

No. 13-1352

In the Supreme Court of the United States

STATE OF OHIO,

Petitioner,

v.

DARIUS CLARK,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED MAY 8, 2014

CERTIORARI GRANTED OCTOBER 2, 2014

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RELEVANT DOCKET ENTRIES

State of Ohio v. Darius Clark
Ohio Supreme Court
Case No. 2012-0215

- 2/6/12 Notice of appeal of State of Ohio (filed by State of Ohio)
- 2/6/12 Memorandum in support of jurisdiction (filed by State of Ohio)
- 3/7/12 Memorandum in response (filed by Darius Clark)
- 5/9/12 Decision: Appeal accepted
- 5/9/12 Order to clerk of court/custodian to certify record
- 5/23/12 Record
- 5/23/12 Clerk's notice of filing of record
- 6/26/12 Stipulation to extension of time to file merit brief to 7/23/12 (filed by State of Ohio)
- 7/23/12 Appellant's merit brief (filed by State of Ohio)
- 7/23/12 Brief of amicus curiae Ohio Attorney General Michael DeWine in support of appellant (filed by Michael DeWine)
- 8/21/12 Stipulation to extension of time to file merit brief to 9/11/12 (filed by Darius Clark)
- 9/10/12 Appellee's merit brief (filed by Darius Clark)
- 9/11/12 Brief of amicus curiae Ohio Public Defender in support of appellee (filed by Ohio Public Defender)

- 10/1/12 Reply brief (filed by State of Ohio)
- 10/1/12 Reply brief of amicus curiae Ohio Attorney General Michael DeWine (filed by Michael DeWine)
- 10/15/12 Oral argument scheduled for Wednesday, January 23, 2013
- 10/17/12 Notice of oral argument to be held on Wednesday, January 23, 2013
- 12/7/12 Motion to dismiss appeal as improvidently allowed (filed by Darius Clark)
- 12/20/12 Entry denying motion to dismiss
- 1/8/13 Joint motion of appellant and amicus curiae Ohio Attorney General Michael DeWine for divided argument time (filed by State of Ohio and Michael DeWine)
- 1/10/13 Entry granted; amicus curiae shall share the time allotted to appellant
- 1/11/13 Notice of appearance of John T. Martin as counsel of record and Erika B. Cunliffe as co-counsel (filed by Darius Clark)
- 1/22/13 Notice concerning oral argument of the State of Ohio and amicus curiae Ohio Attorney General Michael DeWine (filed by State of Ohio and Michael DeWine)
- 1/23/13 Oral argument held

- 8/5/13 Notice of withdrawal of Alexandra T. Schimmer and Elisabeth A. Long as counsel of record and designation of Samuel Peterson as counsel of record (filed by Michael DeWine)
- 10/30/13 Decision: Affirmed. See Opinion at 2013-Ohio-4731
- 11/8/13 Notice of Appearance of Katherine Mullin as counsel of record (filed by State of Ohio)
- 11/12/13 Motion for Reconsideration (filed by State of Ohio)
- 11/19/13 Response to motion for reconsideration (filed by Darius Clark)
- 12/24/13 Entry denying motion for reconsideration
- 3/17/14 Notice of extension of time to 5/8/14 to file petition for certiorari in U.S.S.C.
- 5/19/14 Notice of filing petition for certiorari in U.S.S.C.
- 10/6/14 Notice of granting of writ of certiorari and leave to proceed in forma pauperis

STATE OF OHIO)
) SS: WILLIAM J. COYNE, JR.
CUYAHOGA CTY)

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION

Case No. CR-10-536300-A
C/A: CA 10 096207
(Filed Jan. 31, 2011)

THE STATE OF OHIO,
 Plaintiff,

-v-

DARIUS CLARK,
 Defendant.

APPEARANCES:

WILLIAM D. MASON, ESQ., Prosecuting Attorney,
by: JENNIFER DRISCOLL, ESQ. and KRISTIN
KARKUTT, ESQ. Assistant County Prosecutor,

On behalf of the Plaintiff;

CHARLES M. MORGAN, JR., ESQ.,
On behalf of the Defendant.

COMPETENCY HEARING OF L.P.

* * *

[10]

DIRECT EXAMINATION OF [L.P.]

BY MS. DRISCOLL:

Q. Can you say your name?

A. [L.].

Q. [L.], what's your last name?

A. [P.].

Q. Can you talk again? How old are you?

A. Four.

Q. Can you say it into the microphone?

A. Four.

MS. DRISCOLL: No. Is it on, Your Honor?
Can you hear, Chuck?

MR. MORGAN: Yeah.

Q. And do you know when your birthday is?

A. No.

Q. Yes, you do.

A. No, I don't.

Q. What day did you turn four?

A. Since Thursday.

Q. Since Thursday?

A. Yeah.

Q. You told me earlier when your birthday was.

A. When?

Q. Is it September 26th?

[11] A. Yes.

Q. All right. Do you go to school?

A. No.

Q. Are you telling the truth right now?

A. Yes.

Q. Do you go to school?

A. Yes.

Q. Where do you go to school?

A. Across the street.

Q. Across the street?

A. Yes.

Q. And what grade are you in?

A. First grade.

Q. Are you in first grade?

A. Yes.

Q. Is that the truth?

A. Yeah.

Q. Are you in kindergarten or preschool?

A. No.

Q. No?

A. I'm not going to preschool.

Q. You're in preschool?

A. No.

Q. Are you telling the truth?

A. Yes.

[12] Q. Do you know the difference between the truth and a lie?

A. No. No.

Q. Do you know the difference, [L.P.]?

A. No.

Q. If I said today's your birthday, would that be the truth?

A. Yes.

Q. It would be?

A. Yes.

Q. Is today your birthday?

A. Yeah.

Q. It is?

A. Yes.

Q. Where's your cake?

A. My cake's gone.

Q. It's gone?

A. Yeah.

Q. Who's your teacher?

A. Ms. Smith.

Q. Ms. Smith?

A. Yes.

Q. And what do you like to do at school?

A. I like to do toys.

Q. I can't hear you.

[13] A. I said I like to do toys and –

Q. You like to play toys?

A. Yes.

Q. All right. Do you know who you live with? Do you know who you live with?

A. No.

Q. [L.P.], who do you live with?

A. [T.T.], my mama – mama.

Q. Who's your mom?

A. Is this microphone on?

Q. Yes. Do you live with your mom Jackie?

A. Yes.

Q. Okay. Who else do you live with?

A. I live with [T.T.].

Q. You live with [T.T.] now?

A. Yes.

Q. Or did you used to live with [T.T.]?

A. I live with [T.T.] now.

Q. Are you telling the truth?

A. Yes.

Q. Do you get in trouble when you tell lies?

A. Yeah.

Q. What happens when you tell lies?

A. I get in trouble.

[14] Q. What kind of trouble?

A. Whooping.

Q. A whooping?

A. Yeah.

Q. Who gives you whoopings?

A. I don't know.

Q. Do you know the difference between right and wrong?

A. Yes.

Q. Okay. And so is it right or wrong to tell a lie?

A. Wrong.

Q. It's wrong?

A. Yeah.

Q. Do you remember what presents you got for Christmas last year?

A. No.

Q. No? Do you remember what presents you got for your birthday?

A. Yes.

Q. What did you get for your birthday?

A. A spiderman.

Q. Can you talk into the microphone, [L.P.]? Remember I told you, you got to talk to the judge.

A. Yes.

[15] Q. And are you going to tell the judge the truth?

A. Yes.

Q. Okay. So who do you live with?

A. My mama.

Q. And who else lives with your mom Jackie?

A. My first mama.

Q. Your first mom?

A. Yeah.

Q. Who's your first mom?

A. My mama.

Q. Is that Jackie or [T.T.]?

A. Jackie.

Q. Jackie's your mom? Okay. Does your little sister live there?

A. Zandi.

Q. [A.T.]? Zandi? Is her name Zandi?

A. Yes.

Q. Zandi? How old's Zandi?

A. Four.

Q. How old are you?

A. Four.

Q. How old's Zandi?

A. Two.

Q. Two? So if you said –

A. Zandi a baby.

[16] Q. She's a baby? So if you said Zandi was four, would that be the truth or a lie?

A. A lie.

Q. Have we met before, [L.P.]?

A. What?

Q. Have we met before?

A. I think so.

Q. Yeah? Do you remember when you lived with [T.T.]? Do you remember when you lived with [T.T.]?

A. No.

Q. No?

A. Yes.

Q. Do you remember when you lived with Dee?

A. No.

Q. Do you see Dee here today?

A. No.

Q. Did you look around the room?

A. In my room?

Q. Can you look around this room and tell me if you see Dee?

A. No. What?

Q. Can you look over here?

A. No. Ouch.

Q. You hit your head?

A. Hey. Hey, y'all –

[17] THE COURT: Counsel, the Court, I believe – I've heard enough out of – this child is not competent to testify. Watching the – he's gone already. Watching his demeanor on the stand – and its, by the way, perfectly understandable to deal with this kind of behavior, but he's definitely not competent in this Court's opinion. So that's my ruling. He will not be able to testify as a witness.

MR. DRISCOLL: Thank you, Your Honor.

THE COURT: Sorry.

THE WITNESS: Thank you.

THE COURT: Okay. We'll go off the record.

(Thereupon, a discussion was had off the record.)

THE COURT: We'll go on the record here. Why don't you make your motion and give me any citations of law that you have or copies of cases that you have so it'll be on the record.

Mr. Morgan has a motion he wants to make to the Court.

MOTION IN LIMINE

[18] MR. MORGAN: Your Honor, I would make a motion in limine to have the prosecutor precluded, A, in opening statement and, B, throughout trial to have anybody make any statement that [L.P.] – and what I’m expecting is [L.P.] to say “Dee did it,” Dee being the nickname for my client, Darius.

I believe the State will attempt to get them into evidence either through a police officer, a social worker, the child’s mother’s family, possibly hospital workers, and preschool teachers.

Your Honor, the gist of Crawford – and I understand 807. If Crawford wasn’t around, I’d have no argument. And I would say that to the Court – or to the prosecutor. I have no – Crawford allows an individual to confront their accusers. It’s a constitutional right, and I think that constitutional right trumps any rule of construction such as 807.

We just saw the young child on the stand. The State is going to try to obtain a conviction using those statements from a young child. And we just saw that young child. [19] He’s all over the place.

And ultimately what you have, if the Court allows it in, is the jury to hear a statement from an individual where that individual says [L.P.] said this. And the jury doesn’t have the advantage of seeing – since [L.P.] is not competent, the jury doesn’t have the advantage of seeing how across

the board and, you know, how [L.P.] was acting like a normal four-year old.

So they're trying to get those statements in, Your Honor. And I think it's violative of Crawford, and it doesn't allow my client to face his accuser in this. So I would ask – what I'm relying upon is the Crawford case.

THE COURT: What's the citation?

MR. MORGAN: I don't have it with me. I apologize. I can get it at lunch if you want me to bring it.

THE COURT: On behalf of the State?

MS. DRISCOLL: Thank you, Your Honor. Ohio Rules of Evidence 807(A) states [20] that an out-of-court statement made by a child who's under 12 years of age at the time of trial's hearing, describing any sexual or physical violence performed by, with, or on the child is not excluded as hearsay under Evidence Rule 802 if all of the following apply: One, the Court finds that the totality of the circumstances surrounding the making of a statement provides particularized guarantees of trustworthiness and make the statement, at least as reliable a statement admitted pursuant to Evidence Rules 803 and 804.

The circumstances must establish that the child was particularly likely to be telling the truth when the statement was made and that the test of cross-examination would add little to the reliability of the statement.

In making its determination of reliability of the statement, the Court shall consider all of the circumstances surrounding the making of the statement, including but not limited to spontaneity, the internal consistencies of statements, the mental state of the child, the child's motives or lack of [21] motives to fabricate, the child's use of terminology unexpected of a child of similar age, and the lapse of time between the act and the statement.

In making this determination, the Court shall not consider whether there's independent proof of the sexual or physical violence.

Second, the child's testimony is not reasonably obtainable by the component of his statement.

Obviously, this Honorable Court has just found this child not competent to testify at this time. The child's testimony is not reasonably obtainable at this point.

If there's independent proof of the physical violence, which we do have independent proof through photos and through testimony of people who witnessed this child at the time of the physical violence – and we have provided, in writing, Mr. Morgan all the statements we intend to introduce here. Those would be statements to the teachers, social workers, family members.

And so I think that we have met our [22] burden to go forward with 807. These are non-testimonial. The social worker – these were not for investigating purposes. They weren't taking these statements from this child in order to prepare him for Court. They were trying to figure out if this child was

going to be safe in a placement and who did this to the child for medical purposes, for placement, things of that sort.

So these are non-testimonial statements made by this child. The exceptions would be to 807, 802, 803, 804. We feel we've met every prong of the requirements of 807 and we ask that we are able to introduce these statements. Thank you, Your Honor.

MR. MORGAN: Your Honor, if I may –

THE COURT: You may.

MR. MORGAN: – respond briefly. A, I certainly, for the record, would admit that Ms. Driscoll has provided me with all those statements. I'm not alleging that she hasn't.

807 was written and codified on July 1 of 1991. That is well before Crawford.

[23] Crawford, I would submit to the Court, trumps it. So even if he's available, unavailable or whatever, Crawford trumps it. Just – 807 doesn't really apply to Crawford in this situation.

The trustworthiness of the statement, my reading is, most of the time, the young child said "I fell," first. "I don't know what happened." And then further questioning said, "Dee did it."

So when you're talking about trustworthiness, it's not something like a present sentence compression where he just blurted it out, "Dee did it." He gave an answer prior to that saying "I fell" or "I don't know what happened."

So the trustworthiness aspect of it really isn't there, and I think we can see from his previous testimony during the competency hearing.

Bottom line, Judge, the State is trying to make his statement competent, trustworthy and everything by bringing it in through these other people without the jury having the ability to see the young child and [24] attribute that statement, see the child as a person who that statement is attributed to. And that statement is pretty damaging to my client. I think he's not – it's violative of Crawford. Thank you.

MS. DRISCOLL: Your Honor, State v. Brock is a 2008 Westlaw, 2582574, in that they go through a Crawford analysis. And in that case they were talking about child named Lizzie. We cannot find Lizzie's statements to –

THE COURT: Okay. State vs. Brock –

MS. DRISCOLL: Brock, B-r-o-c-k.

THE COURT: I got that part. What was the cite?

MS. DRISCOLL: 2008 Westlaw 2582574. And they do the entire analysis that we've conducted here where they go through the 807 prongs, and they say that they cannot find that Lizzie's statements to Charmaine were testimonial in nature as these statements do not meet the tests for testimonial statements that are submitted in court. They are not ex [25] parte in-court testimony or its functional equivalent.

Extrajudicial statements contained in formalized testimonial materials or statements that are made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial, and that's the Crawford test. Crawford's 541 U.S. at 51 and 52.

This Court had –

THE COURT: Crawford is –

MS. DRISCOLL: 541 U.S. – and I'm looking for – this is at U.S. 51 and 52. This – and I can find –

THE COURT: That's close enough. 541 U.S. 51. Okay.

MS. DRISCOLL: This Court's previously held that when a child exposes abuse to a family member, those statements are non-testimonial in nature, see *State v. Osborne*, Third District, Number 1-06-94. And I can provide you with that.

So Ohio law has always stated that these sorts of statements are non-testimonial [26] in nature and do not violate Crawford. And I can provide you with this. Do you want me to make you a copy as well?

MR. MORGAN: Sure.

THE COURT: I'll take a copy.

All right. What I'm going to do, I'm going to take this under advisement so that we can begin the impanelment of the jury. There's a jury waiting downstairs. And this is the first I hear there's a

motion in limine. I do want to spend some time on it.

We'll call the jury. And during the voir dire, obviously, nobody's doing to mention these statements anyway. So we'll have sufficient time to try and rule on it before opening statements so that we don't have any misstatements during the opening statements by counsel. It might be inconsistent with the ruling of the Court.

MR. MORGAN: Thank you, Judge.

MS. DRISCOLL: Thank you, Your Honor.

THE COURT: Call the jury.

RULING ON
MOTION IN LIMINE

[163]

* * *

THE COURT: The Court has – the jury’s excused – has taken into consideration the motion in limine of defense counsel relative to the statements, and the Court has reviewed the statements. One is from a Debra Jones, which is a school teacher at William Patrick Day Head Start Program; and it deals with certain statements and observations she made of the three-year-old boy, one of the victims here, [L.P.].

The other is a statement from – it looks like Ramona Whitley, from the Council of Economic Opportunities in Greater Cleveland, who is also familiar with [L.P.], knowing him as a student. And, again, it refers to things that she saw on his person and the observations that she had made of his body and certain injuries, without going into them, on or about March 16th or March 17th.

And if I didn’t say it earlier [164] regarding the Jones statement, it was Wednesday March 17th.

The Court finds that if the statements are not testimonial in nature, then finding the child incompetent to testify does not preclude the admission of the statements at trial.

The Court cites, for that proposition, *State vs. Silverman*, 121 Ohio St. 3d 591, a 2009 case from the Supreme Court of the State of Ohio, authored

by Justice O'Connor at that time. And reading the holding in the case by Justice O'Connor, the Court held that the child's victim hearsay statements contain sufficient indicia of reliability and particularized guarantees of trustworthiness such that the statements were admissible, despite lack of determination as to the child's competence to testify.

Reading further in the Silverman's case at page 4, the Court went on to say, Because we find that admissibility under Evidence Rule 807 is not dependent on the child's competence, we need not determine if competency can be established by extrinsic [165] evidence.

The Court went on in its analysis – and I'm quoting again later on in the same page – Notably absent from the rule is any requirement that the child declarant be determined to be competent to testify before the statement is admitted.

The Court did review the case of the State of Ohio vs. Dennis Brock from the Third District, Hancock County, as cited by the prosecutor earlier, and the Crawford case as cited by defense counsel and his arguments earlier. The Court does find, after reviewing the statements, that the out-of-court statement made by the child, not only under the age of 12 but under the age of 5 in this case, should not be excluded as hearsay under Evidence Rule 802.

And the Court finds that the totality of circumstances surrounding the making of the statement here provide as particular guarantees of

trustworthiness, that they're made to the teachers or the instructors and that the statements, at least as reliable as statements admitted, pursuant Evidence Rule [166] 803 and 804, it appears to the Court the child or children were unlikely to be telling – strike the word – particularly – likely to be telling the truth when the statements were made; and the tests of cross-examination would add little to the reliability of the statements.

It appears there is no motive or fabrication likely to be used by the child when talking to the two teachers. Also, when dealing with the teachers, I believe they have a legal duty to report what they found and what they heard on these separate occasions.

So the Court is going to permit those, as I indicated, for the reasons stated, and particularly in view of the State vs. Silverman, which the Court adopts here as authority for my ruling.

Is any there anything further by the State?

MS. DRISCOLL: Your Honor, I do have the CSF records here that are dated on 3/17, the day that this child was discovered with the bruises, as well as on 3/18 where he had told social workers that Dee did it. [167] That's the top page.

THE COURT: These are on the records that you want to introduce?

MS. DRISCOLL: Yes, Your Honor.

THE COURT: All right.

MS. DRISCOLL: For the same reasons.

THE COURT: I see it. And this is an activity log created by, one, Elizabeth Grizer, G-r-i-z-e-r, responsible of working – person creating an assessment of the child at 4:15, apparently on March 17th, 2010. It says, apparently, [L.P.] had marks on his face, stomach, upper back; appear to be welts. His eye is pink. And after saying initially he fell down the stairs, then he said Dee – that's D-e-e – did it.

And then the other portion of the investigation dealt with a conversation with the victim on March 18th at the home of the mother, [T.T.], said he appeared to have belt marks on his face, welts on his stomach and back, several were also looped extension cords marks on the upper back, and a square bruise on his stomach. She says he [168] said Dee hit him with the belt.

All right. The Court, for the same reasons, will permit the introduction of these. These are the social workers apparently who were involved. And the Court finds that psychiatrists and social workers, they're actually treatment givers in these situations, and I think they're reliable and certainly fall within the, you know, Court's findings that the statements are not testimonial in nature. Again, the child being incompetent to testify does not preclude the admission of the statements from trial.

And the circumstances, I think, establish that the child was particularly likely to be telling the truth when interviewed by the social workers and teachers as I have indicated. They appear to be

spontaneous and would lack, I believe, any motive of the child to pick Dee out of the blue to fabricate this type of a statement. So that's the order of the Court.

Mr. Morgan's exceptions are noted for the record.

MR. MORGAN: Your Honor, if I [169] may, to preserve it for appeal, would the Court like each time that it's introduced that I object; or can the Court just note a continuing objection –

THE COURT: No. I think that –

MR. MORGAN: – throughout the trial just so I can preserve –

THE COURT: Naturally, I wouldn't prohibit you from doing anything you think is in the best interest of your clients. But for the record, I will state that your – any reference to these will continue – we will consider it that you have a continuing objection as stated right now.

MR. MORGAN: Thank you very much, Your Honor.

THE COURT: I'll give these back to the Cuyahoga County prosecutor.

MS. DRISCOLL: Thank you, Your Honor. I appreciate that.

THE COURT: And for the record – I think you've already stated it, Mr. Morgan – you were provided copies of those before the trial.

TESTIMONY OF
RAMONA WHITLEY

* * *

[234] The STATE OF OHIO, to maintain the issues on its part to be maintained, called as a witness, RAMONA WHITLEY, who, being first duly sworn, was examined and testified as follows:

[235] THE COURT: You may take the witness stand right there.

You may proceed.

MS. DRISCOLL: Thank you, Your Honor.

* * *

DIRECT EXAMINATION OF RAMONA WHITLEY

BY MS. DRISCOLL:

Q. Good morning. How are you?

A. Good morning. Okay.

Q. Could you please state your name for the record?

A. My name is Ramona J. Whitley.

Q. Are you currently employed?

THE COURT: Spell your last name for the reporter, please.

THE WITNESS: W-h-i-t-l-e-y.

Yes, I am.

Q. And where are you currently employed?

A. CEOGC Head Start.

Q. And what does that stand for?

A. Council for Economic Opportunities of Greater Cleveland.

Q. Okay. And what do you do for –

A. Preschool teacher.

[236] Q. Where do you teach?

A. William Patrick Day Head Start Center.

Q. What are your duties at William Patrick Day?

A. Care for children, teach them different things.
Care for children and teaching them things.

Q. And how old are these children?

A. Three-, four-, and five-year olds.

Q. How long have you been employed?

A. 15 years.

Q. With William Patrick Day?

A. With the agency. Yes.

Q. Okay. And how long have you been with William Patrick Day?

A. About nine years.

Q. And you were employed there last March?

A. Yes, I was. Yes.

Q. And do you recall a student name [L.P.]?

A. Yes.

Q. And what do you recall about [L.P.]?

A. Well, I recall seeing him one afternoon coming in. Prior to – actually, while sitting at lunch, I was transitioning, sitting at the lunch table, and I noticed that he had a nice haircut. Your hair looks nice. Then I noticed something in his head, like [237] a – actually, it was his eye I noticed. It was kind of red.

So from looking at his head, I just kind of said, What happened? He said, I fell. First, he said nothing. First, he said nothing. Then he said, I fell. I fell.

How did you fall and hurt your face?

I fell down.

I said, Well, okay.

So I didn't think too much of it. And then after leaving the lunchroom we went to the classroom where the light is more reflective. The light, it shines better. It's a brighter bulb. So when I went to the classroom, that's when he sat down and began to play, and I kind of noticed him playing at the table. So I stood up, and that's when I was like, Oh, what happened? I was kind of like in shock, because I'm noticing marks on his head.

Q. What kind of marks?

A. Red marks, like whips of some sort – and brought it to the attention of the – of a co-teacher.

I said, Can you take – I want you to take a look at something. And that's when the other co-teacher came to look at it. And she was like, [238] Whoa, what happened.

So, basically, she kind of suggested that we take this to the attention of the supervisor, which I did. And I brought it to the attention to the supervisor and took the child to the supervisor, and she noticed – that’s when I guess she noticed more things going on with him.

Q. Were you there when she noticed more things going on?

A. No.

Q. Okay. So let me back you up. Do you know what day this was?

A. The exact date, I don’t. I want to say March, April, sometime during Spring.

Q. Okay.

A. I don’t know the exact date.

Q. And how long had [L.P.] been in your class?

A. He hasn’t been there very long. He had just started. Probably – probably two weeks, if that. Two, three weeks.

Q. Two or three weeks?

A. Maybe.

Q. And had you ever looked at [L.P.] prior to this date?

A. Well, yeah. I – well, yeah, I did. But it [239] was something – because we were always – we’re supposed to do that – when the children come in, we’re supposed to always observe them, look for different things, what’s going on with them. I just noticed something white on his head. At first I thought it was

– I don't know – eczema or something. But it was chalk. It was chalk on his head.

Q. Was that that same day?

A. No, it wasn't.

Q. Do you know how close to that day it was?

A. It was probably a day or two before that.

Q. Okay.

A. Probably two days before that.

Q. And as you work, do you know who drops them off and picks them up each day?

A. Maybe mom. I think there were like – like turns. Probably dad one day –

Q. So is it fair to say that you don't know who dropped them off and picked them up every single day?

A. Not every single day, because they would alternate. They would take turns. It would be mom some days and dad some days. But I think, for the most part, mom would drop him and probably daddy pick him up. Since this day – it was different. I'm not [240] too sure. It could have been dad who dropped him off, I think.

Q. Okay. What are the hours that [L.P.] was in your classroom?

A. From 1:00 to 4:30.

Q. From 1:00 to 4:30?

A. Uh-huh.

Q. And did you make a statement with Cleveland police?

A. Yes.

Q. Okay. And do you know how soon after this occurrence that you made that statement?

A. Probably two, three days, maybe. I'm not sure. Probably two, three days.

Q. Okay. And if I showed you that statement, would it help you remember what date this all occurred?

A. It probably would help.

MS. DRISCOLL: Your Honor, may I approach?

THE COURT: You may.

MS. DRISCOLL: Thank you, Your Honor.

Q. Ms. Whitley, I'm showing you what's been marked as State's Exhibit Number 64. Can you take a [241] look at that, please? Does that refresh your recollection?

A. Yes.

Q. Do you know what day it was that you saw the marks?

A. It was that Wednesday, because – well, yeah. It was that Wednesday.

THE COURT: She asked, did you know the date.

THE WITNESS: The date?

THE COURT: That's – the question was, Do you know the date?

THE WITNESS: The 17th.

Q. The 17th of March?

A. Yes.

Q. Okay. And where is William Patrick Day School?

A. East 22nd and across the street from Community College Avenue.

Q. In Cleveland, Ohio?

A. Yes.

Q. Cuyahoga County?

A. Yes.

Q. And was [L.P.] present at William Patrick Day School the day before, on March 16th, 2010?

[242] A. Yes.

Q. And was it March 16th, 2010, when you inspected [L.P.] and saw chalk in his hair?

A. Yes.

Q. And did you see any red marks in his eye –

A. No.

Q. – or blue marks on his face –

A. No.

Q. – on March 16th?

A. No.

Q. And you said that his father would drop him off; is that true?

A. Yes.

Q. Do you see him here today?

A. Yes. I guess that's the gentleman over there.

Q. Can you describe what he's wearing?

THE COURT: You have to keep your voice up so the jury can hear you, please.

THE WITNESS: White shirt and a maroon tie.

MS. DRISCOLL: May the record reflect that she's identified the defendant?

THE COURT: The record may reflect that she identified the defendant in [243] court.

MS. DRISCOLL: Thank you, Your Honor.

Q. And what else did you do in response to seeing these marks on [L.P.]?

A. Again, I brought it to the attention of a co-teacher. We made a suggestion that Mrs. Cooper needs to know what's going on, and that's when she said to make the 696 call.

Q. Did you inquire to [L.P.] as to what happened to him?

A. I did. And the answer was, I don't know. I hurt myself. I fell. He wasn't really telling me exactly what happened.

Q. Okay. Ms. Whitley, I'm going to show you what's been marked as State's Exhibit 1. Can you identify that?

A. This is [L.P.], and the side of his face has a welt mark.

Q. Is that what you recall seeing that day?

A. Yes.

Q. I'm showing you what's been marked as State's Exhibit 53. Do you recognize that?

A. Yes.

Q. And what is that?

[244] A. It's a mark on – it looks like it's on the right side of his face too.

THE COURT: You got to keep your voice up. And you're identifying, for the record, a photograph. And then keep your voice up so the jury can hear you.

THE WITNESS: Marks on the right side of his face, lower.

Q. And is that what you observed on March 17th, 2010?

A. I observed more – I guess what caught me was the eye, the left side. It was red.

Q. I'm showing you what's been marked as State's Exhibit 25. Do you recognize that?

A. Yes.

Q. Is that a photograph of [L.P.]?

A. It is.

Q. And what do you see in that photograph? Are you okay, Ms. Whitley? Can you tell us what you see in that photograph?

A. Marks, welt marks.

Q. Welt marks?

A. Welt marks. Like marks, red welts from his face.

Q. Okay. And do you see anything in his eye in [245] that photo?

A. Bloodshot, like blood, bloodstained.

Q. Pardon?

A. Like a red bloodstain.

Q. Okay. And is that what you observed on March 17th, 2010?

A. Yes.

Q. Does that accurately depict what you observed on March 17th, 2010?

A. Yes.

Q. Okay. And are these marks what made you look at him more closely?

A. Yes.

Q. And where these marks on him on March 16th of 2010?

A. No. I don't recall it being on him March 16h. There was chalk on him, in his head.

Q. Okay. And who dropped him off on March 17th, 2010?

A. A gentleman. His dad, I guess.

Q. And is it the gentleman that you pointed out here today?

A. Yes.

Q. And is that the same gentleman who picked him up on March 16th, 2010, if you recall?

[246] A. Yes. Yeah. You know, he looks – yes. That's – he looks a little thicker.

Q. Did you know his father's name?

A. No. I never really knew dad's name. No.

Q. Okay. I'm showing you what's been marked as State's Exhibit 23. Do you recognize that?

A. Yes.

Q. And is that a photograph of [L.P.]?

A. Yes, it is.

Q. And what is in that photograph?

A. Again, the same marks, red marks, red bloodshot eye, left side of his face.

Q. And are those the marks that made you look at him more closely?

A. Yes.

Q. And are those the marks that made you call 696-KIDS?

A. Yes.

Q. And were those marks present on March 16th, 2010?

A. No.

Q. Now, you talked about his haircut. Did he not [247] have a haircut the day before?

A. He did. He did. I think that's when I noticed the chalk in it. I thought it was something else, like eczema or something. It was chalk. I talked to mom about it, and she said it was chalk.

Q. Okay. So was it mom that picked him up on the 16th?

A. On the 16th, it could have been mom who picked him up.

Q. Are you sure who picked him up on the 16th?

A. It could have been mom.

Q. But it could have been him? It could have been mom?

A. I think it was mom, because we had the discussion with her that day, that he had – it was the day he got picked up, as a matter of fact. And she brushed it. It was chalk. It was mom who picked him up on the 16th.

Q. Okay. And then who dropped him off on the 17th?

A. Dad.

Q. And was that a normal thing for dad to drop him off?

A. Sometimes dad drops him off. Yes.

Q. Okay. And we talked about 696-KIDS. What is [248] 696-KIDS?

A. It's a number that you call if a child is in need for some sort of service, if the child is hurt, being physically abused, sexually abused, there's a number that we call to make sure everything's okay.

Q. And are you a mandatory reporter?

A. I am.

Q. What does that mean?

A. That means that by law I have to report what is going on when it comes to the safety of a child.

Q. And were you trained in this?

A. Yes.

Q. What kind of training did you receive?

A. We received first aid training, CPR, child abuse and neglect, things of that nature.

Q. And have you had to call 696-KIDS very often?

A. No. Not too often. No.

Q. You've been at William Patrick Day for nine years?

A. Yes.

Q. How many times do you think you've called?

A. Maybe twice. This is probably the second call. This is probably my second call.

Q. And you seem pretty emotional about this. Was there anything that stuck out on this day?

[249] A. He was somewhat shy and quiet, just not as talkative as usual. He just was kind of quiet.

Q. So he was different on the 17th?

A. A little different. Usually he's more active, playful. He was kind of quiet.

MS. DRISCOLL: Nothing further. Thank you, Your Honor.

THE COURT: Cross-examination, Mr. Morgan?

MR. MORGAN: Thank you, Your Honor.

* * *

BY MR. MORGAN:

Q. Good morning, Ms. Whitley.

A. Good morning.

Q. My name's Chuck Morgan. I'm the attorney for Darius Clark. I'm going to ask you some questions. Okay?

A. Yes.

Q. If at any time you don't understand, please stop me, and I'll rephrase it. Okay?

A. Okay.

Q. Now, you work for – it could be Council of Economic Opportunity in Greater Cleveland?

[250] A. Yes.

Q. You've been there for –

A. 15 years.

Q. 15 years? And at William Patrick Day for nine years, I think you said?

A. Yes.

Q. Are you the teacher or co-teacher or assistant?
What is your title?

A. Assistant teacher.

Q. Assistant teacher?

A. Yeah.

Q. And who are you the assistant teacher to?

A. Ms. Jones.

Q. Okay. And that would be Debra Jones, correct?

A. Correct.

Q. Okay. What type of training do you have to get
a job as an assistant teacher?

A. Well, we have to do – we have to go to school for
it. I have my child development associate. I also have
an associate's degree – associate of arts degree. And
I'm still in school. So you have to go to school for that.
You take early childhood classes for that.

Q. Okay. Something similar to maybe continuing
education; you got to take something every couple of
[251] years?

A. Correct. Yeah.

Q. Okay. And you are current with all of that?

A. I'm sorry? I didn't hear you.

Q. You are current with what your requirements
are?

A. Yes, I am.

Q. How many children are in that – let me rephrase it. Back in March of this year, okay, about how many children were in that afternoon class?

A. We are enrolled – the enrollment is about 17 children. How many were in there that day? I'm not sure. It could have been 12, could have been 10.

Q. Up to 17?

A. Up to 17.

Q. It just depends on how many show up that day, right?

A. Exactly.

Q. Okay. So it could have been ten? It could have been 12? It could have been 17?

A. Yes.

Q. You just don't know for sure?

A. Yes.

Q. Do you have a sign-in log?

[252] A. We do have one.

Q. Okay. Let's talk about the sign-in log, how it's used. If I'm a parent and I want to bring my child there, okay, and let's say my client's – my child is enrolled in that class and I'm going to drop them off, what is the procedure that goes through to bring the child there? Do I get to walk in, hand my child –

A. There is a sign-in sheet there located directly in front of the parents as they walk inside the classroom, and they sign them in, the sign-in sheet. And we have attendance. And what we do is mark that child being

there, present or absent. A check is if they're there for the day. If it's an A, you're absent for that day.

Q. Okay. And then when the parent comes to pick them up, they also have to sign the child out?

A. Yes.

Q. Okay. Those logs, they're kept at William Patrick Day?

A. Yes.

Q. Okay. Did anybody from the prosecutor's office or the Cleveland Police Department ask you to bring in those logs within the last couple of days?

A. Yes.

[253] Q. Okay. And did you have you the opportunity to bring them with you?

A. No. Because I – we didn't have it. We didn't have those.

Q. You don't have them?

A. No.

Q. How long do you normally keep them?

A. I guess it would depend on the room arrangement. Probably once another school year starts up – probably six months.

Q. And do they destroy them after the school year?

A. I'm not sure, but we weren't able to locate the log.

Q. What did you do to attempt to locate them?

A. Well, we looked in some of the books where they would normally be kept, but –

Q. Ms. Driscoll asked you some questions about the 16th of March, and you told her that mom picked her up – picked up [L.P.], correct?

A. Yes.

Q. Okay. So that would have been approximately 4:30 on the 16th of March?

A. Around 4:30, 4:00. Could be 4:00 to 4:30. The latest pickups starts after 4:30, so around 4:30.

[254] Q. You are going from your memory on that; is that correct?

A. Correct.

Q. Oaky. But I believe you told the jury that you remember it was mom because she dusted off some chalk or whatever.

A. It was mom, that I remember.

Q. Okay. You're certain that mom was there on March 16th at 4:00, 4:30, something like that?

A. Right.

Q. You did not see my client on that day, correct?

A. Correct.

Q. Okay. Prior to March 17th of this year, had you seen my client either drop off or pick up [L.P.]?

A. Drop them off.

Q. Okay. You're certain of that?

A. And he picked them up.

Q. Okay. Debra Jones, when people are dropping children off or picking children up, does she have the same opportunity to view who's doing the drop-off and pickup?

MS DRISCOLL: Objection.

Q. If you know.

[255] THE COURT: If she knows, she may answer. It's cross-exam.

A. If she had that same opportunity? We both have. Yes.

Q. Okay.

A. On that particular day –

Q. Which day are we talking about?

A. The day of the occurrence.

Q. So the 17th?

A. The 17th, March 17th, dad was a little late picking up [L.P.].

Q. Do you know who dropped off that day?

A. Dad.

Q. Okay. Did you check the logs, or are you just going from memory?

A. Dad. It was dad.

Q. Okay. Now, you described, in your statement, welt marks?

A. Yes.

Q. Should I take that to be mean bruises?

A. Yeah. I would. Yes.

Q. And I believe also that you stated that [L.P.] was uncomfortable, correct?

A. Yes.

Q. Was he complaining about being any pain [256] that day?

A. He was just reserved, quiet, more than his usual self. He was being different from how he normally behaves.

Q. But did he make any statement: My arms hurts; my head hurts; my back hurts; my stomach hurts; anything like that?

A. I don't remember a conversation like that. I just remember what I saw, and why he was quiet, why he wouldn't eat.

Q. Well, you made a written statement to Detective Remington on the 19th of March, correct?

A. Yes.

Q. If he had said anything about "my arms hurts, my head hurts, my back hurts, my stomach hurts," would you have put that in that statement? Do you think that would have been important to put in that statement two days later?

A. If he had mentioned anything about any part of his body hurting, yes. Yeah.

Q. You would have been put it in, right?

A. Uh-huh.

Q. So if the statement doesn't include anything like that, can I, then, conclude – would it be fair for me to conclude that [L.P.] made no complaints [257] about pain for an arm, head, back, stomach, anything like that?

A. He made no complaints to me about it.

Q. Okay. When he was doing – when I say “he” – let me rephrase it. When [L.P.] was being asked questions at William Patrick Day on the 17th, was it in the classroom, or was it off in an office somewhere?

A. It was in the classroom, again, because there's better lighting. But it was aside from the other children, and that's when I kind of got the attention of the other teacher, Ms. Jones.

Q. And who was present when he was being – [L.P.] was being questioned?

A. Ms. Jones, myself, and – I think it was Ms. Jones and myself, actually, the one's attention – there was another teacher in there, but it was Ms. Jones and myself.

Q. Who was the other teacher?

A. It's Ms. Banks.

Q. Ms. Banks?

A. Uh-huh.

Q. Okay. When [L.P.] was initially questioned, he said that he fell, correct?

A. Yes.

[258] Q. And at some point, he said my client did it, right?

A. A Dee, I think he mentioned.

Q. He mentioned Dee did it, right?

A. Yes.

Q. "Dee did it" was one of three separate answers that he had given, though, right?

A. Okay.

MR. MORGAN: Do you have her statement?

MS. DRISCOLL: She has it.

Q. Can you take a look at the second page of your statement?

A. The second page?

Q. Yes.

MR. MORGAN: May I approach, Your Honor?

THE COURT: You may.

Q. That question and that answer, can you read that, please?

A. "What was [L.P.]'s demeanor" –

Q. Yes. That question.

A. – "the day that you discovered other marks on his body"?

Q. And your answer to that was?

[259] A. "Hesitant to talk, afraid to talk. He seemed uncomfortable. Maybe he seem afraid because he gave three answers."

Q. Okay. So he gave three separate answers?

A. Uh-huh.

Q. And out of those three, one of them was –

A. He said he fell. He said Dee did it. He said, I don't know.

Q. So three different answers?

A. Three different answers: I fell; Dee did it; I don't know.

Q. After mom picked up [L.P.] on March 16th at 4:00, 4:30 and until about 1:00 on the 17th when [L.P.] was dropped off, do you know where [L.P.] was during that time frame?

A. Can you repeat that?

Q. From the point that mom picked up [L.P.] on March 16th, 2010, at approximately 4:00, 4:30 in the afternoon, from that point up until approximately 1:00 when [L.P.] was dropped off on March 17th, 2010, at William Patrick Day School, for that period of about 21 hours, okay, do you know where [L.P.] was during those 21 hours?

A. No. After he was picked – after he was picked up on the 17th? No. After he was picked up? [260] No.

Q. Okay. So you weren't with him. You didn't see him. You don't know where he was –

A. After the day he was picked up, after the 17th, no. He didn't – he didn't continue to come to school. That was it. I didn't see him.

Q. No. I'm talking from the 1:00 on the 17th and going back to the 16th, just that period of time.

A. From 1:00 to 4:30, that was the time that I saw [L.P.].

Q. Okay. But I'm not talking about those hours. I'm talking about from the point mom picked him up on the 16th until my client dropped him off on the 17th.

A. Uh-huh.

Q. Okay. For those 21 hours – do you know which hours I'm referring to?

A. The ones you just mentioned.

Q. Yes.

A. I have – no. I don't know what happened to him.

Q. From 4:00 p.m. on March 16th, 2010, and going through until 1:00 on March 17th, 2010, you were not with [L.P.], correct?

A. 1:00 – I was with all the children during that time. On the 17th?

[261] Q. No. I don't know how else I can say it.

A. I don't understand what you're saying. You're asking me if I was with that child on the day of the incident – the day of the incident?

Q. No. I'm asking – yes. But prior to him being dropped off. Do you understand what I'm saying?

A. Before he was dropped off –

Q. Yes.

A. – was I with him? No.

Q. You weren't with him?

A. No, I wasn't.

Q. Okay. You don't know where he was, correct?

A. Correct.

Q. You don't know what time dad might have picked him up on the 16th or 17th, correct?

A. The 16th or 17th, dad was late picking him up, the 17th. So on the 16th, mom picked him up.

Q. Okay. But you don't know what time [L.P.] came in to being with my client on the 17th prior to my client dropping him off about 1:00 –

A. Not the exact time.

MR. MORGAN: Okay. Thank [262] you. One second, Your Honor.

THE COURT: You may.

MR. MORGAN: Thank you.

THE COURT: Any redirect?

MS. DRISCOLL: Just briefly.

* * *

REDIRECT EXAMINATION OF RAMONA WHITLEY

BY MS. DRISCOLL:

Q. Mr. Morgan was just asking you about between 4:30 p.m. on the 16th and 1:00 on the 17th. You weren't with [L.P.], right?

A. Right.

Q. But you can say something happened to [L.P.], correct?

A. Yes.

Q. And you can say that you were in Cleveland, Ohio when you saw him on the 16th?

A. Yes.

Q. And on the 16th, no bruises, no welt marks, nothing on his face, correct?

A. Correct.

Q. And on the 17th when dad dropped him off, you [263] noticed his eye, his face and everything, welt marks?

A. Yes.

Q. Correct?

A. Correct.

Q. And [L.P.] told you who did this, didn't he?

A. I was given – yes – three different answers.

Q. And what were those three different answers?

A. "I fell."

THE COURT: Counsel, that's already been asked and answered. If there's something new, you can ask it. She gave the three answers before. You just don't repeat things on redirect. If you have something new, we'll listen to it; but you don't repeat exactly what's already been asked. So move on to something else.

Q. Did he ultimately tell you who did this to him?

A. Dee

MS. DRISCOLL: Thank you. No further questions.

THE COURT: Any recross?

MR. MORGAN: Just very briefly.

[264]

* * *

RECROSS-EXAMINATION OF RAMONA WHITLEY

BY MR. MORGAN

Q. Ms. Driscoll asked, Did he tell you who did it? When he answered that question, were you pointing to a specific bruise or – when you – “it,” what is “it”?

A. Who did this?

Q. No. Who did – who did –

A. Well, I was referring to the eye, because the eye is what caught –

Q. Okay.

A. Bloodshot. It was red. He had welts on his face.

Q. Okay. So that’s what maybe [L.P.] was referring to also, correct?

A. Correct.

Q. So we don’t know if he was referring to other bruises on his body or the mark on his face, to Dee, correct?

A. Correct. Face, head, the head – top of the head, the face, the eye.

Q. So when you were or when you were present and [L.P.] was being questioned “who did this,” you were referring – it was being referred to the eyes?

A. Everything I saw up here. Dee.

[265] Q. Nothing down here, right?

A. I don’t know about down there.

MR. MORGAN: Okay.

THE COURT: Any re-direct?

MS. DRISCOLL: No. Thank you, Your Honor.

THE COURT: You may step down, ma’am.
State may call your next witness.

TESTIMONY OF
DEBRA JONES

[265]

* * *

The STATE OF OHIO, to maintain the issues on its part to be maintained, called as a witness, DEBRA JONES, who, being first duly sworn, was examined and testified as follows:

THE COURT: Okay. You may take the witness stand right there, ma'am. You may proceed, Counsel.

* * *

DIRECT EXAMINATION OF DEBRA JONES

BY MS. KARKUTT:

Q. Ma'am, could you state your name and spell your last name for the record?

A. My name is Debra Jones, J-o-n-e-s.

Q. Ms. Jones, where are you employed?

[266] A. Council of Economic Opportunities. The center I work at is William Patrick Day.

Q. And how long have you been employed by that agency?

A. At least 15 years or more.

Q. How long have you been assigned to –

A. About 15.

Q. And of those 15 years, how long have you been assigned to the William Patrick Day School?

A. About maybe six years.

Q. And in what capacity do you work at the William Patrick Day School?

A. My occupation?

Q. Yes.

A. I'm a teacher, lead teacher, in the classroom.

Q. And what training and background, education, experience do you have to qualify you for that position?

A. I have two associate's degrees in education.

Q. And where are those degrees from?

A. Associate of Science and Associate of Arts.

Q. And where are those degrees from?

A. Tri-C Metro. And I also take classes at Cleveland State.

Q. Currently you do?

[267] A. Yeah. Ongoing.

Q. Ongoing?

A. Working on my bachelor's degree.

Q. And what are the ages of the children that you teach at the school?

A. Three- through five-year olds.

Q. And this is an all-day school?

A. No. Part-day. I'm a part-day teacher, a.m. and p.m. classes.

Q. And how many children are in each class that you teach?

A. We could have up to, like, 17.

Q. 17 in the morning and 17 in the afternoon?

A. Yes.

Q. Ms. Jones, I'd like to call your attention to the date of March 17th of 2010. Were you working on that day?

A. Yes, I was.

Q. And at that time, did you have a student in your afternoon class by the name of [L.P.]?

A. Yes.

Q. And how long had [L.P.] been a student at your school?

A. Not very long, maybe a week or two.

Q. And in that time frame, did he come to school [268] on a regular basis?

A. Yeah.

Q. And did you have an opportunity to observe who dropped him off each day?

A. Yes.

Q. And who was that?

A. On that particular day, I can't say who dropped him off.

Q. You didn't see who dropped him off on the 17th?

A. Right.

Q. Prior to the 17th, did you have an opportunity to see who usually brought him to school?

A. Yeah. Sometimes we're in the lunchroom when some of the kids come in, or we'll – either Ms. Whitley or myself will see the parents, because they have to come in and sign in or say something to one of us.

Q. Okay. And to your knowledge from your observations on those days, week or two prior to the 17th of March, who would you see drop [L.P.] off at school?

A. I think on the first day I remember her and a fellow –

Q. And when you say “her,” who are you referring [269] to?

A. His mom. Because we be eating in the lunchroom when they came in. And they seemed to be nice people, but – I think I remember his mother, because she always looked at me. She always looked at me or hi every time she dropped him off. Even if I'm busy, she'd still look at me, and I always looked back at her.

Q. And would she sign him in as well?

A. Yeah. Sometimes we have a line. You got to wait and sign in.

Q. And do you keep those log sheets at your school?

A. Yeah. We keep them like the whole year, but I don't have that form in particular.

Q. Have you had an opportunity to look at the school to see if you could locate those records?

A. Yeah.

Q. And they're not there?

A. No.

Q. You usually keep them for a year?

A. Yeah. I'm one of those people that keep everything. So they – some take out some things and toss them. I like to keep things for things like this.

[270] Q. And you looked for them, and you can't locate them; is that correct?

A. Right.

Q. Now, you have another teacher that assists you in your classroom, is that correct?

A. Uh-huh.

Q. And her name is Ramona Whitley?

A. Yes.

Q. On March 17th, did Ramona Whitley get your attention in any way regarding [L.P.]?

A. Uh-huh.

Q. And once she got your attention, what did you do?

A. Well, I turned around and looked too. But I said, He needs to go to Ms. Cooper, my supervisor. After I looked at him, I said, you know, I'm going to take him to Ms. Cooper.

Q. And what did you see when you looked at [L.P.] that made you say, Hey, I better get my supervisor, Ms. Cooper, involved?

A. His eye. It looked red on the side. And I'd seen something else. I don't want to alarm him and, you know, make him feel bad. That's when I took him out of the room too and took him to her. I seen some signs of redness, I think around his neck or [271] somewhere.

Q. So you took him out of the classroom; is that right?

A. Yeah.

Q. And when you took him to Ms. Cooper, what kind of room is that?

A. It's an office.

Q. Okay. And who was in that office?

A. Just Ms. Cooper. You know, I didn't want to embarrass him in front of the kids or alarm anybody, so I just took him to the office.

Q. And who went into Ms. Cooper's office with yourself and [L.P.]?

A. That was it. Just us two.

Q. And what about Ms. Whitley, was she there as well?

A. I don't think so. She was still with the kids. Somebody had to stay with the children.

Q. Okay. When you first noticed the eye and you said some other marks on [L.P.]'s neck; is that correct?

A. Uh-huh.

Q. Did you have a conversation with [L.P.] at that point?

[272] A. Yeah, I did.

Q. And how did that conversation go?

A. I just said, Who did this? What happened to you?

Q. And when you said “what happened to you,” did he give you an answer?

A. Yeah.

Q. What did he say?

A. He seemed kind of bewildered. He said something like, Dee, Dee.

Q. And did you know that meant?

A. Actually, no, I didn’t know what that meant.

Q. Did he say anything else that happened to him?

A. No. Because he was kind of quiet, like – but he was just starting to talk to the other kids and everything.

Q. And you had an opportunity to observe his demeanor in the weeks prior to March 17th, correct?

A. Uh-huh.

Q. And was it any different on March 17th than it was on the previous days when he came to your school?

A. No. He was kind of like – I said, he was kind of quiet, like – but I was trying to get him to talk about it. But I noticed him, around that time, talking to kids. Like that time and the time before [273] that, he was talking in the lunchroom to the kids at the table. And I said, Finally he’s talking at the table with the

kids. We always take observations and noticed he was connecting.

Q. Now, when he told you Dee did it, what were you referring to when you were talking to [L.P.]?

A. Can you repeat that?

Q. [L.P.] told you "Dee did it," correct?

A. Yeah.

Q. And when you asked him what happened, what were you referring to?

A. I just – I repeated his words back. I just said, What did you say? Dee? Dee did this? Because he didn't say a name. He said Dee. I said, Oh, Dee.

Q. What else did you ask [L.P.] at that point in time, if you recall?

A. Yeah. It was a while now. I don't know. I just asked, Did Dee do this, and who is Dee? I asked him was he big or little, because I wanted to know was he talking about another child, because sometimes they'll say a brother or a sister hit him or somebody.

Q. Okay.

A. So I wanted to – not trying to find out. I just wanted to understand him clearly. And I said, [274] Is he big or little? And he didn't talk a lot. So I said, Is he big or little?

Q. Now, you just made a motion with your hands, you now.

A. Yeah.

Q. You said you asked [L.P.], Is Dee big or little. Is that what you asked him?

A. Uh-huh.

Q. And can you show us what motion you made with you hand when you had –

A. I made it like this, just like – Is he big, or is he little (indicating)?

Q Is he little, like up here (indicating)? And for the record, my arm –

A. I said, Is he little, or is he big?

Q. Okay.

A. And, Who's Dee?

Q. And when you say "little," is it fair to say you had your arm close to the ground?

A. I don't know. Just middle ways.

Q. Okay.

A. I was just trying to get a better understanding of who it was, you know. I do that all the time.

Q. And when you said "big," did your arm go over [275] your head?

A. It went up. It went up. Big or little?

Q. And what was [L.P.]'s response when you asked, Is Dee big or little?

A. I don't know. He kept looking kind of bewildered.

Q. What do you mean by "bewildered"?

A. Out. Staring out. And I was asking him – he almost looked uncertain, but he said, Dee. So I guess that’s all I can get out of him right now. I said, I’ll take him to the office. That’s what I’m going to do.

Q. Okay. And when you said to him, Who did this, can you tell me what “this” meant?

A. And I didn’t want, again, to alarm him; and I didn’t want to make him feel bad. I just asked hi, Who did this?

Q. And did you point to any of his body parts when you asked him that?

A. I’m not sure about that part. I don’t know if I said “to your eye,” I never said anything about – because I didn’t look all over his body. I didn’t do that in front of the kids. I just said, Who did this? Who did that to you?

Q. And he said, Dee did it?

[276] A. Uh-huh.

Q. And he described Dee as being big, correct?

A. He didn’t say that Dee was big. He might have shook his head a little bit, you know.

Q. Ms. Jones, do you remember after this incident occurred that you went – there was a time that came that you went and met with the detective from the Cleveland Police Department?

A. Uh-huh.

Q. And do you remember how long after March 17th that was?

A. Not too long after.

Q. And on that date, did you give him a statement?

A. Yes.

Q. And in that statement, did you include all of the observations and conversations that you had with [L.P.] on March 17th?

A. Uh-huh.

Q. And if you had an opportunity to review that statement, would you be able to tell us what day it was taken?

A. Yes.

Q. And would it refresh your recollection to the conversations that you had with [L.P.] about his [277] injuries?

A. Uh-huh.

MS. KARKUTT: May I approach, Your Honor?

THE COURT: You may.

Q. Ms. Jones, I'm showing you what's been marked for identification purposes as State's Exhibit 65. Do you recognize that?

A. Yes.

Q. And what is it?

A. It's a statement taken from me, that I remember that day.

Q. What date was that statement taken?

A. On the 19th, March the 19th.

Q. 2010?

A. 2010.

Q. That's just two days after you observed [L.P.], correct?

A. Yes.

Q. Does that refresh your recollection as to your conversation with [L.P.] about his injuries?

A. Uh-huh.

Q. What did he tell you about what happened to him?

A. Oh, yeah. I did say this. Yeah. Again, I'm [278] reading my statement. But, again, he didn't have a lot of words; and I noticed that in the beginning. You kind of just talk with them. So I kind of – like I said, I asked him. He didn't go into detail on what happened.

Q. Did you ask him anything about any type of discipline situation, like a spanking or a whooping?

A. Yeah. He said – he said "Dee."

Q. He said Dee what?

A. He answered. I said, Well, who is Dee? Because I didn't know if it was a child or if it was a grownup or whatever. And he said, Dee is big.

Q. And is that when you went through the hand motions with him?

A. Yeah. Yeah.

Q. Now, after you got that information, is that when you took him to Ms. Cooper's office?

A. Yeah.

Q. And once you got him to Ms. Cooper's office, what happened?

A. Well, Ms. Cooper asked who actually seen him, you know, first. And she said, Whoever seen him first got to make the call.

[279] Q. And when you're talking about a call, what call are you referring to?

A. 696-KIDS.

Q. And that's to report any observations of abuse?

A. Uh-huh.

Q. And who was the person who first made these observations?

A. Ms. Whitley, because she had the boys before we came into the room; and I had the girls.

Q. So she went ahead and made that call?

A. Right.

Q. Once you were in Ms. Cooper's office, was there any closer examination of [L.P.] with respect to any marks or injuries that may have been observed?

A. Yeah. Ms. Cooper pulled up his shirt, and she just told me he had a nice shirt on. And she said, Can I see your shirt – and seen some more marks on him.

Q. You saw some marks?

A. Yeah.

Q. Can you describe what you saw once [L.P.]'s shirt was pulled up?

A. Some marks on his back.

Q. What did those marks look like?

[280] A. I just remember kind of reddish marks.

Q. And any marks anywhere else once the shirt was lifted up that you recall?

A. No. She didn't – I don't know if she pulled – we didn't want to embarrass him. I don't think she pulled down his pants or anything like that, but we saw enough to make that call.

Q. Okay. And you saw enough to make the call, correct?

A. We saw enough to make the call.

Q. Okay. Now, was [L.P.] in your class on March 16th of 2010?

A. I believe so.

Q. And did you have an opportunity to observe his head and neck and face on that day?

A. On that date that this took place?

Q. On the 16th, the day before you called 696-KIDS.

A. Right. Yeah. Because I noticed he had something red in his head. I didn't know what it was because it was on his hair.

Q. Okay.

A. And I wasn't sure, was it – what was going on with his head. So I asked the mother. I remember asking her what was going on with his head. I said, [281] What is that on his head, you know? And she said nothing. And she walked over there, and she touched his head. I think she brushed it. She said, Oh, that's chalk or something like that. And she was

telling whoever she was talking to, That's chalk. You know, they're saying something's wrong with him.

I just said, No. I just need to know that was chalk on his head.

Q. So on the 17th it was just chalk. Did it just brush – wipe right out of his head?

A. Yeah. But I remember her touching his head. And she said, I'll take care of that. That's chalk.

Q. So you touched his head on the 16th?

A. She did.

Q. She did.

A. The mother did. But I seen her, though. She was standing right there.

Q. Okay. And you had an opportunity to look closely at [L.P.]'s head that day; is that right – on the 16th?

A. Uh-huh.

Q. Did you see any welt marks on his head or bruising on his face on the 16th?

A. No. I don't think so.

Q. Did you see any redness in his eyes on the [282] 16th?

A. Uh-uh.

Q. And you had an opportunity to observe him that day? Yes?

A. Uh-huh.

Q. And did he look different on the 17th of March?

A. Yeah.

Q. And how did he look different?

A. That's the red mark, because Ms. Whitley made me look – because I was going to do circle time with the kids, and I said, What's going on? I came back to see, and that's when I looked over.

MS. KARKUTT: May I approach?

THE COURT: You may.

Q. Ms. Jones, I'm showing you what's been marked for identification purposes as State's Exhibit 25. Do you recognize this?

A. Yeah.

Q. You do?

A. Yes.

Q. And what is State's Exhibit 25?

A. It's a mark on his face.

Q. It's a photograph, isn't it?

A. Yes.

[283] Q. And who does that photograph depict?

A. [L.P.].

Q. And what about [L.P.] is depicted in that photograph?

A. He has some red in his eye and on his cheek.

Q. And is that a fair and accurate depiction of how you viewed [L.P.] on March 17th, 2010?

A. I think so. I thought he had more red in his eye, but, yeah.

Q. And is that what called your attention to his face and head on that day?

A. Uh-huh.

Q. Is that a “yes”?

A. Yes, it is.

Q. Okay. I’m showing you State’s Exhibit 24. Do you recognize that?

A. Yeah.

Q. Is that also a photograph of [L.P.]?

A. Uh-huh.

Q. And you can you tell me what’s depicted about [L.P.] in that photo?

A. There’s some red underneath his eye.

Q. And did you observe that on March 17th of 2010?

A. Yes.

[284] Q. Does that accurately depict how he appeared to you?

A. Uh-huh.

Q. I’m showing you State’s Exhibit 26. Do you recognize that?

A. Now that; no.

Q. You don’t recognize –

A. I seen his neck.

Q. Okay. Is this a photograph depicting [L.P.]’s neck?

THE COURT: You got to keep you voice up so the jurors can hear.

A. I thought I saw something red on his neck, somewhere up in here.

Q. Do you recall seeing what’s depicted in State’s Exhibit 26, that photograph?

A. Yeah.

Q. And the marks that you see there depicted in State’s Exhibit 24, 25, and 26, did you see those on [L.P.] on March 16th of 2010?

A. Uh-huh.

Q. On the 16th, those marks were there when you looked at him the day before you called 696-KIDS?

A. No. Those marks weren’t were there. I didn’t see them.

[285] Q. What day did you see those marks?

A. On the date that we called. I just remember – whatever date is on here.

Q. That was on March 17th, right?

A. Right, the 17th.

Q. And then once you took [L.P.] into Ms. Cooper’s room, you had an opportunity to observe what was under his shirt; is that correct?

A. Uh-huh.

Q. You described observing some red marks on his back; is that fair to say?

A. Uh-huh.

Q. I'm showing you State's Exhibit 30. Do you recognize that?

A. Yeah.

Q. And what is depicted here in State's Exhibit 30?

A. Marks on his back.

Q. On [L.P.]'s back?

A. Yeah.

Q. That's a photograph depicting those marks? Yes or no?

A. Yes.

Q. Are those the same marks you observed on March 17th?

[286] A. Yes.

Q. I'm showing you State's Exhibit 54.

A. Go ahead.

Q. Do you recognize that?

A. Yes.

Q. And what is depicted in State's Exhibit 54?

A. Those are marks too, but they look like these. Yeah.

Q. One photograph is bigger – they're both photographs, correct?

A. Yeah.

Q. And one's bigger than the other?

A. Uh-huh.

Q. And is that a fair and accurate depiction of what you observed on [L.P.]'s back –

A. Yeah.

Q. – on the 17th of March?

A. Yeah. I'm pretty sure. He couldn't – he didn't talk a lot. He couldn't express himself. So I just want to be fair about it. He didn't explain anything to me. He just answered.

Q. He didn't expand, but did he tell you who had done this to him?

A. Yeah. That day, before I came into Ms. Cooper's office, yeah.

[287] Q. And he said Dee, right?

A. Yeah.

Q. Did you have any idea who Dee was?

A. No.

Q. Ms. Jones, do you recall who picked up [L.P.] from school on March 17th?

A. No.

Q. No? Were you present for when he was picked up from school?

A. No. No.

Q. Okay.

A. I think he went to Ms. Cooper's office. He never came back in there with us.

Q. And you indicated –

A. Or I don't know who picked him up that day.

Q. You don't know who picked him up?

A. No. Because the – I think the child services or somebody was there. We didn't see him leave

Q. You didn't see him leave?

A. (Witness shakes head.)

MS. KARKUTT: Thank you. I have nothing further.

THE COURT: We'll take our morning recess at this time before Mr. Morgan [288] starts his cross. During the morning recess, do not discuss the case with anymore or permit anybody to discuss the case with you. We'll be in recess for approximately 10 to 15 minutes.

Everybody rise while the jury leaves the courtroom, please.

(Thereupon, a recess was had.)

* * *

THE COURT: I'm sorry for the delay folks, but it was beyond my control. That's all I can tell you. And it wasn't the fault of counsel, either.

Anyway, the witness may resume the witness stand.

Mr. Morgan, for your cross-examination.

MR. MORGAN: Thank you, Your Honor.

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CROSS-EXAMINATION OF DEBRA JONES

BY MR. MORGAN:

Q. Good afternoon, Ms. Jones. How are you doing?

A. Okay.

Q. Okay. I'm Chuck Morgan. I'm the attorney for [289] Mr. Clark. I'm going to ask you some questions. If you don't understand a question, please stop me. Okay?

A. Yes.

Q. You are a teacher at William Patrick Day School?

A. Yes.

Q. Okay. And, Ms. Whitley, who testified before you is your assistant, correct?

A. Yes.

Q. And she's been your assistant for the last several years, correct?

A. Uh-huh.

Q. Up to 17 kids in the class?

A. It can have up to 17. Yeah.

Q. On March 16th or March 17th of this year, do you know how many kids were in your class?

A. No. I couldn't tell on that particular day?

Q. The sign-in procedure, when a parent is dropping off their child, can you briefly describe and explain that sign-in system that you have there for the parents?

A. They usually – whoever brings them in signs them in and puts the time down, whenever they enter the classroom, as well as – that's all.

[290] Q. So basically, you cannot have a child there unless the parent's signed them in?

A. Right. Right.

Q. Okay. The same for when a child leaves; a parent has to sign?

A. Yes.

Q. And you have those logs. I think you said you keep them for about a year, correct?

A. Yeah.

Q. And those logs will tell you who actually dropped off and who picked up on a particular day?

A. Yes.

Q. The prosecutors asked you to bring in those logs from March 16th and March 17th of this year?

A. Yes, sir. Yes.

Q. Okay. You made an effort to try to find them, correct?

A. Yeah. I immediately went back to where we usually keep them, and I went to look in the log to see if I could find that date or March, period.

Q. And you were unable to find them?

A. Right.

Q. Were unable to locate those records?

A. Right.

Q. And it's within a year. But for whatever [291] reason –

A. Right. We usually keep them, but we did some cleaning and all. That's why they're not there. Usually I would have something like that.

Q. Okay.

A. This year we did some extra cleaning, and that's why they're not there.

Q. And if you had them and you brought them in, you could say on March 16th – you'd be able to say for certain who dropped him off and picked him up right?

A. No. On that day? I didn't –

Q. No. I'm saying if you had those logs.

A. Yeah. Yeah. Because they'll have their name up there.

Q. Ms. Whitley testified that she was certain, on March 16th, that mom picked up [L.P.]. You can't dispute that, correct?

THE COURT: I think she said she didn't know.

Q. Okay. You don't know? Okay. Do you still have that statement of yours in front of you?

A. Yes, I do.

Q. Is that still up there?

[292] A. Uh-huh.

MR. MORGAN: May I approach, Your Honor?

THE COURT: You may.

Q. [L.P.] was in the afternoon classes, correct?

A. Yes, he was.

Q. Right there, that question, "Who usually picks him up," what was your answer?

A. I said his mother.

Q. Okay. And then going down a couple, "What day was the call made"? And your answer was, "Um, Wednesday the 17th of March," correct?

A. Uh-huh.

Q. Okay. And the next question right after we talked about the 17th of March was, "Who dropped [L.P.] off that day"? And your answer was?

A. "Ramona saw the dad bring him in."

Q. The question right after that was, "Was that the first time you heard of the dad bringing [L.P.] into school"? And what was your answer?

A. I said yeah. Because she told me – because I said, Oh, the father, he brought them in today.

Q. From that, can we conclude that you hadn't seen the father before the 17th of March?

A. I'm not sure. I'm not going to say yes or no. [293] On the first day that that started, I did see – they seemed like very nice people. They came a little late. It was a guy and the mommy. But I'm not – I didn't look at him a lot. But I remember the personality, because they were talking to me. They were kind of late, and I was telling them what to do. And I was in the lunchroom.

Q. But what we read, the question and the answer, that was on your statement, correct?

A. Yeah.

Q. And you made that statement on March 19th –

A. Uh-huh.

Q. – of this year, about two days after the 17th, correct?

A. Uh-huh.

Q. And you signed that statement after you reviewed it, correct?

A. Yeah.

Q. Okay. Now, going down a little bit further, you answer, I seen bruises on his face and by his ear and by his eye. I saw red in the eye. That's what I first saw. When we took him in later, that's when I [294] saw bruises on the rest of his body, back and neck.

So, from that, can I conclude that you looked at him in the classroom, and then a period of time later you took him somewhere else at William –

A. Yes.

Q. – at the day school, correct?

A. Yes.

Q. Okay. How much longer was it before you took him into the other room and saw the other bruises?

A. About – I don't know. Three, five minutes or something. Everything was happening so fast.

Q. The next line of your statement is, What did you do after you saw the bruises on his face? Your answer was, I spoke to him for a few minutes and asked him what happened, right? Okay. Was that your answer?

A. Yeah.

Q. Okay. And then you go further to say, I asked him, did he get in a fight with somebody or did he get a spanking? He said Dee. Now, when you were asking him that question, you're only referring –

A. Right.

Q – to the bruises and marks on his face, [295] correct?

A. Uh-huh.

Q. Because at that point, you hadn't taken him to the other room, right?

A. Right.

Q. Okay. I asked, Who is Dee. He wouldn't answer. So I said, Is Dee big? And I raised my hand or little and lowered my hand. [L.P.] looked up at the ceiling and said, He's big.

A. Uh-huh.

Q. Okay?

A. Uh-huh.

Q. Now, when he looked blank, was that in response to your question of – you asked him if Dee spanked you or hit you, right?

A. Yes.

Q. Okay.

A. But in all fairness to everybody, my honest opinion –

Q. Let me ask the questions. Okay?

A. Sorry.

[296] Q. Sorry to cut you off. I got to do my job. Okay?

A. Uh-huh.

Q. You were talking about spanking of hitting, and he said “Dee,” right?

A. Yeah.

Q. Do we know if [L.P.] was referring to a hit or a spank when he said “Dee”?

A. No. That’s why I said he looked kind of bewildered. I’m not sure.

Q. Pardon?

A. I don’t know. He looked just kind of – I don’t know. I was trying to make sure he understood what I was saying.

Q. You’re not sure if he understood?

A. Well – yeah, I’m not sure if he – but he answered. I don’t know if –

Q. He answered “Dee,” but you’re not sure if that answer was responsive to your question? Is that what you’re saying?

A. If I made a comprehension part? That was part of what I was trying to say.

Q. Well, you had the opportunity to be with [L.P.] for a couple of weeks before the 17th of March, right?

[297] A. Uh-huh.

Q. Okay. You had the opportunity to observe hi, right?

A. Uh-huh.

Q. You talked with him and all that?

A. Uh-huh.

Q. And is it your testimony today and, you know, after you called him bewildered and a blank stare, that you weren't sure if he comprehended what the questions were?

A. Yeah.

Q. Okay.

A. I guess.

Q. You guess, or you're not sure if he comprehended?

A. I'm not sure, because of the comprehension.

Q. I'm not trying to put words in your mouth.

A. I know. I know. And I'm just trying to be honest about that comprehension.

Q. Okay. But you knew [L.P.], right?

A. Yeah.

Q. And having the benefit of knowing him, you're not sure if he understood the questions, right?

A. Yeah. I'm being honest about that. Yeah.

Q. You're being honest about it. Just so I'm [298] clear, it's your testimony that you're not certain he understood the question, right?

A. Yeah. I was trying not to put words in his mouth, but he wasn't, you know, talking much. That's why I had to say a few things.

Q. You described him as a blank stare, bewildered. I think you used that word. And now I think you're telling the jury you're not certain. You can't say if he understood the question, right? Is that a fair statement?

A. Comprehension.

Q. Is it fair to tell the jury you don't believe that – or you're not certain he understood the question?

MS. KARKUTT: Objection, Your Honor.

THE COURT: Overruled.

A. I think he understood, but there's a question in my head.

Q. There's a question in your head after having the opportunity to observe him and be with him for a couple of weeks, right?

A. Yeah. Because I always talk directly to him to talk to him.

MR. MORGAN: Thank you.

[299] THE COURT: Any redirect?

MR. KARKUTT: Briefly, Your Honor.

* * *

REDIRECT EXAMINATION OF DEBRA JONES

BY MS. KARKUTT:

Q. Ms. Jones, you deal with three-, four-, five-year olds on a daily basis, correct?

A. Correct.

Q. And you have conversations with them every day at work?

A. Uh-huh.

Q. And do they talk with you and engage you in conversation?

A. All the time.

Q. All the time?

A. Yeah.

Q. Okay. And are you able to make a calculation or a judgment based on those conversations that the person you're talking to is understanding what you're saying?

A. Uh-huh.

Q. You are? And what kind of things do you look for to determine if someone's understanding, one of these little kids, if they're understanding what it [300] is you're saying?

A. That's why we test the kids every 30 days. We give them time and –

Q. You didn't have that with [L.P.], did you?

A. No. I didn't get to do that.

Q. But aside from those type of assessments, when you sit down with a three-year old and you have a conversation, on your own observations, what do you

look for to determine if they know what you're talking about?

A. Just giving them – asking them just simple open-ended questions or seeing if they just understand me or can they comprehend.

Q. And how do you make that assessment? If they respond to what you're asking, if that response makes sense?

A. Yeah. But sometimes – all kids don't talk sometimes. And I know body language – everybody don't talk.

Q. What type of body language do you look for?

A. I just watch their facial expressions sometimes. Because sometimes they'll ask me something, and they'll look at me, and they know they want something. So I ask them what they want or need, and then – I usually get really, really close [301] to all the kids.

Q. And when you talked to [L.P.] and you asked what happened to him, correct?

A. Uh-huh.

Q. Was he responsive to you?

A. Yeah. But I was getting to know him. But he did say "Dee."

Q. He did say "Dee"?

A. Yeah.

Q. And in response to what question? And you can refer to your statement, if you wish.

A. When I asked him. I remember when I asked him, Who did this to you.

Q. And he was response to you, yes or no?

A. Yeah. He was responsive and looking around.

Q. Well, what was that response, Ms. Jones?

A. He said "Dee."

Q. He said "Dee"?

A. He said "Dee."

Q. Okay. Now, defense counsel, on cross-examination, went through that whole paragraph, about one answer; is that right? And he went through that question by question and line by line of your answer; is that correct?

A. Yes.

[302] Q. And isn't it fair to say that when you went through line by line of your answer he left one line out, didn't he, very last line of that long answer paragraph?

A. Yeah.

Q. And you weren't able to – he didn't ask you about that part of the answer. What is that part of that answer to that question?

A. "We had looked at him the day before, that he didn't have that. I remember he had chalk on him on the day before."

Q. and when you say that he didn't have that, "that" is what?

A. He didn't have the eye – I don't think he had the red, because I looked at him.

Q. He didn't have those marks that you observed, correct?

A. Right.

MS. KARKUTT: One moment.

THE COURT: You may.

MS. KARKUTT: I have nothing further.

THE COURT: Any recross-examination?

* * *

[303]

RECROSS-EXAMINATION OF DEBRA JONES

BY MR. MORGAN:

Q. Ms. Karkutt's last question that you were talking about something about an eye, and she said he didn't have all that. Your answer was about the eye, though, right?

A. No. Well, he had red on his neck too – eye and the neck. That's what I remember.

Q. She asked you some questions about observing body language and all that. Do you remember those questions?

A. Uh-huh.

Q. When you were answering my questions regarding whether he comprehended everything, you took into consideration his body language on that day when you gave me that answer, correct?

A. Yeah.

MR. MORGAN: Okay. Thank you.

THE COURT: Any re-direct?

MS. KARKUTT: No, Your Honor.

THE COURT: Okay. You may step down. I think your next witness is for 1:30; is that correct?

TESTIMONY OF
SARAH BOLOG

[464]

* * *

(Thereupon, the following proceedings were had
in open court in the presence of the jury.)

* * *

THE COURT: State will call your next witness.

MS. DRISCOLL: Thank you, Your Honor.
Sarah Bolog.

* * *

The STATE OF OHIO, to maintain the issues on
its part to be maintained, called as a witness,
SARAH BOLOG, who, being first duly sworn,
was examined and testified as follows:

THE COURT: You may proceed.

MS. DRISCOLL: Thank you, Your Honor.

* * *

DIRECT EXAMINATION OF
SARAH BOLOG

BY MS. DRISCOLL:

Q. Could you please state your name for the
record?

A. Sarah Bolog.

[465] Q. And spell it.

A. B-o-l-o-g.

Q. Are you currently employed?

A. Yes, I am.

Q. Where?

A. Cuyahoga County Department of Children & Family Services.

THE COURT: Excuse me. What is your entire name?

THE WITNESS: Sarah Bolog.

THE COURT: And your last name is spelled how?

THE WITNESS: B-o-l-o-g.

THE COURT: Okay. Thank you.

Q. Can you pull the microphone up so we can hear you? Is it on?

THE COURT: It is.

A. Yes.

Q. All right. So you work for Children & Family Services?

A. Yes.

Q. How long have you been employed with Children & Family Services?

A. Next month will be my ten-year anniversary.

[466] Q. And what are your duties?

A. I'm currently in the investigative part of it. I take the cases from the 696 hotline and investigate them for child abuse and neglect.

Q. And what does the investigation encompass?

A. I go out. I make contact with the alleged child victims, the family, the caregivers, the alleged perpetrators. I gather information to determine if, according to the Ohio Revised Code, there is substantial evidence for child abuse or neglect or dependency issues.

Q. And what is the purpose of investigating and meeting with all of these various people?

A. Bottom line, we are charged with making sure that the minors in Cuyahoga County are safe and have stable provisions for their basic needs.

Q. So safety for the children?

A. Yes.

Q. Okay. And how long have you been an investigator with the State of Ohio?

A. I coming up on, I want to say, two and a half years, three years. I did our ongoing case services for about eight and a half.

Q. And then switched over to the investigation?

A. Yes.

[467] Q. How many investigations have you conducted?

A. Hundreds. I honestly couldn't tell you. We average anywhere from about a dozen new cases a month upwards to – some months, if it's a large

volume, 20, 30 cases a month. So times two years, I'd say a couple hundred.

Q. Okay. Bringing your attention to March 17th, 2010.

A. Yes.

Q. Did you learn of an investigation of [L.P.]?

A. Yes, I did.

Q. Okay. And were you involved in this investigation at that time?

A. Yes, I was.

Q. how did you become involved?

A. It happened by circumstance that I was working on another case later that evening. My supervisor knew that I was still in the work area, so she contacted me on my cell phone and asked if I'd be willing to try what we call a second attempt.

Another worker had attempted to see the family earlier in the day. And she was wondering if – this was after work hours – maybe if I stopped by I'd be able to make contact. So that's how I first became [468] involved.

Q. And what did you understand you were checking on?

A. I understood that the call initially came into the 696-KIDS hotline, and my coworker was initially sent out because a daycare had noticed a loop-shaped mark on a child that attended that daycare and had contacted the hotline regarding allegations of physical abuse.

Q. Okay. And do you know if your coworker's interview or investigation was successful at the daycare?

A. Her was successful at the daycare but not successful at the family home in trying to meet with the mother.

Q. Do you recall where the family home was?

A. It was in the Cedar Central Project. I forget if it was on the Cedar side or the Central side.

Q. And did you go out to that area?

A. Yes, I did. On March 17th, I had left the Cleveland Heights area; and I went to Third District Police on Chester, and I had a police escort – I want to say probably around 8 p.m. that I took Third District police and went to the family home.

And when I knocked on the door and when the [469] police knocked on the door, no one came to the door. But we have a standard – it's like an informational letter that the investigators – we put it in the family door or the family mailbox when we come out to the home, letting them know that a DCF worker's been to the home and they need to please contact us to schedule a visit. My coworker's letter was still in the door, and then I also left a second one

Q. Okay. From there, what did you do?

A. From there, I noted my attempts in our computer system and then went home for the evening. And I also tried the family home again the next morning, and both my letter and my coworker's letters

were still in the door. And from there, my supervisor assigned me the case for the rest of investigation.

Q. And what did you do for your investigation?

A. That morning, I did use the last known phone number, and I did check the emergency contact for the daycare. And I called mother several times on last known phone number for her. I did speak with her on the phone that morning.

While doing that, I did follow our agency procedures, and I scheduled what's called a staffing, which is an internal meeting that we have that we sit [470] down with the family and any service providers, the social worker, supervisor. And from there, we make a recommendation; and sometimes those recommendations result in a legal filing; sometimes they don't. But it's a way that we can officially have a plan for a case. So I was calling mother on the phone as well as scheduling a staffing for that afternoon.

Q. At this time, who did you understand this child to be with?

A. It was unclear if the children – or specifically [L.P.], if he was with his mother or his mother's paramour, Mr. Clark.

Q. Who did the agency last know him to be –

A. The agency last saw him with Mr. Clark.

Q. At that time, did you know how many children you were dealing with?

A. We only knew, from looking at our case history and then also –referencing the welfare system, that

there were two minor children, but only [L.P.] had been viewed the day before.

Q. Okay. So what did you do?

A. From there, like I said, I was talking to mom. I was calling her on the cell phone. I did have conversations with her on the telephone, but I was unable to get her to agree to meet with me.

[471] Q. Who is mom?

A. Mom's [T.T.].

Q. And what is mom saying to you?

A. When I was calling her and I identified myself, the agency, and I told her that there was concerns regarding child abuse and that we had concerns that there was marks on [L.P.], that there as a loop-shaped mark on his face that was indicative of child abuse. And from there, mom assured me that she had a falling-out with the daycare and that the daycare was making this up because they didn't like here, and it was a personal attack.

And I explained that it could all be cleared up if I could just speak with her and see the child. And from there, she told me that she was unable to visit with me, that he didn't have any marks on him, that she was getting ready to take him to the clinic because he had pink eye. And I asked her which clinic, and she said the Women and Health, and that's over a Metro Hospital. And I'm familiar with the Women and Children's Pavilion, so I asked her if it was 3 or 2, and she said 2.

And so I asked her if she'd be willing to come to a staffing, and she said she wasn't able to because she was going to the clinic because he had [472] pink eye. So at this time, I offered to give her a ride. I was like, If I meet you over at the clinic and I give you a ride, would this make you – and she said yes, that she would come to a staffing.

So when I got off the phone with mom, I did follow up, and I called MetroHealth Department of Social Work. And I have the child – actually both children and mother – what we call – flagged in the computer system, which is where if DCF has serious concerns of abuse or neglect or dependency, we can contact the area hospitals and ask for a child or a parent to be flagged in their computer system, meaning once that person – once their file becomes active in the computer system at that hospital, they won't be released from the hospital until a member of the social work team either sees them or until DCF has been contacted.

Q. Okay. So you had –

A. I had all three. I had both children and mother flagged.

Q. Okay. And from there, what did you do?

A. I kept in contact by trying mother on the cell phone that had worked earlier in the day. Most of my calls went to voicemail.

I also was in contact with the MetroHealth [473] social worker, told her the serious concerns. I do have a working relationship with her, so it was easy to contact her and get back to her. And she shared the

concerns after I had spoken to her. And so on the flag, she had her specific pager number put on it.

Q. Okay. And did you ever meet with mom and the children for a staffing?

A. No. As it got closer to the staffing, I was unable to. And mom stated that it was very busy at the clinic that day and that she was still waiting, but I knew this to be false because I was also talking to the hospitals.

Q. Okay. So did you tell mom that?

A. At this time, no. I was more concerned about finding the children than calling mom out on something I knew that was an obvious lie. So I would have rather maintained a civil relationship and try to work with her for the serious concerns with the children than call her out, that she was lying to me.

Q. Okay. So what did you do?

A. So the clock was ticking, and there was nothing I could do but sit. So I had MetroHealth look through their personnel file on the children, and I asked if there was any other emergency contact, [474] like family member or neighbors or anybody that could help, you know, find a location of the children.

From there, I was given the number of maternal grandmother. And then I also went through our computer system. Mom has an extensive history with us, and I went through the old case record and found another family member, the great maternal grandmother. And so I did call those two relatives.

And my supervisor and I, we were speaking to the relatives, more so just trying to find a possible location of mom and the children.

Q. Do you know the names of those relatives?

A. Yes.

Q. What are they?

A. I spoke to great maternal grandmother, which is Hazel; and I believe her last name is also Traywick. And then I spoke to Schoen Traywick.

Q. Okay. And you were looking for where these kids might be possibly be?

A. If they had any idea. Oftentimes you'll find that maybe if mom's not at home she might be at a grandmother's home or a sister's home. So it's best to always ask the family first if they have any idea.

Q. And did they have any ideas?

A. They each gave us the same or very similar [475] assumptions.

Q. Which was?

A. Grandmother, Hazel – Grandma Hazel didn't know where they were, and she hadn't seen them in several weeks and stated that we need to check with mom's boyfriend. When asked if she knew where he stayed, she wasn't sure where he stayed but knew that his mom lived on the west side.

From there, we did look in our – again, through our computer system. We were able to, with his name and roughly his age –

Q. What was his name?

A. Darius Clark.

Q. Okay.

A. We were able to look him up, and he was named on a previous case of mother's as well as he has his own case history with his own biological children. So from there, we were able to go through his case history

—

MR. MORGAN: Objection, Your Honor.

THE COURT: Sustained. Jury will disregard about his biological children. The jury will disregard that comment. You may proceed.

[476] A. From looking through the case history and the demographics, we were able to find who Mr. Clark's mother was and that she, in fact, did have an old address on West 100th. So I did ask Grandma Hazel if West 100th could possibly be the area, and she said that it sounded about right.

We also had — when I say “we,” I mean my supervisor and I. We were very quick, and we were both kind of in tandem getting on the phone with the relatives.

From there, I spoke to Schoen Traywick, the grandma, and asked her. And she also felt that her daughter would most likely be with her boyfriend, Mr. Clark, and that the children would be with both of them or at least one of them. When asked if she knew where he lived, she stated she wasn't sure if he had his own place but often lived with his mother. If she knew where that was, she said the west side. Again, I asked could it possibly be on West 100th. She said ye.

Honestly, I wasn't feeling very certain that I would find one or either of the children. But, again, it was late in the day. I was very annoyed that I had been blatantly lied to all day. I had had this meeting scheduled and had to try to keep pushing [477] it back. Staffings are not easy to schedule.

So kind of in a moment of annoyance and so I just wasn't sitting at the office feeling useless, I was like, let's drive out to West 100th and just see if it works.

Q. Okay. So did you do that?

A. Yes.

Q. And?

A. My supervisor and I, we drove out there together riding in my car. We knocked on the door, and a young man, a teenage man, who I later found out was 16, he came to the door. And I asked if he knew [T.T.], the mother, [T.T.]. And he said yeah.

And I asked if he knew Mr. Darius Clark. And he said yeah. And I asked, Does he live here? And he said yeah.

I said, Is he home? And the child stated no, he wasn't.

And I asked, Do you know where either of the children are at this time? And he said, They're here.

So at this time, my supervisor and I asked if we could enter the home, and the young man let us in.

Q. Okay. And what happened?

A. We asked if there was any adults home, and he [478] said no. So it was a little awkward. And we're like, Well, can you bring us the children?

He said, He's sleeping. Do you want me to wake him up? And I'm like, Yeah. So he went upstairs.

There was a teenage girl there with him also. They would not allow us past – when you first walk in the home, you're in a living room, and it opens up into like another living room. And then you go back into the kitchen. So they were in – to the right. So he went upstairs and brought [L.P.] down. And we knew we had a substantiated case of child abuse when we saw him.

Immediately upon seeing him, you could see there was a loop-shaped mark from about the side of his face by his hear and it went through the corner of his eye and back; and then there was broken blood vessels. It was obvious when you looked at him, like, the whole corner of his eye was red.

Q. Okay. Was there anything else about [L.P.] that struck you?

A. Yeah. He's a very cute little boy, but his body language was guarded; and it's something that you become more familiar with seeing, obviously with my line of work. But he was very like, you know, I'm [479] a stranger. He didn't know me. And he was kind of very quiet, very hesitant, and he smelled. He was very – he was a medium skin tone, and just looking at his face and what I could see of his arms, he was very ashy. He smelled like he had hadn't had any oral hygiene in several days. His breath was horrible. He was wearing pants that were overly large for him and

kind of like just rolled at the cuffs. And it was dirty. You could see like – it was just very unkept. And he had on – when – later on when we got into the ambulance and you took off his shoes, his socks were just – they stunk very, very badly.

Q. Were there any other marks on his –

A. Oh, yeah.

Q. – face or body –

A. Yes.

Q. – that you could see at the time when you first –

A. Yes. Speaking to him, trying to make the child comfortable. You know, we were talking to him. Oh, I like your Spiderman socks. Oh, you know – my supervisor was saying how her son also likes Spiderman.

And I asked him if he minded if I could lift [480] his shirt and just look at this tummy area. And by that time, he felt a little comfortable and he allowed me.

When I lifted his shirt, I noticed – it was almost a perfect rectangle; and it was right under his one nipple area. I'd say it was about two and half inches, three inches by about an inch and a half deep, purple with like reddish edges, bruise.

And I, you know, asked him how it happened, and he just kind of, you know – and so rather than really trying to get into it, we wanted to see if there were any other marks. So I said, It's okay. It's okay.

I asked him if he minded if I looked at his back, and he was okay with it. And when I lifted his shirt, I could only get it up, you know, part way because it was

still on the child, and I could see the bottoms of several loop marks. And then there was like a small – there was like – almost like a small like puncture on his lower – I’m trying to recall – right side, I want to say. But – and then there was like various marks on his trunk.

Q. Okay. And what did you do after this?

A. This time, I just kind of looked at my supervisor and thought, oh, my God.

[481] From there, we asked – we moved forward and said, Is [A.T.] here? And the kids – I think the teenagers at this point were getting the severity of the situation and said, yes. She’s upstairs.

My supervisor made to start going upstairs like, okay, let’s go get her. And the teenagers – the boy got very secretive and was like, No. No. You can’t come anywhere in the house. She’s in another room. I’ll go get her. So that was suspect to us, be we’re like, Whatever. We just wanted the child at this point.

Q. Sure.

A. So a few minutes later, he came down carrying [A.T.]. And it became very evident to me, when I saw her coming down the stairs with the young man, this is a very serious situation.

Q. And why was that?

A. She had two black eyes, and there was a large burn on her cheek. It looked – I didn’t know it was a burn from the distance of seeing her across the room, but it was a large like – she’s a lighter skin-toned child; and it was like a deep red, pink, white, just like

her whole cheek. And just seeing the back eyes and the burns, I was like, This is a very serious situation.

[482] Q. Okay. So what did you do?

A. I excused myself out to the front porch for probably two minutes. At that time, I did text Detective Remington. I have her personal cell phone from prior cases. Texted her like, I'm going to need you on this one.

I also did then call 9-1-1 and identified myself as a children services worker, that I was at a home. At this time, the teenagers told me that Mr. Clark was coming home. I didn't know if me or my supervisor would be in danger, so I did request emergency police assistance.

Q. Okay. So what happened?

A. I went back in the home. From there, I – [L.P.] started to get more comfortable with us; and he was asking for something to eat, something to eat, something to eat, something to drink, something to drink. So the teenage girl – we went into the kitchen area, and the teenage girl made him a sandwich. And we were getting him a glass of juice. At this time, we were trying to look at [A.T.].

Also during this time, I did call mom out on her lie. You know, instead of using my cell phone and blocking the caller ID or using my office phone, which clearly identifies it's Cuyahoga County, I [483] asked the teenage boy if I could please use the house phone, and he said, Sure.

So I called mom from the house phone so that she would see the caller ID of her boyfriend. And she

answered real bubbly, you know, Hi. Oh, hey, what's up. And I identified myself as, Hi, it's, you know, Sarah Bolog from Children Services.

Immediately, she got very upset with me and wanted to know what I was doing there and where was, you know, Kay-Kay. I don't know who Kay-Kay is – but what was going on. And I stated that – was she still at the clinic and was it still busy, because I was a Darius's home with her children and it didn't seem very busy. And my sarcasm was not appreciated, and she became very irate.

From there, my supervisor got on the phone with her and explained Children Services policies and procedures of there's obvious serious safety concerns with these children. There's obvious serious – what looked to be marks indicative of physical abuse. And from there, we need to have a staffing.

And we did give her the option of, if she had a family member that could watch the children overnight, we could place the children there on what we call a safety plan and have a staffing the next [484] day to discuss how the marks happened. We often do this in case there is an accidental means for physical abuse prior to taking custody and placing them in foster care. It gives us the opportunity of getting more information as well as bringing the family together as a team.

Mom is absolutely adamant that she did not want anyone from her family contacted about this, that there was an open case, and that she would not give us a permission to have any family member care for the children.

Q. Okay. So what did you do?

A. Cleveland Police responded at this time. It was two uniformed officers. They came in. They saw the situation, and they saw that no adult was present. And from there, they radioed for their supervisor to come.

Their supervisor came. He saw the marks on the children and understood everything that was coming out as far as talking to mom on the phone, no adult. And he radioed for EMS to respond.

Also at this time, Mr. Clark, his mother, Ms. Scales came in. I guess one of the teenagers had contacted her. It was all happening so quickly.

Q. So what happened when she comes in?

[485] A. When she came in, it was very awkward at first. At first, she was, I guess, feeling out the situation. It was like, Who are you? What's going on?

And I understand because, you know, I am a stranger. I am in your home, and I am calling the police. So I understand her concerns or hesitation or just confusion as to what's going on. But then it – once more and more came out to light, it became very concerning, because at one point she was like physically trying to usher the police officers and myself out the door – like, They're no kin to me. You need to get out. These are just, you know, my boyfriend's girlfriend's kids. They're nothing to us. You know, they just – they just got here the other day

And at one point, the officer actually stopped and said, Does it look like – this is serious. We're not here just, you know, for shoots and ladders.

At one point, this is also where EMS had just gotten in; and we were starting to look at [A.T.] and the black eyes and the burns on her. And then her right hand was – she couldn't make a fist, and it was like completely swollen. And we're seeing [486] things outside of the clothing. And you could see where she had a bunch of little tiny like braids with beads on the end, and her hairline on one side did not match the hairline on the other side. And you could see where like two pigtails used to be, and they were ripped out at the root.

And so we're seeing the seriousness of the situation. And to have another adult come in and – at one point, EMS was like, Does this look like we're playing? And at this time, he found a large burn on her chest and lifted her shirt, and Ms. Scales, then, did somewhat look shocked and said –

MR. MORGAN: Objection.

A. – Oh, I didn't know it was that bad. I didn't know it was that bad.

THE COURT: Overruled.

THE WITNESS: Excuse me?

MS. DRISCOLL: Go ahead.

THE COURT: Go ahead.

A. And from there, though, she was very adamant that we had to get out of her home. We had to get out of her home. And she stated she had to take her son to North Olmsted, but I don't – I don't – and I didn't believe here, because it was right around school was getting out and a bunch of school-aged [487] children

started coming in, and just the way they were walking in the house, dropped their backpacks at the same spot, it seemed like this was a routine.

So I'm like, okay, well, rather than argue, focus on the children, though. We gathered the children, and we finished the initial on-scene triage of the children in the ambulance.

Q. All right. And what did that consist of?

A. From there, I went in the ambulance with the children and gave my supervisor the keys to my car; and she took my car down to our main office so she could start the process of taking custody of the children, as mom would not cooperate and give us any relatives' information.

Once in the ambulance with the children, it involved the initial triage where the EMS was taking notes: mark on this side; mark on this side; you know, the dry ashy skin or dirty this. And they were doing it for each child.

I assisted in either holding one child while they are working on the other and vice versa, but it involved – we had to take all the clothing off of each child minus [L.P.]'s underpants and [A.T.]'s Pamper at this time to see what else we could find other than the initial just lifting of [488] clothing in the home.

Q. And that was all –

A. In the ambulance on West 100th.

Q. And at this time, are you talking to the kids about who did it?

A. Myself, not right now. Because I have to admit, in almost ten years, it was some of the worst that I had ever seen.

MR. MORGAN: Objection.

THE COURT: That will be sustained. The jury will disregard that. Just talk about this case.

A. I'm sorry. So I was more concerned about trying to get an accurate representation of what all was wrong so I knew what steps I needed to take next.

Q. Okay. So you were in the ambulance?

A. Yes.

Q. And do you arrive at Metro?

A. Yes. I rode with the children from the scene to Metro.

Q. And what happens when you get to Metro?

A. We were met – again, like I stated, I had contacted Detective Remington from the scene to let her know what was going on.

[489] Once at Metro, we were met in the ambulance by Detective Remington, her partner, and the police photographer. Then we followed standard procedure for anybody in an ambulance going to a hospital. They checked us in, and they put us in one of the little emergency rooms.

Q. Did you contact anybody from there?

A. From Metro?

Q. Uh-huh.

A. I was in pretty consistent contact with my supervisor. And while at Metro, I know I spoke to the maternal – maternal great aunt. She arrived at Metro. And then the maternal grandmother, she also arrived at Metro.

And while I was at Metro, I had to complete the telephonic order of removal with one of the juvenile department assistant prosecutors.

Q. Okay. Did you have the opportunity to take photos?

A. Yes, I did.

Q. And where did you take those photos?

A. I started taking the photos in the home on West 100th. And then once we got the children into the ambulance and we were able to remove, you know, their clothing minus the underwear, I also took [490] photos in the ambulance.

MS. DRISCOLL: Your Honor, may I approach?

THE COURT: Yes, you may.

MS. DRISCOLL: Thank you.

Q. All right. Sarah, I'm showing you what's been marked as State's Exhibits 1 and 2 and then 46 through 63. If you could go through these, hold them up and tell us what you're looking at with identifying each one and what you were taking photos of.

A. These are the pictures that I took. This is a picture of [L.P.] getting a sandwich. But you can see from his ear looking around –

THE COURT: If you would identify it by number. Just say which one you're reviewing.

THE WITNESS: 1.

THE COURT: Okay. Proceed.

A. There's a loop-shaped mark that goes from about his ear over his eye and back. You can kind of see the broken blood vessels.

2, this is a head-on shot of [A.T.] where you can clearly see the two black eyes.

And 45, this is the side of her head where you [491] can see there once were two pigtails as well as –

MR. MORGAN: Objection, Your Honor.

THE WITNESS: Pardon?

THE COURT: Overruled.

Q. Go ahead.

A. – where the pigtails once were. And you could see the whole side of her cheek as kind of swollen up and purplish in color. And it's hard to see in a picture, but you can kind of see that the shading color, there was a big knot on her head.

Number 46, this is in the ambulance; and you can see what is the burn on her inner biceps. And then you can kind of see what was going across her chest.

Q. And that was [A.T.]?

A. Yes.

Q. Okay.

A. Number 47 – we’re required, when we take pictures, to take a head-on for our case file since often marks are not necessarily on the face. So this is just – I told [L.P.] to smile and took a picture of him and his sandwich

Q. Number 48, this one is – it’s – I apologize. My camera’s not the greatest.

[492] [A.T.] was also crying. It wasn’t the most cooperative picture. But when you pulled her lip down, there was a row of canker sores to match each of her bottom teeth. So in our investigation, it seemed like somebody had pushed her teeth into her lip causing the cankers.

MR. MORGAN: Objection.

THE COURT: I’ll sustain what seemed to be, but the visual appearance may stand.

A. Number 49, this is where you can see her right cheek; and there’s a large – what looks to be a burn as well as this is where you can see how her right hand was swollen.

Q. Was that right hand functional?

A. She could bend it. But as far as like fine dexterity and make a fist, I obviously – I always have ChapStick with me. And, you now, Do you want some lipstick? She wasn’t able to finely grasp it.

Q. And how did it feel to the touch?

A. It was very cold. It was freaky. Like, usually – I know I always have cold hands, but when you touch the back of my hands they feel normal. It was bizarre to me.

Number 50, this is in the ambulance with EMS. [493] They were pulling her hair back so that you could clearly see the two spots where the pigtails were, as well as there was like a scaly rash through her scalp on that side.

Q. Okay.

A. Number 51, this is [A.T.]'s backside. You can see how dry and ashy their skin was as well as a circular burn on the back of her thigh.

Number 52, this is [A.T.] again. Looking up at her jaw, you can see again where her cheek is kind of swollen and bruised; but you can also see a burn along her jawbone.

Number 53, this is [L.P.]. And it's a loop-shaped mark right around his jugular. And this one, although it's bruised, you can see in the picture where it did break the skin and was scabbing over in spots.

Number 54 is where we lifted [L.P.]'s shirt, and you can see the whole width of his back is a solid mass of loop-shaped marks.

55, this is in the ambulance. This is [L.P.]. When we took his shirt off and lifted his right arm, you could see there was more loop-shaped marks as well as like straight marks, bruising. And there was a small – what looks to be a puncture [494] wound on his lower right side.

Number 56 is, again, the right side; but this time the EMS worker was pointing to the puncture wound.

57, this is [L.P.] again in the ambulance. And you can see on his shoulder biceps area another loop-shaped mark.

Number 58, this is, again, [L.P.]. This is his other shoulder biceps area. And you can see the whole top is kind of bruised, and then just other small marks and bruises, a couple quick straight lines.

Number 59, this is [L.P.]'s thigh. And you can see a loop-shaped mark here and a loop-shaped mark beside it. This is also in the ambulance.

Number 60, this is in the home. This is when we lifted his shirt and – the square bruising under his nipple area I had previously discussed.

Number 61, this is a better picture of [A.T.]'s right cheek and the burn that was on it.

Number 62, this is in the home on West 100 when we lifted [A.T.]'s shirt and we found a large burn on her chest area.

And, lastly, Number 63, this is just a close-up of her swelled-up hand, [A.T.].

[495] Q. So you took all of those photos?

A. There's one that I'm in it, so my supervisor took it; but, yes.

Q. And they were all taken March 18th, 2010?

A. Yes, they were.

Q. And do they accurately depict what you saw on March 18th, 2010?

A. Yes.

Q. What else did you do through your investigation?

A. A lot.

Q. From there. You're at the hospital.

A. Okay.

Q. Jackie Strozier comes in? Schoen comes in?
Grandma –

A. Yes.

Q. – comes in?

A. No. No Grandma Hazel didn't come. It was just Jackie Strozier and [L.P.].

Q. Schoen?

A. Schoen. I'm sorry. I was so busy that night I kept intermixing the victim's name and his grandma's name, because she was named after him [sic].

So from there, I just do a telephonic order [496] removal with one of Children Services assistant prosecutors. I spoke with doctors. I spoke with the relatives. I met both Jackie and Schoen outside the exam room prior to them seeing the child.

Q. What was the purpose of that?

A. The purpose was, is because at this point I knew I had serous child abuse and neglect. And I didn't know if – I believe –

MR. MORGAN: Objection, Your Honor.

THE COURT: Overruled.

Q. Go ahead.

A. I didn't know if either of these women had any idea of this, when the last time they saw him was. I didn't know their role in it as well as if they didn't know anything about it. I didn't want to just throw them – Oh, here's your relative. Look at how they look now.

Q. Well, at that time, did you ask them when was the last time they saw them?

A. I did.

Q. Okay. Did they tell you?

A. Before I let them see the children, I asked them, you know, What's your relationship with the children? What's your relationship with mother? [497] When's the last time you saw the children? What did they look like then? How were they acting?

At this time, they got there within enough time of each other that I was first able to speak with Jackie and have this conversation with her, then go in the room with her. And then it was probably – I don't know – within the next 20, 40 minutes that Schoen had arrived. So I was able to have a repeat. So each conversation I had with the women was one on one.

Q. So tell us your conversation with Jackie.

A. when I got there, Jackie was very concerned; and she was flustered like you normally would if somebody called you and was like, Hey, Children Services, I need you to come to the emergency room because I have your relatives. So she wanted to know what was going on.

And I asked her about the children, and she gave me an accurate description of what you would think of a toddler and a small child. She said that, you know, she's close to them. She hasn't seen them in several weeks; that, you know, yes, they know her; yes, they're comfortable with her.

Q. Did she indicate the last time she did see them?

[498] A. The last time she had saw them, she said, at her nephew's birthday party. There was a cookout where the whole family had gone.

Q. Okay. Did she tell you the date of that?

A. She didn't know the exact date. I got the date later from Schoen. It was her son.

Q. All right. So what else did you and Jackie discuss?

A. I asked Jackie if she had noticed any injuries or, you know, was – did [A.T.] – is she clumsy? Does she walk? And, you know, the description of the child she was telling me was not the description of the child I had just spent the afternoon with.

She was telling me about a child who was bubbly; and she was in the beginning stages of, like, words and short phrases; and was walking and running. She had yet to say a word when I was with her. And when we would try to get her to walk, even in the ambulance, she wouldn't walk. We had to carry her everywhere.

So I'm thinking that this woman really doesn't know the kids because this child doesn't walk or talk. So I'm starting to feel a little sketchy on Jackie. And I was like, Okay.

Well, I gave her a brief rundown of the [499] injuries. At this point, she kind of grabbed the wall and started crying. And I explained to her that I wasn't going to allow her to see the children until she could pull herself together, because they had been through enough. So she kind of pulled herself together. And when she saw the kids, she got really like (indicating) again. And I'm like (indicating).

From there, she sat on the bed in the emergency room exam room, and the children did know her. I was able to see that they did. And, you now, [L.P.] kind of went and sat by her. And from the moment she walked in, [A.T.] like – kind of like how you see bats, where the baby bat grabs on with both its arms and legs. [A.T.] grabbed onto her with her arms and was wrapping her legs around her and was not going anywhere.

And so Jackie was, you now – and we were trying to talk to the children about not the marks but, oh, are you hungry? Do you want something? And, you know, one of the nurses brought us like stickers. So we were talking about what's in the stickers, just trying to calm the children down, gain some trust, smooth it over. And then that's when the hospital staff came and got me again and let me know that another relative, which was Schoen, had arrived.

[500] I went back out in the hallway. I had hospital staff bring her down the hallway, and that's where I had the conversation with her also.

Q. All right. Before we get into Schoen, did Jackie notice anything different –

A. Oh, yeah.

Q. – about the kids?

A. Yeah. Jackie's first reaction of seeing them, she became so upset. The family had the nickname for [A.T.] of Fatty Mama, because she was that little chubby one where she, I guess, had had chubby cheeks and, you know, the little – where you're starting to walk and you still have the baby fat rolls. It's not what I saw. And Jackie immediately expressed a concern of the amount of weight that she had lost, and then the marks on her.

And then at this point, which I didn't have a diaper bag with me, you know – she obviously had a full Pamper. It was full of urine. So Jackie went to change her Pamper, and [A.T.] had a very, very strong reaction to having her Pamper changed. Like, I know that a lot of toddlers don't – you know, nobody wants their Pamper changed, but it was very, very strong, and just the fear of having somebody she know even changer her Pamper. And that was very [501] upsetting to Jackie. And she said that had never happened to her before. So in my line of work, that was very concerning to me.

Q. Okay. So now Schoen gets there?

A. Schoen.

Q. Okay. And what happens when Schoen gets there?

A. Again, I stepped out into the hallway; and I tried to assess just speaking to her. When was the last time you saw the children? What were the children like when you saw them? What's your relationship

with your daughter? When's the last time you saw her? You know, briefly go over the injuries.

She also told me that there had been a family cookout for her son, Jaylin, and that everybody had come over to the home, and they had had a cookout, and the kids were there.

I asked her, When was his birthday? And his birthday was in the end of February. It happened that his birthday this past – this year fell during the week. So they had had a big part on that Sunday.

And she identified – she went through her phone and looked at the calendar on the phone, and [502] she identified the date to me as the last Sunday in February, the 28th.

And I said, Were the kids there?

Yes, they were there.

How were they?

And she said they were normal. They were how they always are.

And because of what Jackie had told me that [A.T.] was walking and talking, I said, Oh, you know, now does – [A.T.], do you have to carry her? And Schoen's sitting there like No, she walks. She was walking. She was talking.

And I was asking like, Well, what does she say, just easy words? She's like, Oh, no. She's able to ask for things to eat, this and that.

And I asked, is she a skinny child or, you know, like a little fat child? And she said, Oh, Fatty Mama?

So it was – and she's looking at me very suspect in questioning like why all these questions. She was getting upset and wanted to see her grandchildren. Where are the kids?

So I briefly ran through the – a quick rundown of the injuries on the children, and she became very upset. And I asked her if she knew where [503] her daughter was, and she said she didn't at the time. You know, she had no idea what was going on, and let her go in and see the children.

And from there, she had the same reaction as Jackie, which was – she got very upset and started to – like tears. And she sat down right away and was holding [L.P.] and was interacting well with the children.

Q. So when you asked her about where her daughter was, she didn't have any idea?

A. She didn't know if she was out of state in Washington, D.C., or if she was in state, but she had heard both –

MR. MORGAN: Objection.

THE COURT: I'll sustain what she said to you. You can tell what happened.

Q. Okay. So she goes in and sees the kids?

A. Yes.

Q. And does that end your investigation?

A. I wish.

Q. So what do you do?

A. Well, just with the external injuries and no one had been able to see the kids from – what we now know – from February 28th until March 18th, as far [504] as family members, we did ask MetroHealth to do a full skeletal scan of each child to rule out any current or past breaks of any of their bones.

While each scan came back with nothing, and they were clean, it was still very – it was very traumatic for the relatives and myself as well as the children to have those scans done. At one point, [A.T.] was so terrified and stressed out from strangers that – when you're having a skeletal scans done, there's certain positions that each hand, each bone needs to be at so you can have a clear picture of the skeleton.

And [A.T.] was so fearful that – as cruel as it seems – we had to have her strapped down to a backboard in order to get all the skeletal scans done. And the process takes about 40 minutes, and it was very painful. Schoen had to be in the room with her while it was done; and she screamed the whole time. And by the end of it, Schoen was just sobbing.

After that, we did have the order of removal. From there, it was decided that [A.T.] would go stay at a relative placement at Jackie Strozier's house, and then [L.P.] would go stay at Schoen's house as a relative placement.

We left Metro Hospital approximately 11:30 at [505] night, midnight the next morning. So we're on the 19th now.

Q. Okay.

A. Yeah. The 19th. I had the emergency custody court hearing at juvenile court at 8:30, 9:00 in the morning. So I was back in court. And the agency was awarded emergency contact and –

Q. Who else was present at that hearing?

A. Myself, the assistant county prosecutor. I don't believe any family members came to that one. If they, it was only Jackie and Schoen. Mom didn't come.

Mom was – I did call mom the night before from a telephone at MetroHealth in one of the conference rooms, and I explained to her a rundown of everything that had happened since I confronted her on the telephone.

Q. Is that the same as the staffing?

A. I'm sorry?

Q. Is the staffing the same thing as the emergency hearing?

A. We didn't' even get to have a staffing here.

Q. Okay. So the emergency custody hearing happens in the morning. Did you schedule a staffing?

A. Yes.

[506] Q. When was the staffing to be held?

A. The staffing was in the morning. The emergency custody hearing was in the afternoon. I apologize.

Q. Okay. And who was the staffing?

A. At the staffing was me my, supervisor, an agency facilitator, maternal grandmother, Jackie

Strozier, great maternal grandmother Hazel, maternal aunt Jackie – [L.P.]’s grandma, and then [L.P.]’s husband – starts with a T –

Q. Terrence Carter?

A. Yes.

Q. And what happened at the emergency custody staffing?

A. At any staffing, we have the same procedures. We stay – we do the introductions. We say why we’re there. We identify the concerns. Obviously, at this one, the agency already had custody. So we stated the reasons of removal of why we took custody.

Another reason we have the staffing is – although the kids did spend the night at family members’ homes, there’s still procedures we need to do, which is our FBI and BCI background checks and fingerprints as well as a worker needs to come out to the home, view the home, you know, a whole gamut of [507] things to make sure that where they go are safe.

Q. So you’re not doing these things just to be nosey?

A. Oh, no.

Q. Why are you doing these things?

A. For the permanency and safety of the children.

Q. Okay. So did you have to do a check on all of the people that were there?

A. Everyone that was at that staffing was. We have a digital fingerprint machine or computer system

at our main building, and I'm – is there any way I can get just a little glass of water?

THE COURT: I can get you a glass of water.

A. And then from there, we have staff that are trained to do the fingerprints. So each person that was there, they have to prove Ohio residency as well as we had the digital fingerprints. And they sign for a background check. We also are able to, through the sheriff's department, on our hotline staff, they do a leads check where we can get like a quick surface background check.

So everybody that was present was fingerprinted. We went over the agency's goal, which is to have temporary custody taken of the children [508] and find safe placement as well as to continue to investigate the child abuse and neglect.

We did ask the family if they knew where mother was. At this time, the family stated they believed she was in the Washington D.C. area.

MR. MORGAN: Objection.

THE COURT: That will be sustained as to what the family said.

A. I knew this also to be the alleged truth because when I had spoken to the mother –

MR. MORGAN: Objection.

THE COURT: yeah that's sustained.

Q. Did you speak to the mom, [T.T.]?

A. I spoke to her the previous night right before I had left Metro.

Q. Okay.

A. And, I mean, at this point, I had like zero patience, and I was kind of like, Be honest. Where are you? And at this point, she told me that she wasn't coming to the –

MR. MORGAN: Objection.

THE COURT: Sustained, what she told you. You can't –

THE WITNESS: Don't say –

[509] THE COURT: The objection is sustained. Put another question to the witness.

Q. What else did you do through the staffing?

A. We had to go over all the injuries of the children. Again, maternal grandmother had not heard the injuries before. Also, with the way that [A.T.] reacted to a known close family member changing her Pamper and with her aversion to strangers, we did have to disclose at this time our concerns –

Q. Did you make several referrals regarding the –

A. Yes.

Q. – the relatives as well as the children?

A. Yes.

Q. – of your safety plan?

A. Yes.

Q. It's something that you do in order to make sure the kids are safe?

A. Oh, we have to do it for every case. I mean, if there's no reason for the agency to offer services, then there's no reason for a staffing or a [510] a safety plan. So we obviously had to offer services. And especially in this, when into the staffing, they had to bring up with her aversion to the Pamper changing and to strangers, I did make a referral to our sex abuse unit because it –

MR. MORGAN: Objection, Your Honor.

THE COURT: "Referral" can stay on, that she made a referral. Next question, please.

Q. Can you tell me all of the referrals that you made in connection with this case, just the referrals?

A. Yeah.

Q. What are they?

A. I referred the family to Children Who Witness Violence, both the children and then the extended family members. The children were – I did a referral for University – yeah – University Dermatology on East 22nd, for [A.T.], due to the rash and whatnot through her scalp. And then I contacted the Cleveland police for the investigation, and I think that was it for my part of it.

Q. Help Me Grow?

[511] A. Oh, yeah. It's an agency policy, anybody under the age of three, whether we substantiate a case of neglect or close the case, we have to do Help Me Grow.

Q. Okay. And what about the Caregivers Local Community –

A. We link them up at our staffings. We have all of that information, and they're given that information at the staffings.

Q. Okay. And from there, what's your involvement?

A. From there, I had to follow through with checking each home, completing the internal paperwork as well as have the caregivers sign off on the paperwork for the placements. I did a clothing order, because we didn't have any clothing for either children. So I did clothing orders that enabled the relatives to go buy some clothing for the children.

I went to the dermatology appointment with Jackie and [A.T.] for the issues with her scalp and head and burns.

And then I write up my whole investigation, and I do what's called our safety assessment and our family assessment. And I transfer the case to an ongoing social worker who sees the case for the life [512] of the case. And then I also did all of the custody complaints and filings for juvenile court. Yeah.

Q. At any point during your investigation, did the child [L.P.] say who did this to him?

A. Yes.

MR. MORGAN: Objection.

THE COURT: Overruled.

Q. Can you tell us about the circumstances and what he said?

A. Yes. He did so twice in front of me.

Q. Okay. What were the circumstances the first time?

A. The first time was in the home on West 100, and it was right before the commotion of the kids coming from the school and, you know, the police were there and everything was going on. Like I had said earlier, not questioning like you would question an adult, but we each – our supervisor and I, we had our cell phones. And her son is about [L.P.]’s age. So we were talking about super heros, and she was saying how, Oh, Nicholas loves Batman. Do you like Batman?

So we were talking to him in a manner of – about her son. I was showing him pictures of my dogs, and we were trying to gain that trust. And in [513] talking about things non-related, we would throw in a question about the investigation. So it was like fun question, fun question, fun question, how did you get this mark on your face? And his body language changed.

My supervisor was showing him pictures of Nicholas and she goes, Well, how did you get this? And he said – he put his head down and he said, Daddy did it. Dee did it. And he just said Dee did it.

And then the second instance where he said it in front of me was at the hospital. Detective Remington and her partner had come in. And Detective Remington had gotten him a pink stuffed animal or something from somewhere; and she was trying to play with him and, you know, how you would with a little kid and playing with [A.T.].

And [L.P.] was very interested in her badge and handcuffs, you know. Who cares about this stuffed

animal. And at this point, she had a picture of Mr. Clark. And she asked [L.P.] if he knew who this was, and he said, you know – looked at it and was like (indicating) and turned his head and said, It was daddy. It was Dee.

So when asked – and then had asked him, Well, [514] how did you get these marks? What happened? And he said again, Dee did it.

Q. Are you trained it talking to children?

A. Yeah. We go – when you first start the agency, there's – before you can get any cases, there's many weeks of training. And then when you – you have to shadow older workers. And then when you do get your first cases, it's oftentimes that you'll have older workers in your unit or in your department that you'll go out with.

So I may go – I was fortunate enough that I knew a girl from my same program at college. So I would go out with her on her cases and see how she did interviews, and she would go out with me. And as I was doing my first few interviews, she would maybe interject a question just to help get that comfort and to know what we're looking for.

Q. So is there a protocol when questioning children? Are you to lead them?

A. No, no.

Q. Okay. And so you don't lead. And did you know who Dee was?

A. I had no idea.

Q. So you put that word or that –

A. No. I didn't know, and it wasn't until [515] like – when he's saying "Dee" and "daddy," I'm thinking his biological father that I found out his information from child support. And it wasn't until Detective Remington had a picture and he identified that pictures that that's Dee, that's daddy, that I put Darius Clark with who the child identified as Dee.

MS. DRISCOLL: Thank you. No further questions.

THE COURT: All right. Ladies and gentlemen, we're going to take the afternoon recess. During the course of the recess, do not discuss the case with anyone or let anybody discuss the case with you. We'll be in recess for approximately 10 to 15 minutes.

Everybody please rise while the jury leaves the courtroom, please.

You can step down.

(Thereupon, a recess was had.)

* * *

[516]

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(Thereupon, the following proceedings were had in open court in the presence of the jury).

* * *

THE COURT: Mr. Morgan, your cross-examination?

MR. MORGAN: Thank you, Judge.

CROSS-EXAMINATION OF SARAH BOLOG

BY MR. MORGAN:

Q. Good afternoon, Ms. Baylog [sic]. How you doing?

A. Good afternoon, sir.

Q. Let me ask you a couple questions. Do you know what an activity log report is as it relates to CFS?

A. Yes.

Q. What is that?

A. It's my case notes.

Q. Okay. Case notes are put into a computer?

A. Now they are. Yes.

Q. Okay. Were they put in a computer back in March of this year?

[517] A. Yes, they were.

Q. Okay. Are they put in under like – this is Sarah Baylog's – everything's under Sarah Baylog's, or are they grouped –

A. Bolog.

Q. Pardon me?

A. It's Bolog. It's not "bay"; it's "bo."

Q. I'm sorry. Are they put in under like your name, or are they put in under the alleged child victim or –

A. Both.

Q. Both. Okay.

A. Not the alleged child – well, there’s – we have a new computer system that all 88 counties share now. And the reports you’re looking at, the activity logs, there’s a – it looks like a rectangle at the top with the titles. It will have, where it has the child’s name – we can click in the computer system on if it’s regards to – if its completed, like we made face-to-face contact with that person. It will also have the family name, and it will have who generated that report. So, in my case, it would either have my name or my supervisor’s name as we have access to the same case.

Q. Who is Howard Little?

[518] A. Howard Little is the coworker I was telling the prosecutor earlier about. He had had the case on March 17th during the day, and then I picked it up that evening from him. He sits beside me.

Q. Okay. Howard Little would also put notes in for the activity?

A. All Children Services workers are required to do activity logs.

Q. Do you do it like at the end of the week, or do you do it at the end of each day or –

A. It all depends. I was doing some earlier today for cases I’m currently investigating while waiting to go on the stand. WE have – the State system is now an Internet-based system. So, have computer; have internet; will travel. We can do it from any Internet site.

Q. Okay. You stated that at some point on the – I think it was the afternoon of March 18th, you were back at your office and decided, Hey, let's take a ride out to West 100th?

A. Yes.

Q. Okay. And at that point, you were involved in this case with [L.P.] and [A.T.], correct?

A. At that point, it had been reassigned to my name.

[519] Q. While you were at the office, did you do anything to bring you up to speed as to what maybe Mr. Little had found out?

A. Oh, of course. Yes. My supervisor, she's – our whole unit is a very close unit. The physical space that our unit takes up is quite small. We're also known in the agency as being a tight-knit unit. We often are in constant communication with various unit members and our supervisor either with E-mail or text messages or on our phones with each other. It's a rarity that we don't cooperate with each other or we don't have interaction on each other's cases.

Q. Well, let me ask you this: That afternoon on the 18th –

A. Yes.

Q. – were you able to view what Mr. Little might have put into that activity log?

A. I did not read the activity log, because I spoke to Howard myself.

Q. Okay. And Howard brought you up to speed –

A. Yes.

Q. – on it, correct?

A. Yes.

Q. Okay. Howard had the opportunity to do a little bit of work on it on March 17th, correct?

[520] A. Correct.

Q. Okay. I believe you had told Ms. Driscoll that on the 18th, when you're at the house on 100th Street, you didn't know who Darius or Dee or dad was, right?

A. I wasn't sure myself. No.

Q. Okay. You had – had you heard that name before?

A. I had heard – which are you asking, Dee or Darius?

Q. Either one.

A. I knew the name Darius as – when a call is called into the 696-KIDS hotline, we're asked to – the hotline screeners will ask you, you know, What's mother name? What's the children's name? And in the course of giving your description of the abuse or neglect, they'll also ask you, Well, who did this alleged abuse or neglect?

So when the report was made, our report – our priority code had Darius Clark listed as an alleged perpetrator. So I had seen the name on that. I has spoke to father – not father. I apologize. I spoke to Howard, and he had said Dee did it. That's who the child had reported to him. But I wasn't sure since I hadn't spoken to the child or Mr. Clark if [521] Dee

and daddy were the same with Darius. I was not sure until the child identified a picture. Yes. I had heard that, but in my mind I was not clear until I saw the child make a connection with the picture.

Q. You had no connection before that – is that what you're saying – between Dee or Darius?

A. I know it had been said, but hearing it from – we oftentimes get false allegations. So, yes, I do go out and investigate false allegations from the 696-KIDS hotline. So for me being an investigator, what I get from the hotline on paper, I don't just take it as the god's truth. I take it at face value. And although it might be written on paper or I might have somebody tell me, until I'm able to prove it in my own mind or I'm able to see a connection, I tend to try to play a devil's advocate in my head or take things at face value.

So, yes, I had heard that. But until I myself witnessed the child being in the connection with the picture, for me, it's something I had had heard, but it wasn't – I wasn't a hundred percent convinced until I saw him make the connection.

Q. you just said something that struck me. You said that you oftentimes get false allegations.

A. We get hundreds and hundreds and hundreds of [522] calls to the 696-KIDS hotline every year. I mean, right now I'm carrying a caseload of the low 20s. And you figure, if you're getting 15 to 20 new cases a month, not every single case that we get is substantiated child abuse or neglect.

The majority of cases the Children Services gets, while we have to treat them all the same and investigate them fully, the majority of the cases are false allegations or are found to be not child abuse or neglect.

So that's what I meant by that. I'm not saying in this specific case. I'm saying in the general scope of the calls we get to 696-KDIS.

Q. Okay. When you get these unsubstantiated or false, whatever you want to term it, tell me if I'm wrong, but most of the time it's probably false or unsubstantiated as to whether or not abuse occurred, correct?

A. Yes.

Q. Okay. But there are occasions where there may be abuse that occurred, but the falsity may be as to who the alleged perpetrator is, correct?

A. You can have that.

Q. Okay. So there are times when individuals may say, Joe did it or whatever, but that may be the [523] farthest thing from the truth, right?

A. And that's my job as an investigator, to go out and determine, A, if the abuse happened or did not happen and, B, if Joe did it or did not do it.

Q. Well, these people are the ones to determine that, right?

A. In this courtroom. But in the DCFS investigation, it's my job for our investigation.

Q. But with false allegations, there's times when the alleged victim will name the wrong perpetrator, correct?

A. I can see where that would be a possibility.

Q. That happens, correct?

A. I'm sure it does.

Q. Okay. Ms. Driscoll had asked you about leading an alleged victim. You would never do that, right?

A. No. I mean, if I'm speaking to a child and I – I often try not to ask flat out questions that would make a child scared or not trust me. I try to get the information from my investigations in more a conversational manner.

A lot of times, if young children – if they're frightened or they might not have the cognitive abilities or they might not have the verbal [524] skills, we – like [A.T.], she was unable to verbally tell me anything. So although I witnessed her, although I spent time with her and I can tell you her mannerisms and how she interacts with people, I had to, what we call, waiver her interview, because I wasn't able to verbally speak to her.

Q. Okay. But as far as yourself with interviews, you would never lead –

A. I don't need to. No.

Q. Okay. So you would never have said something like, you know, Dee did it, didn't he, or anything like that?

A. No. That's beneath me.

Q. All right. During your investigation, you had the opportunity to talk to the maternal grandmother and maternal aunt, correct?

A. Yes.

Q. Okay. When you had talked to them, you had heard about a birthday party at the end of February, correct?

A. Yes.

Q. Isn't it a fact that Jackie Strozier, the maternal aunt, told you that she saw bruises on [A.T.] at that birthday party in late February?

A. She may or may not have. I was more concerned [525] with the actual burns. And when asking about the bruises for this case, I was more concerned about the loop-shaped mark bruises and bruises I know typically indicate child abuse.

Q. Let me ask you this: Did Jackie Strozier say anything to you – and, again, we're talking about the birthday party on the 28th.

A. Yes.

Q. Did she say anything about talking to [T.T.] about maybe taking the kids from her for a little while?

A. Yes.

Q. Okay. And in that conversation, wasn't there some mention from Jackie that there was bruising on [A.T.]?

A. Again, I don't recall what specific bruising Jackie was talking about. But, yes, she did tell me

that she had had a gut feeling and she had felt that things weren't right and that she had asked [T.T.], Let me watch the kids while you get yourself together.

[T.T.] is not – [T.T.] and some of her deficits as a parent are not new to her family.

Q. They're not new to her family?

A. No. This has not been a new issue with these [526] children. This has been an ongoing issue for years and years and years.

Q. Okay. How many children does [T.T.] have?

A. Five.

Q. How many does she have custody of?

A. None.

Q. The first three were taken away previous –

A. The first three were removed by Children & Family Services. Children & Family Services went through the temporary custody portion of it, and then we did receive permanent custody of those three children where parental rights are severed. And they were adopted out by another family member.

Q. Okay. In your conversations with the maternal grandmother and the maternal aunt, did they express to you anything to the effect that [T.T.] is a big liar and you can't trust a word that she says?

A. Yeah.

Q. Okay. You had the opportunity to talk to [T.T.] regarding this, correct?

A. On the telephone.

Q. Okay. Most of what she said turned out to be not true?

A. A lot of things she said to me, yes, turned out to be false.

[527] Q. So she was consistent with the opinion expressed by maternal grandmother and maternal aunt?

A. Sure.

Q. Okay. Did you come to a point in your investigation that you would have a hard time believing anything that [T.T.] said?

A. I have a hard time believing what most people in my investigations tell me until I can prove it. I've been lied to a lot in the last ten years.

THE COURT: The question was about [T.T.]. Just answer the question, please.

A. Yes.

Q. So you'd have a hard time believing anything she says regarding this, right?

A. Yes.

Q. Is she the type of person that would tell you something to protect her own backside?

MS. DRISCOLL: Objection.

A. Don't know.

THE COURT: Overruled. It's cross-examination.

A. I don't know.

MR. MORGAN: Thank you.

THE COURT: Any redirect?

[528]

* * *

REDIRECT EXAMINATION OF SARAH BOLOG

BY MS. DRISCOLL:

Q. Have you ever met [T.T.]?

A. No. I've only spoken to her on the phone.

Q. And how many days of phone conversations have you had with [T.T.]?

A. Just several days. I typically process cases fast.

Q. So it was – started out originally –

A. On the 18th.

Q. Okay.

A. I think I only had the case about nine days.

Q. So any basis you have of [T.T.]'s truthfulness or credibility –

A. Only what she had said probably on two or three days' worth of phone call.

Q. Pretty limited?

A. Yes.

MS. DRISCOLL: Okay. Thank you. No further questions.

THE COURT: Any cross on that?

* * *

RECROSS-EXAMINATION OF SARAH BOLOG

[529] BY MR. MORGAN:

Q. Pretty much [T.T.]'s a big liar and you can't trust a word she says, right?

A. I don't know. I mean, she lied to me a couple days when I talked to her on the phone.

Q. Thank you.

THE COURT: Okay. You may step down. Thank you. State may call your next witness.

TESTIMONY OF
HOWARD LITTLE

[623]

* * *

The STATE OF OHIO, to maintain the issues on its part to be maintained, called as a witness, HOWARD LITTLE, who, being first duly sworn, was examined and testified as follows:

THE COURT: You may take the witness stand, sir. You may proceed, Counsel.

MS. KARKUTT: Thank you, Your Honor.

* * *

DIRECT EXAMINATION OF HOWARD LITTLE

BY MS. KARKUTT:

Q. Would you state your name and spell your last name for the record?

A. Howard Little, L-i-t-t-l-e.

Q. And where are you employed?

A. Department of Child & Family Services, [624] Cuyahoga County.

Q. And how long have you been employees with that agency?

A. Six years.

Q. And in what capacity?

A. Intake, social work, doing investigations.

Q. And what are your duties as an intake social worker?

A. To investigate allegations of abuse and neglect, dependency, emotional maltreatment.

Q. I'm going to ask you if you could just move the microphone just so that everyone can hear you clearly there.

Okay. And how do you receive the cases that you're called upon to investigate?

A. They're assigned through our intake.

Q. And how are those calls received by Children & Family Services?

A. Through a hotline, anonymous.

Q. And how quickly after that call is received into your hotline are you called upon to go out and investigate?

A. For a Priority 1, which was the call that was received, you have to go out within an hour.

Q. Within an hour?

[625] A. Uh-huh.

Q. Mr. Little, I'd like to call your attention to the date of March 17th of this year. Did you have to go out and investigate a Priority 1 on that day?

A. Yes.

Q. And where did you respond to?

A. I responded to a daycare center on East 33rd – on East 23rd and Community College.

Q. And what did you find when you arrived at the daycare center?

A. Found a child, [L.P.], who had some marks, some noticeable marks on both his facial area, mid sternum, a couple welts on his top shoulder blades, and some old bruising on his forearm.

Q. And you had an opportunity to observe that?

A. Yes.

Q. And who was [L.P.] with when you made those observations?

A. When I made those observations, he was with his teacher, daycare teacher.

Q. Was anybody else there when you first arrived at the daycare center to investigate this Priority 1?

A. The daycare center manager was also there in the building. She wasn't particularly in the same room.

[626] Q. And did you have any conversations with [L.P.]?

A. Yes.

Q. Okay. And who did you have those conversations in the presence of?

A. Those conversations were in the presence of the daycare manager and [L.P.].

Q. And what did you talk to [L.P.] about?

A. I talked to [L.P.] basically about how did he receive the bruising that was on his left facial area and

also about basically trying to get more information about who was the last offender who was named Dee.

Q. I'm sorry?

A. Basically trying to find out who was Dee, who was named as one of the last –

MR. MORGAN: Objection.

A. – the last offenders in the case.

THE COURT: Overruled.

Q. And how did you go about trying to get that information from [L.P.]?

A. Well, first of all, we brought in some toys, tried to kind of get him comfortable. He first – at first, didn't open up. But after the interview went along, he kind of mentioned some things.

[627] Q. And what did he mention to you?

A. He mentioned that Dee was his father, that he lived in the home. He had mentioned that – first, that he had sustained some marks and bruises from falling down the stairs. But when I re-questioned him and tried to make him feel a little more comfortable, he later stated that the bruises came from Dee, which at first, of course, he said it was his father – and said that the bruises came because he didn't put his toys back up and they were thrown all over the floor. So that's why he got a spanking for that.

Q. Did you try to ascertain from [L.P.] if he had any brothers or sisters?

A. Yes.

Q. And were you able to determine that?

A. He said he had some siblings, but he wouldn't give us the name of either.

Q. Why was it important to determine if there were any other children in the home?

A. To, of course, eventually try to speak to them and determine their risk factor for safety.

Q. And while you were speaking with [L.P.] on March 17th, did anyone ever come to the daycare to pick him up?

[628] A. Yes.

Q. And who came to pick up [L.P.] that day?

A. Darius Clark.

Q. And did you have a conversation with Darius Clark?

A. Yes.

Q. And what did you talk to Darius Clark about?

A. Talked to Darius Clark about the allegations, the allegation that the child had some bruising to the left side of his face that we're not there, per se, a few days ago; but that, you know, the bruises were noticeable that day, so the call came in.

Q. What was Darius Clark's reaction?

A. Darius stated that he basically knew nothing about it.

Q. Okay. So the first thing he said was he didn't know anything about it?

A. Uh-huh.

Q. And then did that change?

A. Yes. Then he stated that he had last spanked the child a week beforehand.

Q. So he said he had last spanked [L.P.] a week before?

A. Uh-huh.

Q. And then what else did he tell you?

[629] A. He also said that the child had gotten it from playing outside because he lives in the projects.

Q. Okay. Anything else?

A. Also, I asked to speak with mom. He told me that mom had a job working the census bureau, and she didn't get off until 8:00.

Q. Now, did you request any type of phone number for the mother?

A. Yes.

Q. And was Darius Clark able to provide you with any type of telephone number?

A. Yes. He provided me with his number and said I had to call him in order to get into contact with her.

Q. Everything had to go through Darius Clark, then?

A. Yes.

Q. And did you ask him who lived in the home with him?

A. Yes.

Q. And what did Mr. Clark tell you?

A. He said that he lived in the home with the child and the other children.

Q. Other children?

A. Uh-huh.

[630] Q. Did he give you any other information about who those children might be?

A. No. I asked him about who the other children were, and he said I would have to ask mom.

Q. Did you try to ascertain if there was anyone in the household that went by the name of Dee?

A. Yes.

Q. And what did Mr. Clark tell you?

A. He said he doesn't know Dee.

Q. He said he doesn't know Dee?

A. Yes.

Q. Did he tell you that he goes by Dee?

A. No.

Q. And, now, is it your agency's policy to just let a child that was in [L.P.]'s condition just leave the school

—

A. No.

Q. — with Darius Clark?

A. No.

Q. And how was it that [L.P.] was able to just walk out of that daycare center with Darius Clark?

A. We were sitting at the table. I was on the phone with my supervisor speaking about the situation. I informed Mr. Clark that due to the current circumstances there's some real issues we [631] need to still further discuss, that I need you to sit down and, you know, please give me the time to talk, you know, to hear about the situation. We need to also reach mom.

He said, I don't have no time for this. I'm about to go. He stepped – because he was already standing the whole time. He never sat down.

Q. He wouldn't sit down with you?

A. No.

Q. And where was [L.P.] while you were talking with Darius Clark?

A. [L.P.] was still playing with his toys. You know, he was kind of wrapping up. We told him to clean it up, and he was putting on his coat or jacket.

Q. And while you were on the phone with your supervisor, what then happened?

A. While I was on the phone with my supervisor, that's when he – again, he stepped forward, grabbed the child, stepped forward and said he didn't have any time for this. I'm about to go.

I said, Hold on. We still have to speak about these concerns. I got up from my seat, stepped to the right – because the table was there – stepped to the right. He came forward. We had, you know, kind [632] of a stare-down.

Q. "A stare-down," what do you mean by that?

A. Well, more so of trying to get him to stop to leave, trying to stop him from leaving because I need to still talk to you. He's saying – you know, he basically said that he wasn't going to talk to anyone, that he was trying to leave, basically.

So we kind of made eye contact with each other. Basically came to a standstill. He kind of went around me through the door. I followed with my supervisor on the phone, you know, asking what – I didn't want to get into a physical altercation, so –

Q. And what did you see Mr. Clark do then?

A. I saw a car parked in the front of the daycare. He proceeded to leave out the door and got straight into the car.

Q. Were you able to get any information about that vehicle?

A. No.

Q. And once Mr. Clark took off with [L.P.], what did do you?

A. After he took off, I'm still talking to my supervisor. And I went around – I actually went around the corner to the family's home to see if mom was there or any other adult was there, and that was [633] unsuccessful. No one was there. Left some material for the family to get back in contact with me.

Q. And did you ever hear from the family?

A. No.

Q. And did that conclude your involvement with this portion of the investigation regarding [L.P.]?

A. Yes.

Q. And do you see the person here in the courtroom today who you spoke with at that daycare center who identified himself as Darius Clark?

A. Yes.

Q. Could you point him out for us and describe what he's wearing?

A. He's wearing a maroon tie, white shirt.

THE COURT: The record may reflect that the witness pointed to and identified the defendant in court.

MS. KARKUTT: Thank you, Your Honor. I have nothing further.

THE COURT: Cross-examination? Step up for just a minute, Counsel.

* * *

(Thereupon, a discussion was had [634] between Court and counsel at sidebar.)

* * *

(Thereupon, the following proceedings were had in open court in the presence of the jury.)

* * *

THE COURT: You may proceed.

MR. MORGAN: Thank you, Your Honor.

* * *

CROSS-EXAMINATION OF HOWARD LITTLE

BY MR. MORGAN:

Q. Good morning, Mr. Little.

A. Good morning.

Q. A couple questions for you. You responded to William Patrick Day preschool?

A. Yes.

Q. And this is on March 17th?

A. Yes.

Q. You see [L.P.] there, correct?

A. Yes.

Q. Okay. You had an opportunity to talk to [L.P.], correct?

A. Yes.

[635] Q. All right. He's a three-and-a-half-year old at the time?

A. Yes.

Q. Typical three-and-a-half-year old?

A. Uh-huh.

Q. Okay. You talk to him about some bruises, correct?

A. Right.

Q. You also talk to him, and he responded about a spanking right?

A. Yes.

Q. Then in that same conversation you said, Who did this, right?

A. Yes.

Q. Okay. Do you know if he was responding as far as a spanking or responding as to “this”?

A. He was responding as far as the spanking.

Q. As a spanking?

A. Yes.

Q. So at least in your mind – when he said Dee did this, in your mind, he was responding to a spanking, correct?

A. Yes.

MR. MORGAN: Nothing further. Thank you.

[636]THE COURT: Any redirect on that issue?

MS. KARKUTT: No questions, Your Honor.

THE COURT: You may step down, sir. State may call your next witness.

TESTIMONY OF
DETECTIVE JODY REMINGTON

[600]

* * *

DIRECT EXAMINATION OF DETECTIVE JODY
REMINGTON

BY MS. KARKUTT:

Q. Detective, could you state your name and spell your last name for the record?

A. My name's Jody, J-o-d-y; last name is Remington, R-e-m-i-n-g-t-o-n; Badge 2164.

Q. And where are you employed?

A. I'm employed by the City of Cleveland under the Department of Safety in the Division of Police, and my assignment is the sex crimes and child abuse unit.

Q. How long have you been assigned to that unit?

A. It will be six years on January 26th of 2011.

Q. And prior to your experience in the sex crimes and child abuse unit, where were you assigned within the City of Cleveland Police Department?

A. Originally, my first assignment was in the Second District on basic patrol, Zone Car 212. I worked afternoon shift. I worked there about two and a half years, and then I went into a unit called [601] Strike Force, which handled like creature comfort issues, burglaries, B and Es. Anything that residents in the neighborhood had an issue with, we would handle.

From there, I went to the Second District detective bureau. And when I worked there, I handled general felonies, burglaries, B and Es, auto thefts, things like that.

And I went to sex crimes in 2001 for a very brief period of time. While I was assigned there, I was pregnant with my daughter; and I went back to the detective bureau until she was about three years old, and then I came back here to sex crimes.

Q. Detective, how do you receive your cases in your unit?

A. Sex crimes is one of the units within a city that's centralized. We're out of downtown along with narcotics and homicide. And each of the districts across the city will make a report. It comes down to our unit. Our supervisors log that assignment, and then they distribute them to the detectives for further investigation.

Q. Did there come a time in March of 2010 where you received an assignment regarding the investigation of Darius Clark?

[602] A. Yes.

Q. How did this particular case come to your attention?

A. Well, I was aware of the case by virtue of Social Worker Bolog.

Q. And is that typically how you receive your assignments?

A. No.

Q. This is somewhat of an unusual situation?

A. Yes.

Q. How did you first become involved or aware that your involvement would become necessary?

A. Well, I was made aware by Social Workers Bolog that she had a missing child, and that was [L.P.]. So she had contacted me a number of times via my cell phone and told me that she had gone to the school, to [L.P.]'s home. She couldn't find the child. She couldn't find the child's mother. She was very concerned.

Q. What date was this?

A. The first time I had a conversation with her about it was St. Patrick's Day.

Q. And then the second time?

A. The second time would have been, I think, Thursday the 18th. She still had questions inasmuch [603] as she still couldn't find the children. She was checking various different addresses across the city. And I was actually off duty driving to pick up my daughter when I got an actual phone call from her, and she indicated that the case was worse than we originally thought –

MR. MORGAN: Objection.

THE COURT: That will be sustained as to what she said. You may testify as to what you did.

Q. At that point in time, was your presence requested anywhere?

A. She didn't request my presence, but I indicated that I thought she should call a zone car for her safety, because social workers are just like the general public

in these homes. They don't have any means of protection. So I suggested she call a zone car. And then I contacted my supervisor, and I told him he needed me to come back into work I would do that, which is what I did.

Q. Did there come a time that day – now, are we talking March 18th?

A. Yes, ma'am.

Q. Did there come a time that day when you responded to MetroHealth Hospital?

[604] A. Yes. I responded to Metro probably somewhere in the neighborhood of about 6:00 in the evening.

Q. And what did you find when you arrived at MetroHealth Hospital?

A. Well, at that point, I learned what had been indicated, that there were two children involved.

MR. MORGAN: Objection.

THE COURT: I'll let that answer stand. Proceed. Put another question to the witness.

Q. And, Detective, did you have an opportunity to observe these children when you arrived at Metro?

A. Yes, I did.

Q. And what were the names of these children?

A. [L.P.] was the little boy. He was about three years old. And then there was a female child named [A.T.]. She was somewhere around 15 to 18 months.

Q. And when you arrived, who were these children with at Metro?

A. By the time I arrived, Schoen Parries, which is the grandmother – that’s [T.T.]’s mother – was there; and then Jackie Strozier, who is mom’s sister – both of them were in the room with the children.

[605] Q. And did you have an opportunity to observe these children, interact with their family members?

A. I did.

Q. And did you have an opportunity to interact with these children yourself?

A. I did.

Q. In what nature?

A. Well, initially, I just tried to build some rapport with them, because they were clearly traumatized.

Q. When you say “clearly traumatized,” how do you mean?

A. No one could touch [A.T.] with the exception of Jackie Strozier. Nobody could go near her or touch her without her reacting in a negative way.

Q. And when you say “no one,” doctors, nurses?

A. No one. She was literally stuck onto Jackie Strozier. You couldn’t touch her at all.

Q. And how did you interact with [L.P.]?

A. I tried to talk to [L.P.]. I had a little – like a Beanie Baby from my daughter. It was a little pink poodle, and I tried to play with him to build some

rapport. I wanted to see if he would tell me who hurt him.

[606] Q. And did that work?

A. No. Not at all.

Q. And how was he reacting to you?

A. As long as we played, he was okay. He was pretty enamored with my badge, like most little boys are. So I gave him the badge, and I told him I'm the police, and I'd like to help you. I'd like to make sure nobody ever hurts you like this again. Can you tell me who hurt you?

Q. Was he able to do that?

A. He was not.

Q. And when he wasn't able to answer that question, what did you do next?

A. Well, my supervisor, Sergeant Joe Rini, was there; and Detective Kovach was with me. So the three of us talked in the hallway, and we decided that I would go to the Second District and I would print out a picture of the suspect's OHLEG photo, your Ohio driver's license photo, and bring it back and see if the child could make an identification.

Q. At that point in time, what name did you have for a suspect?

A. It had been indicated to me that the individual responsible for [L.P.]'s injuries was Dee.

[607] MR. MORGAN: Objection.

THE COURT: I will sustain that answer.

Q. When did you first hear the name or when did a person named Darius Clark come into your investigation?

A. Immediately. It came to me through Social Worker Bolog, and she had learned that information from both from –

MR. MORGAN: Objection.

THE COURT: I'll let that stand. The rest will be sustained.

Q. And when you went to the Second District to print out an OHLEG photograph of your suspect, who was that?

A. Darius Clark.

Q. And once you printed out that photograph, what did you do?

A. I came back to Metro Hospital with it.

Q. And what did you do with that photo when you got to Metro Hospital?

A. I went back into the room with the children, and I showed it to Darius [sic].

Q. And what was Darius's reaction when you showed it to him?

[608] MR. MORGAN: Objection.

THE COURT: Overruled.

MR. MORGAN: May I approach?

THE COURT: All right. Approach the bench.

* * *

(Thereupon, a discussion was had between Court and counsel at sidebar.)

* * *

(Thereupon, the following proceedings were had in open court in the presence of the jury.)

* * *

THE COURT: Question's withdrawn, and a new question will be put to the witness.

Q. Detective, what happened when you showed [L.P.] that photograph of Darius?

A. He made a statement.

Q. And what did he say?

A. "That's Dee."

Q. And were you able to make a connection to any other information that you had gather in the course of your investigation?

[609] A. Well, I knew from other Cleveland police reports that Darius had an alias of "Dee," or people referred to him as "Dee."

MR. MORGAN: Objection, Your Honor.

THE COURT: Yes. That will be sustained. The jury will disregard about other police reports.

Q. And once you got that information from [L.P.], what did you do next?

A. I still tried to see if the child could disclose to me. But after that, I called for an SIU car.

Q. And what's SIU?

A. It's scientific investigation. And they have cameras. And I wanted the children's injuries to be captured in photographs.

Q. And someone from your department arrived?

A. He did.

Q. And did you observe him photographing those injuries?

A. I did.

Q. And then once that was complete, what did you do?

A. I still tried to build – I spent a lot of [610] time with the children that evening. And once we were completed there, I went back to the justice center and conferred with my supervisor.

Q. And after you conferred with your supervisor, what was your next step in this investigation?

A. Well, I tried to contact both individuals, [T.T.] and Darius Clark. I also went to Darius's mother's house to attempt to make contact with her. It was indicated in the investigation that Mr. Clark had left town.

MR. MORGAN: Objection.

THE COURT: Overruled.

Q. Now, during this time, was [T.T.] also a suspect?

A. Yes.

Q. And were you able to locate [T.T.]?

A. Well, inasmuch as we had phone conversations.

Q. You talked to [T.T.] on the telephone?

A. I did.

Q. And were you able to ascertain her location?

A. Well, she told me she was in Washington D.C.

Q. And when was your first initial contact with [T.T.]?

A. I don't know the exact date. It would have been somewhere between March 18th and March 26th. [611] Because on the 26th, at that point, I finally consulted a prosecutor and issued warrants for their arrests. I gave them an opportunity to come in and discuss the injuries; and they didn't, so I issued a warrant.

Q. And that was just in the very beginning of your investigation, correct?

A. Yeah. We're about a week in at that point.

Q. All right. And after you issued warrants, are you still trying to make some contact with [T.T.]?

A. Well, at that point, we were having more regular phone conversations.

Q. And what do you mean by that?

A. Well, she would call my office fairly frequently.

Q. And how frequent is frequently?

A. Every day of so I would get a phone call.

Q. And what was her reason for contacting you?

A. To find out what was the status of the case and where were the children, were the children safe, things of that nature.

Q. And did you ever have discussions about her coming into your office?

A. Well, every time we talked, I suggested she [612] come have a cup of coffee with me.

Q. And did she ever do that?

A. Not until most recently.

Q. And how was that you ended up having a physical face-to-face interaction with [T.T.]?

A. I believe she turned himself in, in Washington, and then as extradited back to Cleveland.

Q. Did you have to go to D.C. to get her?

A. No.

Q. Or did they bring her back here?

A. They brought her back here.

Q. And did she come in and meet with you at your office at that time?

A. Yes.

Q. And when you had issued warrants for her arrest, she had been charged; is that correct?

A. Correct.

Q. The other suspect in this case, Darius Clark, he had also been charged at that point in time, correct?

A. Correct.

Q. Now, let's back up a little, Detective. When you were at Metro Hospital, did you have an [613] opportunity to observe any markings that were left on [L.P.] and [A.T.]?

A. I did.

Q. And while your SIU detective was taking the photographs, what are you doing?

A. I was actually probably there in the bed or close to bed. I sat on the bed with the kids when I was trying to build some rapport with them. But [A.T.], for the most part, sat on Jackie Strozier's lap. [L.P.] was a little bit interactive with me because he had my badge, but by no means were these children comfortable with anyone but their family.

Q. And did you provide any assistance to your SIU detecting in directing them which areas of the children needed to be photographed?

A. Yes.

Q. And how were you able to do that?

A. Well, I had observed the injuries myself, so I indicated to him what I thought were non-accidental trauma injuries to these children.

Q. And how was it that you had the opportunity to view their injuries?

A. I had come in when the doctor was examining them.

[614] Q. What other assistance did you provide in this investigation once you left Metro Hospital?

A. Well, they actually went and arrested Darius Clark.

Q. And you said initially that you had to issue a warrant for him; is that right?

A. Right.

Q. So did you know where you could find Mr. Clark?

A. Well, not initially.

Q. And at some point in time, you received some information that provided some assistance in locating him?

A. I did.

Q. Where did that information come from?

A. Well, it came from a family member that preferred not to be identified.

Q. A family member of whom?

A. Mr. Clark.

Q. And ultimately where did you go and arrest Mr. Clark?

A. I believe it was at his sister's home.

Q. And in the City of Cleveland?

A. Correct.

Q. Any Cuyahoga County?

[615] A. Yes, ma'am.

Q. Do you recall the address or anything like that?

A. I don't recall the exact address. It was in the First District.

Q. And what date did you take Mr. Clark into custody?

A. I believe it was April 8th.

Q. 2010?

A. Yes, ma'am.

Q. And then you transported him to the Cleveland Police Department, correct?

A. I did.

Q. And was that before or after you were able to meet face to face with [T.T.]?

A. Before.

Q. And when was it that [T.T.] finally came into your office?

A. [T.T.], I believe I interviewed her around the end of October, beginning of November.

Q. 2010?

A. 2010. I'm sorry.

Q. So Mr. Clark came in front of you much more quickly than [T.T.] had?

A. Correct. Not by choice, but –

[616] MR. MORGAN: Objection.

THE COURT: I'll sustain the objection. Wait for the question,

Q. And during the course of your investigation, Detective, what other individuals did you go out and

seek information from or evidence with respect to this case?

A. I interviewed the teachers at [L.P.]’s school.

Q. When did you conduct those interviews?

A. I don’t know the date. I’d have to look at the top of the statements, but it was – I don’t know the date. I’m sorry.

Q. Those were just a day or two after you were at Metro Hospital with the children, correct?

A. Yeah. I’d have to look at the top of the statements to tell you the exact date. I know I interviewed Ramona Whitley, and my partner interviewed the other teacher that was involved.

I went to Hazel’s house around the end of March. That would have been around March 30th. I think it was a Tuesday. And we heard the voice recording at that time, had an opportunity to observe [A.T.] that day. And then my partner –

Q. I’m sorry. Let me back you up. [617] You had an opportunity to see [A.T.] that day?

A. I did.

Q. She was at Hazel’s home?

A. Yes.

Q. And what did she look like on March 30th when you were there?

A. Well, she was happy. It was refreshing to see her.

Q. Was her demeanor any different than it was on March 18th when you first interacted with her at Metro Hospital?

A. Yes. It was much different.

Q. And in what way?

A. She was more outgoing. She actually came to me as opposed to at Metro, she was scared and you couldn't touch her at all. No one could touch any part of her body. At her grandmother's house, she came to me, and it was very refreshing.

Q. Did you have an opportunity to view any of the injuries that you had initially seen on [A.T.] on March 18th?

A. Only the injuries on her face seemed to be resolving.

Q. And when you say "resolving," what do you mean [618] by that?

A. They were healing.

Q. Were they still visibly apparent to you?

A. Yes.

Q. But they were on their way to healing?

A. Yes.

Q. And that was 12 days after you first viewed those injuries, correct?

A. Correct.

Q. You indicated that if you had an opportunity to look at Ramona's statement you'd be able to determine the date of that interview, correct?

A. I could. I also interviewed [T.T.]'s sister. I think her name was Tara Weary. The mother, Jackie Strozier. All the individuals that are involved in this case, I interviewed them with respect to the case.

Q. And what was the purpose of interviewing each one of those individuals?

A. Really, to develop a timeline for when these injuries might have been inflicted; or when was the last time you saw these children and they were okay versus today when I see them and they're certainly not okay.

Q. And interviewing each one of these individuals [619] was able to help you piece that together; is that correct?

A. Right.

Q. I'm showing you what's been marked for identification purposes as State's Exhibit 64. Do you recognize that?

A. This is the statement that I took from Ramona Whitley. I took it March 19th at about 1153 hours in the sex crimes unit.

Q. And does that refresh your recollection as to the date?

A. Yes. It was the day after I seen the children at the hospital. She came in.

Q. Did you ever have an opportunity to go out to the school at all?

A. No.

Q. Now, you had an opportunity to see [A.T.] after that day at Metro Hospital. What about [L.P.]?

A. I hadn't seen Shoen until I saw him a few days ago here.

Q. And, Detective, once you had both of your suspects, [T.T.] and Darius Clark, in your custody, did that conclude your involvement in the investigation until these court proceedings?

[620] A. Yeah. I think it did. I think so. Yes.

Q. Thanks, Detective.

A. You're welcome.

MS. KARKUTT: Nothing further.

THE COURT: For cross-examination, Mr. Morgan.

MR. MORGAN: Thank you, Your Honor.

* * *

CROSS-EXAMINATION OF DETECTIVE
JODY REMINGTON

BY MR. MORGAN:

Q. On the 18th, you took a photo [transcript illegible] lent out to the hospital, correct?

A. I did.

Q. Okay. Photos of anybody else?

A. No.

Q. And I think you testified that he said that's Dee, right?

A. He did.

Q. At the hospital on the 18th, you were there and you had called SIU, Scientific Investigative Unit?

A. I did.

Q. Okay. And they're the wing of the Cleveland Police Department that has the cameras and takes [621] pictures of everything, correct?

A. Correct.

Q. Okay. So you called them, and they came out and took a battery of pictures, correct?

A. Correct.

Q. And they took those pictures at your direction?

A. Correct.

Q. Okay. Is that all that has to be done to get SIU to come out, is just a phone call, or is there further proceedings – procedures to have them come out?

A. No, there's not. My supervisor called for them.

Q. Thank you.

A. You're welcome.

THE COURT: Any redirect?

MS. KARKUTT: Not based on that. No.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Call your next witness, please.
