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JUDICIAL MERIT SELECTION COMMISSION

PUBLIC FACT FINDING HEARING

Thursday, February 19, 2009

1:05 p.m.

COPY

The Gressette Building, Room 105

Columbia, South Carolina

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) 2008-GS-40-3151

THE STATE OF SOUTH CAROLINA,)
)
) PLAINTIFF,)
)
) VS.) TRANSCRIPT OF RECORD
)
) TALISHA LAVETTE SMITH,)
)
) DEFENDANT.)
)
)
)
)
)

DECEMBER 8, 2008
COLUMBIA, SOUTH CAROLINA

B E F O R E:

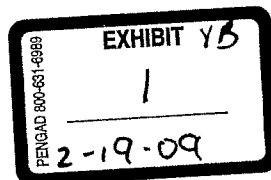
THE HONORABLE KENNETH G. GOODE, JUDGE

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

MARGARET FENT, ESQUIRE, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JERRY LEO FINNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

ELIZABETH B. HARRIS, CVR
CIRCUIT COURT REPORTER



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1 (PRIOR TO GUILTY PLEA, THE DEFENDANT IS SWORN.)

2 THE COURT: Yes, ma'am.

3 MS. FENT: Thank you, Your Honor. Standing before you
4 is the defendant, Talisha Smith. She is represented by
5 Jerry Finney of the private bar. Ms. Smith is charged with
6 great ---

7 THE COURT: Is this the same ---

8 MS. FENT: --- bodily injury ---

9 THE COURT: Is this the same Jerry Finney that won the
10 murder case last week?

11 MS. FENT: It is the one and the same.

12 THE COURT: All right. Excuse me.

13 MS. FENT: The defendant is charged with infliction of
14 great bodily injury upon a child and is pleading straight
15 up. She was also charged with a, an enhancement of the
16 commission of an offense within a hundred yards of a
17 daycare, and we'll be non-crossing that count. So, she is
18 just pleading straight up to the infliction of great bodily
19 injury to a child.

20 THE COURT: Okay, and the great bodily injury to a
21 child carries?

22 MS. FENT: Up to twenty years. It is also a violent
23 offense and requires registry with the DSS Child Abuse and
24 Neglect Registry.

25 THE COURT: And have you discussed these things with

1 Ms. Smith, Mr. Finney?

2 MR. FINNEY: Yes, sir.

3 THE COURT: Mr. Finney, you represent Talisha Lavette
4 Smith?

5 MR. FINNEY: Yes, sir.

6 THE COURT: And have you explained to Ms. Smith the
7 charge contained in her indictment, the possible
8 punishment, and her constitutional rights, including the
9 right to a jury trial?

10 MR. FINNEY: Yes, sir.

11 THE COURT: Let the record reflect that this is a true
12 billed indictment.

13 Mr. Finney, in your opinion does the defendant
14 understand the charge, the punishment, and her rights?

15 MR. FINNEY: Yes, sir, Your Honor.

16 THE COURT: And how does she indicate that she wishes
17 to plead, guilty or not guilty?

18 MR. FINNEY: Guilty, Your Honor.

19 THE COURT: And do you agree with this decision?

20 MR. FINNEY: Yes, sir.

21 THE COURT: Has the defendant been ordered to submit
22 to a mental examination to determine her competency to
23 stand trial?

24 MR. FINNEY: No, sir, Your Honor.

25 THE COURT: Do you feel one is necessary?

1 MR. FINNEY: No, sir, Your Honor.

2 EXAMINATION BY THE COURT:

3 Q. And you are Talisha Lavette Smith?

4 A. Yes.

5 Q. Ms. Smith, before I can accept your plea of guilty, I
6 must first determine that your plea of guilty is made
7 freely and voluntarily.

8 A. Yes, sir.

9 Q. So, at any time during this questioning, if there is
10 anything that you do not understand that I say or that Mr.
11 Finney says or anyone else for that matter, please stop me
12 and I'll be happy to explain it to you.

13 A. Yes, sir.

14 Q. Do you understand?

15 A. Yes, sir.

16 Q. How old are you, please, ma'am?

17 A. Twenty-six.

18 Q. And how far did you go in school?

19 A. Associate's degree.

20 Q. And what type work do you do, please?

21 A. Currently I'm not working; I stay home with my two
22 children.

23 Q. Have you ever been treated for the abuse of alcohol or
24 drugs or mental illness?

25 A. No. No, sir.

1 Q. Have you taken any medication, drugs, or alcohol in
2 the last twenty-four hours?

3 A. No, sir.

4 Q. Are you today aware of any physical, emotional, or
5 nervous problem that might keep you from understanding what
6 you're doing?

7 A. No, sir. I only have anxiety disorder, but that's it.

8 Q. Is -- and, and you said anxiety disorder?

9 A. Yes, sir. Yes, sir.

10 Q. Is this controlled by medication?

11 A. No. She hasn't put me on any. I go to weekly
12 counseling.

13 Q. You go to counseling weekly and, and who do you go to?

14 A. I go to Palmetto Associates. I see Judy Long.

15 Q. And that's here in Columbia, isn't it, on Gadsen
16 Street?

17 A. Yes, sir.

18 THE COURT: And, Mr. Finney, do you agree that the
19 defendant knows and understands what she's doing?

20 MR. FINNEY: Yes, sir.

21 BY THE COURT:

22 Q. Ms. Smith, you've heard your attorney tell me that he
23 has explained to you the charge against you, possible
24 punishment, and your constitutional rights, and that you
25 understand these things. Is that correct?

1 A. Yes, sir.

2 Q. Now, you're pleading guilty to the offense ---

3 A. Yes, sir.

4 Q. --- of great bodily injury upon a child. The maximum
5 possible sentence is twenty years. Do you understand the
6 charge and the possible punishment?

7 A. Yes, sir.

8 THE COURT: Have there been any, other than a
9 reduction in charges, have there been any other
10 negotiations in this matter?

11 MS. FENT: There's no reduction in charge. It's just
12 the dismissal of the other, of the separate charge that was
13 the proximity charge. No other negotiations.

14 THE COURT: Thank you. Is that your understanding,
15 Mr. Finney?

16 MR. FINNEY: Yes, sir, Your Honor.

17 BY THE COURT:

18 Q. And, Ms. Smith, do you understand the nature of the
19 charge against you and the range of possible punishments?

20 A. Yes, sir.

21 Q. Ms. Smith, when you plead guilty you give up certain
22 important constitutional rights. First, you give up your
23 right to remain silent. That is your right against self-
24 incrimination, your right to say nothing at all. You
25 cannot be compelled to testify or to provide evidence

1 against yourself.

2 Second, you give up your right to have a jury trial.
3 That is your right to have a jury decide whether or not you
4 are guilty beyond a reasonable doubt. They would base
5 their decision upon evidence which the state presents and
6 on any evidence you might wish to introduce. In a trial,
7 you would be presumed to be innocent, and the state would
8 have to produce evidence that would convince all twelve
9 members of the jury that you were guilty beyond a
10 reasonable doubt.

11 Ms. Smith, your case has not been before the grand
12 jury for their consideration. After hearing evidence,
13 twelve of the eighteen people on the grand jury would have
14 to agree that you were probably guilty before the charge
15 against you could be reported out as a true bill ready for
16 trial. A grand jury might return a no bill, which would
17 mean that the charge would be dismissed. Do you understand
18 what I just explained?

19 A. Yes, sir.

20 Q. Do you wish to go forward?

21 A. Yes, sir.

22 Q. Do you understand these rights?

23 A. Yes, sir.

24 Q. Do you understand that when you plead guilty, you give
25 up these important constitutional rights?

1 A. Yes, sir.

2 Q. Do you understand that when you plead guilty -- excuse
3 me. Is that what you want to do?

4 A. Yes, sir.

5 Q. Do you understand that you won't get a jury trial if
6 you plead guilty?

7 A. Yes, sir.

8 Q. Understanding then the nature of the charge against
9 you and the consequences of a guilty plea, how do you wish
10 to plead to this charge, guilty or not guilty?

11 A. Guilty.

12 Q. Do you understand that when you plead guilty, you
13 admit the truth of the charge that is made against you?

14 A. Yes, sir.

15 Q. You may have given an incriminating statement in this
16 case. If you plead guilty, do you understand that you
17 waive or give up the right to contest or challenge --
18 excuse me just a second.

19 (A PAUSE.)

20 Q. You may have given an incriminating statement in this
21 case. If you plead guilty, do you understand that you will
22 waive or give up the right to contest or challenge whether
23 such a statement was freely and voluntarily given in
24 accordance with your constitutional rights?

25 A. I don't understand.

1 Q. Ma'am?

2 A. I said I don't understand.

3 Q. Okay.

4 (COUNSEL CONFERS WITH DEFENDANT BRIEFLY.)

5 Q. You may have given a -- an, an -- excuse me, you may
6 have given an incriminating statement in this case. If you
7 plead guilty, do you understand that you waive or give up
8 the right to contest or challenge whether such a statement
9 was freely and voluntarily given in accordance with your
10 constitutional rights?

11 A. Yes, sir.

12 Q. Has anyone promised you anything or held out any hope
13 of reward to get you to plead guilty?

14 A. No, sir.

15 Q. Has anyone threatened you or used force to get you to
16 plead guilty?

17 A. No, sir.

18 Q. Have you had enough time to make up your mind as to
19 whether or not you want to plead guilty?

20 A. Yes, sir.

21 Q. Are you pleading guilty of your own free will and
22 accord?

23 A. Yes, sir.

24 Q. Are you satisfied with the manner in which your
25 attorney has advised and represented you?

1 A. Yes, sir.

2 Q. Have you talked with your attorney as often and for as
3 long as you feel necessary for him to properly represent
4 you?

5 A. Yes, sir.

6 Q. Do you need more time to talk with Mr. Finney?

7 A. No, sir.

8 Q. Has your lawyer done everything for you that you feel
9 that he could have done or should have done?

10 A. Yes, sir.

11 Q. Are you completely satisfied your lawyer's services?

12 A. Yes, sir.

13 Q. Do you have any complaint that you want to make
14 against your lawyer, the solicitor, or a police officer?

15 A. No, sir.

16 Q. Ms. Smith, have you understood my questions?

17 A. Yes, sir.

18 Q. Is there anything that you would like to ask me about
19 what we've just been over?

20 A. No, sir.

21 Q. So, you understand that you have a right to appeal
22 your plea and the sentence of the court and that you or
23 your attorney must do this within ten days?

24 A. Yes, sir.

25 THE COURT: Be happy to hear a factual basis, Madame

1 Solicitor.

2 MS. FENT: Thank you, Your Honor. This occurred back
3 on March 19th of this year. The victim in this case was
4 approximately six and a half months at the time; the
5 defendant was twenty-five years old at the time. The
6 defendant was running a daycare out of her home, Helping
7 Hand Daycare. This was at 194 Fox Grove Circle here in
8 Richland County. It was, as I said, at the defendant's
9 home.

10 She at that -- on this particular day had four kids in
11 her home. She had, I believe, her own child. She had the
12 victim, who was six and a half month's old. She had the
13 victim's brother, and she had another young child in the
14 home.

15 The children were dropped off early morning that
16 morning. The victim's parents came back around 5:00 in the
17 evening to pick up their children. They were met basically
18 at the door with the defendant holding Kendra, the six and
19 a half month old child, and saying that there had been an
20 accident. And the child was kind of crying and a little
21 lethargic.

22 The parents took Kendra and immediately noticed that
23 there was a bruise to the left side of the child's face.
24 The defendant didn't indicate, you know, other than that
25 the child had hit its head on a chair in the home. Had

1 been sitting in a circle with the other children at circle
2 time and had hit its head on a chair.

3 The parents took the child, the six and a half month
4 old, with them. By the time they got home, they took a
5 better look at the bruise on the face, and it started out
6 looking like a hand print already at that point. So, they
7 immediately took their daughter to the hospital, took the
8 daughter to Providence where they did a CAT scan on the
9 infant, and it showed a subdural hematoma: that the child
10 had bleeding on the brain.

11 The child was then transferred to Richland Memorial to
12 the Children's Hospital and put into pediatric ICU where
13 the child stayed in the hospital for approximately five
14 days. The doctors do say that the bruise was a noticeable
15 hand print.

16 The defendant maintained still that it was this
17 accident throughout the beginning of the investigation.
18 She -- the victim's father had called the defendant in
19 basically a controlled phone call, a taped phone call to
20 try to find out what happened. Our child is in ICU. She
21 has bleeding on the brain. You know, please just tell us
22 what happened and she said, you know, it was an accident.
23 Hit her head on the side of a chair.

24 Subsequently the investigator, Richard Carter with
25 Richland County Sheriff's Department who's standing here

1 with me, brought in the defendant and she gave two
2 statements. The initial statement stuck with this, the
3 child hit its head on the side of a chair. And then when
4 confronted that the doctors would say this was consistent
5 with a blow or an assault by a hand to the face, she then
6 admitted that she struck Kendra with her hand, that she
7 slapped the six and a half year old on the left side of her
8 face.

9 The doctors basically indicated that it took
10 significant force, enough to cause bleeding. The blow was
11 to the left side of the head. Would thus cause the brain
12 to go over and hit the right side of the head, that the
13 bleeding -- bleeding was on the right side of the head, and
14 that the bruise was consistent with a -- the shape of a
15 hand. The doctors indicated that just two more pounds of
16 pressure and Kendra would not have survived the, the
17 forceful blow. DSS did an investigation, and they did also
18 indicate for physical abuse against the defendant.

19 The results of this injury are ongoing. The child is
20 now approximately fifteen months old. She has significant
21 developmental, severe developmental delays, what the
22 doctors say, and a severe communication deficit. She still
23 is not able to talk; she's not forming any words. They're
24 -- the parents have her currently involved in a state-run
25 program to work on these developmental delays and hopefully

1 to eventually get her up to the milestones that she's
2 supposed to be meeting, that she was appropriately meeting
3 prior to this injury. And is still too young to assess any
4 behavioral effects this may have on young Kendra.

5 Defendant has no prior convictions.

6 Kendra's parents are here in the courtroom, Sergeant
7 Patrick Gaddie and Michelle Gaddie, and at the appropriate
8 time they would like to address the court. That's the
9 extent of the facts, Your Honor.

10 THE COURT: Thank you. Before I hear from the family,
11 Ms. Smith, you've heard the solicitor state the facts that
12 led to your arrest and indictment on this charge. Do you
13 believe that the facts stated by the solicitor are
14 materially accurate and correct?

15 DEFENDANT: Yes, sir. Yes, sir.

16 THE COURT: Thank you. I find there is a substantial
17 factual basis for the plea. I find the defendant's
18 decision to plead guilty is freely, voluntarily, knowingly,
19 and intelligently made. That she's had the advice and
20 counsel of a very competent attorney with whom she
21 indicates she is totally satisfied. Plea of guilty is
22 accepted.

23 Be happy to hear from the family or police officers.

24 MS. GADDIE: My name is Michelle Gaddie.

25 THE COURT: Do we have a mic that's closer? I can

1 hear her, but it's helpful to me to be able to make eye
2 contact, but if that's not handy, then...

3 MS. FENT: Could she have permission to step up to the
4 -- near the witness stand?

5 THE COURT: That's be fine. Just so I can make eye
6 contact. Thank you. I, I'm sorry to inconvenience you.

7 MS. GADDIE: That's okay. My name is Michelle Gaddie
8 and Kendra Gaddie is my daughter.

9 THE COURT: The -- I keep interrupting you. If you
10 need to take a break, if you need tissue, if you need
11 water, if you need to sit in that chair?

12 MS. GADDIE: No. I'll be okay.

13 After the birth of my firstborn daughter fourteen
14 years previous, my husband and I decided to have a child
15 together. Patrick Eugene Gaddie, Jr., was born October 27,
16 2004. His birth was a period of profound happiness and joy
17 for our entire family.

18 This joy was short-lived. At two and a half months of
19 age, our son was found unresponsive by my husband in his
20 crib. The MPs immediately took my son to the hospital,
21 where he was pronounced dead. Initially the cause of this
22 passing was ruled as SIDS, but later investigation it was
23 discovered to be caused by a viral pneumonia.

24 His death and subsequent funeral has left a hole in my
25 heart that can never be closed or healed. The depths of

1 emotions I feel on a daily basis from his loss can only be
2 imagined by those who have never had a similar loss in
3 their family. My words will never be able to convey the
4 depth, hisI loss, in this court. I miss him every day.

5 Struggling in the aftermath of that tragedy, my
6 husband and I decided to have another child. Bruce Patrick
7 Gaddie was born January 4, 2006, in Columbia, South
8 Carolina. He is our life saver. His original due date
9 was, of all days January 19, 2006, the one-year anniversary
10 of my son's death.

11 The death of my son and subsequent birth of Bruce
12 caused both of us as parents to appreciate all the more the
13 gift that was given to us once again. Our children mean
14 everything to us, and they're our sole reason for living.
15 I promised myself that as a mother, I would make every
16 effort every day of my life to love and protect my children
17 from harm and to shower them with all of the love in my
18 heart. Our children are our most precious gifts.

19 In March 2007 when Bruce was a little over a year old,
20 we undertook a search to find a daycare provider. We took
21 this search extremely seriously because of the death of our
22 son. We wanted to find a small, in-home setting where the
23 risk of illness would be at a minimum and where he would be
24 able to receive more one-on-one care and love. When we
25 were looking for a home to enroll him in, we held numerous

1 interviews with a number of providers in the area in an
2 attempt to find the very best care available.

3 One of the candidates interviewed was Talisha Smith.
4 She was both DSS certified and registered with the State of
5 South Carolina. In addition to caring for her own child,
6 she also looked after one other child full-time at the time
7 we interviewed her. We found her home to be well
8 organized, clean, and she had a curriculum for the children
9 she provided care for posted clearly.

10 We were very excited to enroll him. We told Talisha
11 about the loss of our son and our need to place him in a
12 setting where he would be safe and loved in our absence.
13 We looked at Talisha and her family as a part of our
14 extended family. I would often drop by just to chat, see
15 the kids, as well as attend her son's birthday party, and
16 other family events.

17 At the time we enrolled Bruce in her care, I was four
18 months pregnant with my daughter Kendra. On August 27,
19 2007, we were blessed with Kendra, Kendra Evangeline
20 Gaddie. She was also born here in Columbia, South
21 Carolina. At the age of six weeks, we enrolled her in
22 Helping Hands Daycare, owned by Talisha Smith, where she
23 joined her brother.

24 Shortly after Kendra started, Talisha informed us that
25 she was expecting a baby girl. I was excited for her and

1 immediately started setting aside baby items for her. I
2 would often ask her how her pregnancy was developing, and I
3 offered to remove Bruce and Kendra from her daycare for the
4 summer months in an attempt to make things easier on her in
5 the latter part of her pregnancy and subsequent birth of
6 her child. She informed me that it would not be necessary
7 because her husband would be taking time off to assist her
8 during that time.

9 March 19, 2008, at 5:00 we arrived at the home of
10 Talisha Smith to pick up the babies. Talisha opened the
11 door holding my daughter in her arms facing me. She told
12 me there'd been an accident, and our daughter was injured
13 with a large, raised mark on her face. The explanation we
14 received was a minor morning injury from a fall onto a
15 rocker which Talisha had treated with ice. She further
16 explained that she did not attempt to contact us, fearing
17 the reaction we would have to the incident.

18 All I wanted to do at that moment was to get my child
19 home. My daughter Jessica, then almost seventeen, started
20 crying. During the car ride home, I listened to our
21 daughter make a sound. It was like a cry you would hear
22 from a wounded animal. Immediately I felt panic, as this
23 was not a sound I had heard her utter before. That sound
24 haunts me to this day.

25 We dropped my oldest daughter off at our home and

1 continued to the hospital, where we learned that Kendra's
2 brain was hemorrhaging. I remember holding my injured six
3 month old baby in my arms and crying profusely as the
4 doctor told me her injury was too severe to be treated at
5 the hospital we are currently at. Kendra was to be
6 transferred by ambulance to the pediatric ICU at the
7 Children's Hospital downtown.

8 Kendra continued to make the sickening cries I first
9 heard in the car. While I stood over her crib in the ICU,
10 I worried that I was going to have to bury another child.
11 Patrick Jr.'s death and funeral played like a record in my
12 head the entire time. I felt helpless standing there, and
13 I prayed for a miracle to save her life. I believe that
14 God himself answered my prayers that night in sparing my
15 baby's life because he knew that the pain of having to
16 possibly bury another child would have been a pain too
17 great for our family to bear a second time.

18 Kendra suffered constant pain in the five days that
19 followed. As a mother, it was agonizing to not be able to
20 comfort my baby girl in an effort to take the pain away.
21 My daughter would look at me and my husband with pleading
22 eyes and whimpers. It was heartbreaking to watch her
23 suffer so much. She could not hold down formula, and she
24 vomited frequently, requiring the formula to be diluted and
25 given in sparing amounts over time. She had countless IVs

1 started because her tiny veins were still too fragile and
2 new to old -- hold a line open for any extended period of
3 time. Countless needle sticks and tests were run. A
4 plasma transfusion was necessary to stop the bleeding in
5 her brain. I am very thankful for the medical care my
6 daughter, my daughter received in those five days.

7 Kendra was exhausted when we returned home. She slept
8 for twelve hours straight for the first time in five days.
9 When she awoke, she was screaming at the top of her lungs
10 in her crib. To this day we cannot place her in her crib
11 without her screaming. She could not hold down full
12 strength formula for one full week after discharge, and it
13 was another two weeks before she could hold down solid food
14 without vomiting.

15 I saw an immediate change in her personality. It's
16 like I have a different child. Kendra used to be
17 constantly smiling and babbling. In the months that have
18 followed, she no longer smiles and no longer babbles.
19 Instead, she has episodes of screaming where she is
20 inconsolable, and to this day wakes up in the middle of the
21 night screaming at the top of her lungs. She does not like
22 new faces, and it takes her a long time to develop trust in
23 people.

24 Kendra also does not speak any words at almost sixteen
25 months now of age. Kendra requires therapists and

1 specialists to work with her, and we have yet to hear the
2 words mommy or daddy. She is being taught sign language to
3 help her communicate, and she can sign the words more and
4 food. Each times she uses one of these signs, it tears my
5 heart out. And I can see the look of frustration on her
6 face when she attempts to speak, but all she can muster is
7 a scream.

8 To you, Talisha, I say simply this. How dare you
9 strike my infant baby girl with enough force to positively
10 end her life and take that which is most precious to me.
11 How dare you allow my baby to suffer in your care for eight
12 hours after your heinous act without getting her immediate
13 medical attention she so desperately needed. May God
14 forgive you as I am unsure I will ever be able to afford
15 you that same courtesy.

16 Kendra and our family now have amounts to a lifetime
17 of difficulties and struggles ahead. Any crime committed
18 against a child is heinous, in my opinion. But when a
19 person in a position of trust commits that crime, the
20 severity of the crime is magnified. We do not teach our
21 children to be afraid of those we entrust with their care
22 and safety.

23 I request that these circumstances be taken into
24 consideration when the sentence for the crime that has been
25 committed against my daughter be handed out. I humbly ask

1 the court to allow a clear message to be sent: that crimes
2 against our children in this society will no longer be
3 condoned or tolerated. I ask that the maximum sentence
4 allowed by current law be instituted.

5 MS. FENT: Your Honor, I also have -- I've showed them
6 to defense counsel. It is five photographs taken the
7 following day that show the injuries.

8 THE COURT: Thank you.

9 MS. FENT: To Kendra's face. That's all at this time,
10 Your Honor.

11 (A PAUSE.)

12 THE COURT: Nothing additionally from the state?

13 MS. FENT: Not at this time, Your Honor.

14 THE COURT: Mr. Finney.

15 MR. FINNEY: May it please the Court? Your Honor,
16 Your Honor, Ms. Smith stands before this court with no
17 criminal record, married, mother, daughter. Your Honor,
18 this episode out of her life certainly could be looked upon
19 as completely contrary to how she has lived her life.

20 But, Your Honor, she stands before you because of this
21 episode and because of that, as her lawyer I would first
22 like to tell the victims, the families, the other children
23 that they have, all of their families and friends that are
24 connected with the victims how much I and my heart breaks
25 for them because of this situation.

1 Your Honor, Ms. Gaddie recited to the court how unless
2 you go through the loss and death of a child, you cannot
3 understand, and I would agree with her wholehearted. Your
4 Honor, my wife and I have buried our firstborn child; we
5 attended her funeral. Her name was Lenora, and I saw the
6 devastation that the loss of our child caused on my wife
7 and our marriage and our family. I do understand that
8 personally and because of that, again I would like to
9 extend to them how much my heart breaks to them because of
10 this terrible situation.

11 Your Honor, my client doesn't stand before you
12 pleading under *North Carolina vs. Alford*. She doesn't
13 stand before you pleading no contest. She pleads guilty.
14 Your Honor, before she hired a lawyer, she admitted to what
15 she had done. Your Honor, this is a sad situation for
16 everyone, and there will be no excuse that I will give for
17 her conduct. She has pled guilty to it, and we simply ask
18 your mercy in sentencing.

19 Your Honor, I will submit to the court, and I would
20 ask that the clerk of court help me with this, is a letter
21 from Palmetto Counseling dated December the 8th that shows
22 that my client at the time that this occurred was suffering
23 from a diagnosable condition. Your Honor ---

24 How pregnant were you? How far along were you?

25 DEFENDANT: About five or six, five.

1 MR. FINNEY: Five or six months pregnant at the time.
2 She has since had that child. DSS has vigorously
3 investigated her. I believe that case may even remain
4 open. Your Honor, in asking you for mercy ---

5 And also, Your Honor, it has come to my attention that
6 I think that there may at least be a civil claim. I think
7 I have been notified by Nationwide Insurance, I believe it
8 is, yes, sir, of a civil claim.

9 THE COURT: This would be a subrogation claim?

10 MR. FINNEY: Yes, sir, Your Honor.

11 Your Honor, in standing here and asking you for mercy,
12 I know very well that because of this situation, that no
13 one stands to gain in this situation. Certainly to
14 incarcerate Ms. Smith, Your Honor, would certainly punish
15 her. It will also punish her children, her husband. The
16 victims certainly, certainly have been punished. Not just
17 the child but the mother, the father, and their family.
18 There's really nothing to be gained, Your Honor.

19 I would respectfully submit to the court that Ms.
20 Smith is a candidate, an excellent candidate for probation.
21 And the fact that you may hang a jail sentence over her and
22 should she depart from any condition, special condition of
23 probation that Your Honor sees fit to give her, she would
24 understand that immediately she would go to jail.

25 Your Honor, she is in counseling voluntary, and if

1 Your Honor saw fit, we would respectfully ask that Your
2 Honor set any special condition attached with probation
3 that Your Honor may deem appropriate.

4 Again, Your Honor, I would conclude my remarks with
5 saying how my heart breaks for the family during this
6 terrible situation. I also pray that their daughter
7 recovers.

8 MS. FENT: Your Honor, if I may just respond to a
9 couple things? With regard to this anxiety that she
10 supposedly was, was suffering from at the time of this
11 assault, not only did, you know, she use excessive force
12 against this child. But by her own words, it happened at
13 approximately 10:00 that morning and she never, ever, ever
14 called the parents or did anything about the fact that she,
15 you know, acted on this and she used excessive force
16 against this child. She never tells the parents when they
17 come there at 5:00 to pick up this child.

18 And thank goodness that the parents acted on their gut
19 instincts that they needed to get Kendra to the hospital
20 and get her looked at because who knows what would have
21 happened if they had put her down at night to go, to go to
22 sleep.

23 But then knowing that she was pregnant, the parents
24 offered, we will take Kendra and our other child out of
25 this home if this is too much for you. If all these

1 children are too much for you to handle during this
2 pregnancy, that's not a problem. We'll find other care,
3 and she said no, no, no. I'm fine; I can handle this. So,
4 she still is taking care of these children knowing, you
5 know, that she is supposedly suffering from this anxiety.

6 Then after she uses this excessive force against this
7 child -- she now knows there is a bruise on her face and
8 that she's in the hospital, bleeding on the brain -- she
9 continues over the next few days to care for children in
10 her home. It was not until DSS acted on it and she had to
11 tell the children they couldn't come back to her home. So,
12 she continued over the next few days to care for children
13 in her home knowing that, that she was not emotionally, at
14 least from her account, able to adequately care for those
15 children. And that a crying -- and she said in her
16 statement, the investigator said why did you hit Kendra.
17 She said pathetically: Excessive crying, I guess.

18 MR. FINNEY: May it please the court, Your Honor?

19 THE COURT: Yes.

20 MR. FINNEY: Just very briefly, Your Honor. We, with
21 respect to Ms. Smith continuing to take care of children,
22 she was shut down the same day.

23 THE COURT: Mr. Finney, with all due respect, she
24 should have been shut down.

25 MR. FINNEY: Yes, sir.

1 THE COURT: We have a, a morose sharing of issues
2 here: you lost a newborn child, I lost a newborn child, and
3 of course the victim of this tragic, tragic situation. The
4 government of the United States through the Constitution
5 has put on my shoulders to do what is legal and what is
6 right, and that's, that's an easy thing to do sometimes.
7 Sometimes it's anything but easy. Part of my job is to --
8 excuse me. Sometimes your mind take you places that you
9 don't like to go, and I know you know this as well or
10 better than me. But there are some wrongs that simply
11 can't be righted.

12 See the staff sergeant, and been a long time since I
13 was in the military, but I think that's a combat -- it's
14 not a ribbon, but what's that called, boss man?

15 MR. GADDIE: That's an infantry blue cord, Your Honor.

16 THE COURT: I have, and any of the people who are in
17 this court on a regular basis can tell you that I have just
18 the deepest respect and appreciation for people like you
19 who give of themselves to try to fix a problem thousands of
20 miles away so that we can sustain our quality of life.
21 Sometimes it can't be done. We found that out in Iraq,
22 Afghanistan, and we've got this beautiful, beautiful little
23 girl harmed for no reason at all.

24 But my job is to fix it. My job is to find some way
25 for the individuals involved in this to walk away and

1 everyone feel as if justice has been done. I don't think
2 there's anything in the wide world that I could do that
3 would make you feel that this situation had been fixed. I
4 don't think there's anything that the investigator,
5 anything that I could do that the investigator would feel
6 things had been fixed. That I had done my job properly.
7 There are simply no winners, no winners.

8 You've, you've already had a terrible loss. I'm
9 speaking to the victim's family. How will it help for this
10 lady to receive punishment? What, with the legislatively-
11 given power to me, what will that do to fix your situation
12 or your situation or others such as me who've been in
13 similar situations? It is simply a situation that, that
14 can't be fixed. Any action that I take, any action I take
15 would not fix this.

16 This lady's twenty-six years old. Never had a parking
17 ticket, and she does something stupid. It -- is there
18 something we can do to keep her from doing something ill
19 advised again? Nothing that I know of. I've been to
20 school a lot longer. I've been in situations such as this
21 ten years. Fifteen years of practicing law on top of that.
22 There's just nothing that can be done. I just don't think
23 it will help to send her to jail, but I do think it will
24 help if she gets counseling. And mental health counseling,
25 the quality is better outside than inside.

1 How long were you in jail, Ms. Smith?

2 DEFENDANT: I got out that night. Well, that -- early
3 the next morning, so Saturday, early Saturday morning.
4 That was the first time.

5 THE COURT: So, you, you, you did weekend time? Is
6 that what you're saying, Mr. Finney?

7 DEFENDANT: Yeah, the first time, yes, when I went.

8 MR. FINNEY: She was arrested twice, Your Honor. The
9 charge that was dismissed, she was arrested on that charge
10 as well.

11 MS. FENT: I think she's saying she basically served
12 about a day before she bonded out.

13 THE COURT: Ma'am?

14 MS. FENT: She served about a day before she bonded
15 out.

16 SENTENCE OF THE COURT:

17 THE COURT: I'm going to sentence Ms. Smith to ten
18 years. I'm going to suspend this to five years' probation
19 and any mental health counseling that the Department of
20 Corrections deems appropriate.

21 To the victims, I wish you all the, all the goodness
22 that, that you can feel in your heart, and I hope that your
23 pain eases soon.

24 And, Ms. Smith, you go to this counseling, and you
25 work to get straightened out.

1 DEFENDANT: Yes, sir.

2 THE COURT: Thank you.

3 MR. FINNEY: Thank you, Your Honor.

4 MS. FENT: There is also a finding, Your Honor, that
5 she be put on the Child Abuse and Neglect Registry, the DSS
6 registry?

7 THE COURT: Yes.

8 (Letter from Palmetto Counseling Associates marked
9 into evidence as Court's Exhibit Number 1.)

10 (Five photographs of victim marked into evidence as
11 Court's Exhibit Number 2.)

12 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 8TH DAY OF DECEMBER, 2008.

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

ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

DECEMBER 11TH, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland

STATE

INDICTMENT/CASE#: 2008 -GS- 40 - 2007 ³¹⁵¹

VS.

Talisha Lorette Smith

A/W#: I-937006

AKA:

Date of Offense: March 19, 2008

Race:

Sex: F

Age:

S.C. Code §: 16-3-95(A)

DOB: 7-11-82

SS#: 298-53-1299

CDR Code #: 2766

Address:

City, State, Zip:

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Infliction of Great Bodily Injury upon a Child

in violation of § 16-3-95(A) of the S.C. Code of Laws, bearing CDR Code # 2766

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST:

Anna R. Good
Solicitor

Talisha Smith
Defendant

[Signature]
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

Obtain GED

set by SCOPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling

*Fine:

§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35-13 (Public Def/Prop)	\$500	\$
§73-3, 1B TP (Law Enforce. Funding)	\$25	\$
§33-7, 1B TP (Drug Court Surcharge)	\$100	\$
§60-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40.00	\$
3% to County (if paid in installments)	\$	\$
§90-11 TP (SCOCA Surcharge)	\$5	\$
TOTAL	\$	_____

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

prmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other * mental health counseling as deemed appropriate & placed on child abuse DSS registry

Appointed PD or appointed other counsel, §35-13 TP

Requires \$500 be paid to Clerk during probation

[Signature]
Clerk of Court, Deputy Clerk

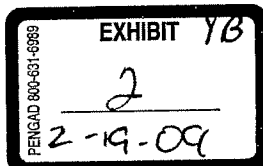
PRESIDING JUDGE

[Signature]
01-20
12-8-08

Court Reporter [Signature]

Judge Code _____
Sentence Date: _____

SCOA 017-07 0083



JUDICIAL MERIT SELECTION COMMISSION)
)

In the Matter of: Kenneth G. Goode)
Candidate for Judge -At Large Seat 8)

)
) WITNESS AFFIDAVIT
) FORM
)

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

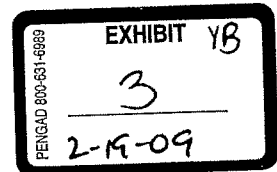
I understand that this written statement must be completed and returned to the Judicial Merit Selection Commission at least two weeks prior to the date and time set for the hearing at which I wish to testify in order for the commission to hear my testimony and that the deadline for complaints is

In regard to my intended testimony, I will offer information as to the following:

(1) Patrick E. Gaddie, age 39,

(2) The following people were also present during the sentencing on Dec 8th 2008 in the case The State vs Talisha Smith. These people can also attest to the testimony I will give.

Michelle Gaddie (Wife)
Drew Stewart (WISTV)
Jerrita Patterson (WACH57)
Jan Knobles (Victims Advocate from the Solicitors Office)
Courtroom personnel
Talisha Smith
Defense Attourney



(3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:

(a) I wish to testify about the demeanor and comments Judge Kenneth Goode made during the sentencing of Talisha Smith. Some of these statements were offensive to my wife as a spouse of a US Army soldier, as well as to me as a soldier serving his country proudly. We feel his comments showed a bias and may have been a factor in his sentence.

b) These events took place in the 5th Circuit Court Dec 8th 2008. At the Richland County Courthouse.

(c) The following people were present at the above proceeding to the best of my knowledge

Michelle Gaddie (Wife)

Drew Stewart (WISTV)

Jerrita Patterson (WACH57)

Jan Knobles (Victims Advocate from the Solicitors Office)

Courtroom personnel

Talisha Smith

Defense Attourney

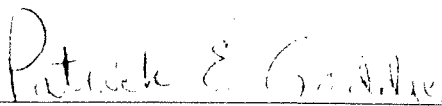
- (d) My testimony will attest to Kenneth G Goodes current judicial conduct or lack thereof. My testimony will also attest to the inappropriate sentence imposed on Talisha Smith by Judge Kenneth Goode. Talisha Smith was charged with a 20 year felony Child abuse Charge "Great Bodily Injury to a Child" She plead guilty to the charge. Judge Kenneth Goode imposed a 10 year suspended sentence to 5 years Probation. Judge Kenneth Goode stated that if he placed the guilty in jail it would only end up hurting " Her children" My child suffered a brain injury and still suffers the effects of this terrible crime to this day.

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

WAIVER

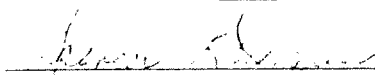
I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission,

I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.



Signature

Sworn to me this 11 day of Feb, 2009



Notary Public of South Carolina L.S.

My commission expires: 11/11/10

JUDICIAL MERIT SELECTION COMMISSION)
)

In the Matter of: Kenneth G. Goode)
Candidate for Judge -At Large Seat 8)

) WITNESS AFFIDAVIT
) FORM
)

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

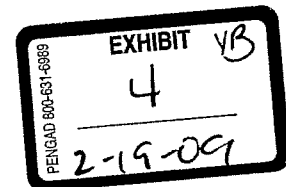
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(1) Michelle A Gaddie, age 39,

(2) The following people were also present during the sentencing on Dec 8th 2008 in the case The State vs Talisha Smith. These people can also attest to the testimony I will give.

Patrick Gaddie (Husband)
Drew Stewart (WISTV)
Jerrita Patterson (WACH57)
Jan Knobles (Victims Advocate from the Solicitors Office)
Courtroom personnel
Talisha Smith
Defense Attourney



(3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:

(a) I wish to testify about the demeanor and comments Judge Kenneth Goode made during the sentencing of Talisha Smith. Some of these statements were offensive to my Husband as a member of the US Army as well as to me as his wife. We feel his comments showed a bias and may have been a factor in his sentence.

b) These events took place in the 5th Circuit Court Dec 8th 2008. At the Richland County Courthouse.

(c) The following people were present at the above proceeding to the best of my knowledge

Patrick Gaddie (Husband)
Drew Stewart (WISTV)
Jerrita Patterson (WACH57)
Jan Knobles (Victims Advocate from the Solicitors Office
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I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

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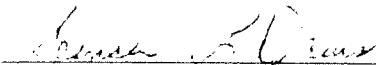
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I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.



Signature

Sworn to me this 13 day of Feb, 2008



Notary Public of South Carolina L.S.

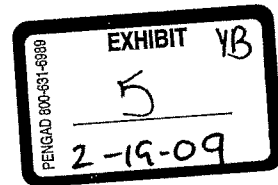
My commission expires: 11/24/2011

THE STATE OF SOUTH CAROLINA)	IN THE GENERAL SESSIONS COURT
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	Indictment No.: 2008-GS-40-03151

The State of South Carolina)	
)	
v.)	AFFIDAVIT OF JERRY LEO FINNEY
)	
TALISHA LAVETTE SMITH,)	
)	
Defendant.)	

PERSONALLY APPEARED before me, Jerry Leo Finney, Esquire who, after being duly sworn, deposes and testifies as follows:

I, Jerry Leo Finney, Esquire, am the counsel of record for Talisha Lavette Smith who pled guilty before The Honorable Kenneth G. Goode on Monday, December 8, 2008. I have been practicing law in South Carolina for the better part of 20 years. I began my legal career as an Assistant Solicitor in Lexington County and worked there until 1995. I then transitioned to the law firm of Suggs & Kelly where I stayed until I decided to open my own firm in 1999. Since 1999, I have been the President and Chief Executive Officer of The Finney Law Firm, Inc. From its inception, The Finney Law Firm has been a general practice in the course of which I have been involved in countless General Sessions cases and numerous guilty pleas. During my time as an attorney, I have had the privilege of appearing before the vast majority of the esteemed members of the South Carolina Judiciary, including Judge Goode. Although I have only appeared before Judge Goode on several occasions, I have always found Judge Goode to be an imminently fair and impartial jurist.



I believe Judge Goode's actions on December 8, 2008 represent a fair administration of justice based upon the totality of the evidence presented to the Court on that day. On December 8, 2008, Mrs. Talisha Smith pled guilty to the charge of infliction of great bodily injury upon a child. This plea was what is known as a "straight up" plea during which the judge was given total discretion to impose any sentence allowable under the law. The possible sentences available to Judge Goode under the law ranged from 0 years to 20 years with any part of the sentence available to be suspended. Under the law, my client could have rightly received no jail time whatsoever. Under the law, my client could have received less punishment than what she actually did receive in the matter.

Talisha Smith's plea had no procedural defects. Judge Goode examined my client to determine the voluntary nature of the plea, to determine that my client understood the possible sentences, and to determine that my client understood the Constitutional rights and protections that she would be foregoing by entering this plea. Upon being satisfied with my client's understanding of the plea, Judge Goode heard from the State as to the factual basis for the plea. The State presented the factual evidence to support the charge to which Mrs. Smith was pleading. Upon determining that a factual basis existed for the plea, Judge Goode accepted the guilty plea.

Upon accepting the plea, Judge Goode allowed the State to present evidence towards sentencing. The State was afforded every opportunity to present as much or as little information as the State deemed appropriate. It was at this time that the victim's mother was given an opportunity to address the Court. After the victim's mother addressed the Court, the State offered 5 photographs into evidence and concluded its presentation. The State exercised its discretion and did not present any medical records whatsoever nor did it present any testimony

from a licensed medical provider. The State also offered no evidence whatsoever regarding the permanency of any of the injuries sustained by the victim. As such, there was no medical evidence whatsoever presented to the Court on December 8, 2008.

Upon allowing the State to present its case in its entirety, Judge Goode afforded the defense the opportunity to present mitigation evidence for the purposes of sentencing. At that time, I noted for the court that this was a straight up plea during which my client was accepting responsibility for her actions. My client did not plead "no contest" and my client did not deny criminal responsibility by entering an *Alford* plea. Rather, she pled guilty. She admitted her mistake, which is significant because the acceptance of responsibility is rightly a significant factor for a judge to consider as mitigation during the sentencing.

Additionally, on December 8, 2008, Mrs. Smith stood before the Court as a twenty-five year old mother with no criminal record of any kind whatsoever. On the date of the incident, Mrs. Smith was five months pregnant with her third child. Mrs. Smith has also been diagnosed as suffering from the diagnosable condition of anxiety disorder. On the date of the plea, I submitted documentation of this condition to Judge Goode illustrating such. As Mrs. Smith stood before Judge Goode accepting responsibility for her action, she was the mother of three children for whom she and her husband are the sole providers. As a result of this incident, Mrs. Smith has been unable to provide any financial assistance to the family. Furthermore, between the date of the incident and the date of the plea, Mrs. Smith voluntarily undertook it upon herself to enroll in counseling. I believe that Mrs. Smith benefited greatly from counseling. I firmly believe, as I stated to Judge Goode during my presentation on December 8, 2008, that to sentence Mrs. Smith to jail time would be to severely and permanently punish not only Mrs. Smith, but

also her husband and her children. Jail time would have forever jeopardized any possibility that any member of this family would live a productive life. Mrs. Smith's actions on the date of the incident cannot and should not be condoned, but sending this individual to prison for 20 years to send a message to the community at large would have ruined not only Mrs. Smith's life but this would also have ruined the lives of everyone in her family, including her children. Therefore, I begged Judge Goode for mercy and requested that my client receive a probationary sentence with a special condition that she continues her counseling.

After I concluded, the State offered a brief response to my presentation. Upon all parties completing all presentations, Judge Goode acknowledged the difficult nature of this situation. Judge Goode expounded on the tragic nature of this case and indicated the difficulty with which some decisions must be reached. The judge correctly noted that there are some problems that simply do not have easy solutions. As an example of this proposition, Judge Goode offered the example of the wars in Iraq and Afghanistan. There was no political diatribe against the wars during the plea, there were no politics discussed whatsoever, there were merely examples of difficult situations without easy solutions. And this was a difficult decision for any judge to make. Judge Goode rightly noted that no winners would emerge from this situation. To sentence Mrs. Smith to jail time would effectively ruin not only her life, but it would ruin the lives of her entire family. Additionally, jail time for Mrs. Smith would not benefit the victim's medical recovery in any way. As such, Judge Goode rightly determined that a probationary sentence involving counseling was the better alternative for Mrs. Smith. The sentence imposed was ten years suspended upon the service of five years of probation and any mental health counseling that the Department of Corrections deems appropriate. Mrs. Smith was put on the Department of

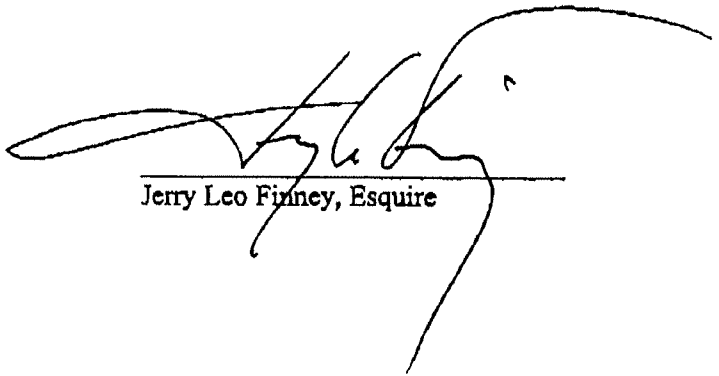
Social Services Child Abuse and Neglect Registry. As such, Mrs. Smith will never be allowed to work around children in any capacity forever. It is important to note that the sentence imposed was not the lowest possible sentence that my client could have received under the law. Under the law, my client could have received time served for the jail time that she endured as a result of these charges, with no probationary sentence whatsoever. Under the law, it would have been allowable for my client to receive less jail time suspended upon the service of less probation. Five years of probation is a significant undertaking that will insure that Mrs. Smith does not step out of line at all for the next five years. Under the terms of this sentence, if Mrs. Smith slips up one inch over the next five years, she serves the entirety of the ten year sentence. I firmly believe that the sentence imposed was justifiable based upon the law and based upon the evidence presented at the hearing. I do not believe that jail time was mandatory given the evidence that was presented, especially since it was not mandated under the law.

In all of my dealings with Judge Goode, which consists of only several guilty pleas, I have always known Judge Goode to be a fair-minded and thoughtful jurist. I have never left a plea before Judge Goode feeling that my client had received anything less than a fair sentence given the situation and circumstance surrounding that particular plea. As any criminal defense lawyer is obligated to do, I always prepare my clients to receive the maximum sentence imposed by law because that is what each client potentially faces when they plead guilty. While I have never had Judge Goode impose the maximum sentence for any of my clients pleading guilty before him, I can honestly say that I have never had any judge in the entire State of South Carolina impose the maximum sentence on any of my clients during any guilty plea that I have ever been a part of. Furthermore, I have taken cases to trial before other judges of this state and

had my clients receive less than the maximum sentence after having been found guilty by a jury.

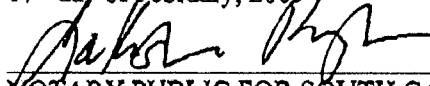
In sum, I simply do not believe that Judge Goode's actions on December 8, 2008 were improper and I do not believe that the sentence imposed indicates an abuse of discretion.

FURTHER AFFIANT SAYETH NOT.



Jerry Leo Firney, Esquire

SWORN and subscribed before me this
17th day of February, 2009



NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 8/2/09

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	
The State of South Carolina)	MOTION TO RECONSIDER SENTENCE
-vs-)	INDICTMENT NO.: 2008-GS-40-03151
TALISHA LAVETTE SMITH,)	CHARGES: INFLECTION OF GREAT
Defendant)	BODILY INJURY TO A CHILD

2008 DEC 10 AM 12:57

FILED

C.C. & S.

NOW COMES The State of South Carolina, by and through Assistant Solicitor Margaret M. Fent, and hereby moves this Honorable court for a reconsideration of the imposed sentence.

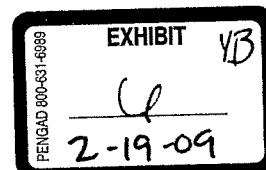
On Monday, December 8th, the defendant, Talisha Lavette Smith, along with her attorney, Jerry Finney, appeared in front of the Honorable Kenneth Goode and entered a plea of guilty to the charge of Inflection of Great Bodily Injury to a Child. The State was represented by Margaret M Fent of the Fifth Judicial Circuit Solicitor's Office.

The possible maximum sentence the defendant could have received was twenty (20) years. The court sentenced the defendant to ten (10) years in the South Carolina Department of Corrections and suspended that sentence to five (5) years probation.

The State is respectfully requesting an opportunity to address the court regarding the reasons the court provided as a basis for the sentence and to ask the court to reconsider the sentence imposed.

Margaret M Fent
Margaret M. Fent
Assistant Solicitor
Fifth Judicial Circuit

This 10th day of December, 2008
Columbia, South Carolina



JANE SHULER - Fwd: State v. Talisha Smith

From: JANE SHULER
To:
Date: 2/12/2009 10:59 AM
Subject: Fwd: State v. Talisha Smith
Attachments: STvsTalishaSMITH.2008.pdf

2/12/09

Dear Judge Goode:

I am forwarding the transcript of the Smith hearing for your review.

Take care,

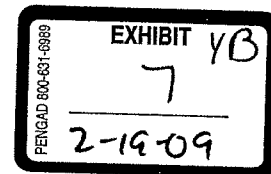
Jane

Jane O. Shuler
Staff Attorney, Senate Judiciary Committee
and
Chief Counsel, Judicial Merit Selection Commission
Room 104 Gressette Building
P.O. Box 142
Columbia, S.C. 29202
(803) 212-6629 (Tuesday-Thursday)
shulerj@scsenate.org

>>> Elizabeth Harris <ebharris1@yahoo.com> 2/12/2009 10:51 AM >>>
Ms. Shuler,

I've attached the transcript of the Talisha Smith hearing before Judge Goode on December 8, 2008. If you have any difficulty opening it, just let me know and I'll be happy to try again.

Cordially,
Elizabeth B. Harris
Circuit Court Reporter
Fifth Judicial Circuit, At-large



JEANETTE W. McBRIDE
CLERK OF COURT



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

ANNE G. KELLY
Chief Deputy Clerk of Court

TELEPHONE:
(803) 576-1950
Fax (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT
Richland County Judicial Center
1701 Main Street
Columbia, S. C. 29201

February 19, 2009

Via Hand Delivery
Judicial Merit Selection Committee

RE: The State of South Carolina v. Talisha Lavette Smith
Indictment No: 2008-GS-40-03151

To Whom It May Concern:

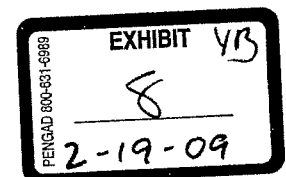
This office has made a diligent search of all records in our custody and control regarding the above-captioned matter. This office is not in possession of any documents reflecting that the Motion to Reconsider, which was filed on December 10, 2008, has been heard and/or ruled upon.

Sincerely,

A handwritten signature in cursive script, appearing to read "James D. Truitt".

James D. Truitt
Clerk of Court Administrator

JDT:agk



STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	
The State of South Carolina)	MOTION TO RECONSIDER SENTENCE
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Margaret M Fent
 Margaret M. Fent
 Assistant Solicitor
 Fifth Judicial Circuit

This 10th day of December, 2008
 Columbia, South Carolina

A T T E S T E
 A TRUE COPY
Jeanette W McBride
 C. C. C. P. & G. S.

1 THE COURT: Madam Agent, is there anything that you
2 would like to add to your packet of information?

3 PROBATION AGENT: Not at this time, Your Honor.

4 MR. SWERLING: Judge, if I -- with respect to that
5 packet I believe in that packet is a charge that Mr. Gavin
6 was arrested for and they have it in the package, they are
7 seeking to revoke him on that charge of the indecent
8 exposure, this matter was dismissed, I handld it. It was
9 expunged and I don't think it's appropriate for probation
10 to bring it up in this proceeding.

11 THE COURT: Of course not. You've had it expunged?

12 MR. SWERLING: Yes, sir. I have got a copy of the
13 expungement.

14 THE COURT: Is your supervisor here?

15 PROBATION AGENT: No, Your Honor. If I may --

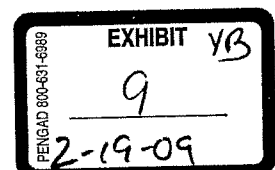
16 THE COURT: Did you talk with your supervisor and tell
17 them that you were planning to bring to the Court's
18 attention a case that had been expunged?

19 PROBATION AGENT: Your Honor, that was addressed in
20 one of the warrants and so that part would be considered
21 null and void since he did not get convicted. He still has
22 more violations besides that one warrant that addressed
23 those charges.

24 THE COURT: So why have you got it in the report?

25 PROBATION AGENT: Because at the time I did not know

1 that it was expunged until this morning, Your Honor. And
2 in the warrant it still addresses his -- for that original
3 warrant, which is the first warrant listed on page two of



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4 his violation report, he still has his monetary obligations
5 that were addressed in that warrant.

6 THE COURT: Okay. And your name, please?

7 PROBATION AGENT: Brittany Sirmon.

8 THE COURT: Spell that last name, if you would.

9 PROBATION AGENT: S-i-r-m-o-n.

10 MR. SWERLING: Judge, I would disagree -- respectfully
11 disagree. I believe the last time we were in Columbia
12 before Your Honor, and I think that day you were not
13 feeling well, we postponed this hearing. But I believe it
14 has been communicated to probation that this case was
15 expunged and Mr. Gavin has also told them it was expunged.

16 THE COURT: Well, first, all who plan to testify or
17 make any statements who are not officers of the court I ask
18 them to please raise their right hands. Your name, please,
19 sir?

20 (Witnesses were sworn.)

21 THE WITNESS: Jeff Rose.

22 THE COURT: And if you could spell your last name.

23 THE WITNESS: R-o-s-e, sir, with American Family
24 Therapists.

25 THE COURT: Thank you. And Ms. Sirmon, your first

□

3

1 name?

2 PROBATION AGENT: Brittany.

3 MR. SWERLING: Judge, before you get started, at some
4 point I would like to address the Court about another
5 matter procedurally with respect to this case, but whenever
6 Your Honor wants to hear from me.

7 THE COURT: Well, I think procedural matters I would
8 rather know them going in. And I've got -- I've got to say

zail gavin_1.txt

9 presenting to this Court a matter that has been expunged
10 and is not guilty, I'm very troubled about that and I'm
11 letting you know at this time that I'm going -- I am
12 certainly am not saying that I am going to levy any type
13 sanctions but I am going to investigate whether or not
14 sanctions are available to me because that's wrong. I
15 don't appreciate it, it shows disrespect to the Court and
16 whether or not it's contemptuous -- or there is contempt I
17 will find out. But if there's a case charged, not guilty
18 and an expungement, the last place it should be is in a
19 place that could end up -- if you would remove your hands
20 from your pockets, please, sir.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: -- that it would end up as being punitive
23 to a person who is here. All defendants are presumed
24 innocent in this Court's eyes.

25 PROBATION AGENT: Yes, sir.

4

1 THE COURT: Any procedural --

2 MR. SWERLING: The expungement was done on October
3 30th of 2008, Mr. Galvin tells me that he told Ms. Sirmon
4 about that. But be that is it may, first of all, I'm about
5 the easiest person in the world to get along with, but I
6 want to apologize to this Court and I apologize to those
7 folks sitting out there who came as well and everybody else
8 here for the lateness of the hour. Last Wednesday
9 afternoon or Thursday morning, I can't immediately be sure
10 so I am not going to say, but I left one message on a voice
11 mail belonging to Ms. Sirmon and followed it up with
12 another voice mail because I was concerned that I had not
13 gotten the right voice mail, but then determine that I did,

zail gavin_1.txt

14 to please call me in connection with Mr. Gavin's case. I
15 did not hear from her and then on Friday we faxed her a
16 letter telling her that I was going to be in Richland
17 County General Sessions Court this morning. I was supposed
18 to pick a jury on a murder charge in front of Judge Cooper.
19 Friday afternoon we negotiated --

20 THE COURT: Would that be Camden Judge Cooper?

21 MR. SWERLING: Camden Judge Cooper. And on Friday
22 afternoon we negotiated a plea but the plea had to be taken
23 this morning prior to jury selection so that the State
24 could move forward and the Court could move forward. I had
25 never got a return call from Ms. Sirmon. And as I said, I

5

1 am easy to get along with, but this morning Mr. Gavin
2 called me and told me that he had been by the probation
3 office this morning and the probation officer was on her
4 way up here to hold the hearing and that if he did not show
5 up he was subject to getting a bench warrant issued against
6 him. Needless to say I got pretty upset, was told by her
7 supervisor, I guess, Ms. Bartkovich, that there was no way
8 to know whether or not she had gotten my voice mail or not,
9 no way to know whether or not she had seen my fax or not
10 and --

11 THE COURT: You faxed also? I don't think --

12 MR. SWERLING: I faxed it on Friday to ask her to give
13 me a call. Now Judge, I apologize, I tried get this thing
14 moved either to this afternoon or tomorrow or another day,
15 but I apologize to you and to these folks. But I would
16 like the probation officer to state in this court as to
17 whether or not she had notice that I had called and also
18 had faxed her and why she didn't call me. Because this is

19 what happens -- and I get along with most of the probation
20 officers -- but we have clients come in to see us all of
21 the who tell us, "Look, I called the probation office and
22 they never called me back," or, "I went by the probation
23 office and they never called me back." And we dismiss that
24 because we hear it over and over and over again, but this
25 is a lawyer who called and a lawyer who faxed a letter and

6

1 I didn't get a call back. So it gives a whole lot of merit
2 to what I hear from my clients now. I just think it's an
3 egregious matter for this Court to have to waste its time
4 waiting for me to come up here and for these good folks to
5 waste their time sitting here when this could have been
6 resolved by a return phone call and I could have explained
7 my position. I was told that I needed an order of
8 protection this morning and I'm not aware of that. My
9 understanding was I was scheduled to pick a jury and I
10 had -- that since we worked it out that plea had to be done
11 before jury selection as Your Honor knows because it's not
12 going to work out once a jury is dismissed or the other
13 defendant gets his jury struck, my client could have backed
14 out of the plea. So that's why it was urgent go ahead and
15 have it done this morning.

16 THE COURT: Ms. Sirmon? And I would remind you that
17 you are under oath.

18 PROBATION AGENT: Yes, Your Honor. I did receive two
19 voice mails from him, I believe I did not check, it was
20 wednesday night or Thursday morning, I cannot be absolutely
21 sure. He did say it was his name and there was a call in
22 regards to Mr. Smith. He left a number, I didn't hear all
23 of it.

zail gavin_1.txt
24 MR. SWERLING: Mr. Gavin.

25 PROBATION AGENT: Mr. Gavin, I'm sorry. And I did not

7

1 get back to him and that is my fault on that. I did not
2 receive the fax on Friday. I did stop in the office
3 yesterday and grab my paperwork out of my box and just
4 throw it out of my bag. When I was called this morning by
5 Ms. Bartkovich that's when she said she had spoke to
6 Mr. Swerling and he had sent me a fax, at which time I did
7 see that and I was already in Fairfield County.

8 THE COURT: Did you make an effort to get a message to
9 Mr. Swerling through his office?

10 PROBATION AGENT: After his voice mails, no, sir, I
11 did not.

12 THE COURT: Did you make an effort to get in touch
13 with Mr. Swerling after you viewed the fax or were informed
14 of the fax, did you make an effort to get in touch with
15 Mr. Swerling?

16 PROBATION AGENT: No, sir. Because at that time I was
17 just being filled in with this by Ms. Bartkovich and
18 shortly after Mr. Swerling called me at the Fairfield
19 County office.

20 THE COURT: You didn't call his office to see if there
21 was some way of getting a message to him?

22 PROBATION AGENT: No, sir. Like I said, I was just --
23 I had just looked over it and it came shortly after.

24 THE COURT: So you were just going to let everybody
25 come on even though you knew that there was a serious

8

1 matter that was contingent on how you handled this.

2 PROBATION AGENT: I was not aware of this until this
Page 6

zail gavin_1.txt

3 morning, Your Honor.

4 THE COURT: well, I'm asking you, did you call this
5 morning?

6 PROBATION AGENT: No, Your Honor.

7 THE COURT: why?

8 PROBATION AGENT: I have no excuse, Your Honor.

9 THE COURT: For one I thank you for being truthful.
10 we're talking about a bunch of folks' time and we're
11 talking about someone else's freedom and I'm bothered by
12 that, and I will check and see what, if any, sanctions I
13 take against you. And if I decide to do that you will have
14 to come before me on a hearing for that.

15 PROBATION AGENT: Yes, Your Honor.

16 THE COURT: And that's Brittany Sirmon?

17 PROBATION AGENT: Yes, Your Honor.

18 THE COURT: well, at least you have a name like a
19 movie star?

20 PROBATION AGENT: Thank you, Your Honor.

21 THE COURT: Anything additional, Mr. Swerling?

22 MR. SWERLING: No, Your Honor. We are prepared to go
23 forward.

24 THE COURT: But have the documents -- and I haven't
25 looked at them at all -- have the documents been redacted

9

1 as to the matter that you mentioned first?

2 MR. SWERLING: Your Honor, I don't know. I frankly do
3 not know.

4 THE COURT: I don't want any mention way, shape or
5 form on a case that he was found not guilty of and the case
6 has been expunged. Have you shared with her the
7 expungement order?

zail gavin_1.txt

8 MR. SWERLING: Mr. Gavin informs me that he told her
9 about it and showed it to her. I have not sent it to her,
10 but as far as I know it was communicated with her.

11 THE COURT: Do you take issue with that?

12 PROBATION AGENT: Your Honor, I was told that he was
13 found not guilty.

14 MR. SWERLING: It wasn't not guilty, it was dismissed
15 at a probable cause hearing so it never got past that
16 because it had no merit to it.

17 MR. HARRIS: And if I may, Your Honor, I showed her
18 the expungement order this morning and I discussed this
19 matter with her about redacting it with the Court and
20 without any reference made. So the answer is, yes, she has
21 been shown the order and it was prior to you receiving
22 those documents.

23 THE COURT: And you have not redacted it?

24 PROBATION AGENT: Your Honor, I spoke with Mr. Evans
25 in our legal department and he's saying -- he had told me

10

1 that we could still go ahead and just mention the arrest
2 and -- but make it be known that he was still found not
3 guilty and it was dismissed, that it would not be illegal
4 for me just to have that in the body of this since that was
5 the original warrant, even though it makes that warrant
6 null and void.

7 THE COURT: And if he had been arrested and the Court
8 had not disposed of it then your Mr. Evans would have been
9 right, but he was arrested and the case was resolved in
10 court to his favor. With that being the case I'm ruling
11 that it's not proper.

12 PROBATION AGENT: Yes, sir.
Page 8

zail gavin_1.txt

13 THE COURT: And I ask you please to redact any
14 documents that you wish for me to review of that.

15 PROBATION AGENT: Yes, Your Honor. These are the
16 three that don't have anything to do with that issue.

17 THE COURT: Okay.

18 PROBATION AGENT: And it does not address it.

19 THE COURT: I didn't know if you just needed to take a
20 few lines out of it.

21 PROBATION AGENT: I did on the original one but there
22 may be some in the body and I don't to be mistaken in that.

23 THE COURT: I don't want to rush you if you need more
24 time, but do you feel like this is enough for your hearing
25 today?

11

1 PROBATION AGENT: Yes, Your Honor. Because I can go
2 off of my violation report if you have any questions. But
3 those are the remaining violations, which are two warrants
4 and a citation.

5 THE COURT: Thank you, ma'am. And at this time is
6 there anything that you would like to add to this?

7 PROBATION AGENT: No, Your Honor. Just that the last
8 document in there is a letter and resume' from Dr. Byrd who
9 used to be Mr. Gavin's --

10 MR. SWERLING: Objection. He's not here and that's
11 not a violation.

12 PROBATION AGENT: He just wanted to submit it for --

13 MR. SWERLING: It's not a violation.

14 THE COURT: How does it relate to a violation?

15 PROBATION AGENT: It relates because he said that
16 Dr. Burke had received a call from Dr. Rose --

17 THE COURT: Well, that's hearsay in addition to him
Page 9

18 not being here so we can't let that in.

19 PROBATION AGENT: would you like me to take that one
20 out.

21 THE COURT: Yes, ma'am, please. You can't have
22 anything from him because if he says something that these
23 gentlemen might want to ask him about he wouldn't be here
24 to respond and that's more or less a basis of the hearsay
25 rule.

12

1 PROBATION AGENT: Yes, Your Honor. I will say I did
2 contact Dr. Burke but he was unable to make it today.

3 THE COURT: Ms. Sirmon, this is a question that has
4 directly nothing to do with this case, but just the fact
5 that you deal with this type thing, have you heard of there
6 being any advances in GPS monitoring that would make it
7 less expensive? Isn't it about \$50 a week now?

8 PROBATION AGENT: It is. We have it set if they are
9 on supervision it's at \$40 per week, if it is just tracking
10 it is \$60 per week. At this time those prices have been
11 staying the same. We have a couple of knew units, which we
12 actually switched Mr. Gavin to as far as one piece unit,
13 but as far as price goes we really haven't heard too much
14 about that.

15 THE COURT: Ms. Sirmon, on the violation of 1/17, that
16 the GPS monitoring 1:01 to 1:20 p.m., 19 minutes and thus
17 being untraceable. It didn't show that he was outside of
18 his appropriate range, did it?

19 PROBATION AGENT: what happens is at that time he was
20 on the two piece unit which is that PTU, and that the ankle
21 monitor -- what you are supposed to do whenever you leave
22 he needs to move about away from the base it is supposed to

zail gavin_1.txt

23 be on him. What this means is that he left that PTU which
24 allows him to be tracked somewhere else. So even if he
25 left it at his home and drove away, that means for that

13

1 period of time he was unable to be tracked and he was
2 unable to be accounted for.

3 THE COURT: But you would be able to tell where the
4 unit that he was supposed to have on his person where he
5 was located.

6 PROBATION AGENT: Usually that is by the last tracking
7 point or you can also tell -- if it says it is not in
8 motion that means he set it down somewhere and that would
9 more than likely be the closest to the last tracing point
10 on there. If it showed that it was still in motion then it
11 could possibly be bad equipment. But that shows that it
12 was sat down and walked away from so he wasn't able to be
13 traced.

14 MR. SWERLING: Judge, if I could --

15 THE COURT: For 19 minutes?

16 PROBATION AGENT: Nineteen minutes, yes, Your Honor.

17 MR. SWERLING: Judge, he explained to them that he was
18 upstairs, he put the battery part of it in a charger and he
19 went downstairs of his residence and that is the 19
20 minutes. He was inside of his residence and they know
21 that.

22 THE COURT: Anything additionally, Ms. Sirmon?

23 PROBATION AGENT: Not at this time, Your Honor.

24 THE COURT: Y'all must be overstaffed in Richland to
25 rule people in for this. Mr. Swerling?

14

zail gavin_1.txt

1 PROBATION AGENT: Judge, very briefly. One of the
2 violations of GPS monitoring is a 30 minute violation on
3 October 16th when he went to the dentist and forgot it.
4 Another violation was on 11-4 when he actually went down to
5 the probation office and he forgot part of the monitor and
6 he was off, I believe, a total of 27 minutes and he went
7 back to probation that day. Another one of the
8 violations -- and judge -- this is -- I tell you, this
9 really bothers me, he has a son who is going to be four
10 years old in May. Now, when that child was born he was on
11 probation in Lexington and Lexington allowed him to live
12 with his wife and his newborn child. When he moved to
13 Richland County and it was transferred, he is not allowed
14 to even see his child. Now, this is his own child, he's
15 going to be four at this point in May. The offenses for
16 which he stands convicted before this Court had absolutely
17 nothing to do with any children let alone his own child.
18 And one of the violations that they are violating him for
19 is on October 23rd his child and the mother stopped by his
20 house briefly to go ahead and say goodbye to him because he
21 was supposedly going to go into a substance abuse center.

22 THE COURT: And the mother was there also?

23 MR. SWERLING: The mother was there. She ran out
24 temporarily to go get something. But there is no question
25 that she was there and dropped -- she left the residence

15

1 temporarily, correct?

2 THE DEFENDANT: Yes, five minutes to get something.

3 MR. SWERLING: They showed up and they arrested him
4 for that. Now, here is what is important about that. In
5 early October Mr. Harris and I were coming over to the

zail gavin_1.txt

6 courthouse in Lexington because he was crying out saying he
7 needed some substance abuse counseling and we prepared an
8 order because he was going to go into a facility in North
9 Carolina at his own expense to deal with that. On our way
10 to Lexington I spoke with a Ms. Sherman -- or Sirmon, I
11 believe it was her, she will have to verify this or not,
12 but it was whoever his probation officer was at that
13 time -- and said that we were going to present an order to
14 Your Honor allowing him to go to this facility in North
15 Carolina the following week. They told us that would not
16 be agreed to, they would not consent to that, that they
17 were going to put him in a facility here in South Carolina.
18 It is now February 2nd, he still has not been put into a
19 facility and the reason he has been given is that he has to
20 deal with this probation violation report first. What we
21 have is they keep changing up on him from Lexington County
22 from Richland County and I don't know understand why he's
23 now allowed -- his wife has to live in North Carolina and
24 he can't see his own son. They won't let him see his own
25 daughter even though family court has allowed to -- agreed

16

1 to that kind of visitation. But I'm not dealing with that
2 today, his son --

3 THE COURT: But just from my curiosity, how old is the
4 daughter?

5 MR. SWERLING: The daughter is --

6 THE DEFENDANT: Six March 25th.

7 MR. SWERLING: And the family court has recorded
8 visitation but the ex is here. But I don't even want to
9 address that today because that's a family court issue.
10 The critical issue here is his son, they're setting him up

11 for failure. He's not allowed to have any contact with his
12 son, he can't live with his wife and his son and when he
13 comes by for a few minutes to see him -- they won't even
14 allow supervised visitation on a charge that has nothing to
15 do with his son or his daughter.

16 THE DEFENDANT: It's two and a half years.

17 MR. SWERLING: It's two and a half years. Now, Your
18 Honor, when they appeared in front of you -- and I'll do
19 the talking. Okay?

20 THE DEFENDANT: Yes, sir.

21 MR. SWERLING: All right. When they appeared in front
22 of you, Mr. Moore and Mr. Gavin, back on May 27th Your
23 Honor was not impressed with the GPS violations at that
24 time, which were same or similar in nature as they are
25 right now. Your Honor told probation that you were not

17

1 impressed with those violations. You also --

2 THE COURT: I think that's why I kept the case is
3 because it appeared that somebody had a grudge or they were
4 being overzealous in the enforcement of this case. But go
5 ahead.

6 PROBATION AGENT: Now, Mr. Moore, this was -- it was a
7 22 page transcript, which I presented for you -- and I will
8 give a copy to the probation officer -- but on the last
9 page of that after telling probation you were not impressed
10 with those kinds of violations and you heard Mr. Moore
11 point out the different restrictions they were putting on
12 him and kept tightening the noose around his neck, you said
13 on the last page 22, "I don't want you to tighten those
14 restrictions with them anymore. If you feel like there's a
15 reason for there to be additional restrictions placed on

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16 this man I direct you as the supervisor of who is over him
17 to run them past me and explain to me why. And when and if
18 this matter in Richland County comes to trial "-- which he
19 was found not guilty of -- "I don't want you to violate him
20 for it." we consider that today, they've gone down,
21 they've tried to address it and through no fault of their
22 own they weren't allowed to. So as far as violations we're
23 starting clean slate today, then the matter was transferred
24 to Richland County. Judge, since he has been transferred
25 over to Richland County this man's business has gone

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1 completely whack because they will not give him the
2 latitude to go out and do his paint contracting business.
3 His hours are restricted, when he can leave the house even
4 though this was not a house arrest violation or situation.
5 He had a paint contracting business, the painting materials
6 are in the shop out in Ninety-Six and they won't let him go
7 out there. They won't give him the latitude to work. They
8 want prior approval for him to leave the house to do any
9 kind of job, they want prior approval before he can go to
10 church on Sunday or leave the house on Sunday. They won't
11 let him go see his parents in Greenwood, and his father
12 last Friday was on his death bed was the only reason I
13 understand they gave him the latitude to go Greenwood to
14 see his parents. His parents can't travel to Columbia so
15 he's without income at this point, his business has gone
16 down, can't see his child, who was four months old at the
17 time -- this was 22 months old, that's where I am getting
18 that number from. He can't travel to Ninety-Six, he can't
19 travel to Greenwood. He's prohibited from traveling to any
20 locations outside of Richland County eliminating any job

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21 prospects for him. He's restricted from leaving his home
22 on Saturday and Sunday and he's restricted from leaving his
23 house without verbal consent and approval from his agent.
24 Prior -- and he was permitted out of his house from
25 7:00 a.m. to 7:00 p.m. Monday through Saturday, then it was

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1 reduced from 8:00 a.m. to 3:00 p.m. Monday through Friday.
2 And he was also prohibited from attending sex offender
3 counseling with Dr. Martin despite the fact that you made
4 it clear he was to continue that counseling. Judge, this
5 is --

6 THE COURT: That's Dr. Martin in Columbia?

7 MR. SWERLING: That's correct. And I won't get into
8 the situation with Dr. Burke because you wouldn't let them
9 get into it. The bottom line, Judge, is that he's on
10 probation I'm not arguing whether or not he needs to be on
11 probation or not, I don't know that he needs to be on
12 probation for another two years. But I believe that the
13 GPS monitor in this case is causing all sorts of problems,
14 and the restrictions they're placing on him, not being able
15 to work, not being able to see his child, not being able to
16 see his parents, not leaving the house are just onerous and
17 not what this Court intended. And you, in fact, directed
18 probation in Lexington not to add any further restrictions
19 against him without your approval because I believe that
20 you felt that way that day and that's why you told him
21 that. But despite that -- now, prior approval is
22 wonderful. Mr. Gavin has to call and he has to get prior
23 approval to leave his house. Well, you saw what happened
24 when I called and I'm a lawyer and I didn't get a call
25 back. What do you think happens when he calls? I think

1 the prior approval is onerous and I think that even though
2 I'm not asking you to terminate his probation, but I am
3 asking you to terminating his GPS and let him go on his way
4 and work and see his child and live with his child. It's
5 just -- I don't understand how you set somebody up for
6 failure and that's what they're doing.

7 THE COURT: well, I certainly don't think that is the
8 purpose of probation, I think it's the exact opposite is to
9 allow them to succeed rather than being warehoused.
10 Ms. Sirmon, I will be happy to hear from you.

11 PROBATION AGENT: Thank you, Your Honor. Those were a
12 lot of different issues and I will try to go and make our
13 case on each one of them as they come up. As far as when
14 he mentioned about the getting him into a facility in North
15 Carolina for substance abuse counseling, I said usually we
16 cannot transfer a case to North Carolina and this has been
17 a problem for me before in the past because they won't let
18 you go through interstate compact for the sole purpose of
19 substance abuse counseling, and also since he is on
20 discretionary GPS he can't really do that. So we talked
21 about getting him into a different care facility. He had
22 contacted Any Links and said they would contact me, I had
23 not gotten a phone call or message from them. I write down
24 all of my messages even though -- and it was a possibility
25 of getting him in there so he could still stay on GPS and

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1 then it was around the corner we were going to be able and
2 get his violations addressed, that would be over and done
3 with so he would have a clear, clean slate to get into drug
4 counseling. For the contact with the minor, that is

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5 straight across the board for any person who is being
6 supervised as a sex offender as a condition of that you
7 cannot have contact with any minors unless blood line and
8 even then it's supposed to be through the coordination and
9 approval of your sex offender counselor and agent. He did
10 not make it through the sex offender counseling at that
11 time because we usually set it up, we will set up ours, we
12 have done that in the past. However he took it upon
13 himself to have contact with the child and when me -- and
14 Agent Rudella (phonetically) was there that day, too --
15 when we went to the house it was just him and the child was
16 there, and then his fiancée or his girlfriend had come back
17 shortly thereafter. So they had gone ahead and had the
18 contact without our approval, knowledge and against his
19 conditions. As far as his hours and everything, since he
20 has been in violation and even if he wasn't on GPS we would
21 want to have an idea of where he is going and we have
22 people provide us schedules. He came in Tuesday with a
23 list of places he wanted to go, I have absolutely no
24 problem letting him out for the hours but we are
25 accountable and I want to make sure he's doing what he's

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1 supposed to be doing. When I talked to him back in
2 December it was showing that he was going to several
3 different places when he had out 8:00 to 3:00 without prior
4 approval, and I sat there and I talked to him in December
5 and told him, "I am going to leave your hours the same as
6 of right now but if you need to go somewhere you need to
7 let me know," and I have that documented in our scheduler.
8 However, I would still look at the tracking points and
9 seeing he had gone up to Newberry, which he went with his

10 family and everything and he went to Lowes and everything
11 without permission again. Like I said, I have no problem
12 with meeting his family in Newberry, he has done before, he
13 did that this past week with my permission. But we need to
14 know ahead of time because he is still on supervision for
15 as far as his hours go. I'm sure I missed a couple of more
16 issues but those are three of the highlighted ones as far
17 as the child contact, the GPS and his hours.

18 THE COURT: Do you have your violation report? I
19 didn't --

20 PROBATION AGENT: That is one I had to take back due
21 to the first issue of the expunged charges.

22 MR. SWERLING: Judge, she has effectively put him on
23 house arrest when you didn't by limiting him so much that
24 he has to stay home. I don't believe that's the purpose of
25 probation. If he violates his probation they have a

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1 right to come in this court and revoke him but they don't
2 have a right to keep him under house arrest.

3 THE COURT: I don't think they have the right to
4 change the terms of probation as I set them forth unless
5 there has been a criminal issue or multiple infractions,
6 but then and still get a hearing set. And I think any
7 change or loosening for that matter, but certainly
8 tightening -- do you feel that you have that authority,
9 Ms. Sirmon, that you could modify what I have ordered, that
10 you can override the terms and conditions of probation that
11 I placed on the individual?

12 PROBATION AGENT: No, your Honor. And at the time I
13 was not there on back in May and this is the first time I
14 have seen word for word what you had said that day in

15 court. So no, Your Honor, I do not feel that I can
16 overturn that.

17 MR. SWERLING: Judge, despite what she says, he hasn't
18 been able to see that child, they haven't arranged that.
19 Can you imagine not seeing your own son in two and a half
20 years?

21 THE COURT: No, I can't. But I'm going to leave him
22 on probation. I'm going to reduce the term by a year, and
23 I'm going to remove the requirement of electronic
24 monitoring, but at the same time the terms and conditions
25 are still there. You can see your children supervised.

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1 And won't this leave approximately one year of probation?

2 PROBATION AGENT: Yes, Your Honor. What I did on
3 there, it shows his end date of 2/6/11, I just changed it
4 to 2/6/10 reducing it for a year; is that correct?

5 THE COURT: Yes, ma'am.

6 PROBATION AGENT: Thank you, sir.

7 THE COURT: And I kind of jumped the gun on you, Mr.
8 Swerling, you didn't get an opportunity to respond after my
9 final questions to Ms. Sirmon.

10 MR. SWERLING: Judge, we have nothing further to say.
11 Mr. Harris has been cocounsel with me in this case.
12 Mr. Moore, of course, has been involved with this case as
13 well and Mr. Rose is here, we were here -- they were here
14 to answer any questions that you might see fit from prior
15 proceedings or what he was doing at this point. We don't
16 need to belabor the order.

17 THE COURT: I think this happens, it's not always
18 purposefully but sometimes the probation and the manner in
19 which it is enforced creates formula for failure. And you

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20 are an experienced probation agent and you know your job
21 and I thank you for doing your job because I know you are
22 not paid to the extent you should be or -- are you about to
23 be subject to the furlow?

24 PROBATION AGENT: We already have been, Your Honor,
25 and possibly some more.

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1 THE COURT: But what we want to do we want you to be
2 zealous, but overall is we want to design a program that
3 will ultimately lead to rehabilitation and if there are too
4 many restrictions, that can sometimes be a formula for
5 failure and I think that is what we became faced within
6 this situation. So as I indicated or started to I am
7 reducing his probation one year. I am removing the
8 requirement of electronic monitoring, you will have to --
9 before you visit with your children it will have to be
10 coordinated but your schedule is going to be a lot more
11 flexible now and that won't be as much of a problem for you
12 as it might have been in the past. The other restrictions
13 as I remember them -- I don't have the --

14 MR. SWERLING: I think it was parents, Your Honor,
15 they are ill and infirmed in Greenwood, any reason why he
16 should not be allowed to go see his parents?

17 THE COURT: No. That's why I'm saying, that is the
18 type thing he can do. But know that even though you don't
19 have an anklet on -- and I want you to understand I am
20 going out on a limb for you. If it is something that needs
21 to be communicated they will either tell you to communicate
22 it or they will communicate it. And I wish you good luck.

23 MR. SWERLING: Judge, since this has a history and you
24 have been involved with it, I would ask you to continue to
Page 21

25 retain jurisdiction on this case in case there are issues

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1 that do come up.

2 THE COURT: I think that's necessary.

3 THE DEFENDANT: Your Honor, may I add one more thing?

4 There's a Mr. Foster here, he does actually represent his
5 ex-wife and the child and he just wanted to say a couple of
6 words if it brought --

7 THE COURT: Oh, absolutely. Come on down, Mr. Foster.

8 MR. FOSTER: Thank you, Your Honor.

9 THE COURT: We will let you stand in the prisoner's
10 dock, if you want.

11 MR. FOSTER: I hope I never have that opportunity,
12 Your Honor. Thank you. May it please the Court, Your
13 Honor? I represent Mrs. Ingrid Lee, she is the ex-wife of
14 Mr. Gavin, and between the two of them they have a six year
15 old child. The child that you heard about today was a four
16 year old child that Mr. Gavin has with another lady and it
17 was -- I did not know he was married to that lady until
18 that was represented to the Court. But Mr. Gavin, as you
19 probably know because this case has been before you on
20 several occasions, has been on a national sexual criminal
21 registry for over a decade and it's multiple offenses that
22 have got him on that registry.

23 MR. SWERLING: Judge, I don't want to interrupt a
24 colleague of mine, but this has nothing to do with this
25 case. I even specifically said that we were not asking to

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1 address the child today. I think that there's a family
2 court order in place and I'm -- there's -- what you ordered

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3 as I understood it was just supervised visitation. So if
4 there's an issue about that that ought to be addressed in
5 the family court, about the terms of that supervision.

6 THE COURT: Is that where you were headed, Mr. Foster?

7 MR. FOSTER: Well, Your Honor, pursuant to the parole
8 guidelines for individuals who are on the sexual offender
9 registry, if they are allowed to see their children there
10 are particular guidelines about that, that they have to
11 complete counseling. I understand that Mr. Gavin has been
12 kicked out of counseling, but they have to get counseling,
13 it has to be supervised. I understood your order was that
14 it were to be coordinated, but the visitation is supposed
15 to be strictly supervised while they are under the
16 probation and I think that -- out of an abundance of
17 caution I just want to make sure that that's clearly on the
18 record, that this is a man who is on a sexual registry, he
19 has been on it for over a decade and that if he is asking
20 to see his children --

21 MR. SWERLING: Judge, you did say it was supposed to
22 be supervised.

23 THE COURT: That's correct, through the department of
24 probation and parole. Now, other supervision, if you have
25 a bone to pick so to speak on that, that would be a family

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1 court matter.

2 MR. FOSTER: Yes, sir. It was just --

3 THE COURT: As far as probation, as long as it is
4 coordinated, the visitation, through Ms. Sirmon or someone
5 there, this Court is going to allow it. Now, how my order
6 impacts, takes issue with other blends with family court
7 matters, I am not addressing that. But I am saying my

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8 order today is that as long as it is coordinated through
9 the department of probation and parole that he can visit
10 with his daughter -- children.

11 MR. FOSTER: Okay. Thank you, Your Honor.

12 PROBATION AGENT: By that rational just so I am clear
13 I don't want to make a mistake on this, as long as it is
14 through probation we can still use the same guidelines as
15 far as getting into counseling, they have the chaperone
16 program and they do where someone goes to the chaperone
17 program then they can have supervised contact with children
18 or as deemed -- a sex offender counselor deems that he is
19 able to do that. Is that --

20 THE COURT: I think that was part of my original
21 order.

22 PROBATION AGENT: I just wanted to make sure I was
23 clear on that.

24 THE COURT: I don't have a summary of my original
25 order in front of me. But I made the changes that I made

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1 and the other portions of my order will remain intact. And
2 I don't know -- who is representing you in family court?

3 THE DEFENDANT: Mark Taylor from Moore, Taylor and
4 Thomas.

5 THE COURT: well, you will be well represented. Mr.
6 Foster, I am sure, will represent his clients capably. And
7 the things that you take issue with that I order today, if
8 there are any, then that would be the place in my mind's
9 eye for it to be addressed.

10 MR. FOSTER: Yes, sir, thank you. And you clarified
11 the concerns I had. I didn't understand the full order, so
12 thank you, Your Honor.

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13 THE COURT: Let's work together. Let's try to help a
14 fellow who has made some mistakes and do all we can to help
15 him which will then help his parents, help the children,
16 help his former wife, help his present wife, and last but
17 not least, help him. Because the economic times and
18 conditions are such that I have never seen. But I wish you
19 all well.

20 (END OF THE HEARING.)

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