KNOW, LIKE A ROCK HITS YOUR WINDSHIELD AND YOU JUST
24 KIND OF GET THAT SPIDER WEB FRACTURE, PRESSURE INJURIES
25 TO THE SKIN, THE SKIN WILL FRACTURE, AND IT WILL HAVE A

1 BUNCH OF ROUGH EDGES ON IT, BUT THIS WASN'T. THIS WAS
2 A SMOOTH CUT FROM ONE END TO THE OTHER.

3 Q AND IN YOUR EXPERT OPINION, DO YOU HAVE AN OPINION
4 AS TO WHAT TYPE OF INSTRUMENT COULD HAVE CAUSED THIS
5 LACERATION?

6 A IT HAD TO BE SOMETHING SHARP, AND WE'RE TALKING
7 SCALPEL, RAZOR BLADE, STEAK KNIFE, SOMETHING VERY
8 SHARP.

9 Q WOULD THIS BE CONSISTENT, IN YOUR EXPERT OPINION,
10 WITH SOME TYPE OF TEAR? YOU ALREADY MENTIONED THE
11 PRESSURE, BUT SOME TYPE OF TEARING?

12 A NO, AGAIN, BECAUSE OF THE -- THERE ARE A COUPLE OF
13 THINGS. THE SCROTUM, THE SCROTAL SACK ACTUALLY HAS
14 RIDGES, WHICH ARE MUCH MORE READILY EVIDENT IN CHILDREN
15 THAN IN ADULTS, BUT THEY ARE ALMOST GROOVES AND ALMOST
16 FINGER-LIKE LATERAL PROJECTIONS, BUT THEY'RE A BIT
17 OBLIQUE OR TWISTED SIDEWAYS LIKE THIS, SO THERE IS AN
18 INHERENT WEAKNESS TO PARTICULAR PARTS OF THE SCROTAL
19 SKIN, IN THE BOTTOM OF THOSE GROOVES.

20 IN THIS PATIENT, THE INCISION WENT ACROSS THE
21 GROOVES. FOR INSTANCE, IF THE GROOVES ARE LIKE THAT,
22 THE INCISION WENT ACROSS LIKE THAT, SO IF THIS WERE A
23 PRESSURE PHENOMENON, YOUR POINT OF WEAKNESS WITHIN THE
24 SCROTAL SKIN WOULD HAVE BEEN RIGHT ALONG THE GROOVE,
25 AND THE INCISION WASN'T, IT WAS ACROSS IT.

1 Q THIS INCISION, WOULD THIS INCISION HAVE PRODUCED
2 BLOOD RIGHT AWAY?

3 A YES.

4 Q AND WOULD IT HAVE BEEN A SIGNIFICANT AMOUNT OF
5 BLOOD, A MINIMAL AMOUNT OF BLOOD, OR WHAT?

6 A NOT ENOUGH TO REQUIRE A TRANSFUSION, BUT IT WOULD
7 HAVE BEEN A SIGNIFICANT AMOUNT OF BLOOD.

8 Q COULD THIS CUT HAVE BEEN MADE AND NOT BLED FOR SAY
9 MINUTES, HOURS, OR SOMETHING?

10 A NO. BLEEDING WOULD BE IMMEDIATE.

11 Q AND WHAT TYPE OF PAIN WOULD A LACERATION SUCH AS
12 THIS CAUSE?

13 A PRETTY SEVERE.

14 Q THE TESTICLE WAS ACTUALLY HANGING OUTSIDE THE
15 SCROTUM AREA; IS THAT CORRECT, WHEN YOU SAW IT?

16 A THAT'S CORRECT.

17 Q COULD THIS CUT HAVE BEEN MADE AND THE TESTICLE
18 STAYED IN FOR A WHILE AND NOT BLEED?

19 A NO. AGAIN, BLEEDING WOULD HAVE BEEN IMMEDIATE.
20 THE TESTICLE, IF THE CHILD IS IN A RECUMBENT OR LYING
21 DOWN POSITION, THE TESTICLE MAY HAVE STILL STAYED
22 WITHIN THE SACK, BUT IT WAS INEVITABLE FOR THE TESTICLE
23 TO COME OUT THE SECOND THE KID STOOD UP.

24 Q OR WAS LIFTED UP?

25 A OR WAS LIFTED UP.

1 Q IN YOUR OPINION, DOCTOR, COULD THIS HAVE BEEN
2 ACCIDENTAL?

3 A IN MY OPINION, NO, I DON'T SEE HOW IT'S POSSIBLE
4 THAT IT COULD BE ACCIDENTAL.

5 Q AND FINALLY, DOCTOR, DID YOU ACTUALLY EXPLORE SUCH
6 THINGS AS HERNIAS OR TUMORS OR ANY OTHER WAY THIS
7 INJURY COULD HAVE BEEN CAUSED IN YOUR EXPERTISE AND
8 EXPERIENCE AS A UROLOGIST?

9 A RIGHT. BEFORE THE PROCEDURE, AS I TOLD YOU, THE
10 HISTORY WAS KIND OF SKETCHY FROM THE DAD. WE HADN'T
11 REALLY GOTTEN MUCH INFORMATION. THERE WAS A
12 POSSIBILITY THAT THERE WAS SOME SWELLING. THERE'S
13 ACTUALLY SEVERAL CAUSES OF SCROTAL OR TESTICULAR
14 SWELLING, A TUMOR, A HERNIA. THERE WAS ABSOLUTELY NO
15 EVIDENCE OF A HERNIA WHEN I EXPLORED HIM.

16 THERE IS ANOTHER KIND OF HERNIA CALLED A
17 COMMUNICATING HYDROCELE. NOW THAT'S WHERE THERE'S
18 REALLY A COMMUNICATION BETWEEN THE MEMBRANE THAT HOLDS
19 OUR INTESTINES IN THE PERITONEUM. WHEN THE TESTICLES
20 DESCEND, BECAUSE THEY'RE UP HIGH, BUT WHEN THEY DESCEND
21 WHEN THE BABY IS STILL IN THE WOMB, THEY TAKE A LITTLE
22 TUBE OF THAT MEMBRANE DOWN WITH THEM. NOW THAT
23 MEMBRANE IS SUPPOSED TO COLLAPSE AND SCAR DOWN. IN A
24 VERY SMALL NUMBER OF BOYS, IT DOESN'T, IT STAYS OPEN,
25 AND YOU CAN GET SOME SWELLING DOWN THERE, AND THAT

1 WOULD BE CALLED A COMMUNICATING HYDROCELE.

2 THE THING WITH HIM WAS HE DIDN'T HAVE A
3 COMMUNICATING HYDROCELE. I EXPLORED THAT AND THAT WAS
4 NOT THE CASE. THERE ARE OTHER RARE CONDITIONS OF
5 SCROTAL EDEMA, WHERE IT JUST SWELLS ALL ON ITS OWN OR
6 TESTICULAR INFARCTION.

7 AGAIN, HE HAD SWELLING THAT EXTENDED NOT JUST ON
8 THE SCROTUM, BUT AT THE TIME I SAW HIM SEVERAL HOURS
9 REMOVED FROM THE EVENT, BUT THE EDEMA HAD ALREADY
10 SPREAD ALL THE WAY UP AND SIGNIFICANTLY INVOLVED HIS
11 PENIS, AS WELL AS HIS LOWER ABDOMEN, SO HE HAD A TON OF
12 EDEMA, SO THERE'S NOTHING MEDICAL THAT I WAS ABLE TO
13 IDENTIFY AS A CAUSE OF THE SCROTAL SWELLING.

14 Q AND AGAIN, IN YOUR EXPERT OPINION, WHAT CAUSED
15 THIS INJURY TO THE SCROTUM?

16 A SOMETHING SHARP.

17 Q FINALLY, HE WILL HAVE SOME SCARS FROM THIS?

18 A YES.

19 Q AND IN YOUR OPINION, DOCTOR, WOULD YOU CONSIDER
20 THIS TO BE GREAT BODILY INJURY?

21 A YES.

22 Q IN YOUR OPINION, DOCTOR, WOULD A CHILD OF THIS
23 AGE, COULD HE HAVE DONE THAT TO HIMSELF, OR IN THIS
24 CASE?

25 A NO.

1 MS. CAMPBELL: THANK YOU. PLEASE ANSWER ANY
2 QUESTIONS DEFENSE COUNSEL HAS.

3 THE COURT: ALL RIGHT. MR. ROGERS.

4 CROSS-EXAMINATION

5 BY MR. ROGERS:

6 Q WHY DO YOU SAY THAT, DOCTOR, THAT HE COULDN'T HAVE
7 DO THAT TO HIMSELF? I'M JUST CURIOUS WHY YOU WOULD SAY
8 THAT?

9 A UNLESS THE CHILD WAS AUTISTIC OR HAD SOME TYPE OF
10 SELF-MUTILATING BEHAVIOR.

11 Q THAT'S WHAT I MEAN. YOU'VE HEARD OF PEOPLE THAT
12 CUT THEMSELVES, CORRECT?

13 A PEOPLE WITH SELF-MUTILATING BEHAVIORS.

14 Q YES.

15 A I JUST GAVE YOU THAT EXCLUSION.

16 Q OKAY. HAD THE LACERATION BEEN HALF A CENTIMETER
17 OR A CENTIMETER, THE SCROTUM WOULD NOT HAVE COME OUT --
18 THAT IS, THE TESTICLE WOULD NOT HAVE COME OUT OF THE
19 SCROTUM, WOULD IT?

20 A HALF A CENTIMETER, IT CAN'T FIT OUT.

21 Q EXACTLY, SO THERE WOULD BE SOME RATIO BETWEEN HOW
22 LONG THE CUT WAS -- IN RELATION TO WHEN THE SCROTUM
23 WOULD COME OUT?

24 A YOU MEAN THE TESTICLE?

25 Q I'M SORRY, YES, FORGIVE ME, THE TESTICLE.

1 A YES, OBVIOUSLY, IT'S A MATTER OF DIMENSIONS.

2 Q OKAY. YOU'RE FAMILIAR WITH THE BINOCULAR SURGICAL
3 OPERATING MICROSCOPE?

4 A YES, I AM.

5 Q AND IT IS USED FORENSICALLY IN MANY CASES TO
6 ACTUALLY GET A BETTER IDEA OF THE TYPE OF LACERATION OF
7 WHAT CAUSED THE LACERATION, WHETHER IT WAS SMOOTH OR
8 JAGGED, THAT TYPE OF THING, CORRECT?

9 A IT IS.

10 Q AND YOU DID NOT USE ONE IN THIS CASE?

11 A I HAVE NEVER USED ONE. I DON'T EVEN KNOW IF ONE
12 EXISTS IN THE HOSPITAL.

13 Q BUT YOU HAVE HEARD OF IT?

14 A I'VE HEARD OF IT ON C.S.I.

15 MR. ROGERS: OKAY. THANK YOU, DOCTOR.

16 MS. CAMPBELL: JUST ONE QUESTION, YOUR HONOR.

17 THE COURT: GO AHEAD, SOLICITOR.

18 REDIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q HE ASKED YOU ABOUT A ONE CENTIMETER CUT, COULD
21 THIS HAVE BEEN A ONE CENTIMETER CUT AND THEN TORN INTO
22 TWO INCHES?

23 A I DON'T SEE HOW THAT'S POSSIBLE, NOT WITHOUT
24 ANESTHESIA.

25 MS. CAMPBELL: THANK YOU.

1 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

2 MR. ROGERS: I HAVE ONE QUESTION, YOUR HONOR.

3 THE COURT: I'M SORRY, GO AHEAD, MR. ROGERS.

4 RECROSS EXAMINATION

5 BY MR. ROGERS

6 Q DOCTOR, NOT WITHOUT GREAT PAIN, CORRECT?

7 A TREMENDOUS PAIN. THAT'S WHY WE HAVE ANESTHESIA.

8 MR. ROGERS: OKAY.

9 THE COURT: ANYTHING FURTHER?

10 MS. CAMPBELL: NO, SIR.

11 THE COURT: MAY HE BE EXCUSED?

12 MS. CAMPBELL: NO OBJECTION.

13 THE COURT: ANY OBJECTION?

14 MR. ROGERS: NO OBJECTION.

15 THE COURT: DOCTOR, YOU ARE EXCUSED.

16 ALL RIGHT, SOLICITOR.

17 MS. HALL: THE STATE CALLS SERGEANT RANDY STRANGE.

18 SERGEANT RANDY STRANGE,

19 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
21 NAME FOR THE RECORD.

22 THE WITNESS: RANDY H. STRANGE.

23 DIRECT EXAMINATION

24 BY MS. HALL:

25 Q THANK YOU, SERGEANT STRANGE. WHERE DO YOU WORK?

1 (WHEREUPON, THERE WAS A BENCH CONFERENCE.)

2 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

3 THE COURT: ALL RIGHT. THE STATE IS READY?

4 MS. CAMPBELL: YES, SIR.

5 THE COURT: THE DEFENSE IS READY?

6 MR. ROGERS: YES, SIR.

7 THE COURT: ANY MATTERS TO TAKE UP BEFORE THE JURY
8 GETS BACK?

9 MS. CAMPBELL: NO, SIR.

10 MR. ROGERS: NO, SIR.

11 THE COURT: BRING THE JURY IN, PLEASE.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 2:15 P.M.)

14 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

15 THE COURT: ALL RIGHT. THANK YOU. SOLICITOR YOU
16 MAY CALL YOUR NEXT WITNESS.

17 MS. CAMPBELL: MAY IT PLEASE THE COURT. THE STATE
18 CALLS INVESTIGATOR ROY LIVINGSTON.

19 ROY LIVINGSTON,

20 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: PLEASE HAVE A SEAT ON THE WITNESS
22 STAND AND STATE YOUR NAME FOR THE RECORD.

23 THE WITNESS: ROY LIVINGSTON.

24 DIRECT EXAMINATION

25 BY MS. CAMPBELL:

1 Q INVESTIGATOR LIVINGSTON, WHERE ARE YOU EMPLOYED?

2 A WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

3 Q WHAT DO YOU DO THERE, SIR?

4 A I'M AN INVESTIGATOR WITH THE SPECIAL VICTIM'S
5 UNIT.

6 Q WHAT IS THE SPECIAL VICTIM'S UNIT?

7 A THE SPECIAL VICTIM'S UNIT, WE HAVE THREE TASKS, WE
8 INVESTIGATE CHILD AND ELDER ABUSE CRIMES AND SEX
9 CRIMES.

10 Q I'M GOING TO TURN YOUR ATTENTION BACK TO AUGUST OF
11 LAST YEAR, AUGUST 16TH. DID YOU BECOME INVOLVED, OR
12 GET ASSIGNED TO A CASE WITH A VICTIM NAMED ~~VICTIM~~
13 ?

14 A I WAS.

15 Q OKAY. WHAT DID YOU DO ON THAT CASE INITIALLY AS
16 PART OF YOUR INVESTIGATION?

17 A WHAT I INITIALLY DID WAS I WAS TOLD TO GO TO THE
18 HOSPITAL. HE WAS IN THE HOSPITAL. I RESPONDED TO THE
19 HOSPITAL THAT MORNING AFTER COMING INTO WORK. I WAS
20 TOLD BY SERGEANT STRANGE THAT THERE WAS A CHILD IN THE
21 HOSPITAL, THAT A UNIFORM OFFICER THERE AT THE HOSPITAL
22 NEEDED AN INVESTIGATOR AND SO I RESPONDED THEN TO THE
23 HOSPITAL.

24 Q AND THAT WOULD HAVE BEEN ON AUGUST 16TH, 2000?

25 A YES, I WAS.

1 Q AND APPROXIMATELY WHAT TIME OF THE DAY WAS IT WHEN
2 YOU GOT TO THE HOSPITAL?

3 A 9:30 IN THE MORNING.

4 Q THE FIRST PERSON YOU MET WITH, I BELIEVE, WAS A
5 SOCIAL WORKER THERE IN THE HOSPITAL?

6 A YES, IT WAS A SOCIAL WORKER AND THE RESPONDING
7 OFFICER.

8 Q YOU CAN'T SAY WHAT THEY TOLD YOU, BUT DID THEY
9 BRIEF YOU ON THE SITUATION AT HAND?

10 A YES, THEY DID.

11 Q ONCE YOU HAD GOTTEN THAT INFORMATION FROM THEM,
12 DID YOU COME IN CONTACT WITH THE FATHER AND THE
13 STEPMOTHER OF THE CHILD?

14 A YES, I DID.

15 Q TELL THE JURY HOW THAT HAPPENED AND BASICALLY WHAT
16 INFORMATION -- YOU CAN'T SAY WHAT THE FATHER SAID, BUT
17 YOU CAN SAY WHAT INFORMATION WAS RELATED TO YOU BY
18 MIAMA KROMAH.

19 A OKAY. I WALKED INTO THE R.O., WHICH IS RESPONDING
20 OFFICER, AND THE SOCIAL WORKER WHO WERE TURNING INTO
21 THE ROOM WHERE THE VICTIM WAS.

22 I MET WITH THE STEPMOTHER AND THE FATHER, AND THE
23 STEPMOTHER, I STARTED ASKING QUESTIONS OF WHAT HAPPENED
24 TO THE VICTIM BECAUSE THE R.O. HAD ALREADY INFORMED ME
25 AS TO WHAT HE HAD SEEN, WHAT HAD HAPPENED TO THE

1 VICTIM, SO I ASKED THE STEPMOTHER AND THE FATHER WHAT
2 HAD HAPPENED, AND, OF COURSE, THEY BRIEFED ME AS TO
3 WHAT HAPPENED.

4 Q BEFORE WE GET ANY FURTHER, I JUST WANT TO SHOW YOU
5 ONE PHOTOGRAPH, THE CHILD WE'RE TALKING ABOUT, STATE'S
6 EXHIBIT 29. DOES THAT REFLECT THE CHILD, Victim
7 ?

8 A YES, IT IS.

9 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE OFFER
10 STATE'S EXHIBIT 29 INTO EVIDENCE.

11 THE COURT: HAVE YOU SEEN THAT, MR. ROGERS?

12 MR. ROGERS: YES, SIR.

13 THE COURT: ANY OBJECTION?

14 MR. ROGERS: NO, YOUR HONOR.

15 THE COURT: STATE'S 29 IS ADMITTED.

16 (WHEREUPON, STATE'S EXHIBIT 29 WAS ADMITTED INTO
17 EVIDENCE.)

18 BY MS. CAMPBELL:

19 Q INVESTIGATOR, ACCORDING TO YOUR INFORMATION OF
20 WHAT MIAMI KROMAH RELATED TO YOU, CAN YOU TELL THIS
21 JURY EXACTLY WHAT SHE TOLD YOU THE FIRST TIME YOU CAME
22 IN CONTACT WITH HER?

23 A YES, SHE TOLD ME, SHE SAID SHE HAD PICKED THE
24 VICTIM UP FROM HER SISTER'S RESIDENCE AND CARRIED HIM
25 HOME AND SHE STATED THEY HAD WATCHED TELEVISION. SHE

1 WAS GETTING HIM READY TO GO TO SCHOOL THE NEXT DAY.
2 SHE WENT INTO THE BATHROOM TO RUN HIS BATH WATER AND TO
3 GET HIM READY. WHEN SHE TOOK HIS CLOTHES OFF, SHE
4 NOTICED THAT HIS PRIVATE AREA WAS SWOLLEN. SHE SAID
5 THAT HE MADE A FROWN ON HIS FACE, LIKE IT WAS A FROWN
6 OF PAIN. SHE ASKED HIM WHAT WAS WRONG AND THAT'S WHEN
7 HE TOLD HER THAT HE WAS HURTING IN HIS PRIVATE AREA.
8 OF COURSE, SHE LOOKED DOWN TO SEE THAT. SHE THEN
9 SAID -- SHE TOLD ME THAT SHE TOOK A HOT CLOTH AND PUT
10 ON THE AREA TO HELP THE SWELLING.

11 Q THE NOTES YOU HAVE FROM THAT CONVERSATION, ARE
12 THOSE ON PAGE ONE OF YOUR FOLLOW-UP?

13 A YES, IT IS.

14 Q IF I CAN REFER YOU SPECIFICALLY TO THE PART WHERE
15 THE IT SAYS "THE VICTIM TOOK OFF HIS CLOTHES AND THE
16 GENITALS WERE SWOLLEN..."-- IT'S ABOUT HALFWAY DOWN,
17 THE FIRST PARAGRAPH.

18 (PAUSE)

19 A OKAY.

20 Q DO YOU SEE WHAT I'M TALKING ABOUT?

21 A WHERE -- WAS IN THE TUB?

22 MS. CAMPBELL: MAY I APPROACH, YOUR HONOR?

23 THE COURT: YES.

24 (PAUSE)

25 BY MS. CAMPBELL:

1 Q THE NEXT LINE. SPECIFICALLY, DO YOUR NOTES
2 REFLECT WHAT SHE TOLD YOU AT THAT POINT?

3 A SHE STATED SHE PUT HIM IN THE BATH WATER AND PUT
4 SOME WARM WATER ON HIM.

5 Q WHAT DID SHE SAY SHE NOTICED AT THAT POINT?

6 A AT THAT POINT SHE SAID SHE NOTICED THE BLOOD
7 APPEARED.

8 Q AT THAT POINT WHAT DID SHE DO WITH THE VICTIM?

9 A SHE STATED SHE PUT HIM IN THE TUB AND PUT A TOWEL
10 AROUND HIM.

11 Q AND THEN DID SHE DO ANYTHING WHAT WITH THE VICTIM?

12 A SHE SAID SHE TOOK THE VICTIM -- AT THAT TIME, SHE
13 TOOK THE VICTIM TO THE LEXINGTON MEDICAL CENTER.

14 Q DID SHE ALSO GIVE YOU SOME OTHER INFORMATION ABOUT
15 THE CARE OF THE CHILD ON A DAILY BASIS?

16 A YES, SHE TOLD ME THAT ON A DAILY BASIS SHE WOULD
17 PICK HIM UP FROM HER SISTER'S RESIDENCE. SHE HAD A SON
18 HIS AGE. SHE WOULD PICK HIM UP AND SHE WOULD KEEP HIM
19 AT HER HOUSE UNTIL -- THE SISTER WOULD KEEP HIM AT HER
20 HOUSE UNTIL SHE GOT OFF WORK AND THEN SHE WOULD COME
21 OVER AND PICK HIM UP AND TAKE HIM HOME.

22 Q DID YOU ALSO GET SOME ADDITIONAL INFORMATION FROM
23 MUSA KROMAH, THE FATHER?

24 A YES, I DID.

25 Q AFTER YOU SPOKE TO THEM BRIEFLY, AT THAT POINT HAD

1 THE CHILD GONE INTO SURGERY YET?

2 A WHEN I GOT TO THE ROOM THAT MORNING, AS I WAS
3 WALKING INTO THE ROOM -- WELL, LET ME BACK UP. BEFORE
4 GOING TO THE HOSPITAL, I HAD ALREADY NOTIFIED FORENSICS
5 TO MEET ME AT THE HOSPITAL. AS I GOT TO THE HOSPITAL
6 AND GOT TO THE ROOM, AS I WAS TALKING WITH THE PARENTS,
7 INVESTIGATOR OATES CAME IN WHO WAS FROM THE FORENSIC
8 SECTION AND RIGHT BEHIND HIM CAME THE SURGICAL TEAM TO
9 TAKE *victim* UP TO SURGERY.

10 Q AND JUST FOR THE RECORD, THE PHOTOGRAPHS WE'RE
11 REFERRING TO THAT ARE SHOWING SOME OF THE BRUISING AND
12 THE GENITAL AREA, THOSE WERE TAKEN BY INVESTIGATOR
13 OATES?

14 A YES, THEY WERE.

15 Q AND THOSE WERE TAKEN THAT MORNING PRIOR TO THE
16 SURGERY?

17 A YES.

18 Q AFTER SPEAKING WITH THE PARENTS, DID YOU MAKE
19 CONTACT WITH THE DOCTOR, DR. ERIN FIELDS, NOW DR. ERIN
20 HARRIS?

21 A YES, I DID.

22 Q AND YOU CAN'T SAY WHAT SHE SAID, BUT DID SHE GIVE
23 YOU SOME INFORMATION ABOUT THE TYPE OF INJURY AND HOW
24 IT MAY HAVE BEEN INFLECTED?

25 A YES, SHE DID.

1 Q ONCE THE WOUNDS HAD BEEN PHOTOGRAPHED AND
2 EVERYTHING, AT THAT POINT WAS THE CHILD TAKEN INTO
3 SURGERY THAT DAY?

4 A YES, HE WAS.

5 Q DID YOU MAKE ANY CONTACT WITH EITHER THE FATHER OR
6 THE STEPMOTHER THAT DAY?

7 A NOT THAT DAY, I DIDN'T.

8 Q ONE THING I WANT TO ASK YOU IN THIS CASE AND IN
9 THE INVESTIGATION OF THIS CASE, WAS A -- THERE'S BEEN
10 MENTION OF A WASHCLOTH AND/OR A TOWEL IN THIS CASE.
11 WAS THERE EVER A BLOODY WASHCLOTH RECOVERED IN THIS
12 CASE?

13 A NO, THERE WAS NOT.

14 Q HOW ABOUT A BLOODY TOWEL?

15 A NO, THERE WAS NOT.

16 Q MOVING ON TO AUGUST 17TH OF 2005, THAT NEXT
17 MORNING, DID YOU GO BACK TO THE HOSPITAL AND GET SOME
18 MORE INFORMATION?

19 A YES, I DID.

20 Q AND WHO DID YOU MEET WITH THEN?

21 A I MET WITH AGAIN THE SOCIAL WORKER, MS. AMY
22 GRANGER, AT THE HOSPITAL.

23 Q THAT NEXT MORNING, DID YOU ALSO HAVE AN
24 OPPORTUNITY TO MEET WITH THE FATHER, MUSA KROMAH,
25 AGAIN?

1 A YES, I DID.

2 Q DID YOU HAVE A CONVERSATION WITH HIM? AGAIN, YOU

3 CAN'T SAY WHAT IT WAS..

4 A YES, WE DID.

5 Q AT THAT POINT, DID YOU SET UP A TIME FOR A MORE

6 FORMAL INTERVIEW OF BOTH MR. AND MRS. KROMAH?

7 A I DID.

8 Q ALL RIGHT. AND WHEN WERE YOU SUPPOSED TO MEET

9 WITH THEM THAT DAY?

10 A I ASKED THEM TO MEET ME AT MY OFFICE, WHICH IS ON

11 TWO NOTCH ROAD AT 1400, WHICH IS TWO O'CLOCK THAT

12 AFTERNOON.

13 Q AND LATER THAT AFTERNOON DID YOU, IN FACT, MEET

14 WITH MR. AND MRS. KROMAH?

15 A I DID.

16 Q AND WHAT TIME DID THAT TAKE PLACE, SIR?

17 A IT TOOK PLACE ABOUT 1500, WHICH IS THREE O'CLOCK.

18 Q AND WHERE DID THAT INTERVIEW TAKE PLACE?

19 A IT TOOK PLACE AT THE RICHLAND COUNTY SHERIFF'S

20 DEPARTMENT ON TWO NOTCH ROAD.

21 Q WHO ALL WAS PRESENT WHEN YOU WERE DOING THOSE

22 INTERVIEWS?

23 A DURING THE INTERVIEW, JUST MYSELF AND -- THE

24 WIFE AND THE HUSBAND WERE NOT AT THE SAME TIME, WHEN I

25 FIRST GOT THERE, I HAD BOTH OF THEM IN MY OFFICE TO

1 TALK TO BOTH OF THEM, BUT I DIDN'T KNOW WHAT WAS GOING,
2 TO HAPPEN, SO THEN I TOOK ONE OUT AND KEPT ONE -- TOOK
3 A STATEMENT FROM ONE AND THEN DID THE SAME THING WITH
4 THE OTHER.

5 Q WHO DID YOU INTERVIEW FIRST THAT DAY?

6 A THE HUSBAND.

7 Q AND AFTER INTERVIEWING HIM, DID YOU HAVE AN
8 OPPORTUNITY TO INTERVIEW MIAMA KROMAH?

9 A YES, I DID.

10 Q AND TELL THE JURY HOW THAT TOOK PLACE AND
11 BASICALLY WHAT KIND OF INFORMATION YOU WERE TRYING TO
12 GET?

13 A WHAT I WAS TRYING TO DO IS FIND OUT EXACTLY WHAT
14 HAPPENED TO THE CHILD, TO THE VICTIM, BECAUSE SHE
15 WAS -- HE WAS IN HER CARE. I WAS TRYING TO FIND OUT
16 WHAT HAPPENED, AND I WANTED THE CHRONOLOGICAL FOR WHAT
17 HAPPENED FROM THE TIME SHE PICKED HIM UP UNTIL SHE GOT
18 TO THE HOSPITAL.

19 Q AT THAT POINT WAS SHE UNDER ARREST?

20 A NO, SHE WAS NOT.

21 Q WAS SHE IN CUSTODY?

22 A NO, SHE WAS NOT.

23 Q DID YOU ADVISE HER OF HER RIGHTS BEFORE YOU TALKED
24 TO HER THAT DAY?

25 A NO, I DID NOT.

1 Q WHY NOT?

2 A BECAUSE SHE WAS NOT A SUSPECT AT THE TIME.

3 Q AT THAT TIME, DID YOU TAKE A FORMAL STATEMENT FROM
4 MS. KROMAH?

5 A I DID.

6 Q AND DO YOU HAVE THE ORIGINAL IN YOUR FILE?

7 THE COURT: MR. ROGERS. MR. ROGERS.

8 MR. ROGERS: I'M SORRY, WE APOLOGIZE.

9 BY MS. CAMPBELL:

10 Q AND THIS TWO PAGE FORM, IS THIS THE INFORMATION
11 THAT SHE GAVE YOU AND THE FORMALIZED STATEMENT ON
12 AUGUST 17TH?

13 A YES, IT IS.

14 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE WOULD
15 OFFER THE STATEMENT INTO EVIDENCE.

16 THE COURT: IS THERE ANY OBJECTION, MR. ROGERS?

17 MR. ROGERS: LET ME LOOK AT IT.

18 MR. ROGERS: NO OBJECTION.

19 THE COURT: STATE'S 32 IS ADMITTED WITHOUT
20 OBJECTION.

21 (WHEREUPON, STATE'S EXHIBIT 32 WAS MARKED FOR
22 IDENTIFICATION AND ADMITTED INTO EVIDENCE.)

23 MS. CAMPBELL: THANK YOU.

24 BY MS. CAMPBELL:

25 Q INVESTIGATOR, CAN YOU GO THROUGH BASICALLY THE

1 IMPROPER QUESTION, BASED ON THAT INFORMATION. WE'VE
2 ALREADY DISCUSSED THIS. MAY WE APPROACH THE BENCH?

3 THE COURT: YES, SIR. COME UP.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
5 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE
6 JURY.)

7 THE COURT: ALL RIGHT. THE OBJECTION IS
8 OVERRULED. YOU MAY CONTINUE, SOLICITOR.

9 BY MS. CAMPBELL:

10 Q BASED ON YOUR INVESTIGATION, WHAT DID YOU DO THE
11 NEXT DAY, INVESTIGATOR LIVINGSTON?

12 A I PLACED MS. KROMAH UNDER ARREST.

13 Q DURING THE COURSE OF YOUR INVESTIGATION, WERE YOU
14 ABLE TO DETERMINE WHO ALL WAS LIVING AT THAT APARTMENT
15 OUT AT ST. ANDREWS?

16 A YES, I WAS.

17 Q AND WHO ALL WAS LIVING THERE?

18 A MR. AND MS. KROMAH, Victim, AND THEY HAD A
19 ROOMMATE, AS WELL THAT WAS LIVING THERE.

20 Q AND BASED ON THE INVESTIGATION, THERE WERE SEVERAL
21 PARTIES IN AND AROUND Victim THAT DAY. WERE YOU ABLE
22 TO ELIMINATE ANY OF THEM AS SUSPECTS?

23 A YES, I DID.

24 Q AND WHO WERE YOU ABLE TO ELIMINATE?

25 A MR. KROMAH, HIS ROOMMATE, AND THE -- HIS

1 SISTER-IN-LAW.

2 Q DID THE DEFENDANT EVER INDICATE TO YOU WHAT HER
3 OCCUPATION WAS?

4 A YES, SHE DID.

5 Q WHAT WAS IT?

6 A SHE WAS A STUDENT AT SOUTH CAROLINA STATE
7 UNIVERSITY, AND ALSO THAT SHE WORKED PART TIME AT THE
8 BRIAN CENTER.

9 Q AND IS BRIAN CENTER A TYPE OF MEDICAL CENTER?

10 A YES, IT IS.

11 Q DURING THE COURSE OF YOUR INVESTIGATION -- AND I
12 SKIPPED SOMETHING, I'M SORRY. WHILE YOU WERE AT THE
13 HOSPITAL THE NIGHT BEFORE, AFTER TALKING TO THE CHILD,
14 DID YOU ALSO MAKE CONTACT WITH THE STAFF THERE AT THE
15 HOSPITAL?

16 A YES, I DID.

17 Q AND WHAT DID YOU TELL THEM YOU WERE GOING TO DO AS
18 FAR AS WHAT WAS GOING TO HAPPEN TO THE CHILD?

19 A I TOLD THE STAFF THAT BEFORE THE CHILD WAS
20 RELEASED FROM THE HOSPITAL TO NOTIFY THE RICHLAND
21 COUNTY SHERIFF'S DEPARTMENT, AND SPECIFICALLY MYSELF
22 BECAUSE I WAS GOING TO TAKE THE CHILD INTO EMERGENCY
23 PROTECTIVE CUSTODY. HE WOULD NOT BE RELEASED TO THE
24 PARENTS.

25 Q AND THAT WOULD MEAN THE DEFENDANT OR HER HUSBAND?

1 A THAT'S CORRECT.

2 Q DID D.S.S. BECOME INVOLVED IN THIS CASE?

3 A YES, THEY DID.

4 Q DO YOU KNOW THIS CHILD'S BIRTHDAY, *victim*

5 A YES, I DO.

6 Q WHAT IS IT?

7 A HIS BIRTHDAY IS 02/26/02.

8 Q FEBRUARY 26TH OF '02?

9 A YES, IT IS.

10 Q THANK YOU.

11 MS. CAMPBELL: I DON'T HAVE ANYTHING FURTHER.

12 THE COURT: ALL RIGHT. MR. ROGERS.

13 MR. ROGERS: MAY IT PLEASE THE COURT.

14 THE COURT: YES, SIR.

15 CROSS-EXAMINATION

16 BY MR. ROGERS:

17 Q YOU'RE THE MAIN CASE INVESTIGATOR ON THIS CASE,
18 CORRECT?

19 A YES, I AM.

20 Q AND AS SUCH YOU'RE RESPONSIBLE FOR MARSHALLING ALL
21 THE EVIDENCE, GATHERING ALL THE EVIDENCE?

22 A I ALSO HAVE ASSISTANCE TO HELP ME WITH THE
23 EVIDENCE.

24 Q BUT THE BUCK STOPS WITH YOU, RIGHT, YOU TELL
25 EVERYONE ELSE, RIGHT?

- 1 A THEY LET ME KNOW WHAT THEY COLLECTED.
- 2 Q YOU TELL EVERYBODY ELSE WHAT TO DO?
- 3 A BASICALLY.
- 4 Q AND YOU'RE RESPONSIBLE FOR MAKING SURE THAT
- 5 EVIDENCE GETS SENT TO S.L.E.D. FOR ANALYSIS?
- 6 A IF IT NEEDS TO GO, YES.
- 7 Q AND YOU DID THAT IN THIS CASE?
- 8 A YES.
- 9 Q AND YOU'RE RESPONSIBLE FOR CONDUCTING ANY OTHER
- 10 INVESTIGATION SURROUNDING THESE FACTS?
- 11 A YES.
- 12 Q OKAY. AFTER YOU CONDUCTED YOUR INTERVIEW WITH
- 13 MRS. KROMAH AND MR. KROMAH, DID YOU GO TO THE APARTMENT
- 14 YOURSELF?
- 15 A NO, I DID NOT.
- 16 Q YOU SENT SERGEANT GRAINGER?
- 17 A STRANGE.
- 18 Q STRANGE?
- 19 A STRANGE, YES.
- 20 Q YOU SENT HIM?
- 21 A YES.
- 22 Q AND DID YOU INSTRUCT HIM TO DO CERTAIN THINGS?
- 23 A YEAH, I TOLD HIM WHAT TO LOOK FOR WHILE HE WAS IN
- 24 THE APARTMENT.
- 25 Q WHICH WAS?

1 A TO LOOK FOR THE BLOODY DIAPERS, THE CLOTHING, ANY
2 CLOTHING, TOWELS OR WHATEVER.

3 Q AND HE DID THAT?

4 A YES, HE DID.

5 Q DID YOU EVER GO TO THE APARTMENT YOURSELF?

6 A NO, I NEVER DID.

7 Q DID YOU EVER GO TO THE SURROUNDING APARTMENTS AND
8 CONDUCT AN INVESTIGATION TO DETERMINE IF ANYONE HEARD
9 ANY CHILD SCREAMING THE NIGHT BEFORE?

10 A NO, I DID NOT.

11 Q A COUPLE OF NIGHTS BEFORE?

12 A NO.

13 Q WHY NOT?

14 A THERE WAS NO NEED TO DO THAT.

15 Q OKAY. NOW MS. KROMAH TOLD YOU THAT SHE HAD PICKED
16 UP HIM UP FROM HER SISTER'S?

17 A YES.

18 Q AND THAT SHE HAD TAKEN HIM HOME, PUT HIM IN THE
19 BATHTUB AND BEFORE SHE PUT HIM IN THE BATHTUB SHE SAW
20 THE SWELLING?

21 A THEY WERE IN THE BATHROOM.

22 Q IN THE BATHROOM?

23 A UH-HUH.

24 Q AND IT WAS ONLY AFTER SHE HAD PUT THE TOWEL ON THE
25 SWELLING IS WHEN SHE FIRST SAW BLOOD?

- 1 A THAT'S CORRECT.
- 2 Q OKAY. AND THEN SHE TOLD YOU THAT SHE PUT A DIAPER
- 3 ON HIM OR A PAMPER ON HIM?
- 4 A A PULL-UP.
- 5 Q A PULL-UP, BUT THAT HE WAS STILL WET AND SHE TOOK
- 6 THAT ONE OFF AND PUT THAT IN THE TRASH, I MEAN, IN THE
- 7 HAMPER?
- 8 A RIGHT.
- 9 Q SO YOU KNEW THAT THERE WOULD BE A BLOODY DIAPER
- 10 THERE IN THE HAMPER OR TRASH?
- 11 A YES.
- 12 Q SHE DIDN'T ATTEMPT TO TELL YOU THAT SHE DIDN'T
- 13 KNOW WHAT HAPPENED TO THE PULL-UP?
- 14 A NO, SHE DIDN'T.
- 15 Q AND THERE WAS NO ATTEMPT MADE TO SAY -- TO HIDE
- 16 THE PAMPER?
- 17 A NO.
- 18 Q OKAY. IT WAS RIGHT THERE WHERE SHE TOLD YOU THAT
- 19 YOU WOULD FIND IT?
- 20 A YES.
- 21 Q OKAY. DID YOU GO TO MS. GAROWAY'S APARTMENT?
- 22 A NO, I DID NOT.
- 23 Q BUT YOU WERE AWARE THAT VICTIM HAD BEEN PRESENT
- 24 THERE?
- 25 A YES.

1 Q AND YOU WERE AWARE THAT VICTIM HAD BEEN PRESENT
2 THERE DURING A TIMEFRAME THAT THE INJURY COULD HAVE
3 OCCURRED?

4 A I KNEW HE HAD BEEN THERE, YES.

5 Q YOU HEARD THE DOCTORS SAY YESTERDAY THAT THE
6 INJURY COULD HAVE OCCURRED WITHIN A 24 HOUR PERIOD FROM
7 WHEN SHE SAW HIM THAT MORNING AT SIX O'CLOCK, CORRECT?

8 Q YES.

9 A WERE YOU AWARE OF THAT AT THE TIME YOU WERE
10 CONDUCTING YOUR INVESTIGATION?

11 A THAT HE WAS IN THE HOUSE?

12 Q NO, THAT THE INJURY COULD HAVE OCCURRED WITHIN A
13 24 HOUR WINDOW?

14 A AT THAT TIME, NO.

15 Q OKAY. HAD YOU KNOWN THAT, WOULD YOUR
16 INVESTIGATION HAVE CHANGED?

17 A HAD I KNOWN THAT HE POSSIBLY COULD HAVE BEEN
18 INJURED AT THE HOUSE, I WOULD HAVE GONE TO THE HOUSE,
19 BUT I DIDN'T.

20 Q OKAY. SO THAT IF THERE WAS ANY EVIDENCE AT
21 MS. GAROWAY'S HOUSE THAT WOULD CORROBORATE WHAT
22 HAPPENED, YOU DIDN'T LOOK FOR THAT?

23 A I DIDN'T GO TO MS. GAROWAY'S APARTMENT.

24 Q AND DID YOU GO TO ST. STEPHEN'S NURSERY SCHOOL?

25 A NO, I DID NOT.

1 Q AND YOU WERE AWARE THAT *Victim* HAD BEEN IN
2 ST. STEPHEN'S NURSERY SCHOOL?

3 A YES.

4 Q WITHIN THE PERIOD THAT THIS COULD HAVE OCCURRED?

5 A YES.

6 Q BUT YOU DIDN'T GO THERE EITHER?

7 A NO, I DID NOT.

8 Q OKAY. WHEN YOU WERE TALKING WITH MUSA AND MIAMA,
9 DID YOU MENTION TO THEM OR ASK THEM DID THEY DO IT?

10 A I REMEMBER ASKING HER, NOT MR. KROMAH BECAUSE HE
11 WAS AT WORK.

12 Q WELL, YOU EVENTUALLY TALKED TO MR. KROMAH?

13 A YES.

14 Q DID YOU MENTION ANYTHING TO THEM ABOUT THIS WAS --
15 OR DID YOU ASK THEM WAS THIS SOMETHING CULTURAL OR
16 RITUAL BECAUSE THEY WERE AFRICAN?

17 A I DID NOT ASK THAT QUESTION. THAT QUESTION DID
18 COME UP, BUT IT DID NOT COME FROM ME.

19 Q THAT CAME UP?

20 A IT DID NOT COME FROM LAW ENFORCEMENT, PERIOD.

21 Q IT CAME UP FROM WHO?

22 A THE DEPARTMENT OF SOCIAL SERVICES.

23 Q SO THERE HAD BEEN SOME TALK PRIOR TO YOUR GETTING
24 THE ARREST WARRANT FOR MS. KROMAH THAT THIS ACTION WAS
25 CULTURAL OR RITUAL?

1 A I DON'T KNOW WHEN IT CAME UP, BUT I DON'T THINK IT
2 WAS BEFORE I MADE THE ARREST.

3 Q BUT YOU GOT THE WARRANT TWO DAYS LATER ON THE
4 18TH; IS THAT RIGHT?

5 A ON THE 18TH. IT WASN'T -- I WAS DOING MY OWN
6 INVESTIGATION AND D.S.S. WAS DOING THEIR OWN
7 INVESTIGATION.

8 Q SO YOU NEVER SAID ANYTHING TO MUSA OR MIAMA
9 QUESTIONING THEM ABOUT WHETHER OR NOT THIS WAS
10 SOMETHING RITUAL OR CULTURAL?

11 A I DID NOT.

12 Q YOU DID NOT?

13 A I DID NOT.

14 Q OKAY. DID YOU SEE SOMETHING? DID YOU SEE THE
15 NEWS REPORTS OF MS. KROMAH'S ARREST ON W.I.S. TV AND IN
16 THE NEWSPAPER?

17 A I THINK I READ IT IN THE NEWSPAPER, BUT I DID NOT
18 SEE IT ON TELEVISION.

19 Q DID YOU READ IN THE NEWSPAPER THAT THERE WAS A
20 SUSPICION THAT THIS INJURY MAY HAVE BEEN CAUSED DUE TO
21 SOME CULTURAL OR RITUAL REASON?

22 A I DO NOT REMEMBER READING THAT, NO.

23 Q AND, OF COURSE, YOU DIDN'T GIVE AN INTERVIEW TO
24 THE NEWSPAPER?

25 A NO, I DID NOT.

1 Q AND YOU WEREN'T RESPONSIBLE FOR GIVING AN ACCOUNT
2 OF THE ARREST TO W.I.S. TELEVISION?

3 A NO, I WAS NOT.

4 Q SO YOU DON'T KNOW HOW THEY WOULD HAVE GOTTEN THAT
5 INFORMATION?

6 A NO, I DON'T.

7 Q OKAY. BUT IT'S CLEAR IN YOUR MIND THAT YOU NEVER
8 MENTIONED THAT TO MUSA OR MIAMA?

9 A THAT'S CORRECT.

10 Q YOU DIDN'T SAY ANYTHING TO MUSA THAT, "MAN, IF
11 THIS IS CULTURAL YOU WON'T --

12 MS. CAMPBELL: OBJECTION. I THINK HE HAS ANSWERED
13 THIS QUESTION.

14 THE COURT: SUSTAINED.

15 MR. ROGERS: YOUR HONOR, I'M ON CROSS-EXAMINATION.

16 THE COURT: YES, SIR, YOU ARE, BUT WHEN HE SAYS HE
17 HADN'T TALKED TO HIM, IT DOESN'T MAKE ANY SENSE TO KEEP
18 ASKING HIM WHAT HE DIDN'T SAY. I SUSTAIN THE
19 OBJECTION.

20 MR. ROGERS: YES, YOUR HONOR.

21 BY MR. ROGERS:

22 Q DID YOU THINK IT WAS RITUAL OR CULTURAL?

23 A NO, I DID NOT.

24 Q YOU DID NOT?

25 A NO.

1 Q WHO TOOK THE PHOTOGRAPHS IN THE HOSPITAL?

2 A INVESTIGATOR -- OFFICER OATES.

3 Q IS HE SOMEONE FROM THE RICHLAND COUNTY SHERIFF'S
4 DEPARTMENT?

5 A YES. HE'S FROM THE RICHLAND COUNTY SHERIFF'S
6 DEPARTMENT FORENSICS UNIT.

7 Q THERE WAS NOT A HOSPITAL PHOTOGRAPHER THERE?

8 A I DID NOT SEE ONE, NO.

9 Q SO BASICALLY YOUR INVESTIGATION IN THIS CASE
10 CONSISTED OF TALKING TO THE KROMAHS, TALKING TO THE
11 SISTER AND TALKING TO THE DOCTORS, CORRECT?

12 A CORRECT.

13 Q AND NOTHING ELSE?

14 A NOTHING ELSE.

15 MR. ROGERS: BEG THE COURT'S INDULGENCE ONE
16 MOMENT?

17 THE COURT: YES, SIR.

18 (PAUSE)

19 THE COURT: REDIRECT.

20 MS. CAMPBELL: JUST A COUPLE OF QUESTIONS.

21 REDIRECT EXAMINATION

22 BY MS. CAMPBELL:

23 Q IN YOUR INVESTIGATION, YOU WERE AWARE THAT

24 SERGEANT STRANGE WAS EXECUTING A CONSENT TO SEARCH?

25 A I WAS.

1 Q THAT WAS ON THE 17TH; IS THAT CORRECT?

2 A YES.

3 Q WOULD THAT HAVE BEEN AT THE SAME TIME YOU WERE
4 INTERVIEWING OR BEFORE YOU INTERVIEWED MR. AND
5 MRS. KROMAH?

6 A YES. IT WAS DONE WHILE MS. KROMAH WAS BEING
7 INTERVIEWED.

8 Q OKAY. AND HE ASKED YOU ABOUT WHAT EVIDENCE WAS
9 FOUND AT OTHER SCENES. WHAT EVIDENCE WAS FOUND AT THE
10 PLACE WHERE MS. KROMAH SAID THE CHILD WAS BLEEDING?

11 A THERE WAS BLOOD ON THE FLOOR.

12 Q AND IN THE TRASH CAN, ON STATE'S EXHIBIT
13 NUMBER 22, WHAT EVIDENCE WAS FOUND IN THE BATHROOM?

14 A A BLOODY PULL-UP.

15 Q IN YOUR INTERVIEW OF ANYONE, WAS THERE ANY
16 ALLEGATION THE CHILD WAS EVER BLEEDING ANYWHERE ELSE?

17 A NO.

18 Q THANK YOU, SIR.

19 MS. CAMPBELL: I DON'T HAVE ANYTHING FURTHER.

20 THE COURT: ANY RECROSS?

21 MR. ROGERS: JUST ONE QUESTION.

22 RECROSS EXAMINATION

23 BY MR. ROGERS:

24 Q DID SHE TELL YOU THAT YOU WOULD FIND BLOOD ON THE
25 FLOOR?

1 A NO, SHE DIDN'T.

2 Q SHE DIDN'T?

3 A NO.

4 MR. ROGERS: NOTHING FURTHER.

5 THE COURT: ANYTHING FURTHER, SOLICITOR?

6 MS. CAMPBELL: NO, SIR.

7 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

8 ALL RIGHT. SOLICITOR.

9 MS. HALL: YOUR HONOR, AT THIS TIME THE STATE
10 RESTS.

11 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
12 GENTLEMEN, THE STATE HAS RESTED. THERE MAY BE SOME
13 MATTERS OF LAW THAT I NEED TO TAKE UP OUTSIDE YOUR
14 PRESENCE. PLEASE DO NOT DISCUSS THE CASE. STEP BACK
15 TO THE JURY ROOM, AND I'LL HAVE YOU BACK IN A FEW
16 MINUTES. YOU'RE EXCUSED. EVERYONE ELSE STAY SEATED,
17 PLEASE.

18 (WHEREUPON, THE JURY LEFT OPEN COURT AT
19 APPROXIMATELY 2:47 P.M.)

20 THE COURT: ALL RIGHT. MR. ROGERS, ANY MOTIONS
21 FROM THE DEFENSE?

22 MR. ROGERS: YOUR HONOR, I MOVE FOR A DIRECTED
23 VERDICT BASED ON MY EARLIER MOTIONS AND OBJECTIONS. I
24 WOULD ASK THE COURT TO REVISIT THE ISSUE OF THE TWO
25 CHARGES. I HAD INITIALLY RAISED THE ISSUE OF HAVING

1 A THEY WERE WATCHING T.V.

2 Q OKAY. AND DID YATTA OR ANYONE ELSE EVER INDICATE
3 TO YOU THAT EITHER ONE OF THE CHILDREN WERE EVER HURT?

4 A NO.

5 Q WAS THERE ANY BLOOD ALL OVER YOUR BEDROOM OR
6 ANYTHING LIKE THAT?

7 A NO.

8 Q AND YOUR TESTIMONY HERE TODAY IS THAT WHILE THIS
9 CHILD WAS YOUR CARE, HE WAS FINE?

10 A HE WAS HIS NORMAL SELF.

11 MS. CAMPBELL: THANK YOU, MA'AM. I DON'T HAVE ANY
12 FURTHER QUESTIONS.

13 THE COURT: ANY REDIRECT?

14 MR. ROGERS: NO, YOUR HONOR.

15 THE COURT: THANK YOU. YOU MAY STEP DOWN.

16 THE BAILIFF: WATCH YOUR STEP.

17 MR. ROGERS: I CALL MIAMA KROMAH.

18 THE COURT: ALL RIGHT.

19 MIAMA KROMAH,

20 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
22 NAME FOR THE RECORD.

23 THE WITNESS: MY NAME IS MIAMA KROMAH.

24 DIRECT EXAMINATION

25 BY MR. ROGERS:

1 THE MIDDLE, YOU MIGHT GET A STRAY BULLET IN YOUR BODY
2 AND A ROCKET MIGHT FALL ON YOU AND CUT YOUR ARM OFF OR
3 YOUR LEG OFF OR GET HURT AND THINGS LIKE THAT. YOU ARE
4 WALKING SOMETIMES AND YOU JUST SAW DEAD BODIES THERE
5 AND...

6 Q SO WHILE YOU WERE GROWING UP, YOU SAW DEAD AND
7 MUTILATED BODIES?

8 A YEAH.

9 Q NOW, WHEN DID YOU FIRST MEET MUSA?

10 A I MET MUSA IN LIBERIA; I CAN'T REMEMBER WHEN.

11 Q SO YOU KNEW HIM IN LIBERIA?

12 A YEAH.

13 Q BUT DID YOU DATE HIM THEN?

14 A NO.

15 Q OKAY. AND DID THERE COME A TIME AFTER YOU MOVED
16 TO THIS COUNTRY THAT YOU SAW HIM AGAIN?

17 A YES.

18 Q IS THAT WHEN YOU STARTED DATING?

19 A YES.

20 Q DO YOU REMEMBER APPROXIMATELY WHAT YEAR THAT WOULD
21 HAVE BEEN?

22 A 2003, 2000 -- I'M NOT SURE.

23 Q OKAY. WHO WERE YOU LIVING WITH IN LIBERIA?

24 A MY MOM.

25 Q IS YOUR MOM HERE IN THE COURTROOM TODAY?

- 1 A YES, SHE IS.
- 2 Q WHERE IS SHE?
- 3 A IN THE WHEELCHAIR.
- 4 Q DID YOU COME TO THIS COUNTRY WITH HER?
- 5 A NO, AFTER HER.
- 6 Q AFTER HER. NOW, AFTER YOU COMPLETED YOUR
- 7 EDUCATION AT COLUMBIA HIGH, WHAT DID YOU DO?
- 8 A I DID THE C.N.A. CLASS, BECAUSE I WASN'T SURE WHAT
- 9 I WAS GOING TO, BUT I TOOK A C.N.A. CLASS AND I STARTED
- 10 TO WORK.
- 11 Q YOU'RE SAYING C.N.A.?
- 12 A YEAH, CERTIFIED NURSING ASSISTANT.
- 13 Q AND WHERE WERE YOU WORKING?
- 14 A I WORK AT BRIAN CENTER.
- 15 Q AND WERE YOU ALSO GOING TO SCHOOL?
- 16 A YEAH, NOT AT THAT POINT, BUT AFTER, A LITTLE AFTER
- 17 I STARTED WORKING.
- 18 Q OKAY. AFTER YOU FINISHED COLUMBIA HIGH, DID YOU
- 19 THEN GO TO SOME SCHOOL?
- 20 A YEAH. I WENT TO SOUTH CAROLINA STATE UNIVERSITY.
- 21 Q UNDERGRAD?
- 22 A YES.
- 23 Q AND WHAT PROGRAM DID YOU ENROLL?
- 24 A THE NURSING PROGRAM.
- 25 Q HOW FAR HAVE YOU GONE IN THAT PROGRAM?

1 A NOT FAR.

2 Q MORE THAN A YEAR OR LESS THAN A YEAR?

3 A MORE THAN A YEAR.

4 Q OKAY... WHEN DID YOU AND MUSA GET MARRIED?

5 A MARCH 15TH, 2005.

6 Q AND DID THERE COME A TIME THAT Victim CAME TO

7 LIVE WITH YOU?

8 A YES.

9 Q AND WHEN WAS THAT?

10 A THAT WAS JUNE 1ST, 2005.

11 Q BUT IN JUNE OF 2005, THAT WAS NOT THE FIRST TIME

12 YOU HAD SEEN : Victim RIGHT?

13 A NO.

14 Q YOU HAD SEEN HIM BEFORE?

15 A UH-HUH.

16 Q WHEN?

17 A HE SPENT CHRISTMAS IN THE YEAR 2004 WITH ME, AND I

18 TALKED TO HIM ON THE PHONE FREQUENTLY, AND HE CAME DOWN

19 BEFORE THAT, TOO.

20 Q OKAY. SO YOU WERE AWARE BEFORE YOU MARRIED MUSA

21 THAT HE HAD A CHILD BY ANOTHER WOMAN?

22 A YEAH.

23 Q OKAY. HOW DID YOU FEEL ABOUT THAT?

24 A I MEAN, I DIDN'T FEEL -- HE HAD A CHILD, THAT WAS

25 IT.

- 1 Q OKAY. DID YOU AND Victim GET ALONG?
- 2 A YEAH.
- 3 Q HOW DID YOU FEEL ABOUT Victim?
- 4 A I FELT GOOD ABOUT HIM, YOU KNOW. BECAUSE WE DID A
- 5 LOT OF STUFF TOGETHER. A LOT OF STUFF. I TEACH HIM
- 6 WHAT TO DO, LIKE HIS A.B.C.'S, POTTY TRAINING, AND YOU
- 7 KNOW, LOTS OF STUFF.
- 8 Q AND YOU KNEW ABOUT THE HISTORY OF Victim
- 9 HISTORY WITH HIS REAL MOTHER IN MINNESOTA?
- 10 A YEAH.
- 11 Q SO YOU KNEW WHAT ALL THAT WAS ABOUT?
- 12 A UH-HUH.
- 13 Q ANY ILL FEELINGS TOWARD Victim AT ALL?
- 14 A NO.
- 15 Q ANY ILL FEELINGS TOWARDS MUSA?
- 16 A NO.
- 17 Q OKAY. NOW, DIRECTING YOUR ATTENTION TO THIS DAY,
- 18 HAD YOU GONE TO WORK THAT DAY?
- 19 A YES.
- 20 Q AND THAT WAS AT BRIAN CENTER?
- 21 A UH-HUH.
- 22 Q AND WHAT TIME DO YOU GET OFF?
- 23 A I GET OFF AT ELEVEN O'CLOCK.
- 24 Q OKAY. WHO TOOK MUSA TO SCHOOL THAT MORNING?
- 25 A MUSA TOOK Victim TO SCHOOL THAT MORNING.

- 1 Q I'M SORRY. MUSA TOOK Victim TO SCHOOL.
- 2 A YES.
- 3 Q DO YOU REMEMBER WHAT Victim HAD ON WHEN HE WENT
- 4 TO SCHOOL THAT?
- 5 A I WAS SLEEPING.
- 6 Q I'M SORRY?
- 7 A I WAS SLEEPING. I DIDN'T GET UP.
- 8 Q OKAY. SO THEN -- WHAT TIME DID YOU GET OFF?
- 9 A I GOT OFF AT ELEVEN O'CLOCK.
- 10 Q AND WHAT DID YOU DO THEN?
- 11 A I WENT TO MY SISTER'S HOUSE TO PICK Victim UP.
- 12 Q AND DO YOU HAVE ANY IDEA ABOUT WHAT TIME YOU GOT
- 13 TO YOUR SISTER'S HOUSE?
- 14 A NO, I WASN'T WATCHING THE TIME.
- 15 Q DID YOU SEE YOUR SISTER?
- 16 A NO, SHE WAS SLEEPING.
- 17 Q OKAY. AND YOU PICKED Victim UP?
- 18 A UH-HUH.
- 19 Q AND DO YOU REMEMBER WHAT HE HAD ON THEN?
- 20 A HE HAD ON A LONG TROUSER AND A SHIRT.
- 21 Q WAS IT THESE ITEMS THAT HAVE BEEN INTRODUCED?
- 22 A YEAH.
- 23 Q SO WHAT DID YOU DO THEN?
- 24 A HE WAS SLEEPING, SO I PICKED HIM UP, PUT HIM IN
- 25 THE CAR. I COULDN'T FIND HIS SHOES, AND DROVE ON TO

1 THE HOUSE.

2 Q SO YOU LEFT THE SHOES AT CIATA'S HOUSE?

3 A UH-HUH.

4 Q OKAY. AND WHEN YOU GOT TO YOUR HOUSE WHAT
5 HAPPENED THEN?

6 A I PUT HIM IN, YOU KNOW, HE KIND OF WOKE UP BECAUSE
7 THE LIGHT WAS ON, AND I SAT DOWN IN THE LIVING ROOM
8 WITH THE T.V. ON. I HAD SOME FRIED CHICKEN. I ASKED
9 HIM IF HE WANTED SOME. NORMALLY HE WOULD EAT ANYTHING
10 YOU GAVE HIM. I PUT IT THERE AND HE REFUSED, SO I LEFT
11 HIM.

12 MS. CAMPBELL: YOUR HONOR, I CAN'T UNDERSTAND.

13 THE COURT: YOU NEED TO SLOW DOWN, MS. KROMAH.

14 BY MR. ROGERS:

15 Q YOU NEED TO SLOW DOWN. I KNOW YOU'RE NERVOUS.

16 A A LITTLE BIT.

17 Q OKAY. LET ME GO BACK. DOES VICTIM HAVE A CAR
18 SEAT?

19 A YEAH, HE DOES.

20 Q DID HE RIDE IN THE CAR SEAT THAT NIGHT?

21 A YES.

22 Q OKAY. AND HOW DOES THE CAR SEAT STRAP?

23 A THE SEAT BELT GOES ACROSS THERE.

24 Q OKAY. SO AFTER YOU GOT HIM HOME AND -- YOU
25 COMPLAINED ABOUT HE DIDN'T WANT TO EAT?

1 A YEAH, HE SAID HE DIDN'T WANT ANYTHING I TRIED TO
2 GIVE HIM.

3 Q SO WHAT DID YOU DO?

4 A I GOT UP TO GO TAKE HIM -- I SAID, "YOU HAVE TO GO
5 TAKE YOUR BATH SO YOU CAN GO TO BED TO GO TO SCHOOL
6 TOMORROW MORNING BECAUSE IT'S GETTING LATE." I PICKED
7 HIM UP FROM THE CHAIR AND I TOOK HIM TO THE BATHROOM.
8 I STOOD HIM UP AND HE MADE A FACE. I SAID TO HIM,
9 "WHAT'S WRONG WITH YOU? YOU KNOW YOU HAVE TO BATHE.
10 YOU HAVE TO GO TO SCHOOL TOMORROW." THEN I ASKED HIM
11 WHAT HAPPENED. HE SAID HE HURT. I SAID, "I SEE IT
12 HURTS BECAUSE IT'S SWOLLEN," SO I CALLED MY SISTER.
13 SHE SAID SHE DOESN'T KNOW WHY, THAT THE ONLY THING SHE
14 SAID WAS HE DIDN'T EAT LIKE -- HE JUST LAID THERE AND
15 WATCHED T.V. THAT'S WHAT SHE SAID.

16 Q AND THEN WHAT DID YOU DO?

17 A I TOLD HER I'M GOING TO GIVE HIM -- PUT HIM IN THE
18 BATH AND SOAK HIM SO THAT THE SWELLING WILL GO DOWN, SO
19 I TOOK OFF THE CLOTHES, I RAN THE BATH WATER, AND I PUT
20 HIM IN THE BATHTUB AND TOOK THE WASHCLOTH. WE SAT
21 THERE, I WAS TALKING TO HIM, WASHING HIS FACE AND ARM
22 AND LIKE ASKING HIM WHAT HE DID IN SCHOOL, WHAT HE
23 SAID, WHAT HE ATE, AND ASKED IF HE LEARNED NEW THINGS
24 AND LIKE THAT.

25 Q DID YOU SEE ANY BLOOD AT THAT TIME?

1 A NO, IT WAS AFTER A WHILE I SAW THE BLOOD.
2 Q WAS HE IN THE WATER THEN?
3 A YEAH, HE WAS.
4 Q AND DIDN'T HAVE ON ANY CLOTHES?
5 A NO.
6 Q OKAY. SO THEN WHAT HAPPENED?
7 A SO WHEN I SAW THE BLOOD I TOOK HIM OUT OF THE TUB
8 AND PUT HIM ON THE -- IN FRONT OF THE BATHROOM DOOR,
9 AND I PUT A PULL-UP ON HIM AND I CALLED MY SISTER AND
10 SAID, "I HAVE TO GO TO THE HOSPITAL." SHE SAID OKAY,
11 TO CALL AND THAT'S WHEN I TOOK HIM.
12 Q REFERRING TO STATE'S EXHIBIT 25, DO YOU RECOGNIZE
13 THAT?
14 A YEAH, THAT'S THE RUG WHEN YOU COME FROM THE
15 BATHROOM, THE RUG WHEN YOU COME FROM THE BATHROOM, THE
16 FIRST PIECE OF THE RUG.
17 Q THIS RUG IS YOUR BEDROOM?
18 A YES.
19 Q AND WHY IS THERE BLOOD AT THAT LOCATION?
20 A BECAUSE HE DIDN'T HAVE ON NO CLOTHES.
21 Q DID YOU LAY HIM DOWN?
22 A NO, I DIDN'T LAY HIM DOWN. HE WAS WET. I PUT THE
23 PULL-UP ON HIM AND THEN I REALIZED HE WAS STILL WET.
24 BY THAT TIME, I DRIED HIM AND I TOOK THE FIRST PULL-UP
25 AND PUT IT IN THE TRASH AND THEN PUT A DRY PULL-UP ON

1 HIM.

2 Q YOU TOOK THE PULL-UP OFF?

3 A I --

4 THE COURT REPORTER: I DIDN'T UNDERSTAND THE LAST
5 PART OF WHAT YOU SAID.

6 BY MR. ROGERS:

7 Q OKAY. LET'S START OVER. WHEN YOU -- YOU TOOK THE
8 PULL-OFF, RIGHT?

9 A YES.

10 Q AND THEN WHAT DID YOU DO?

11 A I DRIED HIS SKIN FIRST BECAUSE HE WAS ALREADY --
12 WHEN I PUT THE FIRST PULL-UP ON, I REALIZED THE SKIN
13 WAS STILL WET.

14 Q OKAY. SO LET ME STOP YOU THERE AND ASK YOU -- YOU
15 TOOK A BATH TOWEL?

16 A UH-HUH.

17 Q NOT A WASHCLOTH?

18 A UH-HUH.

19 THE COURT: I'M GOING TO NEED A YES OR A NO SO THE
20 RECORD IS CLEAR.

21 MR. ROGERS: I'M SORRY, YOUR HONOR.

22 BY MR. ROGERS:

23 Q YOU HAVE TO SAY YES OR NO.

24 A OKAY.

25 Q IT WAS A BATH TOWEL?

1 A UH-HUH.

2 Q AND WHERE DID YOU DRY HIM?

3 A I DRIED HIS SKIN. IT WAS NOT HIS GENITALS BECAUSE
4 HE HAD ON THE FIRST PULL-UP. I JUST DRIED HIS ARMS AND
5 LEGS AND FACE.

6 Q IS THERE ANYTHING UNUSUAL ABOUT MUSA'S SKIN -- I'M
7 SORRY, VICTIM'S SKIN?

8 A WHAT DO YOU MEAN?

9 Q IS IT SENSITIVE, NOT SENSITIVE, EASILY --

10 A YEAH, HIS SKIN, IT'S EASILY BRUISED.

11 Q AND HAVE YOU SEEN BRUISES ON VICTIM BEFORE THIS
12 DAY?

13 A YEAH.

14 Q FROM WHAT KIND OF ACTIVITY?

15 A JUST LIKE SOMETHING LIKE WALKING BY AND HIT A
16 CHAIR OR SOMETHING AND HE SWINGS HIS ARM OR SOMETHING
17 AND HITS SOMETHING AND IT PUFFS UP AND BRUISES.

18 Q YOU NEED TO SLOW DOWN. IS THERE A JUNGLE GYM AT
19 ST. STEVENS?

20 A YEAH. IT'S IRON, IT'S OUTSIDE.

21 Q DOES HE PLAY ON THAT?

22 A YEAH.

23 Q SO WHEN YOU TOOK THE BATH TOWEL AND YOU DRIED HIM
24 OFF, THEN WHAT DO YOU DO?

25 A I TOOK ANOTHER PULL-UP, PUT IT ON HIM AND I PUT

1 THE FIRST ONE IN THE TRASH CAN. I SAT ON THE BED AND
2 PUT HIS CLOTHES ON HIM. I PUT HIS NIGHT CLOTHES ON HIM
3 AND I TOOK HIM TO THE HOSPITAL.

4 Q OKAY. BEFORE THAT, WHEN DID YOU TAKE THE WASH
5 TOWEL?

6 A THAT'S WHEN WE FIRST GOT IN THE TUB.

7 Q WHEN YOU FIRST GO IN THE TUB?

8 A YES, I --

9 Q AND YOU NOTICED THE SWELLING?

10 A YES.

11 Q OKAY. SO IS THIS SOMETHING THAT YOU LEARNED IN
12 NURSING SCHOOL ABOUT PUTTING A WARM TOWEL THAT HAS THE
13 SWELLING GO DOWN?

14 A YEAH, NOT JUST NURSING SCHOOL, BUT FROM MY MOM,
15 YOU KNOW, WHEN I WAS SMALL YOU GET A KNOT ON YOUR HEAD.
16 YOU CAN PUT EITHER ICE, COLD STUFF ON THERE OR WARM
17 STUFF ON THERE. IT'S SUPPOSED TO GET THE SWELLING
18 DOWN.

19 Q HOW HARD DID YOU PRESS?

20 A I REALLY DON'T KNOW. ALL I WAS TRYING TO DO IS
21 GET THE SWELLING TO GO DOWN.

22 Q AND IS THAT WHEN YOU NOTICED THE BLOOD?

23 A YES.

24 Q WAS IT A LOT OF BLOOD, A LITTLE BLOOD, MEDIUM
25 BLOOD, HOW WOULD YOU CHARACTERIZE IT?

1 A JUST WHEN I MOVED MY HAND I SAW THE BLOOD IN THE
2 WASHCLOTH. I MOVED IT AND I SAW IT WHEN I MOVED IT.

3 Q DID YOU SEE HIS SCROTUM HANGING OUT THEN?

4 A NO.

5 Q SO THEN WHAT DID YOU DO?

6 A YOU MEAN AFTER I GOT HIM DRESSED?

7 Q YES.

8 A I TOOK HIM TO THE CLOSEST HOSPITAL, THAT WAS
9 LEXINGTON MEDICAL CENTER.

10 Q WHY DIDN'T YOU CALL AN AMBULANCE?

11 A BECAUSE WHEN YOU CALL AN AMBULANCE THEY TAKE THEIR
12 OWN TIME TO COME. I DIDN'T KNOW HOW LONG IT WAS GOING
13 TO TAKE SO I JUST DROVE HIM.

14 Q AND HOW LONG DID IT TAKE YOU TO GET TO LEXINGTON
15 HOSPITAL?

16 A NOT LONG.

17 Q FIVE MINUTES, TEN MINUTES?

18 A PROBABLY LIKE FIVE MINUTES, 15 MINUTES, THAT'S
19 ALL.

20 Q SO BETWEEN FIVE AND FIFTEEN MINUTES, OR DO YOU
21 KNOW?

22 A NO, NOT FIVE, MORE LIKE TEN OR FIFTEEN MINUTES OR
23 SO.

24 Q OKAY. AND WHEN YOU GOT TO THE EMERGENCY ROOM WHAT
25 DID YOU DO?

1 A I WENT OVER TO THE LADY, TO THE FRONT DESK AND I
2 SAY I NEED TO SEE A DOCTOR. SHE SAID, "WELL YOU HAVE
3 TO GIVE ME YOUR NAME AND SIT DOWN." I SAY, "IT'S NOT
4 ME. IT'S MY CHILD. HE HAS TO SEE SOMEBODY." SHE
5 SAID, "EVEN FOR THE CHILD YOU HAVE TO SIT DOWN AND WAIT
6 FOR THEM TO CALL." SO I GAVE THEM MY NAME FIRST AND
7 THEN SAT DOWN BEFORE SOMEBODY COULD CALL ME. I GAVE
8 HER THE NAME AND STARTED HOLDING HIM IN MY LAP.

9 Q DID YOU MAKE ANY TYPE OF PROTESTS AND SAY I WANT
10 SOMEBODY TO SEE MY SON NOW?

11 A NO, I DIDN'T YELL AND SCREAM AT HER.

12 Q HOW LONG DID YOU WAIT BEFORE YOU WERE SEEN?

13 A I DON'T KNOW. ONE OF THEM WAS LONG BECAUSE THE
14 ROOM WAS FULL.

15 Q ALL RIGHT. DID YOU -- BEFORE YOU LEFT, DID YOU
16 CALL YOUR SISTER AND TELL HER YOU WERE GOING TO THE
17 HOSPITAL?

18 A YEAH, I DID.

19 Q OKAY. SO ONCE Victim WAS SEEN AT LEXINGTON,
20 WHAT HAPPENED THEN?

21 A THE DOCTOR SAID -- I TOLD THE DOCTOR WHAT
22 HAPPENED. HE SAID IT LOOKED LIKE A RUPTURE. HE
23 SAID -- HE TOOK THE VITAL SIGNS AND HE SAID HIS VITAL
24 SIGNS AND TEMPERATURE AND ALL WERE NORMAL AND
25 EVERYTHING AND --

1 MS. CAMPBELL: OBJECTION, HEARSAY.
2 THE COURT: WAIT ONE SECOND. WHAT'S THE
3 OBJECTION?
4 MS. CAMPBELL: HEARSAY.
5 THE COURT: HAS THE DOCTOR TESTIFIED?
6 MR. ROGERS: YES, YOUR HONOR.
7 THE COURT: OVERRULED.
8 BY MR. ROGERS:
9 Q GO AHEAD.
10 A HE TOLD ME EVERYTHING WAS GOING TO BE OKAY. HIS
11 TEMPERATURE WAS NORMAL AND THE ONLY THING WAS THEY
12 COULDN'T TAKE CARE OF HIM THERE BECAUSE THEY DIDN'T
13 HAVE ANY PEDIATRICS FACILITY.
14 Q WERE YOU IN THE TREATMENT ROOM WHEN HE WAS BEING
15 EXAMINED?
16 A YEAH, I STAYED THERE THE WHOLE TIME.
17 Q OKAY. DID ~~Victim~~ INDICATE ANY DISPLEASURE WITH
18 YOU BEING THERE?
19 A NO.
20 Q OKAY. AND, OF COURSE, HE GOT IN THE CAR WITH YOU
21 TO GO TO LEXINGTON?
22 A YEAH.
23 Q DID YOU HAVE TO FORCE HIM? DID YOU HAVE TO MAKE
24 HIM?
25 A OH, NO.

1 Q SO THEN AFTER THE DOCTOR TOLD YOU THAT AT
2 LEXINGTON, WHAT HAPPENED?

3 A HE SAID IT WAS GOING TO HAVE TO WAIT AND THEY WERE
4 GOING TO CALL AN AMBULANCE TO COME GET US. Victim
5 STARTED TO FALL ASLEEP. I WAS SITTING BY HIM. I ASKED
6 ONE OF THE NURSING STAFF FOR A BIBLE AND SHE BROUGHT IT
7 TO ME SO I JUST SAT THERE AND READ IT UNTIL THE
8 AMBULANCE PEOPLE CAME.

9 Q OKAY. AND DID YOU GO WITH THE AMBULANCE?

10 A YEAH.

11 Q WHY DIDN'T YOU DRIVE YOURSELF?

12 A I DIDN'T WANT TO LEAVE HIM BY HIMSELF.

13 Q DO YOU REMEMBER THE NURSE AT LEXINGTON MEDICAL
14 CENTER, NURSE PORILLA, WHO TESTIFIED EARLIER?

15 A NO, I DON'T KNOW THEIR NAMES.

16 Q OKAY. DID YOU TELL ANYONE AT LEXINGTON THAT YOU
17 HAD PUT PRESSURE ON THE SCROTUM AND HEARD A POP?

18 A NO, I DIDN'T SAY NOTHING ABOUT NO POPPING.

19 Q OKAY. BUT YOU TOLD THE PEOPLE AT LEXINGTON --

20 A I TOLD THEM THAT I HAD HIM IN THE TUB AND I WAS
21 SOAKING HIS SCROTUM.

22 Q YOU TOLD THE PEOPLE IN LEXINGTON JUST WHAT YOU
23 TOLD THIS JURY HAD HAPPENED?

24 A YES.

25 Q SO THEN WHEN YOU GOT IN THE AMBULANCE --

1 A UH-HUH.

2 Q ANYTHING UNUSUAL HAPPEN IN THE AMBULANCE?

3 A NO. THE AMBULANCE, THERE WAS TWO, ONE WAS THE
4 DRIVER AND ONE WAS BACK THERE WITH US. SHE WAS SAYING
5 SHE HAD A SON AND YEARS BACK SHE SAID THAT A SIMILAR
6 THING HAPPENED TO HIM, BUT HIS WAS FROM A GAME OR
7 SOMETHING.

8 Q WHAT -- I DIDN'T UNDERSTAND YOU?

9 A SHE SAID THAT HE HAD A PROBLEM WITH HIS SCROTUM,
10 YOU KNOW. SO I ASKED HER, "WHAT COULD HAVE CAUSED
11 THIS?" BECAUSE I REALLY DIDN'T UNDERSTAND, YOU KNOW.
12 SHE SAID SHE DIDN'T KNOW BUT, YOU KNOW BOYS AND HOW
13 THEY ARE, YOU KNOW.

14 Q SO DO YOU RECALL WHAT TIME YOU ARRIVED AT PALMETTO
15 RICHLAND?

16 A WE ARRIVED AT RICHLAND, IT WAS FOUR SOMETHING, IT
17 WAS 4:54.

18 Q OKAY. AND WHERE DID THEY TAKE Victim?

19 A UPSTAIRS IN THE PEDIATRIC WARD.

20 Q AND WHAT HAPPENED AFTER THAT?

21 A THE AMBULANCE LADY CAME AND SHE SAID SHE HAD TO
22 LEAVE. SHE SAID SHE WAS SURE EVERYTHING WOULD WORK
23 OUT. I SAID, "OKAY. THANK YOU." DR. FIELDS CAME IN.
24 SHE SAID SHE WAS AN INTERN AT THE TIME AND SHE WAS
25 GOING TO TAKE CARE OF THE CASE UNTIL THE DOCTOR CAME ON

1 THE NEXT MORNING.

2 Q AND DID YOU TELL DR. FIELDS THE SAME THING YOU HAD
3 TOLD THE DOCTOR, THE PERSONNEL AT LEXINGTON?

4 A YES, I DID.

5 Q OKAY. SO THEN WHAT HAPPENED?

6 A AND SHE ASKED ME, "ARE YOU HIS MOM?" I SAID,
7 "YEAH." SHE SAID, "YOU KNOW, HIS BIOLOGICAL MOM." I
8 SAID, "NO, I'M HIS STEP MOM." SHE SAID, "IS THIS AN
9 AFRICAN RITUAL YOU WERE PRACTICING?" I DIDN'T SAY
10 ANYTHING TO HER. I JUST SAT ON THE OTHER SIDE OF THE
11 BED.

12 Q SO DR. FIELDS ASKED YOU THAT?

13 A YES, SHE DID.

14 Q AND THIS WAS AFTER YOU HAD TOLD HER WHAT HAPPENED,
15 RIGHT?

16 A YES.

17 Q THEN, WHEN DID YOU CALL MUSA?

18 A I CALLED HIM A LOT.

19 Q WHEN DID YOU CALL MUSA TO TELL HIM WHAT HAD
20 HAPPENED WITH *victim*?

21 A I CALLED HIM BEFORE I LEFT THE HOUSE.

22 Q BEFORE YOU LEFT THE HOUSE?

23 A YEAH, I KEPT LEAVING MESSAGES.

24 Q YOU DIDN'T TALK TO HIM?

25 A HUH-UH.

- 1 Q WHEN WAS IT THAT YOU ACTUALLY TALKED WITH HIM?
- 2 A IT WAS AFTER FOUR.
- 3 Q WERE YOU AT RICHLAND?
- 4 A I WAS AT RICHLAND.
- 5 Q AND DID MUSA COME LATER?
- 6 A YEAH, HE CAME.
- 7 Q OKAY. SO WHERE WAS Victim AND WHERE WERE YOU
- 8 WHILE YOU WERE WAITING FOR THE SURGERY?
- 9 A I WAS IN THE ROOM WITH HIM.
- 10 Q AND WAS HE AWAKE, SLEEPING?
- 11 A THE NEXT MORNING HE WAS AWAKE.
- 12 Q OKAY. SO FROM FOUR O'CLOCK UNTIL SIX, YOU STAYED
- 13 IN THE ROOM WITH Victim?
- 14 A YEAH, I NEVER LEFT HIM.
- 15 Q YOU NEVER LEFT HIM THAT ENTIRE DAY?
- 16 A I LEFT HIM AFTER THE SURGERY.
- 17 Q AFTER THE SURGERY. OKAY. BEFORE THE SURGERY,
- 18 WERE YOU IN THE ROOM WHEN THE MEDICAL PERSONNEL WERE
- 19 TAKING Victim's VITALS, HIS VITAL SIGNS?
- 20 A YES, I WAS THERE.
- 21 Q ANYTHING UNUSUAL HAPPEN THEN?
- 22 A AT LEXINGTON OR RICHLAND?
- 23 Q AT RICHLAND.
- 24 A EXCUSE ME, RICHLAND, I DON'T RECALL THE VITAL
- 25 SIGNS, BUT I RECALL THEY TOOK THE VITAL SIGNS AT

1 LEXINGTON. THEY WERE COMING IN TALKING AND GOING OUT,
2 LIKE THAT.

3 Q WAS VICTIM CALM AROUND THE NURSING PERSONNEL?

4 A AT RICHLAND?

5 Q YES.

6 A AT FIRST HE WAS, BUT THEN HE JUST GOT, YOU KNOW --
7 I THINK HE GOT AFRAID BECAUSE --

8 Q DID IT TAKE MORE THAN ONE PERSON TO ADMINISTER THE
9 VITAL SIGNS, THE VITAL SIGN TESTS?

10 A THAT'S WHAT THE D.S.S. CASEWORKER TOLD ME. I
11 WASN'T THERE.

12 Q YOU WEREN'T THERE?

13 A NO, I WASN'T THERE THEN.

14 Q OKAY. SO THEN YOU STAYED WITH VICTIM ALL THE
15 WAY UP UNTIL THE TIME HE WENT TO SURGERY?

16 A UH-HUH, YES.

17 Q OKAY. AND DID YOU STAY UNTIL HE CAME OUT OF
18 SURGERY?

19 A AFTER HE CAME OUT OF SURGERY, YEAH.

20 Q OKAY.

21 A AND EVERYTHING WAS FINE. THE DOCTOR TOLD ME HE
22 WAS ASLEEP, AND I WENT HOME TO TAKE A SHOWER, AND I
23 CAME BACK THAT EVENING.

24 Q OKAY. DO YOU REMEMBER WHAT TIME YOU LEFT THE
25 HOSPITAL TO GO HOME AND TAKE A SHOWER?

- 1 A PROBABLY AFTER THREE SOMETHING BECAUSE HIS SURGERY
2 WAS IN THE AFTERNOON, LIKE SOMETHING AROUND TWO
3 O'CLOCK.
- 4 Q AND DO YOU REMEMBER WHAT TIME YOU CAME BACK?
- 5 A WHAT TIME I CAME BACK TO THE HOSPITAL?
- 6 Q YES.
- 7 A FIVE SOMETHING.
- 8 Q OKAY. AND HOW LONG DID YOU STAY THEN?
- 9 A I STAYED THERE UNTIL AFTER FOUR THE NEXT MORNING
10 OR MAYBE THREE.
- 11 Q SO YOU SPENT THE NIGHT IN THE HOSPITAL?
- 12 A UH-HUH, YES, I DID.
- 13 Q AND WHERE WERE YOU?
- 14 A I WAS RIGHT BY HIS BED.
- 15 Q IN THE SAME ROOM?
- 16 A YES, I WAS.
- 17 Q OKAY. SO THEN DID THERE COME A TIME THAT YOU HAD
18 A CONVERSATION WITH INVESTIGATOR LIVINGSTON?
- 19 A YES, I DID.
- 20 Q WHAT HAPPENED THEN?
- 21 A THE FIRST CONVERSATION WAS IN THE MORNING.
- 22 Q THIS WOULD HAVE BEEN THE MORNING AFTER THE
23 SURGERY?
- 24 A NO.
- 25 Q THE MORNING BEFORE THE SURGERY?

1 A YES.

2 Q OKAY.

3 A HE CAME IN AND HE SAID -- IT WAS AFTER 9:30. THE
4 HOSPITAL STAFF CALLED HIM AND TOLD HIM THAT THEY WERE
5 GOING TO DO AN INVESTIGATION, THEN THE D.S.S.
6 INVESTIGATOR CAME.

7 Q AND DID YOU TELL HIM WHAT YOU HAD TOLD EVERYBODY
8 ELSE BEFORE?

9 A YES, I DID.

10 Q OKAY. AND THEN WHAT HAPPENED?

11 A HE SAID HE WENT TO LIBERIA BACK IN THE 70'S AND HE
12 HAD FUN. EVERYONE THOUGHT IT WAS --

13 Q JUST SLOW DOWN A LITTLE BIT. WHAT DID
14 INVESTIGATOR LIVINGSTON SAY?

15 A HE SAID HE WENT TO LIBERIA IN THE 70'S, SO HE
16 KNOWS SOMETHING ABOUT LIBERIA AND EVEN THOUGH HIS STAY
17 THERE WAS PLEASANT, ALL THE COUNTRY PRACTICED RITUAL
18 AND, YOU KNOW, THEY CUT CHILDREN AND PEOPLE DO
19 SACRIFICES, AND HE ASKED ME WAS THIS RITUAL STUFF, AND
20 I TOLD HIM NO. THE D.S.S. LADY ASKED ME THE SAME
21 THING. I TOLD HER NO. THAT WAS AFTER WE FINISHED
22 TALKING WITH DR. FIELDS. SHE IS THE ONE THAT STARTED
23 THE WHOLE THING. THAT'S THE ONE THAT CAME TO ME WITH
24 THE QUESTION.

25 Q SO DR. FIELDS HAD ALREADY BRIEFED INVESTIGATOR

1 LIVINGSTON?

2 A YEAH.

3 Q DID YOU SEE THAT OR DID SOMEBODY TELL YOU?

4 A SHE TOLD ME.

5 Q OKAY.

6 A YEAH, SHE TOLD SHE WAS GOING TO CALL D.S.S. AND

7 THE INVESTIGATOR BECAUSE THIS IS AMERICA.

8 Q AND WHAT DID YOU SAY TO INVESTIGATOR LIVINGSTON?

9 A I TOLD HIM NO.

10 Q DID HE EVER ASK YOU POINT BLANK DID YOU CUT

11 Victim?

12 A YES, HE DID.

13 Q OKAY. WAS THAT THAT DAY OR THE NEXT DAY?

14 A THAT WAS AT HIS OFFICE.

15 Q AT HIS OFFICE, OKAY.

16 A AT THE HOSPITAL, HE JUST SAID, "DID YOU DO THIS?"

17 AND I TOLD HIM "NO."

18 Q DID YOU CUT Victim?

19 A NO, I DID NOT.

20 Q DO YOU KNOW WHAT HAPPENED TO HIM?

21 A NO.

22 Q MIAMA, CAN YOU -- DO YOU HAVE ANY EXPLANATION AT

23 ALL FOR WHY HIS SCROTUM WAS HANGING OUT OF HIS TESTICLE

24 LIKE THAT?

25 A NO, THE ONLY THING IS WHAT I TOLD YOU, WHAT I SAW

1 AND WHAT I WAS TRYING TO DO, BUT OTHER THAN THAT AS FAR
2 AS TO GO WITH ALL THE OTHERS, I DON'T KNOW NOTHING
3 ABOUT THAT.

4 Q AND WHEN INVESTIGATOR LIVINGSTON ASKED YOU ABOUT
5 THE PULL-UP?

6 A UH-HUH.

7 Q DID YOU TELL HIM WHERE IT WAS?

8 A HE DIDN'T ASK ME ABOUT THE PULL-UP. I TOLD HIM
9 ABOUT IT.

10 Q OKAY. DID YOU ATTEMPT TO HIDE OR LEAVE OUT
11 ANYTHING WHEN YOU WERE BEING INTERVIEWED BY
12 INVESTIGATOR LIVINGSTON?

13 A NO.

14 Q DID YOU TELL HIM EVERYTHING THAT YOU KNEW ABOUT
15 WHAT HAD HAPPENED THAT DAY?

16 A YES, I DID.

17 Q HOW DID YOU FEEL ABOUT Victim?

18 A I FEEL GOOD ABOUT HIM. ME AND HIM GOT ALONG REAL
19 GOOD. WE HAVE FUN ON THE WEEKEND AND AT BEDTIME I READ
20 HIM A STORY EVERY NIGHT BEFORE HE GOES TO BED.

21 Q WOULD YOU SAY THAT YOU ALL WERE CLOSE OR
22 DEVELOPING CLOSENESS OR HOW WOULD YOU CLASSIFY YOUR
23 RELATIONSHIP WITH Victim?

24 A WE WERE DEVELOPING CLOSENESS.

25 Q DO YOU KNOW OF ANYTHING THAT COULD HAVE CAUSED

1 THIS INJURY TO UICtima

2 A NO. I JUST TOLD THEM WHAT HAPPENED.

3 MR. ROGERS: I BELIEVE THAT'S ALL WE HAVE.

4 THE COURT: ALL RIGHT. CROSS-EXAMINATION,

5 SOLICITOR.

6 MS. CAMPBELL: MAY IT PLEASE THE COURT.

7 CROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q I JUST WANT TO ASK YOU A FEW QUESTIONS TO FOLLOW
10 UP. YOU CAME HERE IN 1998 ON A STUDENT VISA; IS THAT
11 CORRECT?

12 A NO.

13 Q YOU CAME HERE ON A VISA OF SOME SORT?

14 A YES.

15 Q OKAY. AND YOU HAVE BEEN HERE EVER SINCE; IS THAT
16 CORRECT?

17 A YES.

18 Q DURING THAT TIME PERIOD, HAVE YOU LIVED IN
19 COLUMBIA?

20 A YES, I HAVE.

21 Q AND WHEN DID YOU MEET MUSA?

22 A IN AMERICA OR BACK HOME?

23 Q BACK HOME.

24 A I DON'T REMEMBER THE YEAR.

25 Q YOU DON'T REMEMBER THE YEAR?

1 A HUH-UH.

2 Q ONCE YOU CAME TO AMERICA, DO YOU REMEMBER WHEN YOU
3 NEXT SAW HIM?

4 A IT WAS 2003, 2004, ONE OF THOSE.

5 Q DID YOU START DATING IMMEDIATELY?

6 A NO.

7 Q DID YOU KNOW, THOUGH OR DID YOU COME TO KNOW AT
8 SOME TIME THAT HE HAD A SON?

9 A YEAH, HE TOLD ME.

10 Q BUT YOU KNEW THAT HE DIDN'T HAVE CUSTODY; IS THAT
11 CORRECT?

12 A YOU MEAN WAS HE LIVING WITH HIM?

13 Q THAT'S CORRECT.

14 A YEAH, HE WASN'T LIVING WITH HIM.

15 Q THE CHILD STARTED LIVING WITH YOU ALL -- YOU WERE
16 MARRIED IN MARCH?

17 A YEAH.

18 Q AND THE CHILD STARTS LIVING YOU ALMOST THREE
19 MONTHS LATER IN JUNE?

20 A YES, UH-HUH.

21 Q AND OVER THE NEXT TWO MONTHS LIVING IN THAT
22 APARTMENT, I JUST WANT TO MAKE SURE, THE ONLY OTHER
23 PEOPLE LIVING THERE ARE DICK DANN?

24 A YES.

25 Q DOES HE LIVE ON ONE SIDE OF THE APARTMENT?

- 1 A YES.
- 2 Q AND DOES HE HAVE HIS OWN BEDROOM?
- 3 A YES.
- 4 Q AND DO YOU SHARE A COMMON LIVING ROOM?
- 5 A YES.
- 6 Q AND THEN IN YOUR BEDROOM, IT WOULD HAVE BEEN YOU
- 7 AND Victim?
- 8 A YES.
- 9 Q AND MUSA; IS THAT CORRECT.
- 10 A YES.
- 11 Q DID YOU KEEP Victim'S TOYS AT YOUR HOUSE OR WERE
- 12 THOSE KEPT SOMEWHERE ELSE?
- 13 A SOME WERE AT HER HOUSE, SOME WERE AT MY HOUSE.
- 14 Q TURNING YOUR ATTENTION TO AUGUST 15TH, THAT DAY,
- 15 WHAT TIME DID YOU GO TO WORK FOR BRIAN CENTER?
- 16 A I DON'T KNOW. SOMETIME IN THE AFTERNOON.
- 17 Q SOMETIME IN THE AFTERNOON?
- 18 A I WAS SUPPOSED TO BE THERE AT THREE. I DON'T KNOW
- 19 THE EXACT TIME I GOT TO WORK.
- 20 Q SO IT WAS SOME TIME AROUND THREE O'CLOCK?
- 21 A YEAH.
- 22 Q YOU WENT THERE TO THE BRIAN CENTER AND -- YOU WERE
- 23 A NURSING ASSISTANT, CORRECT?
- 24 A YES.
- 25 Q SO YOU HAD TRAINING IN THE MEDICAL FIELD; IS THAT

1 CORRECT?

2 A YES.

3 Q AND HOW MUCH TRAINING HAVE YOU HAD?

4 A NOT A LOT, JUST HOW TO CARE FOR PATIENTS.

5 Q OKAY. AND WHEN CARING FOR PATIENTS, YOU LEARN HOW
6 TO TAKE CARE OF PROBLEMS THAT MAY COME ON THEM, CHECK
7 THEIR TEMPERATURE, CHECK THEIR VITAL SIGNS. IF THEY
8 HAD A CUT OR SOMETHING, HAVE IT TREATED, THINGS OF THAT
9 NATURE?

10 A YES.

11 Q ON THAT DAY, YOUR TESTIMONY WAS THAT YOU WENT OVER
12 TO YOUR SISTER'S HOUSE SOME TIME AFTER ELEVEN O'CLOCK,
13 RIGHT?

14 A YES.

15 Q BUT YOU DID NOT SEE HER?

16 A NO, I DID NOT.

17 Q BECAUSE SHE WAS ASLEEP?

18 A YES.

19 Q WHERE WERE THE CHILDREN?

20 A THEY WERE ALL SLEEP.

21 Q WHERE WERE THEY ASLEEP?

22 A IN HER HOUSE.

23 Q WHERE IN HER HOUSE?

24 A I DON'T KNOW EXACTLY WHERE IN HER HOUSE.

25 Q YOU DON'T REMEMBER WHERE YOU PICKED UP Victim

1 THAT NIGHT, WHERE HE WAS SLEEPING?

2 A I PICKED HIM UP FROM THE DOOR. YATTA BROUGHT HIM
3 TO ME.

4 Q EXCUSE ME?

5 A MY COUSIN, YATTA, HANDED HIM TO ME.

6 Q YATTA HAD HIM?

7 A YATTA SANDERS, THE ONE THAT MY SISTER TOLD YOU
8 ABOUT.

9 Q OKAY. SO YOU WENT UP TO THE FRONT DOOR, YOU
10 KNOCKED ON THE DOOR, AND THE CHILD WAS DELIVERED TO
11 YOU?

12 A YEAH.

13 Q AT WHAT POINT -- YOUR TESTIMONY WAS THAT YOU
14 COULDN'T FIND HIS SHOES, SO I ASSUME AT SOME POINT YOU
15 CROSSED THE THRESHOLD; IS THAT CORRECT?

16 A NO, I DIDN'T.

17 Q OKAY. YOU COULDN'T FIND HIS SHOES, BUT YOU DIDN'T
18 GO IN TO LOOK FOR THEM?

19 A YES, WHEN SHE BROUGHT HIM TO THE DOOR, I SAID,
20 "WHERE'S HIS SHOES." SHE SAID, "WE COULDN'T FIND
21 THEM." I SAID, "OKAY, WE'LL JUST GET THEM TOMORROW."

22 Q OKAY. AND WHEN YOU GOT Victim AT 11:30 OR
23 WHATEVER TIME IT WAS, WHEN HE WAS HANDED TO YOU BY YOUR
24 COUSIN YATTA, WAS HE ASLEEP OR WAS HE AWAKE?

25 A HE WAS SLEEPING.

1 Q HE WAS SLEEPING?

2 A UH-HUH.

3 Q AT THAT POINT WHEN HIS COUSIN -- WHEN YOU PICKED
4 HIM UP, TELL THE JURY HOW YOU PICKED HIM UP?

5 A LIKE THAT. (INDICATING)

6 Q SO HE'S DRAPED ACROSS BOTH YOUR ARMS?

7 A YES.

8 Q SO IN THE TRANSFER FROM YATTA TO YOU, WHILE HE'S
9 ASLEEP, DID HE SCREAM, WAKE UP, OR ANYTHING?

10 A HE OPENED HIS EYES, BUT THEN HE JUST CLOSED IT
11 AGAIN.

12 Q OKAY. SO THEN YOU WERE ABLE TO TAKE HIM AT THAT
13 POINT. AT THAT POINT, LET ME JUST MAKE SURE, DID YOU
14 SEE ANY BLOOD ON HIS CLOTHES?

15 A NO, I DIDN'T SEE ANY BLOOD ON ANYTHING. HE WAS
16 JUST ASLEEP.

17 THE COURT: THIS LADY IS HAVING TO TYPE EVERYTHING
18 THAT YOU'RE SAYING AND SO IF YOU WILL JUST TALK A
19 LITTLE BIT SLOWER, PLEASE.

20 BY MS. CAMPBELL:

21 Q DID YOU SEE ANY BLOOD, DID YOU NOTICE ANY BLOOD AT
22 THAT POINT?

23 A NO, I DID NOT.

24 Q AND AT THAT POINT YOU THEN TAKE HIM AND YOU
25 MENTIONED THAT YOU HAVE A CAR SEAT. YOU DID THE SAFE

1 THING, AND YOU PUT HIM IN A CAR SEAT, RIGHT?

2 A YES.

3 Q AND IN ORDER TO PUT HIM IN A CAR SEAT, YOU HAVE TO
4 ACTUALLY SHIFT HIS POSITION AND PUT HIM DOWN; IS THAT
5 CORRECT?

6 A YES.

7 Q AT THAT POINT DID HE SCREAM OUT IN PAIN OR
8 ANYTHING OF THAT SORT?

9 A NO, HE WAS SLEEPING.

10 Q AND AFTER ALL THIS WAS OVER, DID YOU NOTICE ANY
11 BLOOD IN THE CAR SEAT?

12 A NO, I DIDN'T LOOK IN THE CAR SEAT FOR NO BLOOD.

13 Q AND JUST FOR THE RECORD, DID YOU EVER SEE
14 ROOSEVELT, LITTLE ROOSEVELT THAT NIGHT?

15 A NO, I DID NOT SEE HIM.

16 Q OKAY. YOU THEN DROVE FROM -- WHERE IS YOUR
17 SISTER'S APARTMENT?

18 A OFF OF NORTH MAIN.

19 Q AND YOU DROVE OVER TO YOUR APARTMENT ON ST.
20 ANDREWS?

21 A YES.

22 Q AND DO YOU KNOW APPROXIMATELY HOW LONG A DRIVE
23 THAT IS?

24 A TEN MINUTES OR SO.

25 Q DURING THAT PERIOD OF TIME, WAS HE ASLEEP OR

- 1 AWAKE?
- 2 A I WASN'T PAYING ATTENTION TO HIM. WHEN I PUT HIM
3 IN THE CAR SEAT, HE WAS SLEEPING.
- 4 Q SO WAS SLEEPING WHEN YOU PUT HIM IN AND YOU DIDN'T
5 PAY ATTENTION TO HIM, SO YOU DON'T KNOW?
- 6 A NO, I WAS DRIVING.
- 7 Q OKAY. YOU WERE DRIVING, SO YOU DON'T KNOW WHAT HE
8 WAS DOING?
- 9 A NO.
- 10 Q ONCE YOU GOT TO THE APARTMENT I ASSUME YOU TOOK
11 HIM OUT OF THE CAR SEAT OR DID YOU TAKE HIM IN THE CAR
12 SEAT?
- 13 A OUT OF THE CAR SEAT.
- 14 Q YOU LEFT THE CAR SEAT IN THE CAR?
- 15 A YEAH.
- 16 Q AND YOU PICKED HIM UP AGAIN?
- 17 A YES.
- 18 Q AND WHEN YOU GO TO PICK HIM UP, WAS HE STILL
19 ASLEEP?
- 20 A YES.
- 21 Q AND WHEN YOU PICKED HIM UP, RAISED HIM UP, DID HE
22 SCREAM OUT OR ANYTHING OF THAT NATURE?
- 23 A NO, HE WAS SLEEPING.
- 24 Q DID YOU NOTICE ANY BLOOD AT THAT POINT?
- 25 A NO.

1 Q AND ONCE YOU GET HIM INSIDE THE APARTMENT, I
2 BELIEVE YOU MENTIONED EARLIER THAT HE WOKE UP; IS THAT
3 CORRECT?

4 A YEAH.

5 Q WAS THAT UNUSUAL FOR HIM TO WAKE UP WHEN YOU GOT
6 HIM HOME?

7 A NO, NOT REALLY. SOMETIMES HE DID, SOMETIMES HE
8 DIDN'T.

9 Q AND WHAT TIME OF DAY DID victim GO TO SCHOOL?

10 A WHAT DO YOU MEAN?

11 Q WHAT TIME DID HE HAVE TO LEAVE TO GO TO SCHOOL?

12 A IN THE MORNING.

13 Q WHAT TIME IN THE MORNING?

14 A SEVEN SOMETHING, EIGHT SOMETHING.

15 Q WOULD IT HAVE BEEN SIX SOMETHING?

16 A NO.

17 Q HE WENT AT SEVEN SOMETHING?

18 A YEAH.

19 Q YOU WOULD STILL BE ASLEEP AND YOUR HUSBAND WOULD
20 TAKE HIM; IS THAT CORRECT?

21 A SOMETIMES.

22 Q SO AT THIS POINT, BY THE TIME YOU GET HIM FROM
23 YOUR SISTER'S HOUSE, GET HIM BACK ACROSS TOWN TO YOUR
24 APARTMENT IT'S PROBABLY CLOSE TO MIDNIGHT, WOULD YOU
25 SAY?

1 A I WASN'T LOOKING AT THE TIME. I WASN'T PAYING
2 ATTENTION TO THE TIME.

3 Q OKAY. YOU WENT IN AND SAID HE WOKE UP.

4 A YES.

5 Q SO YOU WENT INTO WHAT PART OF YOUR APARTMENT?

6 A THE LIVING ROOM.

7 Q THE LIVING ROOM?

8 A YEAH.

9 Q AND WHAT WERE YOU DOING IN THE LIVING ROOM?

10 A I PUT HIM ON A CHAIR BESIDE THE OTHER CHAIR AND
11 GOT HIM SOME PLANTAINS.

12 Q YOU GOT SOME PLAYTHINGS?

13 A PLANTAINS, IT'S A FOOD.

14 Q AND THEN YOU OFFERED HIM FOOD?

15 A YEAH.

16 Q AND DID HE EAT?

17 A NO.

18 Q ONCE YOU OFFERED HIM THE PLANTAINS, WAS THAT
19 UNUSUAL?

20 A FOR HIM NOT TO EAT IT, IT WAS UNUSUAL.

21 Q AT THAT POINT WHEN YOU SAT HIM ON THE CHAIR, WAS
22 HE CRYING?

23 A I LAID HIM ON THE CHAIR.

24 Q YOU LAID HIM ON THE CHAIR?

25 A NO, THE CHAIR HAD LIKE -- THE CHAIR ARM IS -- HE

1 WAS LAYING PARTLY ON THE CHAIR.

2 Q SO HE'S LAYING ON THE CHAIR?

3 A YES.

4 Q HE IS AWAKE?

5 A SOMEWHAT AWAKE.

6 Q SO YOU'RE TRYING TO FEED HIM WHILE HE'S SOMEWHAT
7 AWAKE OR NOT?

8 A I LAID HIM ON THE CHAIR AND HE OPENED HIS EYES AND
9 I TOLD HIM THAT I WAS HAVING A PLANTAIN, AND ASKED HIM,
10 "DO YOU WANT SOME?"

11 Q SO HE WAS STILL PARTLY ASLEEP?

12 A IT TAKES A WHILE TO ADJUST, SO HE WAS STILL KIND
13 OF SLEEPING.

14 Q I UNDERSTAND. IT TAKES A WHILE TO ADJUST AND WAKE
15 UP. SO WHILE HE WAS STILL HALF ASLEEP, HE DIDN'T WANT
16 ANYTHING TO EAT?

17 A NO.

18 Q AT THAT POINT, YOU ARE IN THE LIVING ROOM AND
19 YOU'VE GOT THE T.V. ON; IS THAT YOUR TESTIMONY?

20 A YES.

21 Q AND WHAT ARE YOU WATCHING?

22 A I DON'T KNOW. I WAS JUST RESTING. I WAS TIRED.

23 Q I UNDERSTAND. DURING THIS PERIOD OF TIME WHILE
24 YOU ARE IN THE LIVING ROOM, APPROXIMATELY HOW LONG DID
25 YOU STAY IN THERE?

1 A I HAVE NO IDEA.

2 Q DID HE CONTINUE TO WAKE UP OR WAS HE STAYING
3 ASLEEP OR COMING IN AND OUT OR WHAT?

4 A I WASN'T LOOKING AT HIM.

5 Q OKAY. WHILE YOU'RE WATCHING T.V., DID YOU HEAR
6 HIM MAKE ANY NOISE WHILE YOU WEREN'T PAYING ATTENTION
7 TO HIM? DID YOU HEAR HIM MAKING ANY NOISE AT ALL?

8 A NO, I DON'T RECALL.

9 Q OKAY. AT THAT POINT DID HE COMPLAIN OF ANY PAIN
10 OR ANYTHING LIKE THAT?

11 A NO, WE HADN'T EVEN TALKED AT THAT POINT.

12 Q YOU HAVEN'T TALKED? YOU OFFERED HIM FOOD, BUT YOU
13 NEVER TALKED?

14 A I JUST PUT THE PLANTAIN TO HIS MOUTH AND ASKED HIM
15 IF HE WANTED SOME, BUT ME AND HIM WASN'T HAVING A
16 CONVERSATION.

17 Q OKAY. I UNDERSTAND.

18 A OKAY.

19 Q I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH. YOU
20 CORRECT ME IF I'M WRONG, OKAY?

21 A ALL RIGHT.

22 Q DO YOU KNOW HOW LONG YOU STAYED IN THE LIVING ROOM
23 WITH YOU SITTING ON THE CHAIR WATCHING T.V. AND HIM
24 LYING ON THE CHAIR?

25 A I DON'T KNOW HOW LONG.

1 Q OKAY. WHAT HAPPENED NEXT? HOW DID YOU -- DID YOU
2 MAKE THE MOVE INTO THE NEXT ROOM? DID HE GET UP, WHAT
3 HAPPENED?

4 A NO. I TOLD HIM, "IT'S TIME TO GET A BATH SO YOU
5 CAN GO TO SLEEP AND GO TO SCHOOL TOMORROW MORNING."

6 Q AND YOU DON'T HAVE --

7 A AND I --

8 Q SORRY. I DIDN'T MEAN TO INTERRUPT YOU.

9 A I TOLD HIM I WAS GOING TO CARRY HIM TO THE BATH SO
10 HE COULD GET A BATH AND GO TO BED AND THEN GO TO SCHOOL
11 THE NEXT MORNING.

12 Q WAS THAT UNUSUAL FOR YOU TO GIVE HIM A BATH AT
13 NIGHT?

14 A NO, IT'S NOT. MY SISTER DOESN'T BATHE HIM.

15 Q SO YOU TOLD HIM HE HAD TO GET UP AND GO TAKE A
16 BATH; IS THAT CORRECT? WAS HE STILL LYING IN THE
17 CHAIR?

18 A UH-HUH.

19 Q AND YOU HAVE NO IDEA HOW LONG YOU ALL WERE IN
20 THERE?

21 A NO.

22 Q AND YOU DON'T KNOW WHAT YOU WERE WATCHING OR HOW
23 LONG YOU WERE IN THERE?

24 A NO.

25 Q AND ONCE YOU HAD TOLD HIM THAT, WHAT HAPPENED

- 1 NEXT?
- 2 A I PICKED HIM UP AND TOOK HIM INTO THE BATHROOM.
- 3 Q WAS HE AWAKE OR NOT AT THIS POINT?
- 4 A I STOOD HIM UP, SO HE KIND OF LIKE WOKE UP.
- 5 Q YOU MENTIONED EARLIER THAT YOU THOUGHT WHEN HE
- 6 WENT INTO THE APARTMENT THAT HE WOKE UP FROM THE LIGHT,
- 7 BUT REALLY WAS IT THAT HE WOKE UP WHEN YOU PUT HIM IN
- 8 THE BATHROOM?
- 9 A WHAT DO YOU MEAN?
- 10 Q I'M JUST ASKING THE QUESTION, DID HE WAKE UP FROM
- 11 THE LIGHT OR WHEN YOU PUT HIM IN THE BATHROOM?
- 12 A I DON'T KNOW IF HE WAS FULLY AWAKE IN THE CHAIR OR
- 13 NOT. YOU KNOW IF YOU PUT LIGHT ON SOMEBODY THEY OPEN
- 14 THEIR EYES.
- 15 Q ALL RIGHT, BUT --
- 16 A HE HAD TO WAKE UP BECAUSE HE WAS ON HIS FEET.
- 17 Q AND WHEN YOU PUT HIM ON THE FLOOR, WERE YOU
- 18 PUTTING HIM ON THE FLOOR IN THE LIVING ROOM OR THE
- 19 BATHROOM?
- 20 A IN THE BATHROOM.
- 21 Q SO YOU CARRIED HIM FROM THE LIVING ROOM TO THE
- 22 BATHROOM?
- 23 A YES.
- 24 Q AT THAT POINT, THAT'S WHEN YOU STOOD HIM UP? WAS
- 25 HE ABLE TO STAND UP?

1 A YEAH, HE STOOD UP IN FRONT OF ME.

2 Q AT THAT POINT, WHEN HE WAS STANDING UP WAS HE
3 FULLY CLOTHED?

4 A YEAH, HE HAD ON CLOTHES.

5 Q AND JUST FOR THE RECORD, WERE THESE THE CLOTHES HE
6 HAD ON? (INDICATING)

7 A YES.

8 Q AND WHEN HE GOES TO SCHOOL AND ON THAT DATE, WAS
9 HE WEARING UNDERWEAR?

10 A YEAH, HE WAS WEARING UNDERWEAR, BUT I DON'T KNOW
11 WHICH ONE.

12 Q AND ONCE HE STOOD UP, WAS HE ABLE TO TALK TO YOU?

13 A YEAH. I TRIED TO --

14 Q OKAY, WELL, TELL ME WHAT HAPPENED ONCE YOU STOOD
15 HIM UP.

16 A I STOOD HIM UP IN FRONT OF ME AND TRIED TO TAKE
17 OFF HIS SHIRT. HE MADE A FACE. I ASKED HIM WHAT WAS
18 WRONG, DOESN'T HE KNOW HE HAS TO BATHE.

19 Q AND THIS WAS ALL IN THE BATHROOM, RIGHT?

20 A YEAH.

21 Q AT THAT POINT YOU TOOK HIS SHIRT OFF, RIGHT?

22 A YES.

23 Q AND WHAT DID YOU DO WITH THE SHIRT?

24 A I DON'T KNOW WHERE I PUT IT.

25 Q OKAY.

1 A I DROPPED IT NEXT TO ME UNTIL I CAN PICK IT UP
2 LATER.

3 Q OKAY.

4 A I JUST DROPPED IT.

5 Q SO YOU TAKE THAT OFF HIM AND JUST DROPPED IT ON
6 THE FLOOR SOMEWHERE IN THE BATHROOM?

7 A I DON'T KNOW EXACTLY WHERE I PUT IT, I PUT IT
8 SOMEWHERE.

9 Q OKAY. AND AT THAT POINT YOU ALSO GO AHEAD AND
10 TAKE OFF HIS PANTS?

11 A YEAH.

12 Q AND THESE ARE THE PANTS? (INDICATING)

13 A YEAH.

14 Q AND YOU WOULD PUT THEM IN THE SAME PLACE?

15 A I DON'T KNOW WHERE I PUT THEM.

16 Q BUT YOU REMEMBERED THE OTHER DETAILS?

17 A WHAT DO YOU MEAN I REMEMBERED THE OTHER DETAILS?
18 WHAT ARE YOU ASKING?

19 Q I'M ASKING IF YOU REMEMBER OTHER DETAILS OF WHAT
20 HAPPENED THAT NIGHT?

21 A YEAH, BUT WHEN YOU TAKE YOUR CLOTHES OFF YOU
22 DON'T --

23 Q OKAY. THAT'S FINE. AT THAT POINT, LET ME ASK YOU
24 THIS, YOU SAY THAT HE MADE A FACE?

25 A YES.

1 Q AND WAS THAT BEFORE YOU TOOK HIS CLOTHES OFF OR
2 AFTER?

3 A WHEN I WAS TRYING TO TAKE HIS CLOTHES OFF.

4 Q AT WHAT POINT -- DO YOU CONTINUE TAKING HIS
5 CLOTHES OFF EVEN THOUGH HE MADE A FACE? WERE HIS
6 CLOTHES ON OR OFF WHEN HE SAID IT HURTS?

7 A HIS SHIRT WAS OFF. I SAY, "YOU HAVE TO BATHE." I
8 SAID, "WHAT'S WRONG, YOU KNOW YOU HAVE TO BATHE." HE'S
9 LIKE, "I HURT," JUST LIKE THAT.

10 Q AND AT THAT POINT THAT'S WHEN YOU TAKE OFF HIS
11 LITTLE PANTS?

12 A UH-HUH.

13 Q AND YOU THROW THEM DOWN WITH THE OTHER THINGS?

14 A UH-HUH.

15 Q AND THEN THAT'S WHEN YOU NOTICE HIS SWOLLEN
16 TESTICLES?

17 A YES.

18 Q LET ME ASK YOU THIS, YOU MENTIONED THAT HIS
19 TESTICLES WERE MORE SWOLLEN THAN USUAL?

20 A YES.

21 Q HAD YOU TAKEN HIM TO THE DOCTOR THAT SUMMER,
22 BECAUSE HE HAD BEEN LIVING YOU A LITTLE OVER TWO
23 MONTHS. HAD YOU TAKEN HIM TO THE DOCTOR FOR THE
24 SWOLLEN TESTICLE PROBLEM?

25 A I DIDN'T TAKE HIM TO THE DOCTOR BECAUSE EVERYBODY

1 I TALK TO SAID I NEEDED A MEDICAL RECORD ON HIM FOR HIS
2 FATHER TO TAKE HIM. WE WENT IN MINNESOTA IN JULY.
3 MUSA TOOK HIM TO THE HOSPITAL.

4 Q OKAY. DID YOU GO WITH MUSA WHEN HE DECIDED TO
5 TAKE THE CHILD TO THE HOSPITAL IN MINNESOTA?

6 A YEAH, I WENT WITH HIM.

7 Q AND DO YOU HAVE THOSE MEDICAL RECORDS?

8 A NO. I DON'T KNOW.

9 Q YOU KNEW THIS TRIAL WAS COMING UP THIS WEEK?

10 A I KNEW WHAT?

11 Q THAT THE TRIAL WAS COMING UP THIS WEEK.

12 A YES.

13 Q BUT YOU DON'T HAVE THE MEDICAL RECORDS?

14 MR. ROGERS: YOUR HONOR, I OBJECT. SHE HAS NO
15 OBLIGATION TO PRODUCE ANYTHING.

16 THE COURT: ALL RIGHT. THERE IS NO BURDEN ON THE
17 DEFENDANT TO PROVE ANYTHING. LET'S MOVE ALONG.

18 MS. CAMPBELL: YES, YOUR HONOR. SHE JUST
19 TESTIFIED SHE WENT THERE.

20 THE COURT: ALL RIGHT. MOVE ALONG.

21 BY MS. CAMPBELL:

22 Q ONCE YOU -- SO YOU WERE NEVER ABLE TO TAKE HIM TO
23 THE DOCTORS IN SOUTH CAROLINA THAT SUMMER BECAUSE YOU
24 DIDN'T HAVE HIS MEDICAL RECORDS?

25 A YES.

1 Q ONCE YOU GET HIM IN AND YOU SEE THAT IT'S MORE
2 SWOLLEN THAN USUAL --

3 A YEAH.

4 Q -- AT THAT POINT, AND YOU'VE GOT SOME MEDICAL
5 TRAINING, THAT'S WHEN YOU CALL YOUR SISTER THE FIRST
6 TIME?

7 A YES.

8 Q AT THAT POINT YOU ASK HER ABOUT THE -- WAS HE
9 OKAY, RIGHT?

10 A I ASKED HER ABOUT HIS ACTIVITIES, YEAH.

11 Q AND THEN YOU GET THAT INFORMATION FROM HER AND YOU
12 DECIDE YOU SHOULD PUT HIM IN A HOT BATH -- OR A WARM
13 BATH, I'M SORRY?

14 A YES.

15 Q SO DO YOU RUN THE WATER IN THE BATHTUB?

16 A YES, I DO.

17 Q DO YOU PUT ANY SOAP IN IT OR BUBBLE BATH OR
18 ANYTHING LIKE THAT, OR WAS IT JUST WATER?

19 A I KNOW I RAN THE WATER.

20 Q YOU RAN THE WATER?

21 A YEAH.

22 Q WAS THERE ANYTHING IN THE BATHTUB?

23 A I DON'T REMEMBER THERE BEING ANYTHING IN THE
24 BATHTUB.

25 Q AT THAT POINT, YOU PUT HIM INTO THE WARM WATER.

1 AT THIS POINT IS HE CRYING?

2 A NO, HE'S JUST SITTING THERE MAKING FACES.

3 Q MAKING FACES?

4 A YEAH.

5 Q HE'S NOT CRYING, SCREAMING?

6 A NO.

7 Q YOU PUT HIM INTO THE WARM WATER?

8 A YES.

9 Q YOU PUT HIM DOWN. IS HE SITTING UP?

10 A I SAT HIM IN THE TUB AND LAID HIM BACK. LIKE HOW
11 I CARRY HIM, LIKE THIS. (INDICATING) IT WAS IN THE
12 SAME POSITION, BUT HIS HEAD WAS HIGHER THAN THE REST OF
13 HIS BODY.

14 Q OKAY. ALL RIGHT. AND AT THAT POINT YOU START
15 USING A WARM WASHCLOTH?

16 A YES.

17 Q AND AT SOME POINT YOU PUT IT ON SEVERAL TIMES; IS
18 THAT CORRECT?

19 A YES.

20 Q AND YOU DON'T KNOW HOW MUCH PRESSURE YOU PUT ON
21 IT?

22 A NO.

23 Q IN YOUR EXPERIENCE, IS IT APPROPRIATE TO PUT
24 PRESSURE ON AN ENLARGED SCROTUM?

25 A YES, TO CARRY IT DOWN, PUT SOMETHING WARM AND YOU

1 HOLD IT THERE.

2 Q OKAY. BUT WASN'T HE ALREADY SUBMERGED IN THE WARM
3 WATER?

4 A CAN YOU SAY THAT AGAIN?

5 Q WASN'T HE UNDER THE WARM WATER? WASN'T HIS
6 GENITAL AREA IN THE WARM WATER?

7 A YES, IT WAS IN THE WATER.

8 Q AND YOU DECIDED TO APPLY THE PRESSURE WITH THE
9 CLOTH?

10 A YES.

11 Q AT SOME POINT AFTER DOING THIS SEVERAL TIMES, YOU
12 NOTICED BLOOD ON THIS CLOTH?

13 A YES.

14 Q OKAY. AND AT THAT POINT THAT'S WHEN YOU BECOME
15 AWARE THAT SOMETHING IS WRONG?

16 A YES.

17 Q OKAY. AND AT THAT POINT, WHAT DO YOU DO?

18 A I GRAB HIM FROM THE TUB, PUT HIM ON THE RUG AND
19 GOT A PULL-UP AND PUT IT ON HIM AND THEN I WOULD CALL
20 MY SISTER. I WAS ON THE PHONE WITH HER WHEN I GOT A
21 TOWEL AND DRIED HIS SKIN OFF. I TOOK THE PULL-UP OFF
22 BECAUSE IT WAS WET. I TOOK THE FIRST PULL-UP AND PUT
23 IT IN THE TRASH CAN, GOT THE SECOND ONE, PUT THAT PULL-
24 UP ON HIM, PUT HIS CLOTHES ON AND TOOK HIM TO THE
25 HOSPITAL.

1 Q SO WHEN YOU TAKE HIM FROM THE BATHROOM, HE'S
2 BLEEDING BADLY; IS THAT RIGHT?

3 A THAT'S THE DROP THAT CAME OFF OF HIM.

4 Q FROM OFF OF HIM?

5 A YEAH.

6 Q DID HE DRIP BLOOD WHEN YOU GOT HIM OUT OF THE
7 BATHTUB AND INTO THE BEDROOM?

8 A IT'S A SHORT DISTANCE. I TOOK HIM FROM THE
9 BATHROOM AND PUT HIM ON THE RUG.

10 Q AND YOU JUST THREW DOWN THE WASHCLOTH WITH THE
11 BLOOD ON IT?

12 A THE WATER STAYED IN THE TUB. I HADN'T RUN THE
13 WATER OUT YET. I LEFT THE WASHCLOTH IN THE WATER IN
14 THE TUB.

15 Q OKAY. AT THAT POINT YOU THEN PUT HIM OUT AND YOU
16 PUT A PULL-UP ON HIM?

17 A YES.

18 Q AND BEING TRAINED IN THE MEDICAL FIELD, DID YOU DO
19 ANY EXAMINATION TO SEE WHAT WAS BLEEDING?

20 A I KNOW HIS SCROTUM WAS BLEEDING BECAUSE THE BLOOD
21 WAS COMING FROM THERE.

22 Q YOU DIDN'T DO AN EXAMINATION?

23 A NO, NO, NO. I WAS GOING TO TAKE HIM TO THE
24 HOSPITAL.

25 Q SO AT THAT POINT YOU DIDN'T CALL 911, YOU CALLED

1 YOUR SISTER?

2 A WHAT DO YOU MEAN I DIDN'T CALL 911? I CALLED MY
3 SISTER.

4 Q DID YOU CALL 911?

5 A NO, I DID NOT.

6 Q YOU CALLED YOUR SISTER?

7 A YES, I DID.

8 Q AND YOU TALKED TO YOUR SISTER AND THEN AFTER THAT
9 YOU WENT TO LEXINGTON HOSPITAL; IS THAT CORRECT?

10 A I WAS ON THE PHONE WITH HER WHILE I WAS GETTING
11 HIM TOGETHER TO CARRY HIM TO THE HOSPITAL.

12 Q OKAY. AND ONCE YOU PUT THE TOWEL ON HIM IN THE
13 BATHTUB UNDER THE WATER AND YOU NOTICED THE BLOOD, WAS
14 HE CRYING?

15 A YES, HE WAS.

16 Q WAS HE SCREAMING?

17 A NO, HE WASN'T SCREAMING.

18 Q HE WAS CRYING?

19 A TEARS WERE IN HIS EYES, BUT NO, HE WASN'T
20 SCREAMING.

21 Q AND WHEN YOU HAD HIM AND WERE UNDESSING HIM, DID
22 YOU NOTICE THE BRUISES TO HIS BODY?

23 A I WASN'T -- IT WAS SWOLLEN. THE WHOLE AREA DOWN
24 THERE WAS SWOLLEN.

25 Q WHAT ABOUT THIS STOMACH AREA, DID YOU NOTICE THE

1 BIG BRUISE ACROSS HIS ABDOMEN?

2 A I WASN'T PAYING ATTENTION TO HIS ABDOMEN. I WAS
3 LOOKING DOWN THERE. I KNOW THAT EVERYTHING WAS
4 SWOLLEN.

5 Q WHEN YOU UNDRESSED HIM -- WHEN YOU BROUGHT HIM
6 HOME THAT NIGHT, DID YOU NOTICE THAT HIS LIP WAS
7 BLEEDING.

8 A NO, THAT'S WHERE HE WAS BITING HIS LIP ON THE WAY
9 TO THE HOSPITAL. THAT'S WHEN THAT HAPPENED. I TOLD
10 HIM TO STOP BITING HIS LIPS. HIS LIP DIDN'T JUST START
11 BLEEDING. HE WAS BITING IT.

12 Q DID YOU CLEAN UP THE BATHROOM BEFORE YOU LEFT TO
13 GO TO THE HOSPITAL?

14 A NO.

15 Q YOU TOOK HIM IMMEDIATELY TO THE HOSPITAL, GOT
16 THERE AS FAST AS YOU COULD?

17 A YES.

18 Q AT THAT POINT, YOU HAD ALREADY TAKEN OFF ONE
19 BLOODY DIAPER; IS THAT CORRECT?

20 A YES.

21 Q SO YOU, AS A NURSE, KNOW THAT HE'S BLEEDING PRETTY
22 GOOD. DID YOU KNOW THAT THERE WAS AT LEAST A CUT TO
23 THE SCROTUM?

24 A YES, BECAUSE I SAW THE BLOOD.

25 Q SO WOULD IT BE APPROPRIATE FOR YOU TO THEN PUT ON

1 A PULL-UP AND PUT PRESSURE ON A CUT SCROTUM, WHICH
2 WOULD BE A PAINFUL EVENT?

3 A I DIDN'T THINK THE PULL-UP WOULD PUT PRESSURE ON
4 HIM. I DIDN'T WANT HIS BLOOD -- IF YOU STOP THE BLOOD
5 FROM FLOWING IT'S BETTER FOR THE PERSON. THEY DON'T
6 LOSE MORE BLOOD THAT WAY. IF YOU HAVE SOMETHING OVER
7 IT, THE BLOOD FLOW WOULD BE SLOWER THAN IT WOULD BE IF
8 YOU DIDN'T.

9 Q OKAY. AND YOUR TESTIMONY IS THAT YOU HAD TO TAKE
10 THIS ONE OFF HIM AND PUT ON ANOTHER ONE BECAUSE HE WAS
11 WET?

12 A YEAH.

13 Q ONCE YOU GOT HIM TO THE HOSPITAL, YOU TALKED TO
14 THE NURSE AT THE FRONT DESK, THE PERSON THAT SIGNED YOU
15 IN?

16 A YEAH.

17 Q DID YOU TELL HER -- AT THIS POINT WERE YOU
18 CONCERNED WITH WHAT WAS GOING ON WITH VICTIM?

19 A YES. THAT'S WHY I TOOK HIM TO THE HOSPITAL.

20 Q THAT'S RIGHT, BECAUSE EVEN THOUGH YOU DIDN'T HAVE
21 MEDICAL RECORDS, BECAUSE IT WAS AN EMERGENCY SITUATION,
22 YOU COULD TAKE HIM TO THE HOSPITAL, RIGHT?

23 A YES. I DIDN'T MAKE THE MEDICAL RULES.

24 Q SO ONCE YOU GOT HIM TO THE HOSPITAL, DID YOU TELL
25 HER HE WAS CUT IN THE SCROTUM AND BLEEDING HEAVILY?

1 Q SO THESE WERE IN THE BATHROOM WHERE THIS INJURY
2 OCCURRED AND YOU KNEW THAT?

3 A YEAH, I KNEW THAT.

4 Q AND DOES HE USUALLY HAVE A SUPPLY OVER THERE
5 BECAUSE THEY GET DULL PRETTY QUICKLY?

6 A YEAH, HE BUYS THEM IN THE PACK AND WHEN HE GETS
7 FINISHED HE GETS SOME MORE.

8 Q YOU MENTIONED THAT YOU WENT TO THE HOSPITAL THAT
9 DAY AND YOU TOLD SEVERAL PEOPLE WHAT WENT ON WITH THE
10 CHILD WHEN THEY ASKED YOU, RIGHT?

11 A YES.

12 Q AND YOU TOLD THEM, ACCORDING YOUR TESTIMONY HERE
13 TODAY, YOU TOLD THEM THE SAME STORY?

14 A YEAH, I TOLD THEM --

15 Q AND DID YOU EVER HAVE ANY ILL FEELINGS WITH THE
16 DOCTORS OR NURSES OR ANYONE ELSE THERE PRIOR TO THIS
17 EVENT?

18 A THE PEOPLE AT LEXINGTON THEY WERE CONCERNED ABOUT
19 TREATING HIM. THE PEOPLE AT RICHLAND WERE MORE
20 CONCERNED ABOUT ACCUSING ME OF STUFF AND NOT PAYING
21 ATTENTION TO HIM. SO I DIDN'T TALK TO THE PEOPLE AT
22 RICHLAND LIKE THAT.

23 Q OKAY. DID ANYONE -- HAD YOU EVER HAD ANY PRIOR
24 DEALINGS WITH ANY OF THESE PEOPLE THAT THEY WOULD HAVE
25 SOMETHING AGAINST YOU?

1 A WHICH PEOPLE?

2 Q THE DOCTORS, THE NURSES, EVERYONE THAT HAS
3 TESTIFIED OTHER THE LAST TWO DAYS.

4 A YOU'RE TALKING ABOUT THE PEOPLE FROM RICHLAND?

5 Q RICHLAND AND LEXINGTON.

6 A I DIDN'T HAVE ANY PRIOR DEALING WITH THEM, BUT IF
7 SOMEONE JUST ACCUSES YOU, HOW ARE YOU SUPPOSED TO TREAT
8 THEM?

9 Q DID YOU GO BACK THE NEXT DAY AND CLEAN UP THE
10 BATHROOM?

11 A I DIDN'T GO BACK THE NEXT DAY AND CLEAN UP THE
12 BATHROOM.

13 Q OKAY. SO THE BATHROOM, THE DAY AFTER THAT, WOULD
14 HAVE BEEN IN THE SAME SHAPE AS IT WAS AFTER YOU LEFT
15 THERE?

16 A I LEFT THE HOSPITAL AFTER HIS SURGERY AND THEY
17 SAID HE WAS SLEEPING. I WENT BACK HOME AND TOOK A
18 BATH. I HAD TO RUN THE WATER OFF AND RINSE THE TOWEL
19 OFF AND PUT IT IN THE HAMPER.

20 Q JUST A COUPLE MORE QUESTIONS. DO YOU KNOW HOW THE
21 LITTLE DROPLETS OF BLOOD GOT ON HIS CLOTHING?

22 A PROBABLY WHEN I WAS TAKING HIM FROM THE TUB
23 TRANSFERRING HIM TO THE RUG IN THE BEDROOM.

24 Q BUT YOU DIDN'T GET ANY ON THE TUB OR THE FLOOR OR
25 ANYWHERE ELSE?

1 NOW, OUR SYSTEM OF JURISPRUDENCE IS BASED ON THE
2 OLD ENGLISH SYSTEM WHERE THERE WERE THREE FORMS OF A
3 VERDICT: GUILTY, NOT GUILTY, AND NOT PROVEN.

4 WE'VE COMBINED NOT GUILTY AND NOT PROVEN INTO NOT
5 GUILTY, BUT IT ENCOMPASSES THE SAME CONCEPT, THAT IF
6 BASED ON ALL THE EVIDENCE THAT YOU HEARD, YOU DON'T
7 THINK THAT THE GOVERNMENT, THE STATE HAS PROVEN THAT
8 MIAMA DID IT BEYOND A REASONABLE DOUBT, THEN YOUR DUTY
9 UNDER THE OATH THAT YOU HAVE TAKEN AS JURORS REQUIRES
10 YOU TO RETURN A VERDICT OF NOT GUILTY. I THINK THAT'S
11 THE STATE OF THE EVIDENCE HERE.

12 I TOLD YOU AT THE OUTSET THAT THIS WAS A TRAGIC
13 EVENT FOR Victim . NOBODY DISPUTES THAT. MIAMA,
14 MUSA, THE WHOLE FAMILY KNOWS IT, BUT DON'T COMPOUND
15 THIS TRAGEDY BY CONVICTING, BASED ON THE STATE OF THIS
16 EVIDENCE, AN INNOCENT WOMAN.

17 THANK YOU.

18 THE COURT: ALL RIGHT. THANK YOU, MR. ROGERS.
19 MS. CAMPBELL.

20 MS. CAMPBELL: MAY IT PLEASE THE COURT.

21 CLOSING STATEMENT

22 MS. CAMPBELL: IN EVERY CASE WHILE PREPARING FOR
23 TRIAL, AS A PROSECUTOR, YOU TRY TO ANTICIPATE WHAT THE
24 DEFENSE IS. DEPENDING ON THE NATURE OF THE CASE, THE
25 DEFENSE MAY BE DIFFERENT, BUT IN CHILD ABUSE CASES

1 TYPICALLY THERE ARE TWO DEFENSES AVAILABLE. ONE IS
2 YOU'VE GOT THE WRONG PERSON, THEY DIDN'T DO IT, OR
3 NUMBER TWO IS IT WASN'T PHYSICAL OR SEXUAL ABUSE, THERE
4 WAS NO ABUSE INVOLVED.

5 IN THIS CASE AS I LISTEN, NEITHER ONE OF THOSE
6 REALLY WORKS IN THIS CASE, SO YOU GO BACK TO THE OLD
7 CLASSIC DEFENSE WHEN THE FACTS AREN'T ON YOUR SIDE AND
8 WHEN THE LAW IS NOT ON YOUR SIDE, JUST DO WHAT YOU CAN
9 TO MUDDY THE WATER. ATTACK THE POLICE, ATTACK THE
10 DOCTORS, ATTACK THE NURSES. DON'T TALK ABOUT ANYTHING
11 THAT POINTS DIRECTLY TO THE DEFENDANT'S GUILT. MUDDY
12 THE WATERS. TALK ABOUT WHAT THE STATE DOESN'T HAVE.
13 WERE THEY ABLE TO GET THE D.N.A. PRINT OFF THAT RAZOR
14 BLADE? IT'S LIKE IN A MURDER CASE IF THE GUN IS NOT
15 RECOVERED, THEN IT WASN'T MURDER. IF SHE THREW THE
16 RAZOR OUT THE WINDOW, THEN IT'S NOT CHILD ABUSE. IS
17 THAT THE THEORY?

18 THERE'S AN OLD JOKE WHEN I WAS IN LAW SCHOOL,
19 WHICH IS HAS BEEN A WHILE. IT'S ABOUT A LAWYER AND A
20 PRIEST WALKING DOWN THE STREET. IT HAD RAINED THE DAY
21 BEFORE, AND THERE WAS A BIG MUDDY SPOT RIGHT NEXT TO
22 THE SIDEWALK AND IN THAT PUDDLE THAT WAS IN THE MUDDY
23 SPOT YOU COULD LOOK STRAIGHT DOWN. THE PRIEST SAID
24 LOOK, THERE'S A SILVER DOLLAR. THE LAWYER PICKS UP A
25 STICK AND HE STIRRED UP THE WATER AND THE MUD AND THE

1 NO MATTER HOW HE WISHES IT WASN'T THE TRUTH,
2 THAT'S WHAT SHE SAW, SO THE VERY FIRST MEDICAL
3 PERSONNEL THAT COMES IN CONTACT WITH Victim ON
4 THE EARLY MORNING HOURS OF AUGUST 16TH IS SHOCKED BY
5 WHAT SHE SEES. SHE THINKS IT'S AN EMERGENCY. SO MUCH
6 SO THAT SHE RUSHES THAT CHILD BACK, THIS CRYING CHILD
7 BACK INTO THE BACK TO MAKE SURE HE GETS THE TREATMENT
8 HE NEEDS.

9 AT THAT POINT YOU HEAR ABOUT DR. O'MEARA AND NURSE
10 PORILLA AND WHAT DID THEY TELL YOU? NO, WE DIDN'T SHOW
11 THEM ALL THE SAME PICTURES. WHAT DID THEY SEE? THEY
12 DESCRIBED IT. THAT'S WHAT THEY'RE ALLOWED TO DO. THE
13 TESTICLE, IT WAS OUTSIDE THE SACK JUST LIKE IT WAS WHEN
14 THEY GOT TO RICHLAND MEMORIAL. THERE'S NO DISPUTE
15 THERE, LADIES AND GENTLEMEN. AT THE TIME MIAMA SHOWED
16 UP WITH HER CRYING CHILD WHOSE TESTICLE IS HANGING OUT
17 OF THE SACK, THERE IS NO DISPUTE.

18 AND SHE GIVES STORIES -- LET ME SAY RIGHT NOW,
19 LADIES AND GENTLEMEN, THE VARIATIONS IN THE STORIES,
20 THE DETAILS, THEY CHANGE SOMEWHAT, YOU REMEMBER. I
21 THINK SHE SAID IT POPS AT ONE POINT. AT ONE POINT, SHE
22 SAID THE CHILD IS OUTSIDE THE BATHTUB; AT ONE POINT
23 IT'S INSIDE THE BATHTUB, AND THE ONLY THING THAT'S
24 CONVINCING ABOUT THAT, AND AGAIN, IT'S JUST ONE FACTOR,
25 BUT AS YOU KNOW WHEN YOU'RE HAVING TO MAKE THE STORY

1 UP, THE DETAILS CAN GET LOST AND THE DETAILS CAN GET
2 KIND OF MIXED UP UNTIL YOU CAN THINK IT THROUGH ENOUGH
3 TO MAKE IT RIGHT.

4 SHE FIRST TELLS MS. SHARPE -- AND YOU REMEMBER
5 THAT SHE APPLIED PRESSURE AND SAW BLOOD. THE NEXT
6 STORY IS THAT SHE APPLIED PRESSURE AND HEARD A POP. HE
7 SAID YOU CAN'T BELIEVE IT BECAUSE SHE DIDN'T WRITE IT
8 DOWN. HE WISHES. DO YOU THINK SHE DOESN'T REMEMBER
9 THIS CASE? SHE TOLD DR. O'MEARA SHE APPLIED PRESSURE.
10 THERE WASN'T ANY TALK ABOUT THE T.V., ABOUT HIM NOT
11 EATING AND ALL THOSE DETAILS AND YOU KNOW WHAT, ASSUME
12 THERE SHOULDN'T BE. THIS IS AN EMERGENCY SITUATION.
13 AT LEAST THE MEDICAL PERSONNEL WERE UPSET. AT THIS
14 POINT ACCORDING TO SHARPE, WHEN SHE SEES SHARPE'S
15 REACTION, SHE STARTED GETTING A LITTLE TENSE BECAUSE
16 MAYBE IT'S A BIGGER DEAL THAN SHE THOUGHT.

17 DR. O'MEARA REFERS THE CHILD OVER TO RICHLAND
18 MEMORIAL HOSPITAL. YOU HEARD ABOUT THE TRANSPORT, THE
19 E.M.T., APRIL BERRY WHO TESTIFIED. AGAIN, SHE GETS A
20 HISTORY ON THE CHILD. NO TRAUMA KNOWN. THAT'S THE
21 FIRST THING EVERY TIME, IS ANY TRAUMA KNOWN. THE
22 NURSES ASK THAT. SHE ASKS THAT, AND IT IS INTERESTING
23 AND AGAIN JUST A FACTOR TO BE TAKEN WITH ALL THE OTHER
24 EVIDENCE -- AND I'LL GET TO THE EVIDENCE IN A MINUTE,
25 BUT THIS IS JUST A BUILD UP.

1 WHAT DOES SHE WANT TO KNOW? WELL, WHAT COULD HAVE
2 CAUSED THIS? ROUGH HOUSING WITH HIS COUSIN? SHE'S GOT
3 HER STORY OUT THERE. SHE'S KIND OF STUCK WITH IT, BUT
4 SHE WANTS TO KNOW. THAT'S JUST ANOTHER FACTOR, LADIES
5 AND GENTLEMEN. NO ONE IS ASKING YOU TO CONVICT HER ON
6 HER DEMEANOR, BUT THAT, COUPLED WITH THE OVERWHELMING
7 MEDICAL TESTIMONY, IS SOMETHING YOU ARE ALLOWED TO
8 CONSIDER AND THAT'S WHY YOU'RE ALLOWED TO HEAR ABOUT
9 IT.

10 AND THE THING THAT SHE WON'T LEAVE HIM -- AND
11 GUESS WHAT, LADIES AND GENTLEMEN, THERE ARE TWO WAYS TO
12 INTERPRET THAT. SHE WON'T LEAVE BECAUSE SHE DOESN'T
13 WANT HIM TALKING OR SHE WON'T LEAVE HIM BECAUSE SHE IS
14 SO CONCERNED ABOUT IT. REMEMBER HER TESTIMONY. HOW
15 DID SHE CHARACTERIZE HER RELATIONSHIP WITH THE CHILD?
16 I LIKE HIM FINE. HE WAS FINE, SOMETHING OF THAT
17 NATURE. THAT'S HER CHARACTERIZATION, AND YOU REMEMBER
18 THE WORDS. THOSE WEREN'T NEW.

19 SHE WON'T LEAVE THIS CHILD ALONE. WAS IT OUT OF
20 HER OVERWHELMING LOVE AND AFFECTION FOR THIS BRUISED
21 AND BATTERED CHILD OR WAS IT BECAUSE SHE WANTED TO MAKE
22 SURE EVEN THIS POOR CHILD WITH A SPEECH DELAY PROBLEM
23 COULDN'T TALK. EVEN IF HE DID, WE COULD UNDERSTAND
24 HIM. SHE STAYS WITH HIM. SHE IS NOT LEAVING HIS SIDE.
25 SHE'S NOT EVEN LETTING HIM RIDE IN THE AMBULANCE

1 WITHOUT HER. ON THE WAY OVER THERE SHE TALKS TO THEM
2 ABOUT WHAT HAPPENED.

3 THEY TAKE THE CHILD OVER THERE AND SOMEHOW HE
4 COMES UP WITH SOME TIME LINE THAT IT'S EITHER TAKEN
5 THREE HOURS TO GET OVER THERE OR WHATEVER. SOMETIME IN
6 THE EARLY MORNING HOURS HE PRESENTS TO RICHLAND
7 MEMORIAL. AND I LIKE THIS FACT, TOO. THEY KEEP ACTING
8 LIKE THEY DIDN'T DO THEIR JOB, THAT LEXINGTON AND
9 RICHLAND DIDN'T DO THEIR JOB, THAT THEY TOOK TOO LONG.
10 THEY SAVED THAT CHILD. THIS WASN'T JUST GOOD CARE,
11 LADIES AND GENTLEMEN, THIS WAS GREAT CARE. THEY SAVED
12 HIS TESTICLE, HIS FUTURE, AND THEY HAVE THE AUDACITY TO
13 SAY THEY WEREN'T DOING THEIR JOB AND IT TOOK TOO LONG?
14 I'LL GET BACK TO WHAT TOOK TOO LONG.

15 YOU HEARD FROM THEM, AND THEN YOU HEARD FROM A
16 SERIES OF DOCTORS. DR. HARRIS. SHE IS A RESIDENT.
17 SHE IS TRAINED IN PEDIATRICS. SHE HAS ALWAYS DONE
18 PEDIATRICS. WE PUT HER ON THE STAND PRIMARILY JUST TO
19 GIVE YOU -- AND HE IS THE ONE WHO ASKED HER OPINION ON
20 THINGS. WE WANTED HER TO GIVE YOU THE SCENARIO BECAUSE
21 SHE HAD THE FIRST CONTACT AT RICHLAND MEMORIAL AND HER
22 STORY AND WHAT SHE TOLD THEM. YOU REMEMBER IT AS SHE
23 GAVE IT TO HER. I THINK THERE WAS PRESSURE AND THAT
24 MAYBE HE WAS OUTSIDE THE BATHTUB OR INSIDE, I DON'T
25 REMEMBER. AGAIN, IT DOESN'T MATTER, IT'S JUST ANOTHER

1 FACTOR.

2 THEN YOU HEARD FROM THREE DIFFERENT EXPERTS.

3 MR. ROGERS JUST GOT UP HERE AND TOLD YOU THAT THEY
4 COULDN'T TELL YOU WHAT HAPPENED, THAT THEY COULDN'T
5 TELL YOU ANYTHING. THAT THEY THOUGHT IT WAS NON-
6 ACCIDENTAL. THEY CAME UP HERE AND THEY SWORE AN OATH
7 AND PUT THEIR HAND ON THE BIBLE AND TOLD YOU IN THEIR
8 EXPERT OPINIONS -- AND THEY DIDN'T SAY THEY HAD A DOUBT
9 THAT THIS WAS AN INTENTIONAL INFLECTION WITH SOME
10 OBJECT CONSISTENT WITH -- AND NO, THEY AREN'T GOING TO
11 GET UP HERE AND SAY THAT THAT RAZOR DID IT. THAT'S NOT
12 REASONABLE. THAT'S NOT DOABLE, BUT THEY CAN TELL YOU
13 WHAT KIND OF INSTRUMENT CAUSED THIS.

14 I THINK DR. EHRETH SAID HE HAD SEEN MANY
15 INCISIONS. THIS WAS DONE WITH EITHER A SCALPEL, SHARP
16 OBJECT, SHARP KNIFE, OR A RAZOR. I CAN'T HELP IT IF
17 THEY JUST HAPPEN TO KEEP RAZORS IN THEIR BATHROOM.
18 THAT'S WHAT THEY SAID CAUSED THIS. EVERY SINGLE
19 DOCTOR.

20 THIS IS OVER AND OVER, IN THEIR EXPERT OPINIONS.
21 COULD THIS HAVE BEEN ACCIDENTAL? COULD HE HAVE DONE IT
22 TO HIMSELF? NO, NO, NO. THIS WAS DONE TO THIS CHILD.
23 IT IS CHILD ABUSE. THERE IS NO DISPUTE IN THIS CASE.
24 THEY ALL AGREED, INDEPENDENT WITH EACH OTHER, THEY ALL
25 AGREED. THEY EVEN WENT SO FAR, DR. AMROL DID, TO CALL

1 IN DR. ABLE, WHO IS A FORENSIC PEDIATRICIAN, WHO HAS
2 KNOWLEDGE ABOVE AND BEYOND WHOSE FIELD OF EXPERTISE IS
3 CHILD ABUSE, JUST TO MAKE SURE SO THAT THEY DID IT
4 RIGHT.

5 WHAT DID DR. ABLE AND DR. AMROL AND DR. EHRETH
6 TELL YOU? DR. EHRETH TOLD YOU ABOUT THE AREA, THE
7 SCROTAL AREA. IT WAS A FOUR CENTIMETER LACERATION, A
8 STRAIGHT LACERATION. HE TOLD YOU IT COULD NOT HAVE
9 BEEN CAUSED BY TEARING, IT WOULD HAVE BEEN TORN IN THE
10 RIDGES OF THE SCROTUM, IT WOULD HAVE BEEN JAGGED. IT
11 WOULD NOT HAVE BEEN CUT STRAIGHT ACROSS THE RIDGES IN
12 THE SCROTUM. EVEN SO, IT WOULD BE STELLATE OR JAGGED,
13 AND IT DOESN'T TAKE -- EVERYONE HAS TORN STUFF APART.
14 UNLESS IT'S PRECUT AND THE THEORY THAT THIS HAPPENED
15 AND HE ASKED OVER AND OVER BECAUSE HE WANTS IT TO BE
16 TRUE. ONE CENTIMETER AND THEN IT TORE ANOTHER THREE,
17 NO, THAT DID NOT HAPPEN IN THIS CASE.

18 IT WAS CUT THROUGH. IT DIDN'T JUST CUT THROUGH
19 THE SKIN, SHE CUT THROUGH A LAYER OF MUSCLE. AS HE
20 SAID, SHE WAS LUCKY SHE DIDN'T CUT THE ACTUAL TESTICLE.
21 THAT'S WHAT DR. EHRETH TOLD YOU. TESTICLE OUTSIDE THE
22 SCROTUM, A SHARP INSTRUMENT, KNIFE, SCALP, RAZOR, NON-
23 ACCIDENTAL TRAUMA, NO DOUBT.

24 THERE WERE OTHER INJURIES, TOO, LADIES AND
25 GENTLEMEN, AND THEY IGNORED THOSE. WHAT DO THEY MEAN?

1 OH, BUT THEY HAVE AN EXPLANATION FOR EVERYTHING. OH,
2 HE WAS BITING HIS LIP ON THE WAY TO THE HOSPITAL. SHE
3 DIDN'T NOTICE THIS INJURY ON HIS SCROTUM DOWN THERE,
4 BUT SHE SAW HIM BITING HIS LIP. DR. ABLE TOLD YOU IT
5 WASN'T CONSISTENT WITH BITING THE LIP. WHAT ABOUT THE
6 OTHERS, THE ABRASIONS TO THE FOREHEAD, THAT TRAUMA.
7 THAT IN AND OF ITSELF, LADIES AND GENTLEMEN, COULD BE
8 CAUSED ACCIDENTALLY. NO DISPUTE THERE.

9 THE STATE IS NOT TRYING TO -- WE'RE JUST TRYING TO
10 SAY AT THE TIME THIS CHILD PRESENTS HE HAS AN ABRASION
11 ON HIS FOREHEAD CAUSED BY SOME KIND OF TRAUMA. HE HAS
12 A PETECHIAL RASH ON HIS CHIN. COULD IT BE CAUSED BY
13 PLAYING AROUND AND ROUGH HOUSING, YEAH. SOMEBODY
14 GRABBING THE CHIN LIKE THAT, YEAH.

15 NO ONE IS TRYING TO SAY THAT AND THAT IN AND OF
16 ITSELF IS CONCLUSIVE OF ANYTHING. IT'S ANOTHER FACTOR
17 AND THEY'RE STARTING TO ADD UP. LACERATIONS TO THE
18 LIP, NOT CONSISTENT WITH SOMEONE BITING THEIR LIP AS IN
19 PAIN. WHAT IS IT CONSISTENT WITH? SOMEONE BOPPING
20 THEM IN THE MOUTH TO SHUT THEM UP. CONSISTENT WITH
21 TAKING THE CHILD, RAMMING HIS FACE AGAINST THE CORNER
22 OF SOMETHING TO SHUT HIM UP.

23 HE JUST HAPPENS TO PRESENT, AND YOU'VE GOT THE
24 PHOTOS, BUT NOT ONLY IS HIS SCROTUM SPLIT WIDE OPEN,
25 HE'S GOT DRY BLOOD ON HIS LIPS FROM LACERATIONS AND HE

1 WANTS TO DISPUTE THE TIME PERIOD, BUT I SUBMIT THAT
2 DR. ABLE DIDN'T SAY TWELVE HOURS FROM THE TIME SHE SAW
3 HIM. SHE SAID TWELVE HOURS FROM THE TIME HE PRESENTED.
4 THAT TWELVE HOUR TIME PERIOD, SHE WENT BACK AND CLEARED
5 THAT UP. WE AREN'T TRYING TO PICK AND CHOOSE. WE'RE
6 LOOKING AT ALL THE EVIDENCE.

7 RED TENDER BRUISE ON THE RIGHT SIDE OF THE
8 ABDOMEN. YOU'VE GOT PHOTOS THAT WERE TAKEN THAT
9 MORNING. SHE SAID WHEN SHE SAW HIM IT WAS EVEN MORE
10 PRONOUNCED BECAUSE AS TIME PASSES THAT'S WHAT BRUISES
11 DO. IT WAS TENDER TO THE TOUCH, SUCH FORCE OR SUCH
12 TRAUMA THAT IT'S STILL TENDER, AND WE'VE ALL BEEN HIT
13 AND HAD BRUISES, AND WE KNOW WHAT THEY'RE TALKING
14 ABOUT. WAS IT CONSISTENT WITH SUSTAINED FORCE SUCH AS
15 HOLDING A CHILD DOWN WHILE HE'S TRYING TO GET AWAY FROM
16 YOU? THEY TALK ABOUT THE CAR SEAT OR THE AMBULANCE
17 DOING THIS? THAT'S NOT THE TYPE OF FORCE WE'RE TALKING
18 ABOUT.

19 SO THIS CHILD, WHO JUST HAPPENS TO HAVE HIS
20 SCROTUM CUT OPEN PRESENTS WITH AN ABRASION TO THE
21 FOREHEAD, WITH LACERATIONS FROM BLUNT FORCE TRAUMA TO
22 HIS LIPS, WITH AN ABDOMEN THAT IS TENDER TO THE TOUCH
23 BECAUSE OF THE FORCE APPLIED, WHETHER HOLDING HIM DOWN
24 OR BOUNCING HIM AROUND OR WHATEVER.

25 WE AREN'T ASKING YOU JUST TO SAY BECAUSE OF ONE OF

1 THESE THINGS, BUT LADIES AND GENTLEMEN, YOU HEARD THE
2 EXPERTS. THERE IS NO DISPUTE. THIS WAS PHYSICAL
3 ABUSE, NOT DONE BY THE CHILD, THAT WAS DONE ON THE
4 CHILD THAT EQUALS GREAT BODILY INJURY.

5 THERE ARE TWO MORE THINGS I WANT TO TALK ABOUT.
6 WHEN YOU CONSIDER -- AND I'M GOING TO GET TO HER STORY
7 -- WHEN YOU CONSIDER HER TESTIMONY, THERE IS NO
8 DISPUTE. THIS IS COMMON SENSE. WHEN THE CUT WAS MADE,
9 THERE WAS BLOOD. NOW LET ME REPEAT THAT, WHEN THIS CUT
10 WAS MADE THERE WAS BLOOD, AND LOTS OF IT. IT'S A
11 VASCULAR AREA IS HOW THEY DESCRIBE IT. IT'S GOT LOTS
12 OF BLOOD IN IT. THIS WASN'T SOMETHING WHERE YOU CAN
13 CUT IT AND THEN FREEZE IT FOR TWELVE HOURS AND THEN IT
14 COMES BACK. YOU'VE GOT HIS CLOTHING, HIS UNDERWEAR.
15 THEY COLLECTED ALL OF IT TO MAKE SURE THEY HAD THE
16 RIGHT ONE.

17 YOU'VE GOT THE TESTIMONY OF HER OWN SISTER THAT
18 WHEN SHE PICKED THAT CHILD UP, EVEN THOUGH THEY TRIED
19 TO CAST ASPERSIONS ON EVERYONE INCLUDING THE DAY CARE,
20 THAT THIS CHILD WAS FINE. SHE SAW NO BLOOD. THERE WAS
21 NO BLOOD AT HER HOUSE, WHICH THEY DIDN'T INVESTIGATE.
22 THERE WAS NO BLOOD ANYWHERE. SHE HAS TO ADMIT THAT
23 THERE'S NO BLOOD UNTIL THAT CHILD COMES INTO HER
24 CUSTODY, HERS AND HERS ALONE.

25 AND BEYOND THE BLOOD, LADIES AND GENTLEMEN, IS THE

1 PAIN. THIS IS AN AREA OF THE BODY THAT SOMEONE KNOWS
2 THAT HURTS MORE THAN JUST A CUT TO YOUR ARM. IS THIS
3 CRIMINAL INTENT? COULD IT BE MORE MALICIOUS? THIS
4 ISN'T A CUT TO THE LEG. THIS ISN'T JUST SLAMMING HIM
5 IN THE FACE, HITTING HIM IN THE ABDOMEN OR PUTTING A
6 KNEE TO HOLD HIM DOWN WHILE YOU CUT HIM, LADIES AND
7 GENTLEMEN, THIS IS EVIL.

8 COULD YOU PICK AN AREA ON A MALE OR ON A FEMALE
9 THAT WOULD BETTER SEND A MESSAGE? THAT'S THE
10 TESTIMONY. NO DISPUTE. EVEN COMMON SENSE, A TWO INCH
11 CUT THROUGH THE MUSCLE, THERE IS NOT JUST PAIN, BUT
12 EXTREME PAIN, SEVERE PAIN, I THINK, IS HOW IT WAS
13 DESCRIBED.

14 ACCORDING HER SISTER, MS. GAROWAY, THIS CHILD WAS
15 FINE, NO PROBLEMS, DIDN'T HAVE ANY PROBLEM. I'LL GET
16 BACK TO THAT. THAT'S THE TESTIMONY YOU HEARD FROM
17 THEM.

18 FINALLY, YOU ALSO HEARD FROM ANOTHER -- OTHER
19 EXPERTS. I'LL GO THROUGH THESE FIRST. YOU HEARD FROM
20 GRAY AMICK. HE'S A D.N.A. EXPERT. WHAT WAS
21 SIGNIFICANT IN WHAT HE FOUND WAS TWO DROPS OF BLOOD
22 THAT HE FOUND ON THE OUTSIDE OF THE CLOTHING HE WORE
23 THAT DAY, AND SO WE KNOW THAT THE CLOTHING HE WORE THAT
24 DAY WHEN SHE UNDRESSED HIM WAS CLOSE. THERE'S NO BLOOD
25 ON THE INSIDE SO IT'S A REASONABLE CONCLUSION TO ASSUME

1 THE CLOTHING HAD BEEN TAKEN OFF IN A MANNER SIMILAR TO
2 WHAT SHE SAID HAPPENED AS FAR AS HIM TAKING OFF THE
3 CLOTHING. WE KNOW FOR A FACT THAT THERE WAS NO BLOOD
4 ON ANY PAIR OF PANTS. IF THERE HAD BEEN ONE, I'M SURE
5 IT WOULD HAVE BEEN PROVIDED BY MUSA. THAT'S ALL GOT NO
6 BLOOD ON THEM.

7 WHAT DO WE KNOW ABOUT THE RAZOR BLADE? I WANT TO
8 BE THE FIRST TO SAY, LADIES AND GENTLEMEN, THAT RAZOR
9 BLADE IS VERY SIGNIFICANT, BECAUSE IT PROVES THAT THEY
10 KEPT RAZOR BLADES IN THE BATHROOM. WE ARE NOT HERE TO
11 TELL YOU, AND WE DON'T HAVE TO PROVE TO YOU THAT THAT
12 IS THE RAZOR BLADE. HE TALKED LIKE THAT HAD TO BE
13 PROVEN IN THIS CASE, BUT WHAT WE HAVE TO PROVE TO YOU
14 IS THAT THIS DEFENDANT HAD THE PRESENT ABILITY TO
15 INFLICT THE INJURY THAT WAS INFLICTED. IT'S JUST LIKE
16 WITH A GUN. JUST BECAUSE WE DON'T RECOVER THE GUN
17 DOESN'T MEAN THE DEFENDANT DIDN'T HAVE ACCESS TO THE
18 GUN THAT CAUSED THE MURDER. IF THE KNIFE IS NOT
19 RECOVERED FROM A STABBING, IT DOES NOT MEAN THAT THE
20 STABBING DID NOT HAPPEN. THAT'S THEIR LOGIC.

21 WHAT THIS DOES PROVE THAT IS SIGNIFICANT IS THAT
22 THERE WAS D.N.A. MATERIAL ON IT. IS THAT CONSISTENT
23 WITH IT HAVING BEEN WASHED? I ASKED HIM THAT. HE SAID
24 YES. ARE WE UP HERE REPRESENTING TO YOU -- AND I DON'T
25 WANT TO MISREPRESENT ANYTHING, THAT THAT'S THE KNIFE,

1 THE RAZOR? IT MAY BE, BUT WHAT WE DO KNOW IS THEY KEPT
2 THEM BECAUSE MUSA EITHER -- I DON'T KNOW IF HE SHAVED.
3 HE SAID HIS FACE, SHE SAID HIS HAIR, BUT -- WHATEVER.
4 WELL, THEY'RE THE SAME. THAT'S WHAT'S SIGNIFICANT
5 ABOUT IT. THERE WAS SO MUCH BLOOD IN THE PULL-UP THAT
6 THEY DIDN'T EVEN DO THE TESTING. THERE WAS NO NEED.
7 THERE WAS NO DISPUTE TO THAT. THERE IS NO DISPUTE BY
8 HER THAT SHE PULLED THE PULL-UP ON HIM.

9 YOU HEARD FROM HEATHER SMITH. YOU HEARD THEM TALK
10 ABOUT HOW THE POLICE DIDN'T DO THEIR JOB BECAUSE THEY
11 DIDN'T GO CHECK ON WHAT HAD HAPPENED THAT TWENTY-FOUR
12 HOURS BEFORE. WHAT THEY DID DO WAS THEY REFERRED THE
13 CHILD OVER THERE FOR ASSESSMENT AT THE RESOURCE CENTER,
14 AS THEY SHOULD. THEY CALLED IN THE FORENSIC EXPERT.
15 THEY CALLED IN THIS FORENSIC EXPERT. SHE INTERVIEWED
16 THE CHILD. I CAN'T GET INTO WHAT THAT WAS, BUT AS A
17 RESULT OF THAT INTERVIEW, SHE TURNED THAT INFORMATION
18 OVER TO THE POLICE. HER FINDING WAS IT WAS COMPELLING
19 FOR PHYSICAL ABUSE. NO ONE DISPUTES THAT.

20 SERGEANT RANDY STRANGE, HE WENT TO THE HOME. HE
21 BECAME INVOLVED ON THE 17TH, THE DAY AFTER THIS REPORT.
22 HE WENT TO THE HOME WITH MR. KROMAH -- OH, AND THEY ARE
23 LIKE GETTING MAD AT HIM BECAUSE HE DIDN'T VIOLATE MUSA
24 KROMAH'S RIGHTS, WHEN HE SAID -- IT'S A FOURTH
25 AMENDMENT RIGHT THAT YOU CAN'T GO ANY FURTHER IN ANY

1 HOME. THEY HONORED HIS WISHES AND THEY WANT TO HOLD
2 THAT AGAINST HIM? HE TOLD THEM THAT THEY COULD SEARCH
3 THE AREA AND WHAT DOES HE FIND? YOU'LL HAVE THE
4 PICTURES. THE BATHROOM, THERE'S NOT A DROP OF BLOOD IN
5 IT.

6 NOW DURING THE TESTIMONY SHE SAID, NO, SHE DIDN'T
7 CLEAN IT UP, JUST PICKED UP, BUT SHE LET THE WATER OUT.
8 WHERE IS THE BLOODY WASHCLOTH? SHE RINSED THAT OUT,
9 AND I THINK SHE DID SAY THAT. WHERE IS THE BLOODY
10 TOWEL IF THEY DIDN'T CLEAN IT UP? WHERE IS THE BLOOD
11 DROPLETS FROM WHERE SHE TOOK HIM OUT OF THE BATHTUB,
12 BECAUSE ACCORDING TO HER HE IS SO WET THAT THE FIRST
13 PULL-UP SHE PUT ON HIM HAD TO BE REPLACED. WHERE IS
14 ALL THAT IF SHE WASN'T TRYING TO COVER HER TRACKS?

15 WHAT HE DID NOTE THAT'S SIGNIFICANT AND LET'S FACE
16 IT, THEY CAN'T DO MUCH WITH THIS, IT'S ON THE RUG.
17 THEY FIND THAT. WHERE DO THEY FIND THE BLOODY DIAPER?
18 IT'S ALREADY BEEN THROWN IN THE TRASHCAN. IS SHE
19 PANICKED? YEAH, BUT SHE HAD THE WHEREWITHAL TO PUT HIS
20 CLOTHES AFTER THEY GOT BLOOD ON THEM INTO THAT HAMPER,
21 OR SOMEBODY DID.

22 YOU HEARD FROM INVESTIGATOR ROY LIVINGSTON. HE
23 GOT UP HERE AND HE SAID HE WENT TO THE HOSPITAL AND HE
24 INTERVIEWED THEM ON THAT MORNING AND HE DIDN'T DO
25 ANYTHING ELSE. THAT IS NOT THE TRUTH. HE DID HIS JOB.

1 UNFORTUNATELY FOR THEM.

2 WHAT DID HE DO? HE WENT THERE THAT DAY. HE
3 TALKED TO THE DOCTORS. HE TALKED TO BOTH PARENTS. HE
4 ASKED THEM TO COME IN THE NEXT DAY FOR AN INTERVIEW.
5 HE GOT A FORMALIZED STATEMENT. YOU GOT IT BEFORE YOU,
6 AND I'LL GET BACK TO THAT. HE DIDN'T STOP THERE. HE
7 WENT BACK TO THE HOSPITAL. HE INTERVIEWED THE CHILD
8 AGAIN WHEN THEY WEREN'T THERE. HE GOT THE INFORMATION
9 FROM THE ASSESSMENT RESOURCE CENTER, FROM HEATHER
10 SMITH, AND BASED ON HIS INVESTIGATION, HE ARRESTED THE
11 PERSON THAT DID THIS, MIAMA KROMAH.

12 THEIR DEFENSE IS BECAUSE SHE SAYS IT'S NOT SO, IT
13 DIDN'T HAPPEN. LADIES AND GENTLEMEN, WHEN THE
14 OVERWHELMING EVIDENCE SAYS IT IS SO, JUST BECAUSE SHE
15 SAYS IT'S NOT DOESN'T MAKE HER INNOCENT.

16 WHEN I WAS GETTING READY FOR THIS CASE, I THOUGHT
17 TO MYSELF, BECAUSE OF THE NATURE OF THIS CASE, THE VERY
18 HEINOUS NATURE, WHO WOULD DO THIS? WHAT KIND OF PERSON
19 COULD DO SOMETHING LIKE THAT? I THOUGHT TO MYSELF,
20 WELL, YOU KNOW, FOR THAT MATTER, CHILD ABUSE IS CHILD
21 ABUSE. WHAT IS A RAPIST LIKE? WHAT IS AN ARMED ROBBER
22 LIKE? WHAT IS A MURDERER LIKE? UNFORTUNATELY, LADIES
23 AND GENTLEMEN --

24 MR. ROGERS: YOUR HONOR, I'M GOING TO OBJECT.

25 THE COURT: HOLD ON.

1 MR. ROGERS: YOUR HONOR, EQUATING THIS CASE WITH A
2 MURDER, ARMED ROBBERY, OR RAPE, IT'S INTERJECTING
3 PREJUDICE THAT NEEDS NOT BE HERE. I OBJECT.

4 THE COURT: I SUSTAIN THAT OBJECTION.

5 MS. CAMPBELL: WHAT DOES A CHILD ABUSER LOOK LIKE?
6 UNFORTUNATELY, LADIES AND GENTLEMEN, IT COULD BE THE
7 NEXT DOOR NEIGHBOR, A FRIEND, IT COULD BE THE LOCAL
8 PRIEST. CHILD ABUSE BY ITS VERY NATURE IS VERY
9 PRIVATE. THERE AREN'T GOING TO BE A LOT OF PEOPLE
10 AROUND IN SOMEONE'S HOME. IT'S PROTECTED BY FAMILY
11 MEMBERS WHO DON'T WANT TO BELIEVE IT'S SO. THAT'S A
12 CHILD ABUSER. IT CAN BE A MAN. IT CAN BE A WOMAN. IT
13 DOESN'T MATTER.

14 YOU HEARD FROM MUSA KROMAH AND LANCE AMARA. WHY
15 DID WE PUT THEM UP? MR. ROGERS SAID I WASN'T NICE TO
16 HIM. I'M SORRY IF I DIDN'T TREAT HIM WITH RESPECT. IT
17 WAS NOT INTENTIONAL ON MY PART, BUT IT'S FRUSTRATING TO
18 HEAR THINGS FOR THE FIRST TIME. MUSA KROMAH WAS PUT UP
19 BECAUSE HE WAS THE ACTUAL PARENT. WE PUT UP LANCE
20 AMARA TO TELL YOU THAT MR. KROMAH WAS AT WORK THAT
21 NIGHT, BUT MUSA KROMAH TOLD YOU SOME SIGNIFICANT THINGS
22 IN THAT HE TOLD YOU ABOUT THE EVENTS LEADING UP TO
23 THIS, HAVING MET HIS WIFE, HOW LONG THEY HAD BEEN
24 MARRIED, WHERE THEY WERE LIVING, CRAMPED QUARTERS WITH
25 A ROOMMATE WITH HALF OF THAT APARTMENT AND THREE OF

1 THEM IN THE OTHER HALF. HE TOLD YOU ABOUT THE EVENTS
2 THAT HAPPENED THAT DAY.

3 AT FIRST HE TOLD YOU THE CHILD WAS HEALTHY AND
4 THEN HE WENT BACK TO THE STORY ABOUT HIM HAVING SWOLLEN
5 TESTICLES. THAT HE COULDN'T GET MEDICAL CARE IN SOUTH
6 CAROLINA BECAUSE HE DIDN'T HAVE THE MEDICAL RECORDS,
7 BUT HE WAS ABLE TO GET MEDICAL CARE SOMEWHERE ON A TRIP
8 IN MINNESOTA, BUT HE DIDN'T HAVE THOSE RECORDS. BY THE
9 WAY, DR. ABLE, AS YOU RECALL, REVIEWED ALL THE MEDICAL
10 RECORDS AND THERE WAS NO INDICATION THE CHILD HAD
11 ANYTHING WRONG.

12 WHY MAKE THAT UP? BUT MORE THAN THAT, HE GETS
13 CUSTODY OF HIS CHILD BACK. SHE CAN'T HAVE HIM. HE
14 GETS CUSTODY BACK IN FEBRUARY. HE MOVES TO ATLANTA
15 IMMEDIATELY THEREAFTER.

16 AND I BELIEVE HE -- HE DIDN'T EVEN KNOW HIS OWN
17 SON'S BIRTHDAY BY THE WAY. I BELIEVE IN CARING FOR THE
18 CHILD OR MAYBE BECAUSE IT WAS GOING TO SAVE HIM MONEY,
19 APPROXIMATELY THREE OR FOUR WEEKS PRIOR THIS TRIAL, HE
20 SENDS THE CHILD TO LIBERIA. HE KNEW, LADIES AND
21 GENTLEMEN --

22 MR. ROGERS: YOUR HONOR, I HESITATE TO INTERRUPT,
23 BUT THERE WAS NO EVIDENCE THAT MUSA KNEW WHEN THE TRIAL
24 WAS COMING UP SUCH THAT THIS WAS SOMETHING INTENTIONAL
25 ON HIS PART. HE TESTIFIED THAT HE SENT THE CHILD

1 BECAUSE OF MONETARY REASONS.

2 THE COURT: ALL RIGHT. AGAIN, I CAN'T COMMENT ON
3 THE EVIDENCE. THE JURY HAS TO REMEMBER WHAT THE
4 EVIDENCE HAS BEEN ACCORDING TO THEIR RECOLLECTION OF
5 WHAT HAS BEEN PRESENTED.

6 MR. ROGERS: YES, SIR.

7 THE COURT: YOU MAY CONTINUE, SOLICITOR.

8 MS. CAMPBELL: THANK YOU, YOUR HONOR.

9 YOU CAN RECALL, LADIES AND GENTLEMEN. HE KNEW
10 THIS TRIAL WAS COMING UP, AND HE CHOSE RIGHT BEFORE
11 THIS TRIAL TO SEND THE CHILD TO LIBERIA. HE TOLD YOU
12 SPECIFICALLY THAT I COULDN'T HAVE ANY CONTACT WITH THE
13 CHILD. THE CHILD WAS NOT TO BE INVOLVED IN THESE
14 PROCEEDINGS AND AS HIS GUARDIAN, THAT WAS HIS RIGHT,
15 BUT, I SUBMIT, LADIES AND GENTLEMEN, WHY? I JUST ASK
16 YOU THAT QUESTION. WHY DOESN'T HE WANT US, ANYONE, TO
17 HEAR FROM ~~Victim~~? HE IS STILL WITH MIAMA. THEY ARE
18 STILL HUSBAND AND WIFE. THEY ARE STILL TOGETHER, AND
19 THAT IS HIS RIGHT. THAT IS WHO HE HAS CHOSEN TO
20 PROTECT TO THE BEST OF HIS ABILITY.

21 YOU EVEN HEARD HIM TALKING ABOUT, OH, THAT'S MY
22 RAZOR. I THINK HE SAID HE SHAVED WITH IT. SHE SAID HE
23 DID HIS HAIR. WHY DOES HE NEED TO SEND THE CHILD TO
24 LIBERIA? IT SPEAKS VOLUMES.

25 IN THIS CASE AND IT'S COME UP -- WE'VE ALL TALKED

1 ABOUT IT, WHY? WHAT KIND OF MOTIVE. LISTEN CAREFULLY
2 TO THE JUDGE AS HE INSTRUCTS YOU ON THE LAW. THERE
3 DOESN'T HAVE TO BE A MOTIVE. WHY WOULD SHE DO
4 SOMETHING LIKE THIS? WAS IT, AS THEY BROUGHT OUT, SOME
5 ATTEMPT AT RITUALISTIC MEDICINE? WAS SHE JUST TRYING
6 TO GET HER HUSBAND'S ATTENTION OR PAY HIM BACK FOR
7 BRINGING THIS CHILD INTO HER LIFE, PAY HIM BACK FOR HIS
8 INDISCRETION, HIS CHILD WITH ANOTHER WOMAN, OR IS IT
9 JUST SIMPLER THAN THAT. DID SHE JUST GET FED UP OF
10 TAKING CARE OF SOMEBODY ELSE'S KID IN THESE SMALL
11 QUARTERS AND THESE LONG HOURS AND SHE DECIDED TO TAKE
12 IT OUT ON HIM, ON THIS THREE YEAR OLD. I MEAN, WHO
13 COULD CARE? WHO WOULD EVER REPORT IT? SHE JUST NEEDED
14 TO TEACH HIM A LESSON, ONE, I SUBMIT HE WILL NEVER
15 FORGET, EVEN AT AGE THREE. WE DON'T HAVE TO PROVE ANY
16 MOTIVE.

17 SHE COMES FROM A TIME AND AN ERA WHERE SHE SAW
18 ATROCITIES. MAYBE SHE JUST SAW THIS AS PUNISHMENT,
19 BUT, LADIES AND GENTLEMEN, THIS IS WAY BEYOND
20 PUNISHMENT.

21 AS SHE HOLDS THIS CHILD DOWN AND INFLICTS
22 UNBELIEVABLE PAIN ON HIM, SOMETHING HAPPENED. MAYBE
23 SHE DIDN'T EXPECT THE BLOOD. MAYBE SHE DIDN'T THINK IT
24 COULD BE SO EASY TO CUT SO BIG. MAYBE IT ABSOLUTELY
25 BLEW HER MIND WHEN IT ACTUALLY FELL OUT OF THE SACK AND

1 SHE PANICKED. WHAT WAS SHE GOING TO DO? AND YOU KNOW
2 WHAT'S SIGNIFICANT? IN ALL THE STATEMENTS, DO YOU
3 REMEMBER HOW SHE ALWAYS TALKS ABOUT THAT PHONE CALL?
4 SHE IS PUTTING PULL-UPS ON, DRYING HIM OFF. SHE ALWAYS
5 SAYS BEFORE I WENT ANYWHERE, I CALL MY SISTER TO TELL
6 HER THAT I AM TAKING HIM TO THE HOSPITAL.

7 WHY COULDN'T SHE PUT THE CHILD IN THE CAR, BE ON
8 THE WAY TO LEXINGTON HOSPITAL AND THEN CALL? WHY IS
9 THAT SO SIGNIFICANT THAT SHE INCLUDES IT? PERHAPS SHE
10 KNOWS THE POLICE HAS THE CAPABILITY OF TRACING THE
11 PHONE CALL THAT SHE MADE IN THE HOUSE. BECAUSE DOESN'T
12 IT MAKE MORE SENSE THAT SHE PANICKED, THAT SHE MADE
13 THAT PHONE CALL, THAT SHE TALKED TO HER SISTER, OH MY
14 GOD THIS IS WHAT I'VE DONE, WHAT SHOULD I DO? TAKE THE
15 CHILD TO THE HOSPITAL, TELL THEM HE HAD SWOLLEN
16 TESTICLES, THAT YOU APPLIED PRESSURE AND STICK TO THE
17 STORY. NO MATTER WHAT, STICK TO THE STORY. IT WAS A
18 PERFECT PLAN BECAUSE WHO WOULD CARE? WHO WOULD
19 QUESTION HER?

20 WHAT ABOUT HER STORY? AGAIN, THE DETAILS -- BUT
21 JUST TAKE THE STORY. ASSUME THE DETAILS ARE THE SAME.
22 HER STORY IS THAT SOMEWHERE BETWEEN 11 AND 11:30, AND
23 LET'S GIVE HER THE BENEFIT OF THE DOUBT, SHE PICKS THIS
24 CHILD UP, LET'S SAY 11:30, FROM HER SISTER, AND IT IS
25 A -- LET'S GIVE HER HALF AN HOUR TO GET ACROSS TOWN.

1 BY 12:00 SHE IS HOME, AND WE KNOW FROM THE NURSE THAT
2 SHE FIRST CAME IN CONTACT WITH THIS CHILD AT 2:23 IN
3 THE MORNING, SHE HAD BEEN WAITING FOR A SHORT PERIOD OF
4 TIME. REMEMBER MS. SHARPE SAID IT WASN'T CROWDED THAT
5 NIGHT. BY TWO O'CLOCK SHE IS AT THE HOSPITAL. WHAT
6 HAPPENED -- AND THIS CHILD HAS GOT TO GET UP AND GO TO
7 SCHOOL THE NEXT DAY. WHAT WAS GOING ON IN THIS TWO
8 HOUR PERIOD, BECAUSE OTHER THAN FIFTEEN MINUTES TO THE
9 HOSPITAL -- WHAT IS SHE DOING, WATCHING T.V., OFFERING
10 HIM FOOD, HE'S NOT HUNGRY, THINGS OF THAT NATURE.

11 THEN THE STORY IS THAT SHE GETS HIM IN. HE IS
12 LYING THERE -- AND THIS IS WHAT SHE TESTIFIED TO
13 YESTERDAY. HE'S LYING THERE, HE'S FINE, SOMEWHAT
14 RESPONSIVE, BUT HE'S NOT HUNGRY. SHE PICKS HIM UP,
15 NEVER NOTICES ANY BLOOD. THERE'S NO BLOOD IN THE CAR
16 SEAT, NO BLOOD ON HIS PANTS, NO BLOOD ANYWHERE. SHE
17 TAKES HIM INTO THE BATHROOM. SHE HAS TRAINING IN THE
18 MEDICAL FIELD. I'M NOT SAYING SHE IS A REGISTERED
19 NURSE, BUT SHE HAS TRAINING. I DON'T EVEN THINK THIS
20 TAKES TRAINING, LADIES AND GENTLEMEN.

21 SHE TAKES OFF HIS CLOTHES, NOTICES A GRIMACE ON
22 HIS FACE. WHAT'S WRONG? AND HE SAYS, I HURT, AND HE
23 POINTS. SHE TAKES OFF HIS UNDERWEAR AND SHE NOTICES
24 THAT HIS SCROTUM IS SWOLLEN MORE THAN USUAL. SHE EVEN
25 MAKES THE PHONE CALL TO HER SISTER, WAS HE OKAY TODAY?

1 FINISH.

2 WHEN I AM FINISHED TALKING, THE JUDGE IS GOING TO
3 TELL YOU WHAT THE LAW IS AND THEN YOU'RE GOING TO GO
4 BACK IN THAT JURY ROOM AND DELIBERATE AND YOU'RE GOING
5 TO BE ASKED TO MARK YOUR VERDICT ON THESE TWO
6 INDICTMENTS. THE WORD VERDICT COMES FROM A LATIN
7 PHRASE VEREDICTUM. THAT LITERALLY MEANS TO SPEAK THE
8 TRUTH. ALL THE STATE ASKS IN THIS CASE, LADIES AND
9 GENTLEMEN, IS DON'T LET HER GET AWAY WITH THIS. HOLD
10 HER RESPONSIBLE FOR HER DECISIONS, HER ACTIONS, HER
11 ABUSE ON THIS CHILD.

12 THANK YOU.

13 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN,
14 BEFORE I CAN GIVE MY INSTRUCTIONS TO YOU, WE'VE BEEN
15 GOING A LITTLE OVER AN HOUR-AND-A-HALF. WE'RE GOING TO
16 TAKE A BRIEF RECESS OF NO MORE THAN TEN MINUTES AND
17 THEN I'LL CHARGE YOU ON THE LAW. GO BACK TO YOUR JURY
18 ROOM. EVERYONE ELSE STAY SEATED, PLEASE. YOU'RE
19 EXCUSED TO YOUR JURY ROOM.

20 (WHEREUPON, THE JURY LEFT OPEN COURT AT
21 APPROXIMATELY 11:21 A.M.)

22 THE COURT: WE'LL TAKE A TEN MINUTE BREAK.

23 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

24 THE COURT: ALL RIGHT. LET'S GET THE JURY BACK
25 IN, PLEASE.

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 Victim 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

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

05-GS-40-8139

06-GS-40-2991

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

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 Victim.

12 Q Victim?

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 victim 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 victim 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 victim 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, *victim* --
- 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:

1
2 BY MS. SHURLING

3 Q Miama?

4 A Ma'am.

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

7 A Yes, ma'am.

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

10 A Uh-huh.

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

13 A No.

14 Q Like most children.

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

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

19 A No, ma'am.

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

22 A Yes, ma'am.

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

24 A Uh-huh.

25 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, *victim*, 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 Mesheck, 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: Victim

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. Victim, 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 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 Victim 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 waived 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.

WITNESSES

(S) Roy Livingston, RCSD

ARREST WARRANT NUMBER
1973637

ACTION OF GRAND JURY

TRUE BILL

Dandra Phrigo
Foreperson of Grand Jury
D: SEP 14 2005

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2005-GS-40-8139

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE
vs.

MIAMA KROMAH

Indictment for

UNLAWFUL NEGLECT OF A CHILD

SC Code: 20-7-50

CDR Code: 2481

Class: E/FELONY

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.

000356

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 ¹⁶~~18~~, 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

000358

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichland
Miana Kromah

AKA:

Race: B

Sex: F

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

05

-GS-

40

8139

A/W#:

1973237

Date of Offense:

August 16, 2005

S.C. Code §:

28-7-50

CDR Code #:

2 / 4 / 8 / 1

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Unlawful Neglect of Child

in violation of § 20-7-50 of the S.C. Code of Laws, bearing CDR Code #

2, 4, 8, 1

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

6/15/06

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	\$
\$	\$
\$100	\$
\$100	\$
\$12	\$
\$500	\$
\$25	\$
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$
\$	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2006 15 15
6/15/06

Court Reporter:

Clerk of Court/Deputy Clerk

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

(S) Inv. Roy Livingston, RCSD

ARREST WARRANT NUMBER

DP06133

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

APR 18 2006

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-40-2991

The State of South Carolina

County of Richland

42

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE
vs.

MIAMA KROMAH

Indictment for

INFLECTION OF GREAT BODILY
INJURY UPON A CHILD

SC Code: 16-3-95(A)

CDR Code: 2766

Class: FEL/C

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.

000359

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

000361

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE

VS.

Miaama Kromah

AKA:

Race:

B

Sex:

F

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

06

SS- 40

2991

A/W#:

DP06133

Date of Offense:

August 16, 2005

S.C. Code §:

16-3-95(A)

CDR Code #:

2 1 7 1 6 1 6

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Great Bodily Injury Upon a childin violation of 16-3-95(A) of the S.C. Code of Laws, bearing CDR Code # 2 1 7 1 6 1 6☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 6/15/06☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

% to County (if paid in installments)

OTAL

Subara A. Scott / PF

Clerk of Court/ Deputy Clerk

Court Reporter:

K. Tracy

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 1 7 1 5 1 5
6/15/06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

000362

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)

Plaintiff,)

vs.)

MIAMA KROMAH)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2005-GS-40-8139
2006-GS-40-2991

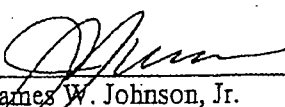
ORDER

This matter is before the Court on Defendant's Motion to Reconsider this Court's sentencing from June 15, 2006. In the alternative, Defendant moves for a new trial based on newly discovered evidence. Defendant was charged with causing great bodily harm upon a child and unlawful neglect of a child. She was sentenced to eighteen (18) years.

After considering the testimony, the arguments from counsel, and reviewing all pertinent documents, this Court denies Defendant's Motion to Reconsider Sentencing and her Motion for a New Trial. Plaintiff failed to present any sufficient arguments on which to reconsider the court's initial sentence of 18 years. Accordingly, Defendant's Motion to Reconsider is denied.

Additionally, Defendant has not made a sufficient showing of "new evidence" to support her motion for a new trial. That motion is also denied.

AND IT IS SO ORDERED.


James W. Johnson, Jr.
Chief Judge for Administrative Purposes-Common Pleas
Eleventh Judicial Circuit

December 20, 2007

FILED
2007 DEC 20 PM 2:38
BARB...
C.C.C. & G.

ALL SENT
A 2007

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions
James W. Johnson, Jr., Circuit Court Judge

Case No. 05-GS-40-8139 & 06-GS-40-2991

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

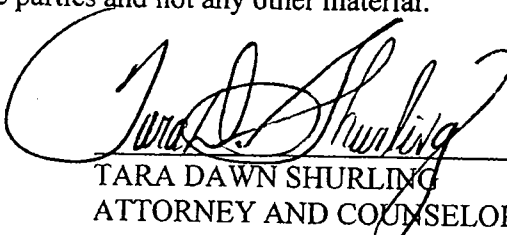
v.

MIAMA KROMAH, 316117,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


TARA DAWN SHURLING
ATTORNEY AND COUNSELOR AT LAW

3614 Landmark Drive, Suite D
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 FAX

ATTORNEY FOR APPELLANT.

This 15th day of September, 2008.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions
James W. Johnson, Jr., Circuit Court Judge

Case No. 05-GS-40-8139 & 06-GS-40-2991

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

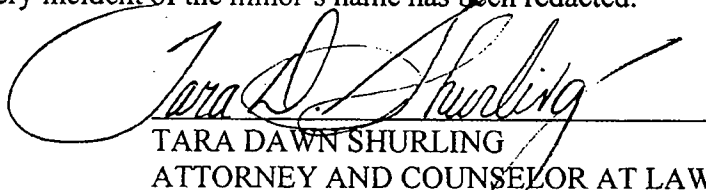
v.

MIAMA KROMAH,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents. Every incident of the minor's name has been redacted.


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This 18th day of September, 2008

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
The Honorable James W. Johnson, Jr., Circuit Court Judge

Case No. 05-GS-40-8139 & 06-GS-40-2991

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

MIAMA KROMAH,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Appellant's Record on Appeal in the above-entitled case has been served upon opposing counsel, William M. Blitch, Jr., Assistant Attorney General, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 18th day of September, 2008.

Sharon McCollister
Sharon McCollister
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 18th day
of September, 2008.

Jeanne Lister (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

The Honorable James W. Johnson, Jr

Case No. 05-GS-40-8139 & 06-GS-40-2991

RECEIVED

MAR 11 2010

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

MIAMA KROMAH, 316117,

APPELLANT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I.

Whether the lower court erred in permitting the State's witnesses to testify as to the actions they took as a result of hearsay statements made by the three-year old victim who would have been incompetent to testify?

II.

Whether the lower court erred in permitting the State to argue to the jury that the victim had been deliberately hidden away from the State, arguing by implication that the victim would have testified that the Appellant committed this crime?

III.

Whether the lower court erred in denying the Appellant's motion for a new trial based on after-discovered evidence?

TABLE OF AUTHORITIES

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STATEMENT OF THE CASE

On September 14, 2005, the Richland County Grand Jury indicted the Appellant for Unlawful Neglect of a Child, and on April 19, 2006, the Richland County Grand Jury indicted the Appellant for Infliction of Great Bodily Injury Upon a Child. On June 13-15, 2006, the Appellant proceeded to trial by jury where she was found guilty as charged. The Appellant was represented in the trial court by James P. Rogers, Esquire, of the Richland County Bar. The Honorable James W. Johnson, Jr., presiding circuit judge, sentenced the Appellant to eighteen years imprisonment on the great bodily injury charge and ten years imprisonment for the unlawful neglect charge. The sentences were to run concurrently.

Notice of Appeal was timely filed on June 22, 2006. However, trial counsel had previously timely filed a Motion to Reconsider Sentence on June 16, 2006. On January 5, 2007, the Appellant filed a Motion for Stay of Appeal and Remand to the Court of General Sessions in this Court. That motion was granted by this Court on February 14, 2007. On December 19, 2007, the Appellant proceeded on the motion to reconsider and on a motion for a new trial based on after-discovered evidence¹ before the Honorable James W. Johnson, presiding circuit judge.² By written Order filed December 20, 2007, Judge Johnson denied the Appellant's motions. Counsel for the Appellant received the Order on December 31, 2007.

A Supplemental Notice of Appeal was timely served on January 4, 2008. This appeal follows.

¹ The motion for a new trial was never formally filed by the Appellant in Richland County. Counsel for the Appellant orally made the motion at a previous hearing scheduled for the motion to reconsider that was continued due to the failure to transport the Appellant. Furthermore, the State did not object to the trial court hearing the motion for a new trial at the December 19, 2007, proceeding.

² The motion hearing was held in Lexington County by consent of the parties.

STATEMENT OF THE FACTS

The Appellant was married to the victim's³ father, Musa Kromah ("Musa"). At the time of the incident, Musa had custody of the victim, who was then three years of age. Trial ROA p. 142, line 19-p. 144, line 25. In the late evening to early morning hours of August 15-16, 2005, the Appellant took the victim to the Lexington Medical Center to treat a severe injury to his scrotum. The injury was so severe that the victim's testicle had fallen out of the scrotum. Trial ROA p. 15, line 17-p. 16, line 19; ROA p. 20, lines 2-25. The victim was then transferred to Palmetto Health Richland Hospital to treat the injury. At trial, the central dispute at issue in the case was whether the Appellant had intentionally or accidentally injured the victim.

The State's Evidence. The State presented three pediatricians who treated the victim at Palmetto Health Richland to testify about what they found when they examined the victim's injury. Dr. Erin Fields-Harris opined that the victim's injury appeared to have been inflicted intentionally. ROA p. 53, line 3-p. 54, line 2. Dr. Jennifer Amrol testified that the victim's scrotum must have been cut in order for the testicle to come out in the manner that it did. ROA p. 68, line 24-p. 69, line 7. Dr. Anne Abel also testified that the injury was very cleanly cut, and that a sharp linear object was used to cause the injury. ROA p. 121, line 15-21; p. 126, line 19-25.

The State also introduced evidence that the victim suffered from additional wounds. In particular, the State highlighted the fact that the victim suffered from bruising on his abdomen. Dr. Abel testified that the victim's injuries to his abdomen were tender when he treated him on August 16, and were consistent with heavy pressure "from a hand or a foot holding the belly down in a very forceful manner." ROA p. 124, line 17-p. 125, line 13. The State used this

³ In accordance with the South Carolina Supreme Court's Order regarding sensitive information in appellate briefs dated August 13, 2007, all references to the minor victim in this case will be to "the victim."

testimony to argue to the jury that the Appellant physically held the victim down and deliberately cut his scrotum open. ROA p. 289, lines 21-24.

The Appellant's Evidence. The Appellant testified that she was giving the victim a bath the night of the incident when she saw blood in the bathtub. ROA p. 217, line 24-p. 219, line 1. She explained that she had thought that the victim's scrotal region appeared to be swollen when she put him into the bath, so she pressed down on it with a wash cloth to get the swelling to go down. ROA p. 222, lines 4-21. When she removed the wash cloth, the victim began to bleed. ROA p. 222, line 22-p. 223, line 2. She denied deliberately causing the victim's injury. ROA p. 234, line 25-p. 235, line 2.⁴

The Appellant also introduced evidence that the victim had suffered from a swollen scrotum in the past. Musa testified that the victim had been taken to the hospital due to a swollen scrotum while he was in Minnesota with Musa's cousin. ROA p. 147, line 21-p. 148, line 2. He also testified on cross-examination by the Appellant that he had attempted to get treatment for his son's swollen scrotum prior to this incident, but that he was not allowed to do so because he did not have the child's medical records from Minnesota. ROA p. 164, line 10-p. 165, line 6.

⁴ The Appellant consistently gave the same rendition of events to medical personnel and to the police. See ROA p. 41, line 10-p. 42, line 18; p. 182, line 19-p. 183, line 10; p. 189, line 25-p. 192, line 25.

ARGUMENT

I. The lower court erred in permitting the State's witnesses as to the actions that they took following their conversations with the victim.

A. How the issue arose at trial

Prior to the trial, Musa, who retained custody of the victim following the incident, had the victim removed from the State's jurisdiction and refused to allow the State to communicate with him. ROA p. 155, lines 3-21. The victim did not testify at trial.

At the outset of the trial, the Appellant moved to prevent the State's witnesses from testifying about any statements made by the victim to them. ROA p. 2, line 17-p. 5, line 1. The trial court indicated that it would rule on the matter when the issue came up during the trial. ROA p. 12, line 24-p. 13, line 10.

Twice during the trial defense counsel objected to the use of the victim's statements. Heather Smith ("Smith"), who interviewed the victim following his surgery, testified *in camera* that the victim had informed her that the Appellant had injured him. ROA p. 78, lines 9-16. The State indicated that they were not planning to use the victim's statements directly, but that they wanted to have Smith testify in front of the jury that she forwarded the information to the police and that she made a finding of "compelling physical abuse" as a result of the victim's statements. ROA p. 78, lines 17-22. Following her *in camera* testimony, defense counsel renewed his objection to her testimony and her findings from the interview. ROA p. 101, line 25. The trial court overruled the objection. ROA p. 102, lines 1-3. Smith's testimony before the jury was consistent with her *in camera* testimony. ROA p. 106, line 14-p. 107, line 23.

Investigator Roy Livingston testified that he met with the Appellant and Musa on August 18, 2005, and took their statements. ROA p. 186, line 16-p. 188, line 18. Investigator

Livingston stated that he did not advise the Appellant of her rights at that point because “she was not a suspect at the time.” ROA p. 188, line 23-p. 189, line 2. He recounted going to the Pediatric Intensive Care Unit at Palmetto Health to meet with the victim later that day. ROA p. 194, line 19-p. 195, line 7. Investigator Livingston was then permitted to testify, over the Appellant’s objection, that he spoke with the victim and arrested the Appellant the following day. ROA p. 195, line 11-p. 196, line 12.

B. Discussion

“Hearsay” is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE; State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004), aff’d as modified 374 S.C. 313, 649 S.E.2d 479 (2007). Unless the hearsay statement falls within one of several enumerated exceptions, the statement is inadmissible at trial. Rule 802, SCRE.

Proof that a statement is introduced to show that an individual heard and acted upon the information contained in that statement does not render the statement hearsay. Fields v. Regional Medical Center Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005); Webb v. Elrod, 308 S.C. 445, 418 S.E.2d 559 (Ct. App. 1992). However, statements admitted to show that a person is the suspect of a criminal investigation are objectionable. German v. State, 325 S.C. 25, 478 S.E.2d 687 (1996); State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001).

The Appellant contends that Smith’s and Investigator Livingston’s statements about their actions taken following the victim’s statements to them were admitted improperly for two reasons. First, the Appellant argues that the victim’s statements were impermissible hearsay, and the State’s elicitation of the testimony was an attempt to get the evidence in “through the back door” when the front door was boarded up and barred. This is particularly true where the trial

judge had ruled that the child was not competent to testify based upon his observation of taped interviews with the child. ROA p. 91, lines 19-21. Thus, the testimony in question is not only an assertion hearsay statements allegedly made by a party not available for cross-examination, but constituted an assertion of statements by an absent witness where the trial judge had already ruled the witness was not competent to testify to himself. If the evidence was unreliable as coming from an incompetent witness, it was no more reliable when it was interjected through the testimony and interpretation of third party witnesses. Second, the Appellant argues that even if the statements were permissible under the hearsay rules, the testimony improperly impugned the Appellant's character. Therefore, the Appellant argues that she is entitled to a new trial based upon the improper admission of the testimony of Smith and Investigator Livingston.

1. Heather Smith's and Investigator Roy Livingston's testimony regarding their actions taken following their conversations with the victim was impermissible hearsay

An out-of-court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was taken. State v. Brown, 317 S.C. 55, 451 S.E.2d 888 (1994). In this case, Smith was permitted to testify that following her conversation with the victim, she turned the information over to law enforcement. Additionally, Investigator Livingston was permitted to testify that following his conversation with the victim, he arrested the Appellant. Investigator Livingston's testimony is all the more damaging because he testified that he did not consider the Appellant a suspect when he interviewed her the morning that he also interviewed the victim.

The Supreme Court's decisions in Brown and German are predicated on the fact that the State has admitted the testimony to explain why someone took an action, not to prove the truth of the matter asserted. In this case, the State clearly wanted the jury to know that the victim implicated the Appellant in this crime. The State was not admitting Smith's and Investigator

Livingston's testimony to show the nature of the government investigation; rather, the State elicited the testimony to implicate the Appellant. Inasmuch as the victim's statements to Smith were deemed to be inadmissible, see ROA p. 91, lines 19-21, the State should not have been permitted to get around the trial court's ruling by eliciting the testimony of Smith and Investigator Livingston. The victim's statements were admitted for the truth of the matter asserted and the Appellant is entitled to a new trial.

2. Heather Smith's and Investigator Roy Livingston's testimony regarding their actions taken following their conversations with the victim was an improper attack on the Appellant's character

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

In this case, both Smith and Investigator Livingston testified that the Appellant was the subject of a criminal investigation following their conversations with the victim. These statements specifically identified the Appellant as the suspect and improperly impugned her character. "[I]dentification of an individual as the suspect of a criminal investigation, based upon speculation and effectively calling into question that individual's character, is [inadmissible]." Jones at 575, 541 S.E.2d at 820 (citing German, *supra*). The statements are directly contrary to the Supreme Court's holdings in German and Jones, and constitute reversible error. Accordingly, the Appellant is entitled to a new trial.

II. The lower court erred in permitting the State to argue during closing argument that the victim would implicate the Appellant in the crime had the State been permitted to call him as a witness at trial.

A. How the issue arose at trial

During Musa's direct examination, the Assistant Solicitor asked several questions regarding where the victim was leading up to the trial. Musa, who had full custody of the victim, testified consistently that he had sent the victim away from the State's jurisdiction for financial reasons and the fact that the Appellant could not live with him if the victim was also living in the same household. ROA p. 159, lines 7-17; p. 161, lines 3-9. He further testified that the Appellant was under court orders to not come near the victim. ROA p.165, line 14-p. 166, line 3. In other words, Musa asserted that he could not afford to maintain a separate residence for his wife, the Appellant, and she could not live with him so long as he kept the child with him. There was no evidence that he Appellant in any way participated in the decision to remove the victim from the jurisdiction of the court.

Despite Musa's unequivocal and clear assertions that he and his other family members had made a legitimate decision to send the victim away, the State continued to imply that they had done so for nefarious reasons. During the State's closing argument, the following exchange occurred:

[Ms. Campbell:] Why make that up? But more than that, he gets custody of his child back. She can't have him. He gets custody back in February. He moves to Atlanta immediately thereafter.

And I believe he—he didn't even know his own son's birthday by the way. I believe in caring for the child or maybe because it was going to save him money, approximately three or four weeks prior this [sic] trial, he sends the child to Liberia. He knew, ladies and gentlemen—

Mr. Rogers: Your Honor, I hate to interrupt, but there was no evidence that Musa knew when the trial was coming up such that this was something intentional on his part. He testified that he sent the child because of monetary reasons.

The Court: All right. Again, I can't comment on the evidence. The jury has to remember what the evidence has been according to their recollection of what has been presented.

Mr. Rogers: Yes, sir.

The Court: You may continue, Solicitor.

Ms. Campbell: Thank you, Your Honor.

You can recall, ladies and gentlemen. He knew this trial was coming up, and he chose right before this trial to send the child to Liberia. He told you specifically that I couldn't have any contact with the child. The child was not to be involved in these proceedings and as his guardian, that was his right, but, I submit, ladies and gentlemen, why? I just ask you that question. *Why doesn't he want us, anyone, to hear from [the victim]?*

ROA p. 287, line 12-p. 288, line 17 (emphasis added).

Following the State's closing argument and the trial court's jury charge, defense counsel placed his specific objection on the record:

Mr. Rogers: Nothing from the Defendant on the charge, Your Honor. I would like to put on an objection *nunc pro tunc* to two items in Ms. Campbell's closing.

The Court: All right.

Mr. Rogers: When she argued that sending the child to Africa was an attempt to protect the wife, of course, that implies that the child would have said something implicating the wife, and secondly when she said [the victim] was not allowed to be here for the same reason, that the implication is that had he been here he would have implicated her, and that is just not the state of the evidence. He may have been found competent or he may not have

been. To say that in that manner, I think, put that implication in the jury's mind.

The Court: All right. Your objection is noted. I would overrule. I think the arguments—other than what I ruled on during the arguments and objections that were made were appropriately within the rules.

ROA p. 295, line 19-p. 296, line 13.

B. Discussion

“No person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. V. “No State shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV.

The State's closing argument must be limited to the evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007). The relevant question is whether or not the State's improper comments so infected the trial with unfairness that the resulting conviction is a denial of due process. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002).

A trial judge is vested with broad discretion in dealing with the range and the propriety of closing argument. State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990). An appellate court will not reverse a trial court's ruling regarding closing argument unless the trial judge abused his discretion. State v. Raffaldt, 318 S.C. 110, 456 S.E.2d 390 (1995); State v. Reddick, 348 S.C. 631, 560 S.E.2d 441 (Ct. App. 2002).

The Appellant contends that the Assistant Solicitor's comments regarding Musa's decision to send the victim outside the jurisdiction of the State so infected her trial with unfairness that she was denied her fundamental right to due process of law under the Fifth and

Fourteenth Amendments to the United States Constitution. Just as the State improperly attempted to do with Heather Smith's and Investigator Roy Livingston's testimony, the State's closing argument was impermissibly designed to imply to the jury that the victim would directly implicate the Appellant if he had been presented to the jury.

The State's closing argument was not limited to the reasonable inferences in the record. There was *no* evidence presented to the jury that the victim would have implicated the Appellant as the perpetrator of the crime, largely due to the victim's absence from the trial. Furthermore, even had the victim been presented as a witness at trial, there is a substantial likelihood that he would have been found incompetent to testify. This fact is borne out by the trial court's determination that the victim was incompetent when he was interviewed by Heather Smith. See ROA p. 91, lines 19-21.

Additionally, there was no evidence presented at trial that Musa had the child leave South Carolina's jurisdiction for any non-financial reason. The trial court, by overruling the Appellant's objection, permitted the State to argue by implication that Musa had done so for nefarious reasons; namely, that the victim would testify that the Appellant committed the alleged crime. There was no evidence in the record to support the State's implication. Accordingly, the State impermissibly argued facts not in evidence to the jury, and so infected the process with prejudice that the Appellant is entitled to a new trial.

III. The lower court erred in denying the Appellant's motion for a new trial based on after discovered evidence.

A. How the issue arose at trial

At the motion hearing convened on December 19, 2007, the Appellant, Musa, and the victim testified. The Appellant testified that she had cut the victim unintentionally with her sharp acrylic fingernails as she was bathing the victim. ROA p. 320 line 18-p. 322, line 5. She testified that she had not previously told the whole truth about the victim's injury due to her fear of what might happen to her if she began telling a different story about that night than she had previously told her husband and medical professionals. ROA. p. 327, line 22-p. 328, line 6.

Musa testified that neither the Appellant nor the Appellant's attorney had taken any part in the decision to take the victim outside of South Carolina's jurisdiction. ROA p. 330, line 24-p. 331, line 14. He also testified that the victim had never told him about the Appellant using an instrument, such as a knife or a pair of scissors, to injure him. ROA p. 332, lines 9-15.

The victim, after being found competent to testify, admitted that the Appellant had hurt him. ROA p. 341, lines 17-20. However, the victim also testified that the Appellant did not have anything in her hands when she hurt him, just that he was injured while he was being bathed. ROA p. 341, line 23-p. 342, line 23. He denied being held down while he was being bathed or when he was hurt. ROA p. 343, lines 18-21.

Following the testimony, the Appellant moved for a new trial based on after-discovered evidence and reconsideration of the Appellant's sentence. After argument by both parties, the trial court indicated that he would take the matter under advisement. ROA p. 355, lines 3-4. By written order filed December 20, 2007, the trial court denied both of the Appellant's motions. ROA p. 362.

B. Discussion

The Appellant asserts that the lower court erred in denying her motion for a new trial based on after discovered evidence. A motion for a new trial based on after-discovered evidence must be made within a reasonable period of time after the discovery of the evidence. Rule 29(b), SCRCrimP. A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). Absent an abuse of discretion or an error of law, an appellate court will not disturb the trial court's denial of the motion for a new trial based on after-discovered evidence. Needs at 158, 508 S.E.2d at 869.

The Appellant respectfully asserts that the trial judge abused his discretion in denying her motion for a new trial based on after discovered evidence. The victim's testimony at the motion hearing clearly meets the threshold standard for granting such a motion. The victim could not be forced to testify at the Appellant's trial because Musa refused to permit him to testify. Additionally, the victim's testimony could not have been discovered by the exercise of due diligence for the same reason. Furthermore, the victim's testimony would have been extremely important and beneficial to the defense had he been presented as a witness at trial. His testimony explicitly and completely rejects the State's theory of the case—that he had been held down while the Appellant cut open his scrotum—while it also corroborates the whole of the Appellant's testimony at trial. His testimony also would have cured any negative inferences the testimony of Heather Smith, the testimony of Investigator Roy Livingston, and the closing

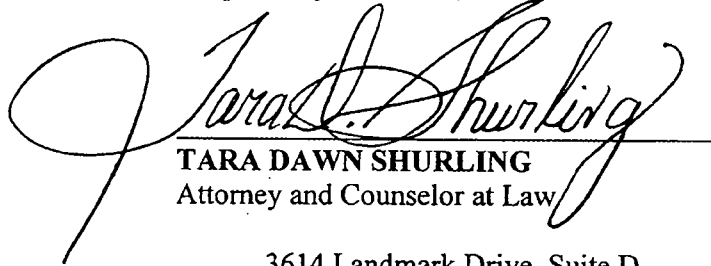
argument of the Assistant Solicitor improperly created. In short, had the victim been presented as a witness at trial, there is a substantial likelihood that the jury would have found the Appellant not guilty.⁵ The trial judge abused his discretion when he denied the Appellant's motion for a new trial. Accordingly, the Appellant is entitled to a new trial.

⁵ The Appellant would note that her position on this issue may be taken as incompatible to her position taken on the propriety of the State's closing argument. The Appellant would assert that had the victim been presented at trial, one of two things would have occurred: (1) he would have been found incompetent to testify, rendering the State's closing argument that he would have implicated the Appellant impermissible; or (2) he would have been found competent to testify, giving the Appellant a far greater chance of being found not guilty. It is immaterial which way the trial court would have ruled on the competency issue—the Appellant is entitled to a new trial regardless of the resolution.

CONCLUSION

The Appellant's conviction and sentence should be reversed, and this case should be remanded for a new trial.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 17th day of September, 2008.

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In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions
James W. Johnson, Jr., Circuit Court Judge

Case No. 05-GS-40-8139 & 06-GS-40-2991

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

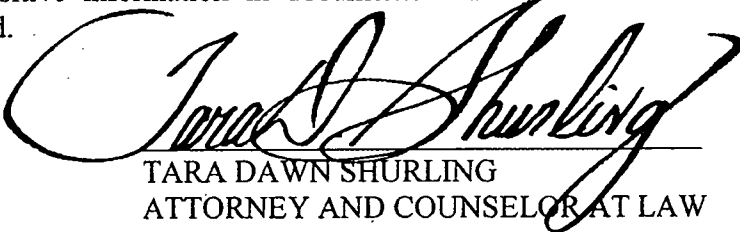
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APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents. Every incident of the minor's name has been redacted.



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STATE OF SOUTH CAROLINA,

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v.

MIAMA KROMAH,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Appellant's Final Brief in the above-entitled case has been served upon opposing counsel, William M. Blicht, Jr., Assistant Attorney General, P. O. Box 11549, Columbia, SC, by depositing in the U. S. Mail, postage prepaid, this 18th day of September, 2008.

Sharon McCollister
Sharon McCollister
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 18th day
of September, 2008.

Stephanne Johnson
Notary Public for South Carolina

My Commission Expires: 3/12/2013

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court correctly allowed the testimony of two State witnesses because the testimony did not constitute impermissible hearsay, nor did the testimony violate Rule 404(b), SCRE. The testimony, even if improperly admitted, was harmless given the overwhelming evidence in the record.
- II. The State's closing argument was proper, and the issue is not properly preserved for review on appeal.
- III. The trial court properly denied Appellant's motions for a new trial and to reconsider her sentence.

STATEMENT OF THE CASE

Appellant was indicted on charges of unlawful neglect of a child and infliction of great bodily injury upon a child. On June 13-15, 2006, Appellant proceeded to trial before the Honorable James W. Johnson, Jr. and a jury. The jury found her guilty as charged. The trial judge sentenced her to eighteen years imprisonment for infliction of great bodily injury and ten years, concurrent, for unlawful neglect.

Appellant filed a Notice of Appeal on June 21, 2006. On February 14, 2007, this Court granted Appellant's motion for a stay and remand to the trial court to consider Appellant's outstanding motion to reconsider her sentence. On December 19, 2007, Judge Johnson conducted a motion hearing on the motion to reconsider and Appellant made an alternative motion for a new trial based on after discovered evidence. By Order dated December 20, 2007, Judge Johnson denied both motions.

Appellant filed a Supplemental Notice of Appeal on January 4, 2008. This appeal followed.

STATEMENT OF FACTS

Appellant is the stepmother of the minor victim. In the early morning hours of August 16, 2005, Appellant 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. Appellant 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.

Appellant 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. (R. 17-19). At trial, the triage nurse testified Appellant was calm and did not seem to consider the injury an emergency. The nurse testified the first time Appellant showed a reaction or became anxious was when the nurse called the ER to rush the child to a room for evaluation and treatment. (R. 21-23).

Appellant 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. (R. 34; 42; 68; 113-114).

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. (State's Exhibits 15 and 17; R. 46). She further testified that the laceration "did not appear that it was consistent with the

pressure that [Appellant] 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.” (R. 53-54).

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.” (R. 68). 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. (R. 69). 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.” (State’s Exhibits 15 and 17; R. 69). Finally, Dr. Amrol testified the injury to the minor victim was not consistent with Appellant’s story, and the injury was caused by non-accidental trauma or child abuse. (R. 71).

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. (R. 117-118). 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. (State’s Exhibits 8-10; R. 118; 125). Dr. Able diagnosed the injury to the minor victim’s scrotum and other bruises as the result of non-accidental, physical abuse. (R. 125-126). She opined the incision was made with a sharp object such as a scalpel, razor, or box cutter. (R. 126-127). Finally, Dr. Able

indicated Appellant'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. (R. 129-130).

Finally, Dr. Jeremy Ehreth, one of two pediatric urologists in South Carolina, performed the surgery to repair the scrotum of the minor victim. (R. 167-168). He noted the injury was not consistent with a pressure injury or similar traumatic event. (R. 170-172). 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." (R.171-172). Finally, he testified there was no possibility the injury was accidental. (R. 174).

Investigator Roy Livingston testified he took Appellant's statement. In the statement, she relayed a similar story to the one told to the medical professionals. (R. 190-191). Investigator Livingston indicated he spoke with Appellant, her husband, and the minor victim. As a result of the investigation, he testified he placed Appellant under arrest. (R. 195-196).

The minor victim did not testify at trial because he was relocated to Liberia by his father, Appellant's husband. Appellant'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." (R. 157-158). He testified it was a "family decision" to send the child back because it would be cheaper and because Appellant could not live with the minor victim. (R. 159).

Appellant 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 with a warm washcloth on it. (R. 217-223). Appellant said she noticed the blood and took the minor victim to the hospital. (R. 233-235).

ARGUMENT

- I. The trial court correctly allowed the testimony of two State witnesses because the testimony did not constitute impermissible hearsay, nor did the testimony violate Rule 404(b), SCRE. The testimony, even if improperly admitted, was harmless given the overwhelming evidence in the record.

Appellant maintains the testimony of two State's witnesses constituted impermissible hearsay or, in the alternative, was implicit hearsay. Additionally, Appellant asserts the testimony improperly impugned her character and violated Rule 404(b), SCRE or State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). The testimony of the witnesses, however, contained no statements by the minor victim which met the definition of hearsay. The testimony merely recited the actions of the witnesses. It is also questionable whether the hearsay issue is preserved for review on appeal. Further, the issue regarding a violation of Rule 404(b), SCRE or Lyle is not preserved for review on appeal, and fails completely on the merits.

Prior to the testimony of two State witnesses, the trial court conducted an *in camera* review of proposed testimony and also entertained argument regarding the competency of the minor victim. Based on viewing a forensic interview, the trial court concluded the minor victim was not competent to testify. (R. 90-91).

Defense counsel then argued any opinion formed by Heather Smith, the forensic evaluator who conducted the interview with the minor victim, would be inadmissible because it would be based on the incompetent testimony and she should not be allowed to testify regarding any statements made by the minor victim. The trial court told defense counsel: "If you feel like there's an objection to be taken, I'll rule on it at that particular point." (R. 100).

The court then heard proposed questioning of Smith, and ruled she could testify as proposed. (R. 100-101). The court also indicated she could not offer any statements made by the minor victim during the interview.

Smith testified in front of the jury that she interviewed the minor victim, and the interview was viewed at least in part by Investigator Roy Livingston. She testified: "Based on the interview that I conducted, as well as information provided by law enforcement and the child protective services worker, I made a decision that the child had give compelling - - a compelling finding." (R. 106-107). At this point, defense counsel stated "Objection" which was overruled by the trial court. Defense counsel asked for a bench conference, after which the trial court ruled: "The objection is sustained as to the form of that question. Please rephrase your question, Solicitor." (R. 107). At no time did Appellant ask to strike the prior response by Smith, nor did any objection specifically mention hearsay or the previous *in camera* arguments. Smith finished her testimony by stating her finding was for "child physical abuse" and she passed the information along to law enforcement including Investigator Livingston. (R. 107).

Investigator Livingston testified he met with Appellant, Appellant's husband, and the minor victim. He stated he spoke to the minor victim and asked him what happened to him and who did it. He never testified to the minor victim's responses. (R. 195). He was then asked: "And based on your investigation at that point, the next day did you arrest Miama Kromah?" He answered: "Yes, I did." (R. 195). Defense counsel objected stating "This is an improper question, based on that information. We've already discussed this." A bench

conference was held that was not put on the record, and the objection was overruled. (R. 195-196). Again, the objection did not mention hearsay.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). This Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law. Id.

Hearsay

Rule 801(c) of the South Carolina Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Appellant contends the testimony by Smith and Investigator Livingston was hearsay because it was based on information obtained from the minor victim. At no time during their testimony, however, did either witness recite any statement made by the minor victim. As is clear by the definition of hearsay, the testimony of neither witness violated Rule 803, SCRE.

As in State v. Weaver, neither witness repeated statement made by the minor victim, they simply testified to the conclusions they had reached based on their evaluations and investigations. See State v. Weaver, 361 S.C. 73, 86, 602 S.E.2d 786, 792 (Ct. App. 2004). Further, Investigator Livingston's testimony simply explained the progression of his investigation. See State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 893-94 (1994) (finding

officers' statements explaining why they began their surveillance of defendant's apartment were not hearsay); State v. Thompson, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003) (“[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken.” (quoting Brown, 317 S.C. at 63, 451 S.E.2d at 894)).

Additionally, Smith could properly reference the interview and the information she obtained from the minor victim because she was testifying as an expert and the information she received would have been the type typically relied on by an expert in her field of forensic child evaluations. (R. 104-105). Rule 703, SCRE, states:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Therefore, Smith could testify about the interview as the basis for her finding of child abuse, because it is clearly the type of information reasonably relied upon by experts in her field, even if the minor victim's testimony is rendered inadmissible by the court's finding that he was incompetent to testify. See Rule 703, SCRE; State v. Hutto, 325 S.C. 221, 224, 481 S.E.2d 432, 433 (1997) (“[I]t is well-settled that an exception to the rule prohibiting hearsay exists when it is used by an expert. An expert may base his opinion on hearsay evidence so long as it is of a type reasonably relied upon by other experts in the field.”); Todd v. Joyner, 376 S.C. 114, 124, 654 S.E.2d 862, 867 (Ct. App. 2007) (“Experts may testify regarding facts or data, not as substantive proof of the facts so stated, but rather as information upon which they have relied in reaching their professional opinions.”).

Finally, it is very questionable whether the issue of hearsay is properly preserved for review on appeal. During Smith's testimony, the only objection raised is apparently based on the form of the question and no further objection is made when the testimony is repeated after a new question is asked. (R. 106-107). After Investigator Livingston's testimony, counsel objected based on it being an "improper question, based on that information. We've already discussed this." The bench conference was not placed on the record, and there never appears to be an objection based on impermissible hearsay. Accordingly, this Court should find the issue not preserved, or if it is properly preserved, it clearly fails on the merits because there was no testimony by either State's witness regarding statements by the minor victim which meet the definition of hearsay.

Rule 404(b), SCRE, or Lyle

Appellant argues, in the alternative, the testimony violates Rule 404(b), SCRE and Lyle, because it was an improper attack on her character. First, this issue is obviously not preserved for review on appeal. At no time during trial, and especially at no time during the testimony of either Smith or Livingston, did defense counsel argue the testimony violated Rule 404 or Lyle. As a result, this Court should find the issue not preserved for review on appeal. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court).

Further, the issue fails on the merits. Smith testified she conducted a forensic interview of the minor victim. She then testified based on information from the interview, law enforcement, and the child protective services worker, that she believed the minor victim

suffered child abuse. She testified she passed her information along to law enforcement. At no time during her testimony did she discuss Appellant or Appellant's character or bring into question Appellant's character in violation of Rule 404. Smith especially did not discuss "other crimes, wrongs, or acts" as addressed under Rule 404(b) and cited by Appellant in her brief.

Investigator Livingston explained the progression of the investigation. He testified he spoke with Appellant and her husband. Investigator Livingston testified he talked with the minor victim about who injured him. Finally, he stated based on his investigation to that point, he arrested Appellant for the injuries to the minor victim. This testimony is not similar to the objectionable testimony found in State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001) or German v. State, 325 S.C. 25, 478 S.E.2d 687 (1996). Investigator Livingston's testimony is entirely consistent with explaining the investigation's progression, and his testimony does not mention Appellant's character or make any comment on Appellant's character. See State v. Brown, 317 S.C. 55, 451 S.E.2d 888 (1994). Accordingly, this Court should affirm the trial court's decision to allow the testimony of both Smith and Livingston.

Harmless Error

Finally, any error would be entirely harmless given the overwhelming evidence in the record indicating the laceration was intentionally inflicted by a sharp instrument, and Appellant was the only one capable of inflicting the abuse. See State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) (holding improperly admitted evidence was harmless error given the overwhelming evidence of guilt).

II. The State's closing argument was proper, and the issue is not properly preserved for review on appeal.

Appellant contends the State impermissibly referenced the unavailability of the minor victim and attempted to infer the minor victim would implicate the Appellant if he had been allowed to testify. The State was merely addressing comments raised by defense counsel in his closing argument and discussing the evidence presented at trial. Further, the issue is not preserved for review on appeal because counsel did not make a contemporaneous objection.

Preservation

The issue is not preserved for review on appeal because Appellant did not make a contemporaneous objection during the State's closing argument. To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (citing State v. Johnson, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996)). If a party fails to properly object, the party is procedurally barred from raising the issue on appeal. Id. at 59; 609 S.E.2d at 523 (citing State v. Pauling, 322 S.C. 95, 99, 470 S.E.2d 106, 109 (1996)). "A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured." State v. Torrence, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991)(eliminating *in favorem vitae* review in death penalty cases and instead requiring a contemporaneous objection to preserve and issue for direct appeal)(emphasis added).

In the instant case, there was no contemporaneous objection. (R. 287-288). Instead, defense counsel attempted to offer an objection *nunc pro tunc*. (R. 295). However, allowing

the objection would clearly erase the benefit of requiring a contemporaneous objection, which is to give the court the ability to decide if there was error and to immediately cure the error. In this case, if there had been error, then the timing of the alleged objection would not have allowed for any remedy because the closing argument was completed, the judge offered his charge, and the jury was out of the courtroom to deliberate before the objection was made. (R. 295-296).

Additionally, the issues raised on appeal are whether the comments during closing argument “so infected [Appellant’s] trial with unfairness that she was denied her fundamental right to due process” and the State argued facts not in evidence. (App. Br.13-14). During defense counsel’s *nunc pro tunc* objection, he argued the closing statement “implies the child would have said something implicating the wife . . . and that is just not the state of the evidence.” (R. 296). Clearly, the issue of due process and fundamental fairness was never raised to the trial court, even in the tardy objection. Accordingly, this Court should find the issues raised by Appellant are not properly preserved for review on appeal.

Merits

The argument also fails on the merits. Appellant contends the trial court erred in allowing the State to improperly comment during closing argument on the facts of the case and on facts not in evidence. The closing argument merely asked the jury to question why the child was not permitted to testify. The closing argument mentioned that Appellant’s husband, Musa, removed the child shortly before trial, a fact which is supported by his own testimony that he sent the child to Liberia sometime after May 20 before the trial’s start on June 13, 2006. (R. 157; 287-288). Additionally, the Solicitor stated:

You can recall, ladies and gentlemen. He knew this trial was coming up, and he chose right before this trial to send the child to Liberia. He told you specifically that I couldn't have any contact with the child. The child was not to be involved in these proceedings and as his guardian, that was his right, but I would submit, ladies and gentlemen, why? I just ask you that question. Why doesn't he want us, anyone, to hear from [the child victim]? (R. 288).

The statements by the Solicitor are clearly supported by the testimony in the record, and specifically by Musa's testimony. (R. 157-159).

Additionally, the comments were indubitably in response to comments by defense counsel during his closing arguments in which he stated:

There isn't other testimony that directly implicated [Appellant]. The State is asking you to conclude, based on what you heard, that [Appellant] did this, but you have heard no testimony, so we don't have one story version or the other. We have one version that has really been contradicted. (R.267).

The State was merely responding to defense counsel's arguments by asking the jury to remember the facts of the case and why the child was not present to testify. The State's closing argument did not implicate Appellant or testify about facts not in the record. It merely asked the jury to remember the facts presented during the case and make a conclusion based on the facts. Accordingly, this Court should find the issue is not preserved, and in any event, the argument is entirely without merit.

III. The trial court properly denied Appellant's motions for a new trial and to reconsider her sentence.

Appellant contends the trial court erred in denying her motions for a new trial and to reconsider her sentence. Appellant, however, provided the court with no new evidence and it was entirely within the court's discretion to reconsider her sentence.

New Trial

The denial of a new trial will not be reversed absent an abuse of discretion. State v. South, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993). In order for Appellant to prevail on a motion for a new trial based on after-discovered evidence, she must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. See State v. Needs, 333 S.C. 134, 157-158, 508 S.E.2d 857, 869 (1998). The granting of a motion for a new trial based on after discovered evidence is not favored and, absent error of law or abuse of discretion, an appellate court will not disturb the trial judge's denial of the motion. Id. at 158, 508 S.E.2d at 869.

Appellant alleges the testimony by the minor victim constitutes after discovered evidence sufficient to entitle her to a new trial. The testimony, however, would not change the outcome of the trial and did not constitute new evidence.

During the hearing, the minor victim testified he remembered being hurt and Appellant was the one who hurt him. (Motions Hearing R. 341). Further, he testified he did not see anything in her hands at the time he was cut. (Motions Hearing R.341-343). Counsel asked the minor victim whether Appellant held various objects in her hands at the time he

was cut. The minor victim, however, was never asked whether he saw Appellant with a razor blade, which was the item the State argued was used to cut the minor victim. (Motions Hearing R. 342). Counsel for Appellant asked: "What did she hurt you with when she was bathing you?" The minor victim responded: "I didn't see what - - what she hurt me with." (Motions Hearing R. 342).

The testimony provides no new evidence and in no way contradicts the State's theory that Appellant used a razor blade to slice open the minor victim's scrotum. He admitted not seeing anything in her hand. However, he also acknowledged that he did not see what she used to cut him. Even if the testimony was admitted, it would not likely change the result of the trial. Accordingly, the trial judge did not abuse his discretion in denying Appellant's motion for a new trial.

Reconsideration of Sentence

The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. Id. (citing Wasman v. United States, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984)).

At the motions hearing, Appellant presented a second theory of the incident. She admitted lying during trial and to all of the medical professionals she saw in order to obtain

treatment for the minor victim. At the motions hearing, Appellant maintained she accidentally cut the minor victim with her fake fingernails. She explained that she did not tell this story at trial because she was scared and she had already told medical professionals her other version of the facts. (Motions Hearing R. 307-312).

This version, however, still does not match the testimony provided by the medical professionals at trial. Multiple medical doctors, indicated the cutting of the minor victim's scrotum was an intentional act, not an accident like Appellant still maintains. Each doctor, including the pediatric urologist, testified the cutting was done by something incredibly sharp like a razor, scalpel or box cutter. The judge found Appellant "failed to present any sufficient arguments on which to reconsider the court's initial sentence of 18 years." (R.362). The trial judge did not abuse his discretion in refusing to reconsider Appellant's 18 year sentence for infliction of great bodily injury on a minor.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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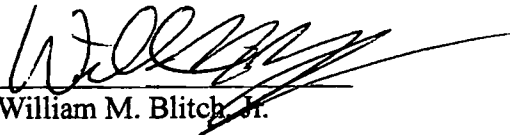
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October 8, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Hon. James W. Johnson, Jr., Circuit Court Judge

The State,

Respondent,

v.

Miama Kromah,

Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent and Designation of Matter on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 8th day of October, 2008.



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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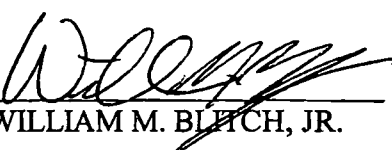
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