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IN THE

Supreme Court of Virginia

AT RICHMOND

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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

RECORD NO. 810917

DIANNA MIKELS PUGH,

Appellant

v.

COMMONWEALTH OF VIRGINIA,

Appellee

APPENDIX

William O. Roberts, Jr.
18 West Washington Street
Lexington, Virginia 24450

Counsel for Appellant

Robert H. Anderson, III
Assistant Attorney General
101 North 8th Street
Richmond, Virginia 23219

Counsel for Appellee

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STATE OF VIRGINIA, CITY OF BUENA VISTA:

IN THE CIRCUIT COURT FOR THE CITY OF BUENA VISTA:

The Jurors of the Commonwealth of Virginia in and for the body of the City of Buena Vista and now attending the said Court, UPON THEIR OATH PRESENT, that on or about the 15th day of July in the year One Thousand Nine Hundred Eighty in the said City of Buena Vista, Dianna M. Pugh did maliciously and unlawfully and feloniously kill and slay one Mary Pugh, a minor child of 3 years of age.

against the peace and dignity of the Commonwealth of Virginia.

Violation of Virginia Code Section 18.2-30,

This indictment is found on the testimony of

Chris Campbell

Witness sworn in Court and sent before the Grand Jury to testify

Betty S. Hall, Deputy Clerk

COMMONWEALTH OF VIRGINIA

VS.

DIANNA M. PUGH

Violation Section 18.2-30

A True Bill

By John T. Kline
Foreman

Date 1-26-81

CITY OF BUENA VISTA

VIRGINIA

Dial 261-6171

CITY POLICE DEPT.
CHIEF E. K. CAMPBELL
BUENA VISTA, VA. 24416

July 16, 1980 to 12 PM.

Interrogation of Dianna Pugh
by: Chief E. K. Campbell - July 16, 1980
Under lined conversation is that of Chief Campbell

We will be taping your voice on this tape, is it all right? Yes, Could you speak up? Yes. I will advise you of the marinda warning. I will read them to you, so you will understand what is going on. You have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answere any questions or make any statements. Do you understand each of these rights? Yes Sir. Having read these rights to you, do you wish to talk to us now? I don't know, huh, I don't know the way you all do that, I don't know if I should get a lawyer or what, I just don't know, I've never been through this before. Well its up to you, we are not here to charge you with anything, but we've got to get to the bottom of it, to see what is going on. Your statement don't mean you're guilty of anything, but if it comes out that you was, naturally you will be charged. Do you still wish to talk to us? So if I don't have a lawyer, I'm in a bad condition? No thats not what we are saying. I don't know, know, I've not been through nothing like this before, I don't

k-2 3/10/81 NP

know what to do. May as well just answere, so ask me the questions. Thats all I understand, ain't nothing to hide no more. You have nothing to hide? No. Well you know the little girl, she's 3 years old? She will be 3 in October. Well you know they took her to Roanoke, having an autopsy on her, it come up with pepper down in her throat and alot of scratches and bruises on the kid. The main thing we want to know, is what happen and how did she get the bruises and how she got the pepper. We're here to get the truth. We are not here just to say you did something like that, but if you did, you should tell us exactly what did happen. You know the kid bound to got the bruises and scratches from some body, and your Mother said something about your finger where she bit your finger trying to get the pepper in her. I know, I couldn't get her mouth open, It took all my pressure and everything even to get her mouth open, I finially got it open. Why don't you try from the beginning and tell the whole thing as what happen, I know you have been having alot of problems. I know, everybody knows that, but me. I know you have been to the Social Services and talk to them. They have been bothering me, thats it. They've been bothering you? Yeah. What have they been doing? Just walking in, coming around once a week and tell me what to do, how upset and hurting I was and everything. What do you mean, how was you hurt? About the seperation, the kids and everything. Well how did the kid get scratches on her? I left them, huh I made them, I hit her. You hit her and scratched her with your finger nails? No, I ain't got finger nails, I didn't scratch her. Why did you hit her? She kept on crying, and crying and crying, not really crying just whining, got on my nerves and I just hit her. What did you hit her with? My hands, sometimes my fist. Now what about the pepper, how did that get involved?

Well I did put a little bit in her mouth for sucking the baby's bottle when I told her not too. Why did you put it in her mouth? Well people always told me to put soap or something like that in their mouth whan they cuss, you know stuff like that, to keep her from doing it, but I think she got a hold of a can or something the last time and got it down her throat, I don't know. But you did put pepper in her mouth, You sure you didn't put it in this time, are you sure? If you did now you tell us because, What was she doing? Your Mother was down there earlier that day, she said you were real upset. Yeah, she had to take me to the Social Services again. She said she could tell you were all upset and nervous. Did you try to get the Social Services to take all those kids at one time? Yeah, I told Mark to take them, he said he wouldn't put them in a home. He said he wouldn't put them in a home? I even asked Ronnie to take them, he said he had no where to put them. On this ocassion where was the pepper setting? On the kitchen table. Well how did she get it if she's only two? I don't know, she just runs around getting into everything What about the other kids where were they when this was happening? Scottie was outside, Michael was in the living room with me, I was changing the baby. How old is Michael? He's four, he just turned four in Februray. The pepper that was used, didn't you have it where you could just shake it out? In the can, it had the top off or something, I reckon one of the other kids took it off or something. Could you find the pepper later? Yeah, I put it under the couch so the other kids couldn't get it, I was so nervous with the crying and everything, just crying and whining all the time. I just couldn't put up with it no more. All them kids, all by myself, no body around to help me out. Yes, I know you got a problem, its

pitiful. You sure you didn't put the pepper in its mouth, a whole lot? I put some, I don't know how much. What was the kid doing that made you do that? She was getting her bottle and sucking on it and I told her not too and that teacher, that came up there. Rose took her bottle one time and I thought she didn't even toutch a bottle at all or nothing like that, she would whine for the other kids stuff and it wasn't right for her to have everything. Every time you turned around she was always sneaking it and drinking it and the baby would cry for her bottle and everything. Every time you turned around she was sneaking in stuff. Did you realize the pepper could kill her or not? No, I didn't know it, No, it didn't hurt her the other time. How many ocassions - I think the best thing is to put me away, just put me away somewhere. I never want to hurt my kids again. I don't want to hurt them, no more. I know you don't. I've been hurt and hurt, over and over, I don't want to hurt my kids no more. Their Daddy don't want them, I've all ready told him to take them and he wouldn't take them. He would never come around and take them no where or do nothing. Its a pity, I know. Why couldn't I have died instead of her? No you shouldn't feel that way, you ought to look to the future for brighter days, you've got your life. I told Mark I was nervous and everything, he wouldn't beleive me. I know it. He just came up told me to get it all out and everyting. Who said that? Mark, said just getting my feelings out, that hurt me more than any thing else, trying to tell my feelings. Who? Mark Derbyshire. When did he talk to you? He's got to be some fault in this too. He has? Yes, Ronnie even said he was in fault too, for us breaking up and everything, just because one of my kids got burnt with a iron one time and I just had went outside, all the kids were in there, after

they didn't answere me I went straight right back in there to tend to them, but he had all ready got burnt and they said it wasn't my fault. I still think it was all my fault, it was the truth. What are you going to do with me now? Well I don't know, we will talk to our Commonwealth Attorney on it, but the autopsy shows it was a good bit of pepper in the baby's stomach, breathing and every where. How many times have you did this? Just a couple of times. Just a couple of times? Yes, she would get into stuff and drinking out of my bath water, all that stuff like that, she always has. But she never did do nothing like that till that teacher started coming down and telling me what to do. What teacher? Terry Connley or something like that, from Social Services, you know Mark got her into it, you know and she was doing so good before she came and after that she started getting awfull and she started getting on my nerves. On this ocassion how much pepper did you put in the kids mouth? Do you realize how much? No. How did you do it? I just poured it from the box in her mouth. You poured it from the box? Yeah. Wouldn't that just strangle a kid all most to death? No. Did she cough? Yeal. She cough and got alot of stuff up after that, I didn't mean to kill her, huh I didn't mean to kill her.
(You think she has given us enough?)
The only thing we can do Dianne, you go back up there with your sister. Do you mind going down there with us and give us the can of pepper? We'll take you down there or either you can follow us, do you mind or do you have any reason you don't want to go down there? Oh! Gosh I'll follow you down there, I don't want to go in the Police car. Okay, we understand. I want to go down and straighten up some. This is a volunteer statement, we did not force you to give us a statement of nothing. No. You've been very cooperative with us and

we appreciate it, we're just sorry this thing happen, its a pity some body or us couldn't have done something to have prevented this. Well, we'll follow you down there then, and you can show us where the pepper is and we will pick it up. Okay.

VIRGINIA

IN THE CIRCUIT COURT OF THE CITY OF BUENA VISTA

COMMONWEALTH OF VIRGINIA

VS Murder

DIANNA MIKELS PUGH
(DOB 11/27/50)

ORDER - Felony No. A-293-1

This day came the Attorney for the Commonwealth, W. T. Robey, III, and Dianna Mikels Pugh, age 30, who stands indicted for a felony, to-wit: Murder, was led to the bar in the custody of the Sheriff of the City of Buena Vista, and came also William O. Roberts, Jr., her attorney, heretofore appointed.

Whereupon the accused was arraigned and after private consultation with and being advised by her counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by her attorney and by the Court of her right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and the Commonwealth's evidence having been heard, counsel for the accused moved to strike the Commonwealth's evidence for the reasons stated to the record, which motion was overruled, and to which ruling of the Court counsel for the accused excepted, and having heard all of the evidence and argument of counsel, the Court finds the accused

guilty of Murder in the Second Degree as charged in the Indictment.

And it being demanded of the defendant if anything for herself she had or knew to say why judgment should not be pronounced against her according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of twenty (20) years and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of $485.85 by it about its prosecution in this behalf expended. Counsel for the defendant noted his exceptions to the rulings of the Court on his motion to strike the evidence, which exception was noted by the Court.

And it is further ordered that as soon as possible after the entry of this Order the defendant be removed and safely conveyed according to law to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court certifies that the prisoner be allowed 73 days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and her attorney was likewise personally present and capably represented the defendant and further that she was fully advised of her rights regarding appeal.

And the prisoner is remanded to jail to await transfer to the penitentiary.

JUDGE

DATE: March 11, 1981

Entered March 11, 1981
Law Order Book No. 9
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VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF BUENA VISTA:

COMMONWEALTH OF VIRGINIA	§	
VS.	§	NOTICE OF APPEAL
DIANNA M. PUGH	§	

Dianna M. Pugh, the above defendant, who, on March 11, 1981, was found guilty of murder in the second degree and sentenced to serve twenty years in the penitentiary, does hereby give her Notice of Appeal in this case and will apply for a writ of error.

The transcript of the testimony recorded at the trial will be filed at a later date.

This defendant is without funds and requests that all filing fees and costs be waived.

DIANNA M. PUGH

By: _____
Counsel

William O. Roberts, Jr.
18 W. Washington Street
Lexington, Virginia 24450

CERTIFICATE

I certify that a copy of this Notice of Appeal was mailed to W. T. Robey, III, Commonwealth's Attorney, P. O. Box 669, Buena Vista, VA. 24416, this 30th day of March, 1981.

Filed in the Clerk's Office of the Circuit Court of Buena Vista, Va., on this 30 day of March, 1981.

_____ Clerk.

Betty S. Hall DC.

William O. Roberts, Jr., Counsel for Dianna M. Pugh

ASSIGNMENTS OF ERROR

Appellant assigns three errors as follows:

1. The trial court erred in admitting into evidence the alleged confession of the defendant, Diana M. Pugh, on the ground that it was not given voluntarily.

2. The trial court erred in admitting into evidence the testimony of Dr. Weddle as to the conversation or dialogue between the parents shortly after the child was pronounced dead, such testimony being hearsay and privileged.

3. The trial court erred in finding the defendant guilty of murder in the second degree, there being no evidence that the defendant was motivated by malice and conversely there was evidence that malice did not exist and, without malice, the defendant cannot be convicted of murder in the second degree.

* * *

DR. WILLIAM E. WEDDLE

a witness called by and on behalf of the Commonwealth, being duly sworn, testified upon his oath as follows:

WEDDLE - DIRECT

By Mr. Robey

Q For the record, Doctor, would you state your full name and occupation?

A William Weddle, physician, I am a medical doctor in Buena Vista, Virginia.

Q Where do you have your practice?

A On Magnolia Avenue in Buena Vista.

Q For how long have you had a practice there?

A Approximately two and one-half years.

Q How would you characterize your practice?

A It's a family practice, a cross section of the population of the town.

Q Are you duly licensed and have the necessary credentials from the State of Virginia to practice family medicine?

A Yes sir.

Q Were you so practicing on July 15, 1980?

A Yes, I was.

Q At approximately 3:00 p.m. on that day, where were you?

1 A I was at the Stonewall Jackson Hospital in
2 Lexington, Virginia.
3 Q Was that by chance or ...
4 A It was by chance. I was walking through the hall
5 going to see a patient over there.
6 Q And were you then summoned to the emergency room?
7 A Well, I heard the ambulance drive up and I went to
8 see what was going on and they were bringing in a child.
9 Q Did you then go to the emergency room and endeavor
10 to give treatment?
11 A Yes, I did.
12 Q Tell the Court what you first saw in regard to
13 the patient, who it was and what it was and what the situ-
14 ation was when you were first confronted with the emergency
15 victim.
16 A The Squad came through the doors and they were
17 performing mouth-to-mouth resuscitation or CPR, coronary
18 pulmonary resuscitation on this infant. My first impression
19 was that the child was probably dead. She was limp and
20 cyanotic.
21 Q What do you mean by cyanotic?
22 A She had turned blue. It looked .. it very obvi-
23 ously looked very emaciated and that became more obvious
24 later after we got some of the clothing off.
25 Q What treatment did you undertake as a result of

1 seeing this condition?

2 A The first thing I did ... the Squad said they

3 could not get any air to go down so I attempted to get an

4 airway and pass the plastic tube successfully through the

5 vocal chords but in attempting to breathe through it with

6 my own mouth no air went into it.

7 Q What did that indicate to you?

8 A I couldn't figure out what was going on except I

9 did notice that my mouth was burning.

10 Q Your mouth was burning?

11 A Yes, because I had tried to blow air in with my

12 mouth into the mouth of the baby and I couldn't figure

13 out why my mouth was burning. I thought maybe I was just

14 excited but my mouth was really burning. I pulled the

15 tube out and looked down the suction and tried to reinsert

16 the tube and some black material started coming back. I

17 tried to blow again and nothing happened, I couldn't get

18 any air to go down.

19 Q When you tried to blow and nothing happened, what

20 medical condition, or what did that indicate to you was

21 going on down in the trachea or the breathing area?

22 A Well, I thought the baby had aspirated something.

23 Q When you say aspirated, what do you mean?

24 A That the baby had maybe had maybe inhaled something

25 like a bean or a pea or peanut or something of that sort.

1 Q Is that what you were trying to ..
2 A Trying to suction back. Then another doctor walked
3 in and he tried to do the same thing and he suctioned more
4 and more and more of this black material, just copious
5 amounts of black material and we were not able to ever
6 successfully get any air into the baby's chest. Then we
7 gave the usual medications, intravenous was started and
8 the baby was given all of the usual medications that we
9 would give for cardiac arrest.
10 Q Did you later make a determination of what the
11 black substance was that was coming from the baby's mouth?
12 A Well, after we got back more and I started realiz-
13 ing how hot my mouth was we figured it must have been black
14 pepper. We tasted a little bit of it and it tasted like
15 black pepper.
16 Q How much black pepper were you able to extract
17 from the baby?
18 A That's hard to say, I would say maybe a couple of
19 teaspoons. That would just be a guess because it was coming
20 out in little bits and pieces, but I would say probably a
21 teaspoon and possibly two teaspoons.
22 Q Have you read the autopsy report that shows that
23 the child's lungs and trachea and stomach were just totally
24 filled...
25 A I have not read the autopsy report.

1 Q If it so states, would that condition be consist
2 with the symptoms that you were getting as you were treat-
3 ing this child?
4 A Yes.
5 Q For how long did you undertake to revive the
6 child?
7 A I would say about 40 minutes.
8 Q Were you getting any pulse?
9 A We never got a pulse and we never got a gasp.
10 The Squad said they thought the child may have gasped once.
11
12 MR. ROBERTS: Your Honor, I object to what the
13 Squad told the Doctor.
14
15 Q After about 40 minutes I presume you pronounced
16 the child dead?
17 A Yes sir.
18 Q After that did you then undertake to make a
19 physical examination of the balance of the baby's body?
20 A Yes sir. I examined the body, I thought, pretty
21 carefully after pronouncing death. I noticed that the head
22 was free of any cuts but there was a large bruise over the
23 left cheek, the left side of the face and I noticed that
24 both the upper extremities were covered with bruises which
25 were approximately three or four days old. The bruise on

her face also was about three or four days old. All over the baby's upper chest were numerous circular bruises anywhere from one to two inches in diameter. I turned the baby over and there were linear, horizontal bruises extending from the upper back to the lower back and buttocks and they were about three or four days old, similar to the type of bruises that I have seen produced by a belt or rope. There were numerous fairly severe and more recent bruises over the lower legs which, having seen this sort of thing before, looked as if the baby might have been tied up.

MR. ROBERTS: If Your Honor please, I am going to object to the speculation that the Doctor is putting in here. I think he can testify to what he observed.

MR. ROBEY: I agree that what he could testify to would be only what he saw in regard to the physical condition.

Q Describe in more detail, please, the recent marks that you observed on the legs.

A I could not describe it in more detail except that they were...

Q Which way did they run?

A They ran circumferentially, they were linear in

1 in the front and back.
2 Q How many of those did you see?
3 A I couldn't say, they were all over.
4 Q In regard to the buttocks and the back area,
5 what bruises did you observe there?
6 A Over the back they appeared to be the linear, over
7 the buttocks they were more circular and over the front
8 they were also circular bruises, as if they might have ...
9 well, I can't say that.
10 Q The medical examiner's report indicates this child
11 was approximately three years of age, two and one half feet
12 long, or tall, and weighed seventeen pounds. You personally
13 observed the physical condition of the body yourself.
14 What observations did you make with that regard?
15 A It had the stature of a two year old and it had
16 the weight of about a nine month old baby. There was no
17 subcutaneous fat, that means it was skin and bones. It
18 was quite sunken around the cheeks and all the ribs showed
19 quite prominently. It looked like the baby had been
20 starved.
21 Q Did you take some photographs of this child?
22 A Yes I did.
23 Q Do you have those with you today?
24 A No sir, I turned them over to Ned Brush. The
25 photographs were not too good since they were done with an

1 instant developing camera and they did not turn out so good.
2 Q After administering all treatment that you could
3 and after examining the body after declaring the baby dead,
4 did you have a contact with the mother who would be the
5 Defendant here, Mrs. Pugh?
6 A Yes sir.
7 Q First of all, from a technical standpoint, I don't
8 think we have identified the body. What is the name of the
9 child that you were dealing with there in the emergency
10 room?
11 A All I know is that it was the Pugh baby, I don't
12 know the child's first name. I didn't fill out the final
13 death certificate. I guess Dr. Brush did that.
14 Q Did someone later show up and identify themselves
15 as the mother of this body, or this baby that you were
16 treating?
17 A Yes sir, the mother arrived and the father had
18 arrived a few seconds earlier, I saw them both together.
19 Q Was this in the emergency room?
20 A I took the mother ... I didn't take her directly
21 into the emergency room ... I took her into a small room
22 next to the emergency room.
23 Q The lady sitting beside Mr. Roberts there, can you
24 identify her as the mother of the baby that you had just
25 treated?

1 A Yes sir.

2 Q Did some dialogue or conversation take place then
3 in the presence of the three of you, and I am including what
4 Mr. Pugh may have said to you and the mother and what the
5 mother said to you and Mr. Pugh at that point.

6

7 MR. ROBERTS: I am going to object to that, Your
8 Honor, that would be hearsay. It would not be by
9 way of investigation either. What dialogue took
10 place between the husband and wife at that time I
11 think should be privileged.
12 COURT: What would be privileged?
13 MR. ROBERTS: As far as the doctor is concerned.
14 I realize he was not there attending the defendant,
15 but certainly...
16 COURT: Isn't that necessary for the physician/
17 patient privilege?
18 MR. ROBERTS: I think there is a round about con-
19 nection here between the doctor of the child and
20 the mother. I would object to the doctor repeating
21 any conversation that took place between the father
22 and the mother and the doctor at that time.
23 MR. ROBEY: May I lay some groundwork?
24 COURT: Go ahead.
25

1 Q Doctor, had you, prior to this occasion created
2 a physician/patient relationship with this family or with
3 Mrs. Pugh?
4 A Not that I am aware of directly with her. I had
5 treated her husband possibly once, I think. I might have
6 seen one of the other children. I looked back through my
7 records and my partner had treated the mother on two occas-
8 ions in the month prior to that but I had not personally
9 seen her.
10 Q On that day were you undertaking any physician/
11 patient realtionship between your patient, the child?
12 A That's the way I looked at it.
13 Q You considered yourself to have a physician/patient
14 relationship between the little Pugh baby and yourself, is
15 that what you are saying?
16 A Yes sir.
17 Q Were you in any way treating or having a physician/
18 patient relationship between yourself and Mrs. Pugh at the
19 time you were attempting to find out what in the world hap-
20 pened to this child?
21 A That is not the way I looked at it.
22 Q Were these conversation taking place in a room
23 where Mr. Pugh and Mrs. Pugh and you were all present?
24 A Yes, and I invited one other person to be present.
25 Q There was a fourth person present at the time the

1 conversation took place?
2 A Yes sir.
3 Q Who was that?
4 A Prior to the encounter I realized this was all
5 probably going to come up so I called the Children's Pro-
6 tective Services and asked them to send someone over to be
7 a fourth person and witness this conversation.
8 Q So these conversations did not take place in privacy
9 then?
10 A No sir.
11 Q That being the situation, will you now tell the
12 Court what conversations occurred between you and Mr. and
13 Mrs. Pugh all in the presence of each other and in the
14 presence of the social service worker?
15
16 COURT: Before you asnwer that question, do you
17 have any questions that you want to ask at this
18 point, Mr. Roberts?
19 MR. ROBERTS: My point, if Your Honor please ...
20 COURT: Go ahead and state your objection for the
21 record.
22 MR. ROBERTS: I am objecting to the Doctor relating
23 the conversation under priveleged circumstances
24 whereby he had just had a patient/physician privi-
25 lege with this mother's child and the discussion

1 and the fourth individual that was called into it
2 also is from an agency, I gather, whose records and
3 information are private unless they are released
4 by the parties involved.
5 COURT: Private, but does that make it privileged?
6 MR. ROBERTS: I contend that there is a privileged
7 realtionship there that the doctor cannot testify
8 to the conversation if my client objects to it,
9 and we object.
10 COURT: The objection will be overruled. The Court
11 finds that there is no doctor/patient relationship
12 for a privileged communication to exist in this sit-
13 uation and further finds that they were not done in
14 any furtherance of that and were not uttered as
15 privileged communications at the time. Your objec-
16 tion is overruled and your exception is noted.
17
18 Q When you first saw Mrs. Pugh and Mr. Pugh together
19 what did he say to her?
20 A Well, he didn't say anything to her initially ...
21 Q Well, what was the first thing that happened? Relate
22 that whole sequence of events.
23 A She had just come into the room and I was in there
24 with the social worker getting ready to talk and he came in
25 at that point and sat down and he was agitated, as she was,

1 they were both sobbing, she was somewhat agitated, hysterical,
2 and he was, too. He wanted to know if there was a physical
3 cause of death and before I could answer that...
4 Q At this point, doctor, did both of them know that
5 the child was dead?
6 A Yes sir. I walked in and said, "Your child is
7 dead." I told that to her and then he came in and I told
8 it to him.
9 Q And he then asked the question about the cause of
10 death, and then what happend?
11 A He said, was there a physical cause of death, and
12 then he related...before I could answer he said, "We have
13 been carrying the baby back and forth to find out why she
14 hasn't been gaining weight." He was angry about the fact
15 that the baby had died and he quite frankly said if there
16 was anything wrong with the baby he was going to sue the
17 doctor that took care of the baby. I told him at that point
18 that the baby had died of asphyxiation and he acted very
19 shocked and then he turned and looked at the mother and said
20 to the mother , "Oh no, not again.", which I thought was a
21 very strange reaction.
22 Q He said to the mother, "Oh no, not again"?
23
24 MR. ROBERTS: Now this is ...
25

1 Q When he said to the mother, "Oh no, not again",
2 then...
3
4 MR. ROBERTS: Now, Your Honor, this is the portion
5 that is strictly hearsay. The doctor is repeating
6 what Mr. Pugh said and I don't think it has any-
7 thing to do with this case at all.
8 COURT: The evidence is being offered, I believe,
9 for statements that the accused is supposed to have
10 made and they would be admissible. Admissions in
11 a conversation of this sort, I think it is appro-
12 priate that the whole conversation come in. Also,
13 the Court would note that as to someone who is not
14 a party in this matter statements can be treated
15 only as a matter of utterance and a fact of utter-
16 ance. The objection will be overruled.
17 MR. ROBEY: I might also make the observation, so
18 that the record is clear, these statements were not
19 not responded to by the wife, by Mrs. Pugh, the
20 Defendant, and we contend they would amount to a
21 tacit type admission.
22 COURT: I think my previous ruling would also apply
23 to that. It is a form of admission.
24
25 Q When he said, Oh no, not again", what did she say?

1 A She said, "What do you mean". At that point I didn't
2 know what he meant, either. I felt very uncomfortable at
3 that point because the conversation didn't make any sense
4 to me. I explained to him at that point, I said to him,
5 "The baby had aspirated a large amount of pepper", and he
6 indicated he didn't know what aspirated meant, he said do
7 you mean swallowed and I said no, it was more like inhaled.
8 The father responded sort of strangely, he got very angry
9 with the anger directed toward the wife and also toward me
10 and said,"How do you suppose that happened?" I said again
11 that I was not exactly sure but that it looked like the
12 baby had inhaled a lot of pepper and I was not exactly sure
13 how it happened. At that point I turned to the mother and
14 asked if the baby had a habit of getting into things, getting
15 into the pantry and that sort of thing, and she sort of calm-
16 ed down at that point, she had been hysterical and at that
17 point she calmed and seemed to me to get very defensive,
18 that was the feeling I got from her, and she said the child
19 did frequently get into things and swallowed things.
20 Q Did you then advise the two of them of the other
21 physical conditions that concerned you about the baby?
22 A Yes, I told them that I was concerned because there
23 was evidence that the baby had numerous bruises that did
24 not look like what you normally see when a child falls down
25 because they were all over the body, from head to toe, and

1 did they know how the bruises got there. I was not directing
2 this at him or her specifically, I was just asking the ques-
3 tion of both of them and I did not know at that point that
4 apparently the two of them were not living together, I assum-
5 ed they came directly out of the same household.
6 Q When you said that there were bruises of that
7 severity what did the father say to Mrs. Pugh?
8 A He said, "I knew they should have taken the children
9 away from you."
10 Q He said to her, "I knew they should have taken the
11 children away from you"? When he said that to her, what did
12 she say back?
13 A She said, "I only beat her twice before."
14 Q She said, "I only beat her twice before", and then
15 what did she say?
16 A Well, she said, "I guess they'll put me away now."
17 Q After saying she guessed they would put her away
18 now, how did she then begin to act from an emotional stand-
19 point?
20 A She got really angry at the father, her husband,
21 and started accusing him of infidelity and lack of support
22 of her and never being around when she needed him, that sort
23 of thing. I can't remember all of the details, basically
24 she was saying that he wasn't there when she needed him.
25 Q With these significant conversations having then

1 taken place in your presence, did you then start to make
2 observations as to her total orientation to the world and
3 the situation of what was going on right then, and did you
4 then make notes as to what state of mind you observed her
5 to be in, after realizing what we are here about now.
6 A Yeah, I thought it was appropriate at that point
7 to see if the mother was possibly psychotic, that means out
8 of contact with reality, so I just asked her some routine
9 questions; did she know what day of the week it was, did
10 she know where she was physically, did she remember how she
11 got there, did she remember the rescue squad coming to the
12 house, how old was she, what date was she born, what I call
13 orienting questions to see if, in fact, the patient is
14 oriented to their surroundings and not overtly insance, or
15 psychotic. She answered everything appropriately and her
16 orientation to her surroundings was very appropriate, as
17 far as knowing where she was and who she was. I might add
18 that throughout all of this the father was sobbing, he was
19 really desolated.
20 Q I assume you then called in the medical examiner
21 and that arrangements were made for the usual steps for the
22 medical examiner and the autopsy in Roanoke?
23 A Before I called in the medical examiner I took the
24 baby over and did total body x-rays of the baby and while
25 that was being done I called the medical examiner.

WEDDLE - CROSS

By Mr. Roberts

Q Dr. Weddle, the bruises that you mentioned were not the cause of death, is that correct?

A Not the immediate cause of death, no sir.

Q Would they have caused death?

A That's hard to say, if this child had abdominal or head trauma it is conceivable. These were about four days old, and I think that would be unlikely. If they had been acute bruises, like maybe the child had fallen out of a window and they were fresh bruises, but these were about three or four days old so I don't think I could say in all honesty that these would be the cause of death.

Q So they are not the cause of death?

A No sir.

Q The autopsy report makes this statement: "The body is normally developed, somewhat thin." Is this compatible with your observation of the child?

A No sir, it is not. I think it is somewhat of an understatement. I would say markedly undernourished. Seventeen pounds is the weight of a normal nine-month old child.

Q And you recall the mother told the father that he was not there when she needed him?

A Yes sir.

1 Q Is it your opinion that the child was dead when you
2 started to work, or did the child die afterwards?
3 A It is my opinion that the child was probably dead
4 but in view of the fact that children have a greater toler-
5 ance of asphyxiation then do adults I felt it was important
6 to try and resuscitate the child. There have been cases of
7 children in this state being resuscitated after long periods
8 of time.
9
10 ERSKINE K. CAMPBELL
11 a witness called by and on behalf of the Commonwealth,
12 being duly sworn, testified as follows:
13
14 CAMPBELL - DIRECT
15 By Mr. Robey
16 Q Please identify yourself for the record.
17 A Erskine K. Campbell, Chief of the Buena Vista Police
18 Department.
19 Q Were you serving in that capacity on the afternoon
20 of July 15, 1980?
21 A Yes sir, I was.
22 Q Did it come to your attention that there had been
23 a death of a child from here in Buena Vista?
24 A On 7/16/1980 it came to my attention.
25 Q The following day?

1 A Yes sir.
2 Q Pusuant to that did you have occasion to interrogate
3 Diana Pugh, the Defendant here, in regard to that death?
4 A Yes sir, I did.
5 Q First of all, as to location, where does Mrs. Pugh
6 live?
7 A She lives at 1250 Maple Avenue.
8 Q Is that within the Corporate Limits of the City of
9 Buena Vista?
10 A Yes sir, it is.
11 Q Did your investigation reveal that the Defendant
12 and the deceased child both resided at that address prior to
13 the child's death?
14 A Yes sir.
15 Q Where did you interrogate Mrs. Pugh?
16 A Mrs. Pugh was brought into the police department
17 and we interrogated her in a room that we've got back there
18 especially for that.
19 Q Who was present?
20 A Lt. Ferguson and myself.
21 Q What mechanical or electrical apparatus did you have
22 in addition to the usual things?
23 A We had purchased a small tape recorder and we taped
24 her voice along with mine.
25 Q At the time you were making this interrogation

1 was Mrs. Pugh under arrest?
2 A She was under interrogation until the point that she
3 confessed to the murder of the child.
4 Q I assume from that then that she was not under arrest
5 at the time she was brought in for interrogation?
6 A No sir.
7 Q She was not being physically detained by you at
8 the time you began your interrogation?
9 A No sir.
10 Q Despite that, would you read into the record the
11 rights that you advised her of before commencing the inter-
12 rogation?
13 A We talked to her and said we would be taping her
14 voice on that tape and she said all right, she said yes,
15 and I asked her could she speak up and she repeated, "Yes."
16 I told her: "I will advise you of your Miranda warnings, I
17 will read them to you so you will understand what is going
18 on. You have the right to remain silent, anything you say
19 can and will be used against you in a Court of law, you have
20 the right to talk to a lawyer and have him present with you
21 while you are being questioned. If you cannot afford to hire
22 a lawyer one will be appointed to represent you before any
23 questioning if you wish. You can decide at any time to
24 exercise these rights and not answer any questions or make
25 any statements. Do you understand each of these rights?"

1 Q When you asked her, "Do you understand each of
2 these rights?" what did she say?
3 A She said: "Yes sir."
4 Q Then what transpired?
5 A I said: "Having read these rights to you, do you
6 wish to talk to us now?" And she said: "I don't know, I
7 don't know the way you all do that, I don't know if I should
8 get a lawyer or what, I just don't know. I have never been
9 through this before."
10 Q And what did you say?
11 A I said: "Well, it's up to you, you are not here
12 to be charged with anything but we have to get to the bottom
13 of this and see what is going on. Your statement don't mean
14 that you are guilty of anything but if it comes out that you
15 was you will naturally be charged. Do you still wish to talk
16 to us?" She said: "If I don't I am in bad condition."
17 I said: "No, that is not what we are saying." She said:
18 "I don't know, I have not been through nothing like this
19 before. I don't know what to do. I may as well just answer
20 so ask me the questions. There ain't nothing to hide no
21 more."
22 Q All right, her last statement before you interro-
23 gated her was; "I may as well just answer, there ain't
24 nothing to hide no more"?
25 A Right.

1 Q Then relate to the Court what she said to you.
2
3 MR. ROBERTS: Now, if Your Honor please, at this
4 stage I will object to the admissibility of what
5 I suppose is going to purport to be confession.
6 It is obvious from the lead in that the Chief did
7 recite to the accused the Miranda warnings, however
8 the next portion of the conversation was a coaxing
9 on the part of the police department for the accused
10 to make a statement. She expressed some hesitation
11 about making any comments and asked them about a
12 lawyer but ...
13 COURT: Do you want to ask any more questions on
14 foundation, make a motion to suppress the statement
15 or do you wish to tender any more evidence on that
16 foundation?
17 MR. ROBERTS: I simply wish to tender my observation
18 that the police coaxed her into making this state-
19 ment and that it was not voluntary.
20 COURT: On the evidence tendered I will find that
21 there was a voluntary waiver and I will allow the
22 statement, and your expection will be noted.
23
24 Q Will you start with the questions and answers that
25 occurred between you and she after she said that she wanted

you to ask her some questions.

A It went like this:

"Q Well, you know the little girl, she was three years old?

A She will be three in October.

Q Well, you know they took her to Roanoke to have an autopsy on her."

COURT: Mr. Robey, do you have another copy of this statement, perhaps I can read along as the Chief is testifying. We will mark this as Commonwealth's Exhibit #2. Excuse me for interrupting you, Chief. Go ahead.

A "Q Well, you know they took her to Roanoke to have an autopsy on her. It came back with pepper down her throat, a lot of scratches and bruises on the kid. The main thing we want to know is what happened and how she got the bruises and how she got the pepper. We are here to get the truth, we are not here to say that you did something like that, but if you did you should tell us just exactly what did happen. YOu know the kid was bound to have got the bruises and scratched from somebody and your mother said

1 something about she bit your finger trying to
2 get the pepper in her.
3 A I know I couldn't get her mouth open, it took
4 all my pressure and everything even to get her
5 mouth open. I finally got it open.
6 Q Why don't you try from the beginning and tell
7 the whole thing as to what happened. I know you
8 have been having a lot of problems.
9 A I know everybody know that but me.
10 Q I know you have been to Social Services and
11 talked to them.
12 A They have been bothering me, that's it.
13 Q They have been bothering you?
14 A Yes.
15 Q What have they been doing?
16 A Just walking in, coming around and telling me
17 what to do, how upset and hurting I was and
18 everything.
19 Q What do you mean, how was you hurting?
20 A About the separation, the kids and everything.
21 Q How did the kid get the scratches on her?"
22
23 Q What did Mrs. Pugh say when you asked her how the
24 kid got the scratches on her?
25 A She said: "I left them, I made them, I hit her."

1 Q And you said what?
2 A I said: "Well, how did the kid get the scratches on
3 her"? and she said, "I left them, I made them, I hit her".
4 Q Just go ahead with your statement then, please.
5 A "Q You hit her and scratched her with you finger-
6 nails?
7 A No, I ain't got any fingernails, I didn't
8 scratch her.
9 Q Why did you hit her?
10 A She kept on crying and crying and crying, not
11 really crying, just whining. It got on my
12 nerves and I just hit her.
13 Q What did you hit her with?
14 A My hands and sometimes my fist.
15 Q Now what about the pepper and how did this get
16 involved?
17 A I did put a little bit in her mouth, she was
18 sucking the baby's bottle when I told her not
19 to.
20 Q Why did you put it in her mouth?
21 A Well, people always told me to put soap or
22 something like that in their mouth when they cuss
23 you know, stuff like that, to keep her from doing
24 it, but I think she got hold of a can or some-
25 thing the last time and got it down her throat,

1 I don't know.
2 Q But you did put pepper in her mouth, are you
3 sure you didn't put it in this time? Are you
4 sure? If you did, tell us. Your mother was
5 down there earlier that day and she said you
6 were real upset.
7 A Yeah, she had to take me to the social services
8 again.
9 Q She said she could tell you were all upset and
10 nervous. Did you try to get the social services
11 to take all of these kids at one time?
12 A Yeah, I told Mark to take them and he said he
13 wouldn't put them in a home.
14 Q He said he couldn't put them in a home?
15 A I even asked Ron to take them and he had nowhere
16 to put them.
17 Q On this occasion where was the pepper sitting?
18 A On the kitchen table.
19 Q How did she get it if she is only two?
20 A I don't know, she just runs around getting into
21 everything.
22 Q What about the other kids, where were they when
23 this was happening?
24 A Scotty was outside, Michael was in the living
25 room with me, I was changing the baby.

1 Q How old is Michael?
2 A He is four, he just turned four in February.
3 Q The pepper that was used, didn't you just have
4 it where you could just shake it out?
5 A The can had the top off or something I reckon.
6 One of the other kids took it off or something.
7 Q Could you find the pepper later?
8 A Yeah, I put it under the couch so the other kids
9 couldn't get it. I was so nervous with the
10 crying and everything, this crying and whining
11 all the time, I just couldn't put up with it no
12 more. All them kids and all by myself with no-
13 body around to help me.
14 Q Yes, I know you've got a problem, it's pitiful.
15 Are you sure you didn't put the pepper in her
16 mouth, a whole lot?
17 A I put some, I don't know how much.
18 Q What was the kid doing that made you do that?
19 A She was giving her bottle and sucking on it and
20 I told her not to and the teacher that came up
21 there took her bottle one time and I thought she
22 didn't even touch a bottle. She would whine for
23 the other kid's stuff and it wasn't right for her
24 to have everything. Every time you turned around
25 she was always sneaking it and drinking it and

1 the baby would cry for the bottle and every-
2 thing. Every time she turned around she was
3 sneaking his stuff.
4 Q Did you realize the pepper could kill her?
5 A No, I didn't know it, no, I didn't hurt her the
6 other time.
7 Q On how many occasions?
8 A I think the best thing is to put me away, just
9 put me away somewhere. I never want to hurt my
10 kids again, I don't want to hurt them no more.
11 Q I know you don't.
12 A I've been hurt and hurt over and over. I don't
13 want to hurt my kids no more. Their daddy don't
14 want them, I have already told him to take them
15 and he wouldn't take them. He would never come
16 around or take them nowhere or do nothing.
17 Q It's a pity, I know.
18 A Why couldn't I have died instead of her?
19 Q No, you shouldn't feel that way, you ought to
20 look to the future for brighter days.
21 A I told Mark I was nervous and everything and he
22 wouldn't believe me.
23 Q I know, I know.
24 A He just told me to get it all out and everything.
25 Q Who said that?

A Mark said just getting my feelings out would hurt me more than anything else, just trying to tell my feelings.

Q Q Who said that?

A Mark Dervershire.

Q When did you talk to him?

A He has got to be some fault in this, too.

Q He has?

A Yes, Ronnie even said he was in fault too, for us breaking up and everything, because one of my kids got burned with an iron one time when I just had went outside. All of the kids were inside. After they didn't answer me I went straight back in to tend to them but he had already got burned and they said it wasn't my fault. I still think it was my fault. What are you going to do with me now?

Q I don't know, we will talk to our Commonwealth's Attorney about it but the autopsy shows it was a good bit of pepper in the baby's stomach, breathing, and everywhere. How many times have you did this?

A Just a couple of times.

Q Just a couple of times?

A Yes, she would get into stuff, even drinking

1 my bath water and all that stuff like that. She
2 always has, but she never did do nothing like
3 that until the teacher started coming down and
4 telling me what to do.
5 Q What teacher?
6 A Terry Conley, or something like that, from
7 Social Service. You know, Mark got her into it
8 too, you know, she was doing so good before she
9 came, and after that she started getting awful
10 and she started getting on my nerves.
11 Q On this occasion, how much pepper did you put
12 in the kid's mouth? Do you realize how much?
13 A No.
14 Q How did you do it?
15 A I just poured it from the box in her mouth.
16 Q You poured it from the box?
17 A Yes.
18 Q Wouldn't that just strangle a kid almost to
19 death?
20 A No.
21 Q Didn't she cough?
22 A Yeah, she coughed and got a lot of stuff up
23 after that. I didn't mean to kill her."
24 Q All right, that ends the statement in regard to
25 the incident itself. After she had told you that she had

1 poured pepper from the box into the child's mouth, did you
2 make inquiry of her as to where the box was?
3 A Yes sir, I did.
4 Q What did she tell you?
5 A I asked her where the pepper was and she said:
6 "Oh, gosh, I will follow you down but I don't want to go
7 in the police car."
8 Q Did you all then go to the marital home?
9 A Yes sir.
10 Q Which, again, it is located within the corporate
11 limits of the City of Buena Vista?
12 A Yes sir.
13 Q When you got there didyou ask her to locate the
14 pepper for you...or to locate the box for you?
15 A Yes sir, I did.
16 Q Do you have that box here now?
17 A Here is the box right here.
18 Q Who gave you that box?
19 A We went into the living room and Diana reached
20 under the couch seat and pulled it out.
21 Q Under a couch seat?
22 A Yes sir, in the living room.
23 Q This black pepper box shows a net weight content
24 of 56.70 grams. Does it still have any pepper in it?
25

1 MR. ROBERTS: I am going to object to that. I
2 think I know where Mr. Robey wants to go on that.
3 Unless we know how much pepper there was in that
4 can in the first place there is no way of estimating
5 any volume that might have gotten into this child.
6 COURT: I think it might go to the weight of the
7 evidence and the inferences to be drawn from it
8 but I will allow the question and overrule the
9 objection.
10
11 Q Does this 57.60 gram box of black pepper have any
12 pepper left in it?
13 A It has approximately a third of a can.
14 Q Can you tell the Court whether or not the one-third
15 of the pepper that is left in that can is ... how that re-
16 lates to the amount that was in there when it was turned over
17 to you by the mother after she retrieved it from under the
18 couch?
19 A It is the same amount that was in the can when she
20 gave it to us. I have had it under lock and key since then.
21 Q How many means does that type of can have for get-
22 ting the pepper out?
23 A It has two, you can pour it or you can use the
24 other thing where you just sprinkle it.
25 Q You are saying that it has a portion that it can

1 just be sprinkled out?

2 A Yes sir.

3 Q Then I notice a larger portion on the top. Would

4 you characterize the dimensions of the big hole on top of

5 it?

6 A The big hole is approximately one inch by approx-

7 imately 5/8 inch.

8 Q One inch by 5/8 inch. Now when you got a statement

9 from Mrs. Pugh, did she indicate when she was telling you

10 about getting the pepper in whether she sprinkled the pepper

11 in or whether she poured it in?

12 A She stated that she poured it into the child.

13

14 MR. ROBEY: May we introduce this pepper can as

15 an exhibit.

16 COURT: This will be accepted and marked as Common-

17 wealth's Exhibit #3.

18

19 CAMPBELL - CROSS

20 By Mr. Roberts

21 Q Chief, what was the condition of the can when you

22 found it?

23 A It was closed.

24 Q Completely closed?

25 A Yes sir.

1 Q Otherwise, it was like it is right now? I know
2 you can't see it right now, but it was like it was when you
3 were testifying?
4 A Right, it was closed. Both parts were completely
5 closed.
6 Q And you found it under the sofa?
7 A Yes sir, well, under the seat.
8 Q Where Mrs. Pugh had pointed out to you that it was?
9 A She said she had put it under there to keep it away
10 from the other kids.
11 Q You didn't have her sign that statement, did you?
12 A No sir, it was taped.
13 Q And then it was transcribed?
14 A Yes sir.
15 Q By someone in your office?
16 A Yes sir.
17 Q Do you still have that tape available?
18 A Yes sir, I do.
19 Q You seemed to have some sympathy with her home en-
20 vironment during your interrogation of Mrs. Pugh, is that
21 correct?
22 A Yes sir.
23 Q Do you have some familiarity with it?
24 A Well, I didn't see any food in the house when we
25 went down there.

* * *

1 and psychological condition in which you found her as a
2 result of the examination?
3 A Yes, I will refer to the report that has been re-
4 ferred to.
5 Q If you could summarize it, it would be better.
6 A Mrs. Pugh on admission was obviously depressed,
7 distraught, teary, particularly so when the events surround-
8 ing the death of her daughter were discussed.
9 Were you given a history of those events surrounding
10 th death of her daughter?
11 A Yes sir. Upon, or soon after, admission to the
12 spital we received the following reports: the examina-
13 Pleasants, who had seen her on order of the Court
14 and he recommended that she be hospitalized at Central State
15 for diagnosis, evaluation and observation. We received a
16 document entitled, "Dialogue of Death Concerning Pugh Baby",
17 by Dr. William Weddle, which was formulated on July 16, 1980.
18 We received a transcript of the interrogation of Diana Pugh
19 by Shief E. K. Campbell dated July 16, and a report of in-
20 vestigation by the medical examiner which was completed soon
21 after death by Dr. David W. Oxley.
22 Q You have been in the court room and heard the tes-
23 timony this morning, have you not?
24 A Yes, I have.
25 Q Was the background that you were given, the docu-

1 ments that you have just recited that you were provided with,
2 reasonably consistent with what you have heard testified to
3 here today?
4 A I would say that the information I have heard was
5 taken from the same documents that I had examined.
6 Q Did you then examine this patient in light of the
7 medical and social history and occurrences and form an
8 opinion as to whether or not this woman was sane on July 15,
9 1980 at the time her daughter died?
10 A Our examination was not specifucally directed to
11 her mental condition at the time of the alleged offense.
12 However, we did examine and discuss her with relation to
13 this. Our court order was for a determination of competency
14 to stand trial.
15 Q Did you find her competent to stand trial?
16 A At the time of her admission we felt that Mrs.
17 Pugh was in no condition to stand trial. She was deeply
18 depressed, we did not guess about the ideology or source of
19 her depression, but felt that she was too emotionally upset
20 to cope with or participate in her defense in the trial
21 process. Consequently she was kept at the hospital under
22 the direction of our physicians and others and treated for
23 approximately two months. During that period oftime we
24 felt that she became less depressed, more able to emotionally
25 control herself, her grief, and her feelings and behavior.

1 Consequently on September 12th we requested that the Court
2 return her to her community, that our examination and treat-
3 ment had been completed and that she was competent to stand
4 trial.
5 Q Prior to sending her back here after treatment did
6 not you or someone at your hospital make a determination in
7 regard to her sanity at the time of the commission of this
8 offense?
9 A In our examination we made a number of conclusions
10 concerning Mrs. Pugh. She is an individual who had emotional
11 problems over the years, that she had -- she is a chronic
12 or long term depressed person, was and is extremely dependent
13 on others, and it appeared from our history and examinations
14 that this was a characteristic from her for a long time, if
15 not all of her life.
16 Q Addressing yourself to the question that I asked
17 with reference to her sanity at the time of the offense, did
18 she have the capacity to know right from wrong? Did you
19 make a determination whether or not she had the capacity to
20 know right from wrong at the time this offense occurred?
21 A We felt that Mrs. Pugh did not present a mental
22 disorder that would prevent her from knowing the nature and
23 consequences of her act... of her behavior at any given
24 period of time.
25

GWALTNEY - CROSS

By Mr. Roberts

Q Dr. Gwaltney, did you in conjunction with Dr. Dalton prepare a report of the evaluation of Diana Pugh while she was at the hospital?

A Yes.

Q Do you have a copy of that?

A Yes I do.

MR. ROBERTS: Mr. Robey, do you have any objection to the report going into the Court file?

MR. ROBEY: I have no objection if this is in lieu of a presentence report.

(Discussion between counsel)

MR. ROBEY: I have no objection.

COURT: This will be accepted into evidence and marked as Defendant's Exhibit A.

Q Apparently, in obtaining a history of Diana Pugh, you did go well beyond the events of July 15, 1980?

A Yes, we feel that in any examination of competency a history should be taken.

Q Without going into any extensive clinical analysis of depression, could you briefly explain what depression is and distinguish depression from insanity?

A I will be glad to attempt that. Depression is one word we use in our field that also meets fairly well the lay

1 meaning of the word. We describe it as a disturbance of
2 affect more than a disturbance of mood, a sad mood that
3 reaches the extent where it interferes with one's social
4 and personal functioning and where they experience extreme
5 or severe subjective distress related to their disturbance
6 of mood. We see people who are depressed frequently lose
7 interest in normal kinds of activities, every day pleasures
8 in which most of us enjoy engaging, and this disturbance of
9 mood is relatively persistence in nature, it goes on for a
10 long time. It may not be related to any particular event
11 but to the individual's overall life events. Frequently we
12 see many other kinds of feelings and behaviors associated
13 with depression. People who are frequently depressed either
14 stop eating, some eat too much and gain a great deal of
15 weight because of their feelings of self worth. We fre-
16 quently get people who are depressed who have sleep disturb-
17 ances. We also get what we call psychomotor agitation which
18 can lead to pacing, hand wringing, overtalkativeness, what
19 the normal person would think or say that a person looks
20 anxious, we refer to this as psychomotor agitation. People
21 frequently get decreased energy when they are depressed.
22 They feel that they can't cope, that the world is closing
23 in on them and they don't have the energy to do very much.
24 Some of the bottom lines there are that the person feels
25 worthless, hopeless, frequently they feel guilty for the

1 things that have happened to them, and sometimes thoughts
2 of death or suicide or actual suicide attempts. We also
3 behaviorally, as we have in the Defendant here, tearfulness,
4 anxiety and frequently irritability is a sideline or symptom
5 of depression. So we see primarily a mood disturbance that
6 interferes with a person's social functions. I prefer to
7 use the term depression when it goes beyond the reactions of
8 the average person to everyday occurrences in our lives, in-
9 fering with their effectiveness, socially or behaviorally.
10 Q You used the term mood disturbance, I assume, as
11 distinguishable from what a layman like myself would call
12 a mental disease or mental disorder?
13 A I would characterize or contrast mood disturbance
14 with thought disturbance or intellect disturbance, a dis-
15 turbance of feelings vs. a distrubance of contemplative or
16 thinking functions.
17 Q Your review of depression was in a manner generally
18 responsive to my question, but as far as Mrs. Pugh is con-
19 cerned, did she exhibit all or most of those symptoms?
20 A Based on our examination as well as the history
21 that was made available to us or we were able to obtain,
22 we saw Mrs. Pugh as a chronically or long term depressed
23 person who had many of these kinds of symptoms and feelings
24 over the years and particularly at the time of crisis when
25 we first examined her.

* * *

1 give his opinion as to the ultimate fact in issue
2 here.
3
4 Q Doctor, did you go to the point of the actual
5 death of the child with Mrs. Pugh?
6 A Yes, this was discussed among Mrs. Pugh and myself
7 and others.
8 Q You discussed it with her?
9 A Yes.
10 Q Would you relate to the Court as well as you can
11 recall basically what the content of the discussion would
12 be and her responses to any questions that you might have
13 asked.
14 A In our discussions with Mrs. Pugh, with her relat-
15 ing the events, were essentially as they were already pre-
16 sented to the Court by Chief Campbell. That this happened
17 and that she had been told...please stop me if I am not
18 answering your question...that she had been told that pepper
19 would stop a child from doing certain things and that this
20 is why she was doing it.
21 Q It was disciplinary?
22 A And to prevent behavior that was unacceptable and
23 inappropriate on the child's part.
24 Q Have you ever heard of this disciplinary procedure
25 before?

1 A I had not before. I understand it is somewhat
2 like the idea of using soap to stop a child from cursing.
3 Since this event I have heard that pepper is used by families
4 and I have had others relate first-hand experiences of doing
5 that to their child to stop the child from engaging in cer-
6 tain behavior. Prior to knowing Mrs. Pugh, however, I had
7 not heard of it, or I had not, at least, incorporated it in
8 my memory.
9
10 LARRY BURKE
11 a witness called by and on behalf of the Commonwealth, being
12 duly sworn, testified as follows:
13
14 BURKE - DIRECT
15 By Mr. Robey
16 Q Identify yourself for the record, please.
17 A Larry Burke, Police Dispatcher, Buena Vista Police
18 Department.
19 Q Did you serve as a dispatcher for the Buena Vista
20 Police Department in July of 1980, and more specifically on
21 July 15 of 1980?
22 A I did.
23 Q Were you on duty about 2:45 p.m. on that day?
24 A I was.
25 Q Do you have a function in regard to emergency calls,

1 rescue squad?

2 A I do.

3 Q What is your responsibility or how do you get in-

4 volved in an emergency or rescue squad call?

5 A A person in Buena Vista cannot call directly to

6 the rescue squad or the fire department. All calls have to

7 come through the police dispatcher. The minute we know it

8 is an emergency call such a fire, or First Aid, we try to

9 get the address and who is calling and the nature of the call

10 as soon as we can and put it on our siren and to the speaker.

11 Q On the day that I have just asked you about, at the

12 approximate time I have just asked you about, what sort of

13 emergency call did you receive in regard to the Pugh family?

14 A I received a call from a young boy, at least the

15 voice sounded like a youngster, and he said his sister was

16 asleep and they could not wake her up. I asked him what his

17 name was and he said it was Ronnie something or other, I

18 could not understand over the phone his last name. I tried

19 again to get the address and he said it was Maple Avenue but

20 again I could not understand the address. So I asked if there

21 was anybody else there with him and he said his mother was

22 and I asked him to put her on the phone. So she got on the

23 phone and she said, "This is Mrs. Pugh, my daughter in un-

24 conscious and I cannot wake her up." And then she gave me

25 the exact address.

1 Q Is that all she said to you?

2 A That's all she said because we have to put down
3 in our log the nature of the incident, whether it is a
4 stabbing or a shooting or what and underneath here it says,
5 "Little girl unconscious".

6 Q Did you ever get, either before that or subsequent
7 to that, any frantic request from Mrs. Pugh for help for her
8 child?

9 A No. As a matter of fact this particular request
10 was as matter of fact as though she was telling me the time
11 of day.

12

13 MR. ROBERTS: We have no questions.

14

15 (COMMONWEALTH RESTS)

16

17 ----------

18

19 MR. ROBERTS: I would make a technical motion to strike
20 based on my previous objection to the statement given to the
21 police officer by Mrs. Pugh, actually it was not a voluntary
22 statement, actually it was coaxed from her and therefore it
23 was involuntary.

24 COURT: The Court previously having made the determin-
25 ation from the facts presented that it was a voluntary waiv-

1 er and having found that it was voluntarily made, the Court
2 will overrule your motion for the same reasons as previously
3 stated.
4
5 JAMES D. PUGH, JR.
6 a witness called by and on behalf of the Defense, being
7 duly sworn, testified upon his oath as follows:
8
9 PUGH - DIRECT
10 By Mr. Roberts
11 Q State your name. please.
12 A James D. Pugh, Jr.
13 Q Where do you live?
14 A 105 Clark Drive.
15 Q Is that in the City Limits or is that outside the
16 City Limits of Buena Vista?
17 A It's in the County.
18 Q What is your relationship, if any, to Diana Pugh?
19 A She is my aunt.
20 Q So the child we are talking about was your cousin?
21 A Yes sir.
22 Q Where were you on the 15th of July, 1980?
23 A I was at home.
24 Q What were you doing?
25 A I was just around the house, sitting around watch-

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1 ing T.V.

2 Q And what happened that day, that afternoon?

3 A The call come over the scanner and my grandmother

4 told me...

5 Q Who had the scanner?

6 A My grandmother, we have a police scanner, and the

7 call come over and she told me to go down there and she told

8 me to see what was wrong so I went down there.

9 Q What did you find when you got to your aunt's

10 house?

11 A When I walked in the door Diana was over the baby

12 giving her mouth-to-mouth resuscitation and trying to get

13 her to breathe.

14 Q Had anybody else arrived?

15 A No, I was the first one there.

16 Q How long did this go on before the first aid crew

17 arrived?

18 A I would say this went on for five or ten minutes

19 before the squad arrived.

20 Q Can you tell the Court precisely what you observed

21 Mrs. Pugh trying to do with regard to the baby when you came

22 into the house?

23 A Well, when I came in she was giving the baby the

24 standard first aid procedure for mouth-to-mouth resuscitation

25 and trying to get her to breathe. From time to time she

would check the baby and try to get her to start breathing again and trying anything she could to get her to start breathing.

Q Did you offer your assistance...do you have any training?

A I have had some at school but I asked her if I could help but she just stook there trying to get the baby to breathe so I shook the baby a little bit myself and tried to get her to breathe, tried to help as much as I could.

Q What was the baby's appearance when you arrived?

A She was laying on the couch and she was unconscious and at the time I saw her she was very discolored and from time to time the baby would gasp for breath.

Q So you did hear the baby gasp?

A Once or twice.

Q Describe Mrs. Pugh as well as you can at that particular time, was she calm or was she excited or what?

A She was very upset and she was crying and she kept saying, "Mary, please breathe", and she was trying to get her to breathe again. She was very upset.

PUGH - CROSS

By Mr. Robey

Q You were where when you got this phone call?

A At my house.

1 Q Which is how far from Mrs. Pugh's house?
2 A About a mile.
3 Q At what time did you receive the call?
4 A As soon as it came over the scanner I left.
5 Q You were not called by Mrs. Pugh, you heard it
6 over the scanner?
7 A Right, I heard it over the scanner.
8 Q And pursuant to that you went to her house?
9 A Yes sir.
10 Q And found Mrs. Pugh giving mouth-to-mouth resusci-
11 tation?
12 A Yes, I did
13 Q After the rescue squad arrived what did they do?
14 A As soon as they got there they took the baby and
15 picked her up and took her on to the hospital.
16 Q What did you do?
17 A I asked Diana if she would like to go to the hos-
18 pital and she said no and I asked her if she would like me
19 to go over and she said yes.
20 Q You asked her if she wanted to go to the hospital
21 and she said no?
22 A Yes, she told me that I could go because the kids
23 were there. I guess she was going to watch them. So I
24 followed the squad over to the hospital.
25 Q She didn't ask you to keep her kids and let her

1 accompany her daughter to the hospital in this condition?
2 A No sir.
3 Q How many kids were left there to be kept?
4 A At the time there was two kids in the house.
5 Q Certainly you must have asked her what in the
6 world was wrong with the baby?
7 A Yes sir.
8 Q When you asked her what the problem was, what did
9 she say?
10 A She just said she couldn't breathe, she couldn't
11 wake up.
12 Q Did you ask her whether she had any reason to know
13 why she couldn't breathe?
14 A No sir.
15 Q Did you see any pepper around the house?
16 A No sir.
17 Q Did you see any pepper on the baby, around her
18 mouth or in her throat?
19 A I can't recall seeing any around her mouth.
20 Q Did you administer mouth-to-mouth resuscitation?
21 A No sir, Diana administered that.
22 Q Did you stay at the hospital until the time that
23 Mrs. Pugh got there?
24 A I stayed there until my uncle arrived.
25 Q Do you know how she got there?

1 A I believe her sister brought her.

2 Q How long had you been at the hospital before the

3 mother of this baby even showed up?

4 A I would say it was probably twenty minutes to a

5 half hour.

6 Q Did you have any conversation with Mrs. Pugh then?

7 A No sir.

8 Q Did you ever have any conversation with her about

9 what happened to her baby?

10 A No sir.

11 Q When you got there you say the baby was on the

12 couch?

13 A Yes sir.

14 Q How was the baby dressed?

15 A As I recall I think she had on a dress but I can't

16 really be certain, that day was very hot and she had dressed

17 the baby according to the weather I guess.

18 Q You described the baby as lying on the couch,

19 and Chief Campbell has testified that this pepper can was

20 up under the couch. How many couches are there in that

21 living room?

22 A Just the one.

23 Q So from the layout of the living room as you saw it

24 if the pepper was under the couch it would have had to be

25 under the couch that you found the baby laying on?

A Yes sir.

Q Did you notice any bruises on the baby?

A I couldn't really notice, like I said the baby at the time was very discolored.

Q At that time the baby had a blue color?

A Yes sir.

Q All over or just parts of her body?

A Her arms and face and legs was all that I could see.

FAYE WILSON

a witness called by and on behalf of the Defense, being duly sworn, testified upon her oath as follows:

WILSON - DIRECT

By Mr. Roberts

Q Would you state your name please?

A Faye Wilson.

Q Where do you live, Mrs. Wilson?

A At Hevener's Trailer Park in Long Hollow.

Q Is that within or outside the City Limits of Buena Vista?

A It's in the City Limits.

Q What is your relationship to Diana Pugh?

A I'm her mother.

* * *

1 her and my brother went on to the hospital after she got
2 someone to take the children.
3 Q What was your observation of your daughter that
4 morning during the period that you were with her?
5 A She was very upset. She was complaining of her
6 blood pressure going up, she was shaking all over, she was
7 complaining of her back and headaches, which she was on her
8 menstrual period. She was just...I don't know, you know
9 a mother can see a change and Diana was just awful upset
10 that day. She even made the remark that she wished she was
11 dead.
12 Q She said that to you in the morning?
13 A Yes sir. She was over the crib changing Crystal
14 the baby's diaper, but she didn't have no diapers, she was
15 just pinning an old gown on her. She was out of diapers,
16 she didn't have no diapers whatsoever. She kept grabbing
17 her head and she said, "Oh, Lord", and she looked over at
18 me, and she said, "Mom, I believe my blood pressure is up
19 again".
20 Q What were your observations as well as you can
21 recollect of Mary that morning?
22 A Well, she...she was...I'd say it was an extremely
23 hot day and all of the children was cranky. Mary was crying
24 and she was fretting some, quite a bit. Diana finally just
25 got her up and sat her on a chair and told her to be quiet,

1 to stop crying, and she did smack her.
2 Q How was she in the car with you?
3 A She was extremely cranky. She kept wanting to
4 take the little baby's bottle...Diana had weaned Mary from
5 the bottle but she kept grabbing at the baby's bottle and
6 she was wanting to suck it, you know, and I let her go on
7 and suck on it a little while and then her little brother
8 said, "Nanny, Mary's got Crystal's bottle and Momma's done
9 weaned her and she don't want her with it." I would just let
10 her suck a little bit of milk, you know, and then I would
11 take it away from her. She was extremely cranky that day,
12 which everybody was. It was an awfully hot day. I think
13 everybody was feeling uncomfortable.
14 Q Did you visit in your daughter's home frequently?
15 A Not too often, but I went when I could. It had
16 been approximately about two weeks since I had been down
17 there to visit with her.
18 Q Did she have any physical problems of which you
19 are aware? Did she take any medication of any kind?
20 A No sir, not as I know of.
21 Q Did she ever complain about any physical problems?
22 A Yes, she complained of headaches all the time.
23 In fact, she almost went crazy with headaches. She kept them
24 all the time.
25 Q How long had that been going on?

1 A I know it had been going on for months.
2 Q Is that a relatively recent thing in her life,
3 then, the headaches?
4 A No, not when she was at home before she was married
5 and all. Diana was always kind of a nervous type person even
6 when she was at home but in the last year she just stayed
7 nervous, and bad headaches. We have even had to call the
8 doctor and he called in stuff for her for her headaches.
9 Dr. Weddle or Dr. Slaughter, I won't say which one, but I
10 think it was Dr. Weddle called in...I think she went up to
11 visit Dr. Weddle or Slaughter and they gave her pills for
12 the headaches. They had give her medication for headaches.
13 Q Do you know approximately when your daughter and
14 Mr. Pugh separated?
15 A It would have been a year in November, somewhere
16 along in there.
17 Q This past November?
18 A Yes sir.
19 Q Can you related the onset of these headaches to
20 this time, before or after? These physical problems and
21 headaches, did they exist before they were separated that
22 you are aware of, or afterwards?
23 A No, she had some while they lived together. She
24 had a lot of headaches then.
25 Q Is your daughter living now in the same place

* * *

1 got down right to the basics to ask her, Diana, did you
2 give Mary the pepper? I just never could do it.
3 Q So you have never discussed with your daughter
4 the circumstances surrounding your granddaughter's death
5 since it happened?
6 A Well, we...she gets...like I said, when you mention-
7 ed the baby's name she got extremely upset, she would cry
8 and cry and cry and I just didn't bring it up. I didn't
9 want to hurt her like that so I never discussed that one
10 point with her.
11 Q You went to the home on this particular day
12 about what time?
13 A I'll say around 11:00 or 11:30 I got down there.
14 Q And you were with your daughter and her children
15 from 11:00 or 11:30 to what time?
16 A I'd say about 12:30, somewhere along in there. I
17 was there approximately an hour or an hour and a half from
18 the time I went to her home until I got back.
19 Q Mary was with you during that period of time,
20 was she not?
21 A Yes sir.
22 Q It was a hot day, you say?
23 A Yes sir.
24 Q It was an extremely hot day?
25 A Yes sir.

WILSON

1 Q How was Mary dressed?
2 A She was dressed in a little summer dress like you
3 would ordinarily dress children for summer weather.
4 Q So I assume, then, that her shoulders and arms and
5 legs were exposed?
6 A Yes sir.
7 Q Did Mary ride with you in the car?
8 A Yes sir.
9 Q Did she ride in the front seat or the back seat?
10 A At first she was in the back seat. Diana and the
11 baby, Crystal, who was a year old, rode up there with me and
12 then later on all of the other children was in the back seat.
13 Q When you all went back to the house you all were in
14 the living room together, weren't you?
15 A I didn't get out of the car.
16 Q How long did you stay in the house before you came
17 up town?
18 A I will say a half an hour.
19 Q And I assume it was at that time that your daughter
20 slapped your granddaughter?
21 A Yes sir.
22 Q Slapped her where?
23 A Just kind of on the cheek.
24 Q Where was your granddaughter at that time?
25 A Well, Diana had...she just kept fretting and crying
and Diana picked her up and told her to set up in the chair

1 and stop crying.

2 Q Did she slap her while she was in the chair?

3 A Yes sir, just as she picked her up and set her in

4 the chair and she told her to stop crying. She said, "I'm

5 nervous, stop crying," and that's when she smacked her on

6 the cheek.

7 Q How close were you to Mary from time to time?

8 How close did you get to her?

9 A About as far as from the table to where I am at

10 now.

11 Q Were you in the court room a while ago when Dr.

12 Weddle testified?

13 A Yes sir.

14 Q And you heard Dr. Weddle testify about the bruises

15 on this child's face, shoulders, arms and legs, didn't you?

16 A Yes sir.

17 Q And I can only assume from the way he described

18 those bruises that you must have seen them, too?

19 A Yes sir, I saw some.

20 Q What did you say to your daughter, Mrs. Wilson,

21 about these bruises being on this seventeen pound, thirty

22 inch child?

23 A Well, that day I didn't...my intention was of

24 going back. Diana was acting peculiar and my intention was

25 of going back down there to take a couple of the children off

1 of her hands but I didn't get back. No, I had not discussed
2 this.
3 Q You didn't ask her how in the world this child got
4 all these marks and bruises on her?
5 A No, not right then...like I was...I was in a hurry
6 because I had to get back. I would have talked to her when
7 I went back down.
8 Q Are you saying that what you saw in regard to the
9 marks on the baby was sufficient to make you that concerned
10 that you were going to come back later and do something about
11 it?
12 A Yes sir.
13
14 FRED C. DALTON
15 a witness called by and on behalf of the Defense, being
16 duly sworn, testified upon his oath as follows:
17
18 DALTON - DIRECT
19 By Mr. Roberts
20 Q Please state your name.
21 A Fred C. Dalton, M.D.
22 Q Dr. Dalton, where do you practice?
23 A I am a Forensic Psychiatrist at Central State
24 Hospital and I am a private practitioner in the City of
25 Petersburg.

* * *

1 refer one or two questions to Dr. Dalton.
2 COURT: I will allow it.
3
4 Q Doctor, I believe I asked you what procedures and
5 testing and so forth you used in arriving at any decision or
6 opinion with regard to Mrs. Pugh during her stay at the hos-
7 pital.
8 A My introduction to this lady was as the new foren-
9 sic psychiatrist in charge of her case, making daily ward
10 rounds with my staff. This is part of the observation, a
11 daily review of the patient's activities and subsequently
12 face-to-face interviews with the staff present as well as
13 individual interviews, asking her questions concerning her
14 thought processes, her state of mind and her emotional re-
15 actions. Individually, the other members of the psychiatric
16 team such as the psychologist, Dr. Gwaltney, who was here
17 and other psychologists working on this case would do cer-
18 tain tests of which the results were made available to me
19 in arriving at my diagnosis and preparing the reports re-
20 quired by the Court.
21 Q What, if anything, were your findings with regard
22 to Mrs. Pugh, her previous problems, mental condition, and
23 so forth?
24 A We found Mrs. Pugh to be a person who was basical-
25 ly a very unhappy person, a distraught person, she had a

1 poverty type of environment, an impoverished existence,
2 especially during the last five or six years prior to ad-
3 mission to our hospital. I obtained a history for her from
4 the social worker and in talking with the patient herself
5 I found that she had been a depressed individual throughout
6 most of her life, as far as she could recall and that also
7 she was a dependent type of individual who needed to have
8 the support of other family members, other responsible peo-
9 ple in order to adequately meet her social obligations in
10 her life. She was frustrated and distraught because,
11 according to the history I had received, received this type
12 of support, particularly from her husband and other family
13 members had been unable to intercede because of Mrs. Pugh's
14 inability to actually reach out and ask for it.
15 Q How did this effect her life in relation to what
16 we are here for?
17 A As a mother she found herself quite ineffective
18 and frustrated at her inability to meet the ordinary needs
19 of a mother with a number of children, young children who
20 are in her care. Her financial situation is such that she
21 was deprived, as we heard here earlier today, in many ways
22 and deprived of many of the ordinary conveniences in making
23 a home and her reaction to this was one of frustration and
24 inability to cope.
25 Q Did she have any specific medical problems that

1 you found?

2 A She complained of low back pain and she had a

3 history of asthma, and at the time of admission I understand,

4 which was prior to my seeing her, but part of my history was

5 available in the record and from the other physician's that

6 examined her, a history of asthma. And she was treated for

7 these two conditions on admission to Central State Hospital.

8 She received medication for the low back pain and for the

9 asthmatic condition. Part of her medical treatment, of

10 course, involved the psychiatric aspect and the psychiatrist

11 who examined her on admission had prescribed an anti-depress-

12 ant medication for her.

13 Q At the time she left the hospital was this med-

14 ication continued?

15 A Yes sir.

16 Q In your opinion is it still necessary for her to

17 take this medication?

18 A Yes sir, I feel this should be continued in any

19 event.

20 Q With regard to the death of this child, did you

21 come face-to-face with the events that occurred on July 15,

22 1980?

23 A Yes sir, we did discuss this.

24 Q Can you relate to the Court what was said, what

25 questions might have been asked and what responses were

1 made in those interviews?

2 A In the interview...it was difficult, even after

3 my arrival...as it has been described before, in July when

4 Mrs. Pugh arrived she was a very tearful individual, she

5 would dissolve in tears if the matter of the baby's death

6 was brought up and she had not discussed this with anyone,

7 and this was true after my arrival. In attempting to speak

8 with her about it she would become tearful and would dissolve

9 emotionally in such a state that felt that it was inhumane

10 to press questions further, and furthermore she was not able

11 to answer them. As time went on and she received the benefit

12 of the total hospitalization and of the medication she was

13 taking she began to improve and within approximately two

14 weeks of my arrival, after August 15, which would take us

15 up to approximately the first week of September, there was a

16 noticable change in her condition and she began to relate to

17 any questions asked her. We asked her many of the questions

18 which have been brought up here today and whether or not she

19 had been told to use pepper in controlling a child's behav-

20 ior and she stated that she had been told this, had been

21 given this advice by others, and we asked her questions con-

22 cerning her intentions as far as the child was concerned,

23 and it is my opinion that there was never any intent to do

24 harm to the child.

25 Q Had you ever heard of using pepper as a disciplin-

1 ary measure before?

2 A Yes sir.

3 Q Under what circumstances?

4 A I recall as a child my grandmother using it on

5 other children in the family to stop them from sucking their

6 thumbs. It was a fairly common practice in the area where I

7 grew up.

8 Q Would you be able to express a recommendation with

9 regard to Mrs. Pugh's condition and the continuance of any

10 assistance that she might require mentally?

11 A Yes sir, I would recommend further watchfulness

12 and psychiatric care I feel is indicated because of her po-

13 tential depression state which we refer to technically as

14 her emotional lability which would indicate to me that she

15 is subject to depressive reactions and I feel that she would

16 benefit from closely supervised psychiatric care.

17

18 DALTON - CROSS

19 By Mr. Robey

20 Q Doctor, when you first saw this Defendant, you

21 were given a history, were you not, that she was charged

22 with having killed her own child by suffocating it to death

23 with pepper? You were given that history?

24 A Yes sir, that history unfolded as I became familiar

25 with the case.

1 Q I can only assume that one of the first, if not the
2 first thing that you would have asked her is did she do it?
3 A I don't recall asking her that exact question.
4 Q You never determined from your patient whether or
5 not she was charged with doing something she had or had not
6 done?
7 A In a discussion I eventually got around to asking
8 this type of questions, but as to getting directly to it I
9 did not deal with the responsibility, as to whether she did
10 or did not commit the act of which she was accused.
11 Q I am not sure I understand your answer. Are you
12 saying yes, you did find out from her that she did these
13 things to kill her child or that you didn't find out?
14 A I am sorry to sound a bit difficult, sir. I
15 thought you asked me if I asked her if she murdered her
16 child, and I did not ask her that.
17 Q I didn't ask you that. I asked you if she did those
18 things, which are said to have been putting pepper down the
19 throat of a child who was suffocated to death...I asked you
20 whether she told you if she did or didn't do it.
21 A She did not say that she suffocated her child with
22 pepper.
23 Q What did she say?
24 A She said that she put pepper on the nipple of the
25 younger sibling in order to stop the child who is now de-

1 ceased from taking the bottle from the baby.
2 Q She said she put pepper on what?
3 A The nipple of the baby's bottle.
4 Q She said she put pepper on the nipple of the bottle
5 that this little Mary, who is dead, now, was not supposed to
6 be using?
7 A Yes sir.
8 Q What effect did she explain to you that was going
9 to have on the baby who was supposed to use the bottle?
10 A She didn't make any comment in that content, and
11 I am not sure what she did in that respect.
12 Q Did she deny pouring pepper in this baby's mouth?
13 A She said she put pepper in the three-year old's
14 mouth out of frustration when she continually reached for
15 the bottle whether she put pepper on the nipple or not.
16 She said she did put pepper in the child's mouth
17 Q Have you examined the autopsy report as to the ex-
18 tent of pepper which had gotten into the lungs and trachea
19 and breathing passages of this child?
20 A Yes sir, I have.
21 Q You are a physician, are you not?
22 A That's correct.
23 Q Was her verbal explanation to you as to what she
24 was doing to that child consistent with the physical findings
25 of that autopsy report?

1 A No sir, not entirely.

2 Q So it would be your opinion that she somewhat
3 understated to you the extent to which pepper was administer-
4 ed to this child when you see what the autopsy report says?

5 A If I were to tie the two events together, yes sir.

6 Q Well, they are tied together from the extent that
7 she is talking about what she did to the child and the autopsy
8 report shows exactly what happened.

9 A Well, my only comment, sir, would be that I have no
10 indication that she necessarily is the individual who placed
11 this amount of pepper. I do know she used pepper as a discip-
12 linary measure.

13 Q She didn't state to you that somebody else had
14 placed the pepper in the child's throat, did she?

15 A No sir, she did not.

16 Q So would it be fair to say that she accepted respon-
17 sibility to you for whatever pepper was down in this child's
18 lungs and throat and trachea?

19 A I don't know that she did accept that responsibility.

20 Q But at least she didn't deny it, is that what you
21 are saying?

22 A As far as I know she did not.

23 Q I made notes of four or five words here when you
24 testified. When Mr. Roberts asked how did you find this
25 lady when you initially made a contact with her, I think

* * *

1 MR. ROBERTS: I would, for the record, renew my motion
2 to strike.
3 COURT: I will again overrule it.
4 MR. ~~ROBEY:~~ The Commonwealth has no ~~rebuttal.~~
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CLOSING

1 difficulty in coping does not increase to the level that in
2 order to cope, we can become murderers.
3 In closing, I make reference to Mr. Roberts' statement
4 to you that this child is dead now and there is nothing that
5 we can do about it now. In answer to that statement I say
6 a very, very strong no. There is something that can be done
7 about it. It is true that this little girl will always be a
8 situation where she has departed this worldly life, but the
9 thing that we can do about it is to take such action, today,
10 in an effort to assure that she...that little seventeen pound
11 girl is the last one in this country to ever have to sustain
12 the punishment that this mother chose to place upon her child.
13
14 COURT: Obviously we are at a very emotional time here.
15 Before the Court announces its decision, I want it under-
16 stood clearly that I will not have any outbursts of emotion,
17 discussion, or any jumping up and running around. Members
18 of the public in the court room are to stay in their seats
19 and not talk until such time as I have adjourned court or
20 permitted you to leave. I will certainly appreciate your
21 cooperation in that regard.
22 Mrs. Pugh, would you stand. Do you care to make any
23 statement at this time? You have the right to make a state-
24 ment at this time if you wish but there is no requirement
25 whatsoever that you do. It is your right if you wish to

SENTENCE

1 exercise it.

2 DEFENDANT: Nothing will bring her back. I didn't

3 kill her, I didn't.

4 COURT: Do you know of any reason why the judgment of

5 the Court should not be pronounced at this time?

6 DEFENDANT: No.

7 COURT, Then Mrs. Pugh, on the evidence presented in

8 Court today, the Court finds beyond any reasonable doubt

9 that you are guilty of murder in the second degree, and the

10 Court would so enter judgment that you are guilty of murder

11 in the second degree of the infant child Mary Pugh.

12 The Court will sentence you to twenty years in the pen-

13 itentiary.

14 I will advise you that you have the right of appeal to

15 the Supreme Court of Virginia. You have the right to have

16 an attorney appointed to assist you should you be without

17 funds to employ counsel of your own choosing. You have the

18 right to have the State pay the expenses of such an appeal

19 if you be without funds to bear the expenses yourself.

20 The record in this case will reflect that Mrs. Pugh has

21 been personally present during any and all proceedings against

22 her in this matter; that her attorney has likewise been per-

23 sonally present during any and all proceedings against her,

24 and that she has been ably and capably represented at all

25 stages of this proceeding by her attorney. The Court finds,

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SENTENCE

1 as a matter of fact, that the calibre of representation
2 provided her by her attorney is that which is expected by
3 members of the Bar practicing in the criminal courts of the
4 Commonwealth.
5 I remand you to the custody of the Sheriff.
6 MR. ROBERTS: If Your Honor please, I would note an
7 exception.
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