

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENELYN BAUTISTA,

Appellant,

v.

JAMES PICONE,

Respondent

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Case No.: 72713

District Court Case No. D-14-495928-P

SUPPLEMENT TO APPENDIX

Respectfully submitted:

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CHRONOLOGICAL/ALPHABETICAL INDEX OF APPELLANT'S APPENDIX
VOLUME III

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Ann L. Sullivan
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

In the Matter of)	CASE NO. D-14-495928-P
the Petition by:)	DEPT. N
JAMES PICONE,)	APPEAL NO. 72713
Petitioner.)	SEALED

BEFORE THE HONORABLE MATHEW P. HARTER,
DISTRICT COURT JUDGE
WEDNESDAY, SEPTEMBER 16, 2015
TRANSCRIPT RE: ALL PENDING MOTIONS

APPEARANCES:

The Plaintiff:	JAMES PICONE
For the Plaintiff:	EDWARD R. MILEY, ESQ. 711 S. 9th St. Las Vegas, Nevada 89101

The Defendant:	RENELYN BAUTISTA
For the Defendant:	JOHN D. JONES, ESQ. 10777 W. Twain Ave., #300 Las Vegas, Nevada 89135

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I N D E X O F W I T N E S S E S

WEDNESDAY, SEPTEMBER 16, 2015

APRIL ARNDT

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* * * * *

1 LAS VEGAS, NEVADA

MONDAY, SEPTEMBER 16, 2015

2 P R O C E E D I N G S

3 (THE PROCEEDING BEGAN AT 11:07:50.)

4 THE CLERK: Judge, we're on the record.

5 THE COURT: All right. This is Case D495928, Picone
6 versus Bautista.

7 Counsel, appearance for the record.

8 MR. MILEY: Ed Miley, 6063, unbundled on behalf of Mr.
9 Picone, who's present at counsel table.

10 THE COURT: Okay.

11 MR. JONES: John Jones, Bar Number 6699, appearing on
12 behalf of the defendant, who's also present.

13 THE COURT: All right. And for the record, I believe we
14 have the investigating officer in the back, which we'll
15 probably talk to in one second. But on the phone we have Dr.
16 Paglini.

17 Can you hear us?

18 DR. PAGLINI: Yes.

19 THE COURT: For the record, to let everybody know why Dr.
20 Paglini is on the phone, I did not talk to him directly. I
21 did not know, and I still don't know, ultimately where this
22 case is going to end up going. But back when this case first
23 started, there was an outsource referral for Dr. Paglini to do
24 an assessment of this case. Only -- it was only partially
25 done. And so if in fact we were gonna go down that route and

1 I was going to send the matter out for an assessment, the
2 Court's preference would for the matter to be go back to Dr.
3 Paglini.

4 And I'm getting -- I'm getting this again secondhand
5 from my law clerk, Dr. Paglini. And correct me if I'm wrong.
6 You indicated you would not take this case and would like to
7 make a record as to why.

8 DR. PAGLINI: That's correct. I had written letters to
9 the Court dated September 17, 2014. I wrote a letter to
10 Attorney John Jones, October 24, 2014. It was cc'd to the
11 Court. And then a letter January 9, 2015.

12 Mr. Picone, James Picone, was very cooperative and
13 invested. He was very frustrated with the process. He felt
14 that, I think, he was being alienated upon to a certain
15 degree. And he conducted. He was involved in the interviews.
16 He did the psych testing. We even did a home visit.
17 Everything was fine in the home visit. He was eager to
18 complete evaluation. I did not conduct his collaterals
19 because I was trying to get Ms. Bautista in.

20 As I saw Ms. Bautista for a procedural meeting with
21 her husband and then also for a clinical interview and psych
22 testing. But as noted in my September 17, 2014, there was no
23 additional contact from her but contact from Mr. Schramm.

24 Mr. Schramm apparently would say things that this
25 custody evaluation was not authorized. And he would make

1 other statements that were untrue. And I tried to correct him
2 several times. It's all listed in my report.

3 But the bottom line is, is that I don't think that I
4 -- if I did the evaluation and if I sided perhaps with Ms.
5 Bautista, I guess that would be fine. But if I sided with Mr.
6 Picone, they may say that there's a bias because of my earlier
7 letters.

8 What I think needs to happen if this is -- proceeds
9 to child custody evaluation, you need a different evaluator.
10 And I would suggest to the courts that the new evaluator
11 contact me, review my letters, but also get my impression of
12 the case.

13 I have noted Mr. Picone was very cooperative. And
14 Ms. Bautista, although she may have had morning sickness, I
15 still believe that you could easily make a phone call sometime
16 within several months. So I -- I do not think I can proceed
17 with the case because of the fact of what the history has been
18 preceding this.

19 THE COURT: Okay. And -- and again, you're the -- you're
20 -- you asked to make that record here today. Is that correct?

21 DR. PAGLINI: That's correct. Because I just want to
22 make sure everybody understood it.

23 THE COURT: Let me -- let me ask you, since we're on the
24 phone. If in fact -- because you are familiar with the
25 provider list here at family court, correct?

1 DR. PAGLINI: Yes.

2 THE COURT: So if in fact I do end up referring the
3 matter out, do you have one or two providers, given your
4 knowledge of this case, that you believe would be best at
5 assessing it?

6 DR. PAGLINI: Well, Dr. Lenkeit's great. Dr. Holland
7 would probably do a good job if, you know -- so I would just
8 make sure it's -- it's a very experienced child-custody
9 evaluator.

10 THE COURT: I'm a little apprehensive. But does anybody
11 have any questions for Dr. Paglini? Again, he's the one who
12 asked to make that record. And I just wanted him to have that
13 opportunity.

14 MR. MILEY: Plaintiff doesn't.

15 MR. JONES: No.

16 THE COURT: Thank you for being available today Dr.
17 Paglini.

18 DR. PAGLINI: Thank you. And good luck.

19 THE COURT: Thank you.

20 DR. PAGLINI: Thank you very much. All right. Bye.

21 THE COURT: All right.

22 This -- this matter is on for dad's motion to
23 enforce custody and the visitation orders. There was an
24 opposition filed by the defendant. First there was a
25 declaration. Then there was an opposition that incorporated

1 the declaration. In there, there indicates there is an
2 ongoing criminal investigation regarding the alleged child sex
3 abuse. So I thought it necessary to know the status of the
4 case. I have no idea. My office hasn't asked the
5 investigator. But...

6 Ma'am, you wanna come on up? And wherever you're
7 more comfortable. If you're more comfortable standing or
8 sitting. So...

9 MR. JONES: Would you like to sit?

10 MS. ARNDT: I guess I'll sit.

11 MR. JONES: Here you go.

12 THE COURT: Well, no.

13 MS. ARNDT: Everybody's sitting.

14 THE COURT: If we have a seat. Let's go ahead and...

15 MS. ARNDT: Up -- up there?

16 THE COURT: (Indiscernible).

17 MS. ARNDT: Sure.

18 THE COURT: Let's have you come up here. I don't think
19 it necessary to swear her in unless counsel thinks it -- I've
20 always been of the opinion if you're gonna lie in open court
21 on the record, it's the same as being...

22 MR. MILEY: Whether you fear...

23 THE COURT: ...sworn in...

24 MR. MILEY: ...God or not.

25 THE COURT: I mean...

1 MR. JONES: I -- I -- I don't have a problem with not
2 swearing her.

3 THE COURT: That's just my feeling. I'm gonna get that.

4 EXAMINATION

5 BY THE COURT:

6 Q All right. First of all your name for the record.

7 A Detective April Arndt, A-R-N-D-T.

8 Q Okay. And your occupation, the agency that you're
9 with.

10 A Detective of the Special Victims Unit at Henderson
11 Police Department.

12 Q Okay. And it's my understanding that you are the
13 one investigating the alleged allegations regarding Sophia
14 Picone. Is that accurate?

15 A Yes, sir.

16 Q Okay. Let's start with, what is the status of the
17 investigation?

18 A The status would be, I -- if Mr. Picone chooses to
19 make a statement, we'll include his statement. I've been in
20 contact with Mr. Picone and his attorney if he wishes to do
21 that. And then it will be submitted to the district attorney
22 for prosecution if they wish to go forward.

23 Q So if he decides not to make a statement, then what
24 is the status of the investigation?

25 A The status would be without a -- without a

1 statement, it would be sent forward for -- for their
2 consideration. With his statement, it would be a more
3 balanced report so that he can speak to the allegations. And
4 then it will be submitted.

5 Q Okay. My understanding, again through the
6 pleadings, is there was a physical investigation of the child
7 at a hospital. Is that correct?

8 A A medical exam.

9 Q A medical exam. And what -- do you have any
10 knowledge of the results of that?

11 A I do, sir.

12 Q Okay. And can you briefly explain what...

13 A Sure. And I'm not a...

14 Q ...those findings were?

15 A ...doctor. But the records were diagnoses she had.
16 She presented during the initial report with sores in her
17 mouth, those were determined to be not of sexual relation or a
18 cause of an STD; vaginitis and labia fusion. No labs were
19 conducted though. They did a physical exam because the time
20 of the allegations were over a spread of a time period. So
21 they will not do a more invasive exam unless they know a more
22 precise date of allegation.

23 So what we discussed was to do a physical exam, if
24 there was something presented during that physical exam that
25 would suggest to do a more invasive exam, which would be the

1 entire sexual assault kit...

2 Q Right.

3 A ...that they would do that. So without being there
4 and being with the doctor, it was their, I guess, presumption
5 that there was nothing that deemed necessary to do a more
6 physical, you know, a more thorough sexual assault kit. And
7 what they saw was vaginitis, labia fusion and that the oral
8 sores were not related to sexual abuse.

9 Q I mean, based on what -- again, and I'm getting this
10 -- I get this second, third hand from pleadings that are
11 written to me. Based on what the alleged allegations were,
12 which is my understanding, penetration, would they not be
13 looking for that? I mean...

14 A It was...

15 Q ...would they -- would they not be...

16 A The allegations were digital penetration.

17 Q Right.

18 A So they were looking for, excuse me, any outward
19 signs that would suggest, but typically in digital
20 penetration, you're not gonna have the same issues. So
21 they're gonna look for -- there was no scarring or injury or
22 trauma to the outer genitalia. So without that, that would be
23 suggesting that there's none inside. If it was an allegation
24 that happened immediate, they would do a more thorough exam.
25 I -- I...

1 Q Okay. We have checked and, I guess, affirmed even
2 up and through this morning that Child Protective Services is
3 not involved in this case. Is that correct?

4 A They've been referred the case. I don't know if
5 they have an assigned investigator. But they have the
6 referral. At the point that the referral was made, because
7 the child wasn't in immediate harm's way or with the alleged
8 suspect, then they don't do a 72-hour response.

9 Q Okay. And then I guess we're back to, are you the
10 -- are you the one who told the defendant not to turn the
11 child over to the plaintiff?

12 A No, sir.

13 Q Okay. So was there someone that you...

14 A So the -- the stance typically between CPS and our
15 unit is that when an allegation is made with additional
16 information, meaning any kind of physical, she presented with
17 some physical stuff going on, mainly the mouth sores and the
18 redness in the vaginal area, that until we can do the CAC
19 interview and do the forensic interview and have an
20 examination, we tell them to keep the child in their care pr-
21 based on the information we get from that.

22 Q All right.

23 A However, I made it very clear, too, that because
24 there was a custody order...

25 Q Right.

1 A ...that if there was a custody order in place, that
2 they would need to answer for any violation of that order,
3 that I do not have the power or authority to tell anyone to
4 violate an order. And we don't get involved in custody
5 issues. And we ex- we spoke of that...

6 Q Right. I appreciate that.

7 A ...in our lobby, saying...

8 Q Do you -- do you know approximately when you
9 informed the defendant of that?

10 A That was 8/27.

11 Q Okay.

12 A I'm sorry. I don't know. I think that may have
13 been a Thursday.

14 Q Again, and I can let you know that the -- the -- I
15 don't know procedurally how you've turned it over or whatever;
16 but there is nothing happening on the CPS end.

17 A Could...

18 Q Again, we...

19 A Do you mind if I look at my notes?

20 Q We affirmed that. I can tell you my office just
21 affirmed that this morning.

22 A I have a reference number for the referral. It's
23 1651425.

24 Q Okay. Do you know when that was made?

25 A It would have been this week. But I don't have the

1 exact date in front of me. The reason being, I'm thinking
2 that on 8/27 we had a call out for an infant injury. So I --
3 that's my Friday.

4 Q Okay.

5 A They were scheduled for CAC on Monday immediately
6 after they went to Sunrise that night. And there were
7 disclosures made in the CAC interview. And that's -- that's
8 where that was at. We also discussed -- I give them my
9 information. And they said their exchange was on Sunday. I
10 said, if there's problems, here's my information and Mr.
11 Picone could call me, whether that was relayed or not. But I
12 left on Thursday. My RDO's are on Friday, Saturday, Sunday.
13 So I return on Monday. Met them first thing Monday morning.

14 Q Monday of this week?

15 A No, no. So CAC -- there was a...

16 Q So they've had it for some time. Or they've had
17 the...

18 A CPS?

19 Q Yes.

20 A No, they have not had the case. The case referral
21 was made this week.

22 Q Okay. I guess, why -- why the delay in the -- in
23 the referral?

24 A Just that the Thursday that they came in, they met
25 at -- they came to me at...

1 Q Well, because I got by 8/27 you're telling the
2 defendant that she has to turn the child over to the -- she --
3 she can't violate -- or you can't...

4 A No, no.

5 Q ...advise her...

6 MR. JONES: That's not what she said.

7 THE WITNESS: No, no. What I said was, we're asking
8 until -- because the child presents with...

9 Q BY THE COURT: Okay.

10 A ...physical signs...

11 Q Right.

12 A ...in a disclosure.

13 Q Right.

14 A So with that, until we can do the forensics -- they
15 weren't due to give the child back till Sunday. We said,
16 we're asking -- you have a duty to protect your child.

17 Q Right.

18 A We don't know what's going on. I'm not judge and
19 jury. However, you do what you think is necessary but keeping
20 in mind and especially in this situation when there's custody
21 issues already, you will be called to answer as to why you did
22 that. I think it's a logical explanation that you have
23 concerns and this -- these are why -- this is why. We didn't
24 have just a disclosure without evidence. We had physical
25 evidence and disclosure about the claim or supporting evidence

1 to say there might be something going on. And without having
2 the physical exam, which they immediately left us and went to
3 Sunrise. I left late that night. I don't know what time they
4 were done with the exam.

5 Q Okay.

6 A And then there were disclosures made in the CAC.
7 And that's why the case is being submitted.

8 Q All right. If you haven't talked with anybody with
9 -- at CPS, I guess you're unaware that there were prior CPS
10 stuff that was unsubstantiated?

11 A I do have that information, yes.

12 Q And have you had the opportunity, or looked at the
13 -- the history in this case?

14 A The custodial, only criminal.

15 Q The custody case.

16 A Only criminal and whatever CPS reports for prior.
17 So I don't have information or access to the custody case, no.

18 Q Okay.

19 A My report does say that it was -- they had a custody
20 arrangement. And that was finalized in May. That's -- that's
21 per statements. I don't have a copy.

22 Q Is that partly because Mr. Picone would not talk to
23 you that you don't know the history of the case? I mean...

24 A He -- he has actually been very cooperative, called
25 me -- returned my phone call for an interview.

1 Q Okay.

2 A And then I...

3 Q You just haven't talked to him yet?

4 A Then he said he wanted to talk to his attorney.

5 Q Okay.

6 A So I said, okay. And then I talked to the attorney

7 to see if they wished to make a statement. And I actually

8 recommended they get a copy of the report if they didn't want

9 to make a statement so that they would know what the

10 allegations were and to see if they wanted to make a statement

11 in reference to those allegations.

12 Q I -- I don't have a report.

13 Does -- does anybody have one?

14 A I do have a copy if you would like it.

15 Q Do you have a copy of it?

16 A Mm-hm.

17 THE COURT: (Indiscernible).

18 MR. JONES: I don't have a copy of it.

19 MR. MILEY: I have nothing.

20 THE COURT: Do you have it?

21 Mr. Jones?

22 MR. JONES: I don't.

23 Q BY THE COURT: All right. So we'll go ahead and...

24 A I actually made a second copy. It's just the

25 narrative portion of the case. If you want the whole case, I

1 can give you that, too.

2 Q (Indiscernible) simple the narrative summarizes
3 everything?

4 A Yes.

5 Q Yeah. It's usually how I look at it anyways.

6 A You can keep that.

7 Q So and again -- just getting -- I'm not even past
8 the first line. It was her husband that contacted the police
9 department. Is that accurate?

10 A The initial call was made to patrol. And it was Mr.
11 Schramm, in the call details, that made the actual phone call.

12 Q Okay.

13 A And then the two -- I don't know all of the
14 circumstances other than the -- the call for service log. The
15 information was presented to me by my sergeant, asked if I
16 could respond. I was actually on another call and said I
17 could meet them back at the station. So the family came to
18 the station together. So it was Mr. Schramm -- Mr. Schramm;
19 Mrs. Schramm, her mother; and the children that all responded
20 to me in that afternoon.

21 Q So the labial fusion, she was born with that.

22 A It's my understanding.

23 Q Okay. That -- on page 3, paragraph 1, 2, 3, 4, 5.

24 MR. MILEY: I observe?

25 THE COURT: I'm sorry?

1 MR. MILEY: Is that paragraph starting with, I observe?

2 THE COURT: Yes.

3 Q BY THE COURT: In the middle of that paragraph, I
4 find that -- it's a curious statement. It wasn't until James,
5 her new stepfather, had disclosed information to her, that she
6 no longer liked Jimmy. Did -- did you find that curious at
7 all?

8 A No, sir.

9 Q Okay. I'm gonna let you know that there has been a
10 barrage by the defendant to try to modify custody since
11 custody was joint physical custody. And all of those have
12 been denied. I don't know if they've told you the history of
13 the case or Mr. Picone has told you the history of the case.
14 In fact, I believe it was within two weeks of me denying her
15 most recent request to change custody, then these allegations
16 come up. Were you aware of that?

17 A No, sir, (indiscernible).

18 Q That was one of the other -- you -- there's a
19 statement on page 4, the last paragraph, it indicates the
20 defendant in this case suspects that Sophia's treatments are
21 related to Jimmy's touching Sophia's vaginal area over the
22 last year. The pleadings indicate also that this had been
23 going on for some time. Did -- was the question asked why
24 she's never reported this before?

25 A During the report, what -- if I understand your

1 question, was that she had made these comments about not
2 wanting to be washed and therefore, you know, habits had
3 changed. But they were dismissed and it wasn't, I guess,
4 thought of or occurred to them that it may be related to
5 anything more than her just not wanting to be washed. Those
6 were the overall premise of the statements, so. But she had
7 never made any direct -- as far as reported to me, she had
8 never made any direct disclosure that...

9 Q But she reported to you, like the -- I think she did
10 in her declaration, that she believes that -- that she'd been
11 complaining of this for quite some time. Would that be
12 accurate?

13 A Yes. And it hurt when they wiped her is what the
14 complaints were prior to this.

15 Q But again, it says, Jimmy's touching Sophia's
16 vaginal area over the last year. So you're saying that
17 doesn't -- that's not related to the sexual abuse?

18 A That's her belief now looking -- now with the
19 disclosure...

20 Q Right.

21 A ...of her saying this that she had chalked all the
22 other statements up to just not wanting to be washed before or
23 after she went to the bathroom. And -- and that's why habits
24 had changed in the shower that she was washing herself.

25 So now with this disclosure, it's my understanding

1 -- or her statement to me that she's saying -- and I don't
2 know. You'd have to ask her. But if I understand her
3 statement to me correctly, is that, she never attributed that
4 to sexual abuse. But now that she made this disclosure, she,
5 in looking back, she's thinking that maybe it was going on for
6 that period of time. That's how I understand the statement.

7 Q And I -- I'm not going to pull any punches. I find
8 it suspect in that, again, she's filed multiple proceedings...

9 MR. JONES: One, Judge.

10 THE COURT: All right, Mr. Jones.

11 MR. JONES: Post judgment.

12 Q BY THE COURT: And...

13 MR. JONES: I filed it, actually.

14 Q BY THE COURT: There's been no statement to that
15 effect before. Again, we've had allegations prior to the
16 decision that he keeps her too hot, too cold, doesn't feed her
17 enough, things like that, but never any allegations of this.

18 A Sir, I only report what they write and...

19 Q I understand.

20 A ...tell me.

21 THE COURT: All right. I will afford counsel, if you
22 wanna -- do you have any limited...

23 MR. MILEY: I have a few questions.

24 THE COURT: Sure.

25 ////

1 EXAMINATION

2 BY MR. MILEY:

3 Q In reviewing that, is there any independent medical
4 information you can point to demonstrating that there was a
5 sexual assault?

6 A Okay. I just want -- and I do want to be clear here
7 that this is an ongoing investigation. So it's not complete.
8 But I am not a doctor. I get medical records. And I, like
9 anybody else, can only read what they write down. So...

10 Q Did you make a rec-...

11 A ...could the argument be made for either way?
12 Vaginitis is a very common -- I hate to speak to something
13 medically. I'm not trained medically. I can tell you from
14 our doctors and the doctors that we refer to, is vaginitis a
15 very common occurrence for young children? Yes. In my line
16 of work, have I seen it? Yes. Am I a doctor? Can it be
17 attributed to sex abuse? Yes. Can it be attributed to dirty
18 hygiene? Yes.

19 Q So there's nothing in it that you can point to?

20 A No.

21 Q Do you -- do you normally when you submit your --
22 you submit pretty much every case to the DA, don't you, for
23 him -- the DA to follow up or DA (indiscernible) to either
24 follow up or (indiscernible). Correct? So you're just
25 following protocol in this case and every case?

1 A The majority of our cases do get submitted if there
2 is more than just a statement.

3 Q I understand. In this case you have statements...

4 A In this case we have a...

5 Q ...the medical records.

6 A ...disclosure and a CAC interview.

7 Q I understand. But there's nothing independent. Do
8 you normally pass along your -- your recommendations to the
9 DA...

10 A No.

11 Q ...when the DA...

12 A No.

13 Q Do you -- does your office have the ability to
14 direct file?

15 A No.

16 Q Does the jail -- your office doesn't -- sexual
17 assault team doesn't have the opportunity -- or Henderson
18 doesn't have the opportunity to direct file?

19 A I don't even know what direct filing is.

20 Q Where you submit...

21 A So if we have that, I don't know about it.

22 Q Where you can submit it directly to the DA's office
23 for an arrest warrant without going through screening.

24 A Oh no. Well, I mean, I guess they could. I've
25 never done it. So I don't wanna say for sure.

1 Q Did anybody, to your knowledge, look at the prior
2 medical care of the child, saw from I guess Wee Care
3 Pediatrics? It's referenced...
4 A I actually...
5 Q ...on page...
6 A ...documented that she had had a rash there that she
7 had been seen for at Wee Care.
8 Q Did you ever get a copy? Did anybody get a copy of
9 the...
10 A I...
11 Q ...medical records?
12 A No, I've only requested.
13 Q Anybody talk to the -- to the doctor about that?
14 A Again, it's an ongoing investigation. But I haven't
15 spoke to Ms. Picone -- Mr. Picone. That was a small piece of
16 the statements made to her...
17 Q Now...
18 A ...or made to me from her. So, no.
19 Q You said on this investigation. My understanding
20 is, is your investigation complete except for waiting,
21 potentially to get any kind of response from Mr. -- from my
22 client?
23 A Yeah, I think he's an -- statement is...
24 Q So...
25 A ...important.

1 Q How was it ongoing?

2 A So if he thought the rash was important and could
3 balance this out and explain some of the allegations, then I
4 would absolutely do that.

5 Q You would do what?

6 A Get the records, wherever he thought that they'd be
7 necessary to get them. But I don't have it...

8 Q But my -- but my client has a right not to speak to
9 you. Doesn't he?

10 A Yeah.

11 Q Legally?

12 A Absolutely.

13 Q So but I'm asking you with your job is, is that
14 somebody mentions the child saw Wee Care Pediatrics, do you
15 know when in relation to -- to this report being made the
16 child was seen by Wee Care Pediatrics?

17 A Does it have a date in there?

18 Q In your report it doesn't. I don't know what you
19 have in your file.

20 A No.

21 Q Would it interest you if it was approximately a week
22 beforehand he took the child to the doctor?

23 A That would interest me. That's why I would like to
24 speak with him.

25 Q Again, my client's not under any...

1 A I've also off-...

2 Q ...obligation.

3 A I -- I don't wanna argue. But I'm just saying

4 that's why I also offered to you and to him to get a copy of

5 the report, see what was alleged in here. And if you wanted

6 to prar- prepare a statement, even outside of meeting me, I

7 would include that. So that this could be a balanced report.

8 I gather the facts. And I can only gather what people tell

9 me. I don't go out to every doctor and ask them if their

10 child's ever been seen here.

11 Q And to...

12 A That's not what I do.

13 Q And to clarify, I'm not a criminal defense attorney.

14 So you've never -- I've never had any conversation, no offers

15 have been made to me whatsoever.

16 A I actually told your...

17 Q I came in today...

18 A ...law clerk that. And I told Mr. Picone that.

19 Q It's a completely different attorney. It's not me

20 at all. I came in from Thailand last night about 7:00 at

21 night.

22 A Okay. Well, his attorney who...

23 Q So it was not me or my office.

24 A ...represented himself as his attorney, I explained

25 to Mr. Picone and his attorney that I did think there were

1 some things that needed to be answered in here and it could
2 easibly [sic] be answered.

3 Q Again...

4 A However...

5 Q ...that's...

6 A ...they can prepare a statement if they didn't want
7 to meet with me in person. But I thought that it would be in
8 his best interest to do so, so that it was a balanced report.
9 My job is to gather facts and to present them.

10 Q Knowing now what I've just presented -- I understand
11 you -- your investigation is complete essentially except for
12 what my client is gonna support even though you said...

13 A My investigation...

14 Q ...it's an ongoing investigation.

15 A ...with the Schramms and Sophia and Shyla (ph) are
16 complete.

17 Q Would it -- does it interest you or does it now --
18 is it now part of your investigation to try and go get a copy
19 of the Wee Care Pediatrics record knowing now...

20 A Do you think that that would be pertinent to
21 something?

22 Q I'm asking, do you think it would be?

23 A Not at this point, no.

24 Q Okay.

25 A If you tell me there's a reason to, then I will go

1 and do that.

2 Q Ma'am that's not my job is to tell you what you are
3 supposed to do. I'm just asking you if -- if it made...

4 A Okay.

5 THE COURT: All right. All right. We're...

6 THE WITNESS: Okay.

7 Q BY MR. MILEY: ...if it's important.

8 THE COURT: Let's -- do you have any other questions, Mr.
9 Miley?

10 Q BY MR. MILEY: There was reference to daddy's
11 friend, where it says on, if you want to look at your report,
12 page 4.

13 A Mm-hm.

14 Q I think it's the third full paragraph because the
15 first paragraph is...

16 A Mm-hm.

17 Q ...essentially a sentence. The last talks about,
18 Sophia refers to her biological father as Jimmy, et cetera, et
19 cetera. Sophia did not identify Jimmy as her father. Is that
20 odd for a 3-year-old not to do?

21 A Sir, I work in SVU. I -- I don't see anything that
22 I would consider normal on the majority of my days.

23 Q That may be true. But does that seem to odd to you?
24 Whether you see normal on your day or not, does that seem odd
25 to you that she wouldn't identify her father?

1 A I -- no. I -- I don't know how to answer that, sir.

2 Q And also does it seem odd that a 3-year-old would

3 say that when you asked who Jimmy was, she's not gonna go

4 there anymore? Does that seem odd for a 3-year-old to -- to

5 say that?

6 A It's pretty consistent with most of my cases.

7 Q Then it says, she's not going there anymore because

8 of daddy's friend, referring to James's friend. Do you have

9 any information about who daddy's friend is?

10 A I do not.

11 Q Would it seem important to you that their daddy's

12 friend that potentially has some invest- or some involvement

13 in this case?

14 A Are you familiar with a CAC interview?

15 Q I am.

16 A Do you -- are you -- do you understand the dynamics

17 of a forensic interview?

18 Q Ma'am, I do. And we -- that's not really my

19 question. My question is...

20 A Okay. Well, we don't have -- I have the luxury of

21 observing it, not answering the questions. I don't ask 'em.

22 I don't answer them.

23 Q My -- that's not my question to you.

24 A I watch it. So I don't have -- all I can do is

25 report what she said.

1 Q What I'm asking you is, is there any investigation
2 or any -- any follow-up going on regarding a daddy's friend?
3 A No, I'm investigating a sexual abuse, not who his
4 friends are.
5 Q No, but it says that she's not going any -- anymore
6 because of daddy's friend.
7 A I'm guessing that's his attorney. I could be wrong.
8 Q When I read the report, I took it as a different
9 meaning than daddy's friend. When was this -- when was this
10 report compiled where it talks about daddy's friend being
11 possibly an attorney?
12 A When -- I don't know what you're asking.
13 Q When was the date of this report where...
14 A 8/27/2015.
15 Q So at that point, she's not gonna go there anymore
16 because of daddy's friend, means daddy had an attorney
17 already, two days -- the day that the complaint came in, daddy
18 has an attorney?
19 A She's three-and-a-half years old.
20 Q I understand that.
21 A It was a C...
22 Q This doesn't seem...
23 A It was a statement made in the CAC inter- interview.
24 I don't have the chance to clarify her statements or ask her
25 any questions. That would be a violation of the protocol.

1 Q I'm not asking you to clarify. I'm asking you if it
2 seemed strange or if there was any follow-up based on that.
3 And you said, no.

4 A With all due respect, I don't know what my opinion
5 about that matters.

6 MR. MILEY: Pass the witness, Your Honor.

7 MR. JONES: I -- I don't know that she's really a
8 witness. She -- you -- you asked her to be here to help...

9 THE COURT: Absolutely.

10 MR. JONES: ...the Court...

11 THE COURT: And I have the right to...

12 MR. JONES: ...understand things.

13 THE COURT: ...call her in as a witness under the rule
14 under motions to...

15 MR. JONES: Well, I -- I...

16 THE COURT: ...take further evidence...

17 MR. JONES: ...understand.

18 THE COURT: ...and testimony. You're not obligated to.

19 MR. JONES: No, no. I just -- I don't think she came
20 here, especially to be cross-examined. I just have a couple
21 of questions.

22 **EXAMINATION**

23 **BY MR. JONES:**

24 Q Some cases, when you investigate them, were either
25 immediately determined to be not credible and you don't refer

1 to the DA; right?

2 MR. MILEY: Your Honor, this is a leading question now.

3 THE COURT: I'll allow it.

4 Go ahead.

5 THE WITNESS: Our practices...

6 Q BY MR. JONES: I'm just asking you, some cases, you
7 find at your level to be not credible enough to even submit to
8 the...

9 A Sure.

10 Q ...district attorney; right?

11 A Absolutely.

12 Q Tell me about a CAC interview. Who -- who's doing
13 the interview? How does the process work? Because I really
14 don't know.

15 A So a CAC interview is an independent third party.
16 Their interviewers are trained in forensic interviewing, which
17 under their protocol and their model is nationally recognized,
18 is a non-leading interview done with a child in a child-
19 friendly environment where questions are -- are limited, to
20 say the least. And we sit in the other room. We get a copy
21 of the recording. And after the interview, that's -- that's
22 it. There's no follow-up. We don't re-interview the child.
23 We don't have a chance to clarify. So the protocol is -- is a
24 nationally recognized court-approved method of interviewing
25 children for sexual abuse.

1 Q And you are able to observe the interview?

2 A Yes.

3 Q And do you know what the credentials of the
4 interviewers are?

5 A I do not. I'm sure they're available.

6 Q But the interview itself, is available somewhere on
7 a DVD?

8 A Yes, sir.

9 Q So if the Court had any questions about the child's
10 disclosure, the Court...

11 A It is recorded.

12 Q ...could obviously review it; right?

13 A Yes.

14 MR. JONES: I don't have any other questions, Judge.

15 **FURTHER EXAMINATION**

16 **BY THE COURT:**

17 Q One of the lines in the declaration's last motion is
18 that you were going to possibly be conducting a polygraph of
19 the plaintiff. Was that offered?

20 A I haven't spoke with him. But it would be offered.

21 Q Okay. I guess the same...

22 A I'm sorry. Where...

23 Q ...question...

24 A I don't know where you're looking.

25 MR. JONES: The...

1 Q BY THE COURT: No, again, it's not...

2 MR. JONES: The...

3 Q BY THE COURT: ...in your report. It's...

4 A Oh.

5 Q ...in the -- the pleadings to the Court. It says
6 that the detective confirms that they will be coming for an
7 interview and asking to voluntarily submit to a polygraph.

8 A We always offer that, yes.

9 Q Okay. Now if in fact there was any indication that
10 this might be fraudulent, would you also offer a polygraph of
11 the parents?

12 A Yes, sir.

13 Q Okay.

14 MR. MILEY: Would a polygraph also be forthcoming for
15 Uncle P.J. or J.T. or whatever, which is the new father -- the
16 new husband?

17 THE COURT: Well, he -- he's the one that made the call.

18 Q BY THE COURT: Whoever reported this to you, and it
19 -- if it ended up being suspect or possibly suspect, I mean,
20 to fetter it out, you would offer them polygraphs, as well?

21 A We'll offer a poly- polygraph to anyone who will
22 take it.

23 THE COURT: Okay. Thank you for being here today. And I
24 appreciate the work you do out there. It's -- I'm sure it's
25 very difficult.

1 MS. ARNDT: Thank you.

2 THE COURT: All right.

3 MS. ARNDT: Free to go?

4 UNIDENTIFIED SPEAKER: You can leave.

5 MS. ARNDT: Okay.

6 MR. JONES: You can go.

7 THE COURT: All right. I've read the underlying

8 pleadings. I've now heard the testimony of the investigating

9 officer. I obviously know the history of the case.

10 I'll be very candid with you. She's made the

11 referral to CPS. Anybody familiar with the CPS system, CPS

12 can supersede me at any time. They can issue an order

13 tomorrow and not only take over the case, suspend the

14 plaintiff's contact, but actually file a J case. And it's a

15 fairly low -- it's a lot lower standard than I deal with.

16 It's a reasonable cause standard.

17 But given what's been submitted today, I'm gonna go

18 ahead and order that the plaintiff's visitation will continue,

19 that he can pick up the child, shy of a CPS order that he not,

20 during his regular visitation as requested by his motion.

21 MR. MILEY: Thank you.

22 THE COURT: You need a pick-up order. And you can feel

23 free to draft that, as well.

24 MR. JONES: Your Honor...

25 MR. MILEY: Would it be easier today is what he's asking

1 for?

2 I mean, I don't know when your visitation's
3 supposed to be but...

4 THE COURT: It's already -- that's what it looks like.
5 Going through his pleadings, he did not ask for change of
6 custody. He did not. He simply -- all he asked for in his
7 underlying pleadings...

8 MR. MILEY: Right, he wants to see her. What he's asking
9 for, I don't know when his visitation starts. He wants to go
10 see her.

11 THE COURT: His -- they know what the visitation is.
12 Starts Sunday at 10:00. Dad gives her -- and again, I -- I --
13 even if -- if it was his time right now, I would purposely
14 delay it probably a week. This gives them the time to contact
15 CPS. And if in fact they believe that there is a reasonable
16 cause, they will issue their orders. And they will suspend
17 his contact. Again, it could be for a week. It could be for
18 two weeks while they further investigate, et cetera, et
19 cetera.

20 But given my burden by a preponderance, given what
21 was submitted to the detective, given the history of this
22 case, I'm not suspending the plaintiff's contact.

23 MR. JONES: Even though the investigation's not complete?
24 Even though the decision...

25 THE COURT: No.

1 MR. JONES:to charge...

2 THE COURT: They can issue an order any time.

3 MR. JONES: You're putting a potential victim in the care
4 of...

5 THE COURT: CPS...

6 MR. JONES: ...a potential perpetrator.

7 THE COURT: ...out of reasonable cause can issue an order
8 any time, any time.

9 MR. MILEY: We'd point out that the -- Henderson hasn't
10 (indiscernible). I also want to get a copy from you -- I want
11 to get a copy, if I can, of the narrative.

12 THE COURT: I should've asked her for her full report. I
13 apologize for not doing that. I would believe that you guys
14 could obtain that obviously through subpoena. If you need a
15 court order, feel free.

16 MR. MILEY: The way it works, Your Honor, is you can't
17 until if -- until they release it or whatever it is. I'm
18 asking to give a copy to him today of the -- of the narrative.
19 She provided it, I guess, for the attorney.

20 MR. JONES: Give who a copy?

21 MR. MILEY: Give my client a copy of the narrative
22 against him.

23 MR. JONES: I don't think there's a reason not to.

24 MR. MILEY: I agr- I just want to make sure because I'm
25 unbundled. If the Court has any objection to me giving him a

1 copy of the narrative. She's already apparently offered it to
2 him. I just wanna confirm for everybody, I was gonna give him
3 a copy of the narrative.

4 THE COURT: Let me -- let me jump in because not -- the
5 -- the unbundled stuff gets frustrating sometimes.

6 Mr. Picone, I would suggest you seriously consider
7 retaining Mr. Miley through this process, okay, so we have the
8 this, that and other; so Mr. Jones knows who to call, not to
9 call; so he -- you have a representative that's going to
10 represent you because you're in a serious situation.

11 MR. PICONE: I understand.

12 THE COURT: Do you understand that?

13 MR. PICONE: Yes.

14 THE COURT: All right. So I understand, right now you're
15 unbundled. But I'd suggest you seriously consider retaining
16 him as your attorney of record.

17 Have a good day.

18 MR. JONES: Thank you, Judge.

19 (THE PROCEEDING ENDED AT 11:53:52.)

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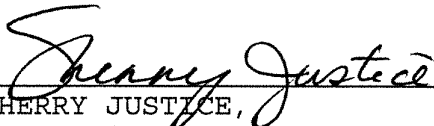
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* * * * *

22 ATTEST: I do hereby certify that I have truly and
23 correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.

24

25


SHERRY JUSTICE,
Transcriber II