

Index of Appendices

APPENDIX A – Court of Appeals Opinion 2-27-18 (1a – 5a)

APPENDIX B – Michigan Supreme Court Order Denying Leave to Appeal 9-12-18 (6a)

APPENDIX C – Police Interrogation (7a – 37a)

APPENDIX D – Trial Court Order Re: Defendant’s Motion to Suppress Statements Made By
The Defendant 5-16-14 and Transcript Excerpts (38a – 49a)

ORDER OF APPOINTMENT (50a – 51a)

APPENDIX A

STATE OF MICHIGAN COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY CASANOVA,

Defendant-Appellant.

UNPUBLISHED
February 27, 2018

No. 324819
Muskegon Circuit Court
LC No. 13-063270-FC

Before: MURPHY, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony murder, MCL 750.316(1)(b), with first-degree child abuse, MCL 750.136b(2), constituting the underlying felony. He was sentenced to life imprisonment without the possibility of parole. Defendant now appeals as of right. We affirm.

Defendant's conviction arises out of the sudden death of his infant son, TC, on January 4, 2013. The evidence established that TC was born perfectly healthy on October 26, 2012. On the day in question, TC's mother left TC in defendant's care while she went to work. Hours later, emergency personnel were called to defendant's house for an "unresponsive child." First responders arrived to find TC unconscious, not breathing, and without a pulse. He had multiple bruises, which appeared to be in varying degrees of healing, on his chest and abdomen. The responders were unable to revive TC.

An autopsy ultimately revealed that TC died of "multiple injuries." The following injuries were noted by the medical examiner (ME): approximately 25 bruises on TC's chest and abdomen, circular in design, that were of "multiple varying colors;" a large hematoma on the right side of TC's head; a lacerated liver; a lacerated spleen; a total of 15 rib fractures, some of which had "callous formations" suggesting that they were older and healing; a contusion on the heart; a skull fracture several inches in length; and "a large amount of blood that had accumulated beneath the skull, not just associated with the fracture but from tearing of veins that connect the lining underneath the bone to the brain itself." The ME concluded that TC's injuries were the result of significantly forceful and violent actions. She opined unequivocally that TC's injuries were not accidental but rather intentionally inflicted.

APPENDIX A

Defendant initially told various first responders, medical personnel, and a detective that TC sustained his injuries after defendant tripped over the family dog while carrying TC, causing defendant to drop the baby before ultimately falling on top of him.¹ However, during a subsequent police interview and prior to being given his *Miranda*² rights, defendant admitted “bouncing” TC off an air mattress seven or eight times in what was “a little more than a play bounce.” Later, and still prior to being Mirandized, defendant added that he might have squeezed TC “a little too hard” to stop his crying, with defendant also stating that he had bounced TC off the bed because of the crying. Defendant was then read his *Miranda* rights. Afterward, defendant informed police that, in response to TC’s crying, he had squeezed TC twice in kind of a “bear hug,” causing TC to lose his breath for a few seconds, and that when TC started crying again, defendant bounced him off the bed.

The trial court suppressed the un-Mirandized statements made by defendant, but allowed the admission of the statements made by defendant after he was given his *Miranda* rights.³ On appeal, defendant argues that the post-*Miranda* statements should have been suppressed as the poisonous fruit of the illegally obtained un-Mirandized statements. We hold that, assuming error by the trial court, defendant has failed to establish the requisite prejudice. MCL 769.26 provides:

No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.

In *People v Whitehead*, 238 Mich App 1, 7; 604 NW2d 737 (1999), this Court observed that “[t]he United States Supreme Court has determined that the erroneous admission of a confession into evidence is a nonstructural defect that does not justify automatic reversal but, instead, requires a harmless-error analysis.” Harmless-error analysis applies to statements obtained in violation of *Miranda* that were admitted into evidence. *United States v Perdue*, 8 F3d 1455, 1469 (CA 10, 1993); *United States v Johnson*, 816 F2d 918, 923 (CA 3, 1987); *Bryant*

¹ We note that TC’s mother testified that just one day before the child died, defendant gave the exact same explanation to her with respect to the cause of a bruise on TC.

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

³ At trial, defendant’s entire videotaped police interview was played for the jury after defendant decided, for strategic purposes, to agree to the admission of the full interview in light of the trial court’s ruling. Counsel made clear that defendant was not abandoning his position that the post-*Miranda* statements should have been excluded. Given these circumstances, we reject the prosecutor’s contention that defendant waived the appellate issue concerning *Miranda*. We note that the ME refuted defendant’s description of events and his claim of accident.

APPENDIX A

v Vose, 785 F2d 364, 367 (CA 1, 1986); *United States v Ramirez*, 710 F2d 535, 542 (CA 9, 1983). The error must be harmless beyond a reasonable doubt. *Whitehead*, 238 Mich App at 7; *Perdue*, 8 F3d at 1469. In *Whitehead*, 238 Mich App at 9-10, this Court explained:

[T]he question before us is whether, absent the confession, honest, fair-minded jurors might very well have brought in not-guilty verdicts. The properly admitted evidence must be “quantitatively assessed” to determine whether, had the improperly admitted evidence not been presented at trial, there is any “reasonable possibility” that a factfinder would have acquitted. . . . A reviewing court must conduct a thorough examination of the record. If, at the end of that examination, the court cannot conclude beyond a reasonable doubt that the jury verdict would have been the same *absent the error*, it should not find the error harmless. . . . When reviewing the erroneous admission of an involuntary confession, the appellate court, as it does with the admission of other forms of improperly admitted evidence, simply reviews the *remainder of the evidence* against the defendant to determine whether the admission of the confession was harmless beyond a reasonable doubt. If the proof against defendant was so overwhelming that all reasonable jurors would have found guilt even without the confession being brought into evidence, the conviction must stand. [Citations, quotation marks, alteration brackets, and ellipses omitted.]

Here, any error in failing to suppress the post-*Miranda* statements was harmless beyond a reasonable doubt because reasonable jurors would still have found defendant guilty on the basis of the untainted evidence, which overwhelmingly established defendant’s guilt. First, as mentioned above, the evidence revealed that this was not the first time defendant claimed to have injured TC by tripping over the family dog, as TC’s mother testified that just one day before the fatal incident, defendant used the very same scenario to explain a bruise on TC’s chin. By the mother’s own admission, it was odd that defendant employed the same excuse to also explain TC’s fatal injuries a day later. This evidence substantially, if not completely, undermined any claim of accident. Moreover, the ME testified and stated unequivocally that TC’s injuries were caused intentionally, not accidentally. Her opinion rested on several factors. First, the multiple bruises on TC’s chest area did not fit “whatsoever” defendant’s claimed act of tripping and falling; the bruises looked like finger marks. Given TC’s age and the fact that he was not yet mobile, there was no logical reason for such bruises to exist on his body, leading the ME to opine that they were “non-accidental in nature.” Second, TC’s rib fractures, some of which were healing and all of which were caused by “significant” force, did not fit the pattern of a one-time, crushing-type injury but were instead indicative of intentional abuse. Finally, in the ME’s opinion, defendant’s version of events would not have accounted for the tearing of the veins under TC’s skull, which required “motion and impact,” not just blunt force trauma to the head. These observations led the ME to conclude that there was “really nothing else to explain” the child’s fatal injuries, other than that they were intentionally inflicted. The ME expressed that she was “very confident” in her conclusion that the manner of TC’s death was homicide.

In light of the above untainted evidence, it is clear to us, beyond a reasonable doubt, that a rational jury would have found defendant guilty even absent the admission of the challenged portion of his confession.

APPENDIX A

Defendant next argues that the trial court erred in allowing testimony about defendant's act of viewing various pornographic websites on his cellular telephone in the approximately one-hour window before calling 9-1-1 to report TC's injuries. As a threshold matter, however, we conclude that defendant has waived this issue. Waiver is defined as "the intentional relinquishment or abandonment of a known right" and occurs when a defendant acquiesces to a course of action. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (quotations marks and citation omitted). "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *Id.* (quotation marks omitted). This rule exists to preclude defense counsel from harboring error as an appellate parachute. *Id.* at 214.

It is apparent from the record that in testifying about the various pornographic websites that defendant visited, the witness at issue was reading directly from an "extraction report" containing the information taken from defendant's cellular telephone. Before that witness testified, that "extraction report" was admitted into evidence with defense counsel's affirmative acquiescence. In other words, the challenged evidence regarding pornographic websites viewed by defendant on his cellular telephone during the timeframe in question was admitted with defense counsel's express approval long before the witness ever testified to that information. By affirmatively acquiescing to the earlier admission of the report, defense counsel waived any right to later object to the testimony, and any claimed error in allowing that testimony was "extinguished." *Id.* at 214-215. There is thus "no error to review." *People v Kowalski*, 489 Mich 488, 504; 803 NW2d 200 (2011). Accordingly, defendant is not entitled to reversal on this basis.

Finally, defendant contends that the trial court erred in refusing to grant his motion for a new trial on the basis of ineffective assistance of counsel, where counsel failed to procure an expert for trial to counter and rebut the conclusions and opinions of the ME. We disagree.

Whether counsel was ineffective presents a mixed question of fact and constitutional law, which we review, respectively, for clear error and de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). In *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001), our Supreme Court, addressing the basic principles governing a claim of ineffective assistance of counsel, observed:

To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the 'counsel' guaranteed by the Sixth Amendment." *Strickland*, *supra* at 687. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id.* at 690. "Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 694. "A reasonable probability is a probability

APPENDIX A

sufficient to undermine confidence in the outcome.” *Id.* Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

An attorney’s performance is deficient if the representation falls below an objective standard of reasonableness. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). “Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy.” *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). And we will not “assess counsel’s competence with the benefit of hindsight.” *People v Rockett*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). We cannot insulate, however, the review of counsel’s performance by simply calling it trial strategy. *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). Initially, this Court must determine whether strategic choices were made after less than complete investigation, with any choice being reasonable only to the extent that reasonable professional judgment supported the limitations on investigation. *Id.*; see also *People v Ackley*, 497 Mich 381, 389; 870 NW2d 858 (2015) (finding defense counsel performed deficiently by failing to investigate and attempt to secure an expert witness who could both testify in support of the defendant’s theory and prepare counsel to counter the prosecution’s theory of the case).

At the *Ginther*⁴ hearing, defendant produced the testimony of experts, who did not give an opinion as to the cause of TC’s death, but did call into question aspects of the ME’s conclusions, methods, findings, processes, and timing of injuries, indicating that an accident could not be ruled out as the cause of death.

This is not a case wherein defense counsel did not contemplate and look into obtaining an expert; he did so. Indeed, the trial court’s decision to deny defendant’s motion for new trial based on ineffective assistance of counsel was primarily predicated on the fact that defense counsel consulted with an expert but chose not to call him as a witness. We agree with the trial court’s determination that an attorney is not ineffective for failing “to continue searching for an expert until he finds one with opinions favorable to his theory.” We adopt the trial court’s written opinion and order denying defendant’s motion for new trial as our own relative to that portion of the opinion regarding whether defense counsel’s performance was deficient.⁵

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O’Connell
/s/ Kirsten Frank Kelly

⁴ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

⁵ We decline to address the prejudice prong of ineffective assistance of counsel.

APPENDIX B

Order

September 12, 2018

157647

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

ANTHONY CASANOVA,
Defendant-Appellant.

SC: 157647
COA: 324819
Muskegon CC: 13-063270-FC

28028
MLW
Michigan Supreme Court
Lansing, Michigan

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

On order of the Court, the application for leave to appeal the February 27, 2018 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

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APPELLATE DEFENDER OFFICE



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 12, 2018

Clerk

APPENDIX C

CASANOVA POLICE INTERROGATION

Q: It's dark in here after hours.

A: [indistinguishable]

Q: How long have you been [indistinguishable]?

A: Um, April? April it will be nine years.

Q: Incredible. It'll be nine years? Was her maiden name Black?

A: No, Holmes. Cause her mom and dad lived on one side of [indistinguishable], and we lived on the other.

Q: Maybe it was her parents.

A: Yeah, they live on, um, [indistinguishable]

Q: Where?

A: Not Hillby, but the next one over from that.

Q: McDowell?

A: Yep.

[2:23]

Q: Her grandma, didn't she used to run a ceramics shop or something?

A: Yeah, she used to do that. She passed away in her sleep and her grandfather passed away and they've both been gone a while.

Q: I just remember growing up, cause I grew up in that area and my mom used to do ceramics.

A: Yeah, she used to do it, and come over and say, "hey, do you guys want to paint some stuff?"

Q: Out of her basement. Yep. I'll be right back.

[A brief exchange as they try to get a light in the room]

[3:28]

Q: Well, I thought we'd get away from all the detective stuff down there and come here and we can go over everything. Again, you know I can't express my condolences enough, the loss of a child is never easy.

A: I just want him back. [crying]

Q: I know, it's a hard thing and unfortunately there's gonna be a lot of questions and you know that, that's one the things we wanted to go through. But before we get started, this is an interview room at a police department but I want you to know that **[4:00]** the door's unlocked, you are not under arrest, okay? You are here obviously under your own free will to talk to me about what happened today with your baby. It's a difficult thing, accidents happen, mistakes happen. I want to get some basics again from you, I know we talked about it. Your full name for me.

A: Anthony Casanova.

Q: You have a middle name?

A: Nope, no middle name.

Q: Your date of birth.

APPENDIX C

A: 12/4/72.

Q: Address.

A: 5687 Davis Road.

Q: Phone number there? Cell?

A: 221 – 557 – 3167.

Q: And you've been there for--?

A: It'll be 9 years this April. I moved in there Good Friday of 2004.

Q: And how long did your ex move out?

A: She moved out last June, so almost seven months.

Q: So you've been there nine year, she moved out June of 2012? So not that long?
When did you guys file?

A: So probably a week after she moved out. So that will be a finalized a few weeks from yesterday.

Q: So it's not final yet. Now, your girlfriend, full name?

A: Julia Striker. I'm not sure how to pronounce her middle name.

Q: Ok, DOB?

Q: It is 12/17/78.

A: How long has she been living there?

Q: She moved in in September of last year.

A: Okay. So obviously there was some cheating going on.

Q: Well –

A: Baby's – baby's – 2 months...

Q: Well, the whole thing was, I felt like because I have two kids with my ex wife, they're adopted and I love them to death.

A: Are they yours or they're someone else's and you adopted them?

Q: No, we adopted them and brought them back –

A: You adopted them together.

Q: -- right out of the hospital.

A: Okay.

Q: And things, I don't know, I just felt like, women that's what they want. They want children. I love children. I love my nieces and nephews. But I don't like my ex wife pushing me away like she didn't want me there. She got what she wanted.

A: So how long had you been seeing Julia?

[7:32]

Q: August of 2011.

A: Okay.

Q: So, February of next month it will be a year and a half.

A: So, you guys started dating. Full name of your son again?

Q: Tyler Anthony Casanova.

A: Date of Birth?

Q: His? It is 10/26/2012.

A: I'll be right back, I want to ask them about something.

[Det. Nanna leaves the room from **8:30** until **9:05**]

APPENDIX C

Q: So. Okay. So Tyler is 10/26/2012. Now, living at the house where Tyler, you, Julia, and who else?

A: And her two kids.

Q: What are their names?

A: River and Isabella Striker.

Q: Both are Striker?

A: Because she's in divorce because her husband cheated on her twice. Once with her best friend and then with another girl, and now he's ==

Q: There was a whole lot of cheating going around, man.

A: And now he's gonna – he's got two kids with what used to be her best friend. So--

Q: How old is River?

A: River's gonna be three in March and Izzy's gonna be four at the end of this month.

Q: Ok. So the 5 of you guys living there?

A: And I have my two every weekend and then I get them Wednesday. That's the agreement.

Q: And your two with your ex are?

A: Michael and Addison Marie.

Q: You know their dates of birth off the top of your head?

A: Yep, I do. It is December 2nd, 2010. And they're twins.

Q: You have twin two year olds, a three year old, a four year old, and then Tyler. A two and a half month old. And you still have pretty much a full head of hair.

A: Well, I keep it short because I don't want to see grey hairs.

Q: The grey is nothing, I couldn't handle the stress, man. You working?

A: Oh yeah. We both work. I work at Knoll. She works second, I work first.

Q: How long you been at Knoll?

A: I've been there fifteen years this month.

Q: You work a shift. What time is shift for you?

A: Seven in the morning til three in the afternoon.

Q: Didn't work today though?

A: I took a half day because I had to get some things done. I went to Comcast and I'm getting my regular phone turned on and internet service.

Q: And she's been there how long?

A: Two years in April.

Q: What do you do at Knoll?

A: I work in the shipping department.

Q: And what does she do?

A: She assembles. She's an assembler.

Q: So. You got when the house is full, seven people and one dog?

A: One little dog. But usually when all the kids are there, I usually leave him in the front part where the baby gate is there, so I figure if it was just me and Tyler, cause she left for daycare, and she was headed to work, so, um.

Q: So it was just you –

[12:48]

A: Me, Tyler, and Tucker. He's a 9 pound miniature dachshund. Hyper as ever.

APPENDIX C

Q: So tell me what happened again.

A: So, she left, Tyler was laying in his pack and play sleeping.

Q: What room?

A: That's in our bedroom, in the southeast corner of the house.

Q: Is it a ranch?

A: It's a ranch. I got a cross face.

Q: So he's in the back bedroom?

A: He's in our bedroom sleeping in his pack and play. Cause she goes, oh yeah, he sleeps for you but he's up for me all night and all day, and then wants to sleep with you. And I say that's just how he is, I guess, I don't have any control over when he sleeps. So anyway, I told her bye and stuff and I'll see you later, and I was sitting in my rocking chair watching TV and then I noticed, I heard him crying, so I said okay, **[13:53]** I'll get him and hold him, and of course naturally, they said before if you pick up a baby they'll stop crying because they'll say, hey, I got picked up, I got what I wanted.

Q: He's in the back bedroom, and you're in the family room?

A: I'm in the family room, and then if you open the baby gate there's the kitchen, but you can get from the living room from either side of the kitchen.

Q: And you're in the living room – what are you watching?

A: TV. Just whatever's on.

Q: You don't remember what you were watching?

A: No, I don't.

Q: Ok. So you watch that and you hear him making a noise crying.

A: So I figure he needs – he wants a bottle so naturally I'm gonna get a bottle going. So the dog starts crying, he's whining and that's an indication that he wants to go out. So, I let him out of his crate and then –

A: Where's the crate?

Q: In the kid's room where Michael and Addison sleep.

A: So I let him out of his crate and I got Tyler in my hand like this. Real close to me. And then I pull the curtain back and I undo the lock. The slider, and then I slide it off and then he went out. And I 'm still holding his Tyler, patting him on his back, so I can get his bottle ready.

Q: Are you getting his bottle ready? Are you standing by the door?

A: No, I'm just standing by the door. I'm still holding on to Tyler. And then after that Tucker is scratching at the glass and I push the curtains back again. And as I go for the slider he's running back out the door again and he comes back and **[15:38]** no sooner am I closing the door and he's running in between my legs and that's when I just lost my footing and went like that, and we both flew in the air and Tyler landed on his head first and I came down and before I just couldn't even catch my footing.

Q: Ok. Up until that fall, has Tyler had any other injuries?

A: Last night we had an incident again with the dog.

Q: Last night. Ok. What happened last night?

A: Same thing. I let him out, opened the slider, this time it's late night so it's dark this was before she went home. So she want out last night to get the kids from day care.

[16:21] I told her everything that happened last night and last night it wasn't as bad.

APPENDIX C

Q: Tell me what happened last night?

A: Last night I let him out again, you know it's dark, pushed the curtains back, undid the lock, and then once again he's a hyper little dog and he wants the attention as well. So he's going in and out of my legs and once again, then I had closed the door and shut the curtains, and I swung around like this and he just likes to run between your legs. Back and forth. So I lost my footing and when I went down I went down like that and I kinda grabbed him like this. So, that's probably if you notice he [17:14] probably has some marks on his chest. That's because I didn't want this to happen. So I grabbed him and then did the best that I could to hold on to him because I just – I don't want to see anything happen. But that's not what happened – that's not the case today.

Q: Ok. So they said there was some bruising on his jaw too.

A: When he hit, I still had him, and when I was trying to grab him, I kinda stopped him from really hitting the floor, and that's how he got the bruising right here from. When he hit the floor really hard. And when he hit, I kinda tweaked my back because I have a revolving disc on the right, so when I went down, I kinda twisted and came down on him really hard, so, [indistinguishable].

Q: Was there ever any issues before that where he's gotten hurt?

A: Nope.

Q: Ok. Here's the thing, Anthony. I think everybody makes mistakes. And I think God forgives us when we make mistakes and I think you know that. That's one of the things your girlfriend and I talked about when we were sitting in that room just the two of us. She told me that you said yesterday that during the day that happened, where you tripped over the dog, and then she saw the bruising on the chin and on the body from --

A: Yeah, cause I told her what happened last night. So--

Q: And I think you do have a good heart. And you do love kids, I don't doubt that at all.

A: I really, really do.

[18:50]

Q: I don't doubt that at all. Okay. But here's my thing. I don't think you're being totally honest about --

A: I really, I really am.

Q: Okay, Anthony.

A: I really am.

Q: And -- and you know that being honest is the only thing that is just and right for Tyler.

A: I'm saying the truth.

Q: And to say you tripped over your dog twice in two days and fell on your kid twice in two days on a two month old baby...The reason the MEs are concerned obviously is prior bruising that the baby has.

A: Well, I mean, a baby that small, I mean, with my weight of course, that's gonna happen.

APPENDIX C

Q: Ok. But when they do the autopsy it's also gonna show other bruising that didn't come to the surface or if there was any shaking or if you slipped and dropped him, I don't need all the drama of it's cause of the dog and all this. I just need to know the exact truth of what happened because that's what the MEs are gonna find when they do the autopsy. Okay? And I can tell by looking at you there's more going on.
A: No, there really ain't. There really ain't. I'm being honest with you right now. That's the God's honest truth, it really is.

[20:10]

Q: It's not consistent with what the injuries are though. To fall on a carpet like that and have the severity of those injuries.
A: Well the baby's up in the air and I come down on him and he hits his head because I come down on him.
Q: You gotta remember it's on the carpet. How tall are you?
A: Five eleven.
Q: Ok. Five foot eleven and the baby's right here. If I'm slipping and falling and I'm dropping a baby from right here, babies are pretty resilient. Okay?
A: Well...
Q: So, there's something a little more going on and I just want you to be honest with me so it doesn't look like you're trying to hide something.

[20:43]

A: I'm not, I'm –
Q: And if it's you're worried that she's gonna be mad at you because you were tired, you were trying to take a nap, you're busting your ass, you're working the first shift and you got five kids at the house – that's a lot. And the dog. That's a lot.
A: Yeah, it is. I know it is.
Q: Yeah. And the stress level's there. And you need sleep and you're probably not getting it with a newborn and all the other little ones running around.
A: Well, why would I ever hurt my son? It's not –
Q: I don't think you did it on purpose.
A: That's not –
Q: Nope, I don't think you did it on purpose at all. That's why I said I think you got a big heart.
A: That's not true. I love my child. I love all my kids.
Q: I know you do.
A: And I love her two kids. They're not mine but I still love them.
Q: Well, [indistinguishable]. And that's why I don't think you did something on purpose. I think an accident happened but it didn't happen the way you're describing it by talking to the officers that have already been to the house – everything is not adding up to that. So I'm just trying to figure out why you're not telling the exact truth. You know what I mean? Why you're not being totally honest, **[21:48]** and if it's just cause you feel stupid cause you did something wrong and it was a mistake, you need to be able to say that. You didn't intentionally hurt your

APPENDIX C

child, I don't think that at all. And I don't think you could, I don't think that's in you, to hurt a child. But I think an accident happened and you're trying to make up this story about slipping and legs going up in the air and flying and all that. I think [22:15] something else happened and we need to just get to the bottom of that so we can close this out. An accident's an accident. But we need the truth of it because an autopsy's gonna show the truth and the injuries are not consistent with that. Okay? Do you see what I'm saying?

[22:34]

A: Well, I'm telling you the truth. I would never hurt my young child.

Q: I know you wouldn't, man. I know you wouldn't do it on purpose. I know you wouldn't. And you know you wouldn't. But you know and I both know that's not [22:50] how the injuries all happened. And that's all I'm saying. I don't think you did it on purpose but I think there was an accident that happened at your house today and it's not tripping over the dog.

A: It was tripping over the dog. I'm being honest with you.

[23:10]

Q: That's just not consistent with the injuries, dude. You know, your brother does auto body and if someone comes in to the shop and the front's bashed in and he says someone sideswiped me, no they didn't sideswipe you, you did something at the front end of your car. Okay. So, same thing with injuries. We look at it and we can see. You've watched enough shows on TV and seen that the autopsy show – they can show what angle the injuries occurred, how much weight it took to cause the injuries, how old the injuries are, how old those bruises are. You know? Those bruises on his chest were not from last night.

A: Those were from last night.

[23:52]

Q: No, they're not all from last night. They've already started changing and going back on color. And that's one of the things you –

A: Well, that's just like my son Michael. His iron is low.

[Phone vibrating]

Q: Is that your phone?

A: Yeah, his iron's low so he falls and he gets hurt and he bruises –

Q: Well, are there any medical conditions that you know of with Tyler?

A: No. I don't.

Q: So, I know you love your girlfriend.

A: Yeah, we plan on getting married.

Q: And so I think you're scared of letting her know what happened because she'll think less of you, like you screwed up. So it's easy to point the finger at the dog and say it's cause of the dog, I tripped over the dog. That's not how it happened. So, [24:43] that's just where I need you to be honest with me. An accident's an accident,

APPENDIX C

it's not a crime, it's an accident. I'd be concerned if I thought you did this on purpose. We'd have a whole different attitude with you and I, you know what I mean? But I think it's an accident but the problem is the evidence in the injuries doesn't add up [25:14] to what you're telling me happened. You see what I'm saying? I just need the truth out of you and we can figure out how to tell her the truth. Together. And I'll be there when you tell her. Okay? But you need to be honest and you need to let it go and be honest. I fucked up and this is what happened. Cause you know it wasn't over [25:35] the dog. You know that wasn't the whole thing that happened. Not for the injuries that baby has. Your son doesn't have those injuries from you dropping him on the carpet and falling on him. What happened?

A: I'm telling you, that's what happened.

Q: She doesn't think that's what happened. She knows. I'm gonna tell you that right now. Her and I talked. She knows. You gotta let it go and tell me what happened. It's the only way you're gonna get through is and she's gonna get through this and your kids are gonna get through this. You were raised to be strong and keep your emotions in check, weren't you? Just like me, we're supposed to be tough and strong and all that. But this is your baby. You need to be honest. What really happened? Explain to me how that really happened so I can explain it to her and you guys can grieve together and move on.

A: [Sighing]

Q: It's okay not to always be strong, man.

[Silence]

Q: It's okay not to, you know, always have to be tough guy and not show the emotion. We all make mistakes. I've made them. You've made them. How did it happen? How did Tyler lose his life today?

A: [Crying]

Q: This is where your son needs to be the strongest and be honest. Cause you can get through things with honesty, you know that. You and I are about the same age, I'm forty-one, you're forty. We've lived through enough shit that we all know that the truth ends up coming out eventually. The best thing to do is be honest with ourselves and the people we care about. And be able to say I'm sorry.

A: It doesn't really matter because I'm sure people won't believe me.

Q: But you know what? It's your baby.

A: Yeah, I know. It's the baby that I lost.

Q: How? She knows it's not, I know it's not, you know it's not. The right thing to do for your son is say here's what really happened. People can believe what they want to believe, say what they want to say. But your son deserves honesty. In his two and a half months on this earth he looked to you for everything, didn't he?

A: Yeah, he did.

Q: And he looks to you right now to be honest. It's okay to cry, man. It's okay to cry. I will help you through this and I will help you explain it to her. What really happened? Let me help you get through this dude. You saw my son there tonight, didn't you? Yeah, as a dad I know. You know you tell your other kids how important honesty is, don't you?

A: I do.

APPENDIX C

Q: And I know you know that. Hell, you got four of them coming up now. They're gonna have a lot of questions. And we can't base it on lies cause the truth comes out. And you can't outrun the truth, man. You can't outthink it. You can't outsmart it. You better admit that you and I have tried that and it doesn't work, it just goes down in flames. I know in my forty-one years, I've learned it's best just to say it how it is and be honest. Then you move forward. You grieve. You mourn together as a family. I can't tell you how sorry I am for your loss. I can't express it enough you know showing up and having to bring my son to the hospital to meet the babysitter tonight, I know it. One small mistake and that could've been me there. And I might be scared and try to lie and say this happened and this happened. But they love you. And they will love you. And they will go through this with you. How did it happen? You're picturing it in your head right now?

A: I just want my son back.

Q: I know it. Was it just the two of you there?

A: Yeah, it was. Just me and Tyler and the dog.

Q: And what really happened?

[Silence]

Q: Do you even remember how it exactly happened? What do you remember? The honest part of what you remember?

A: Nothing, really.

[36:12]

Q: You don't remember any of it? I don't think you're being honest there. Did you lose your cool?

A: No, I would never do that to my son.

Q: Exactly. So you know.

A: I would never do that to him I love my son. I love my kids.

Q: And you owe the truth to your son. Don't you? You don't feel like you owe him that? No matter how upset anyone else is gonna be that you weren't honest, you don't owe your son that?

A: Yeah.

Q: Cause that's who it's between now. It's you and your son. Be the dad he knows. That he deserves.

A: Yeah, but what about the other kids?

Q: What about them? They don't know what you told us tonight, what they told her.

A: What happens at this point?

Q: What do you mean? I need to know the truth of what happened. That's where this point. We're looking for the truth. Cause the autopsy's gonna tell me what those injuries were consistent with, how much force it took, all those things. That shouldn't be who tells the truth for your son. It shouldn't be a medical examiner and tests. It should be his dad. His family that stands up.

[37:57]

[Silence]

Q: You know that. I'm not telling you anything you don't already know. Alright?

APPENDIX C

A: [sniffing, crying]

Q: Are you scared that she's gonna be mad? Is that your biggest fear?

[Silence]

Q: I want to be able to tell her you came back here and you were honest. That you were scared and worried of what people would say and what they would think and you just panicked and made up a story. And that then you told me the truth.

[40:27]

A: What can you honestly say is going to happen to me?

Q: What do you mean what's gonna happen to you? Unless you tell me exactly what happened I can't tell you exactly what's gonna happen. You tell me what happened and I can promise you this. **[40:38]** That I will walk you through this and help you every step of the way that I can. Man to man. That's all that I can promise you. That I won't lie to you, and I won't sugarcoat things and I won't bullshit you. If you fucked up and did something you shouldn't have, we can get through it.

A: Yeah, but how?

Q: By being honest. Believing in the people that love us, that really know is. That know the Anthony inside. That know you're human. And we all make mistakes. I can tell you I will be with you every step of this. I've been doing this 18 years. I'm not your top ticket writer as a cop, I'm not your number one arrest guy when I was on the road. My thing is people. Cause at any time it could be me on the other side. You know what I mean? All I can do is treat you like I'd want to be treated and be honest. Treat you like the man that I know you are. I don't come at you lying or screaming.

[42:23] I will help you every way I can. And I'll tell you know, you know enough about Muskegon. There's a new prosecutor. You know that? DJ Hilson, he's a great guy. He's a good friend of mine. And he's gonna ask me my opinion on this. So what do you think Tony, was he a good guy? What am I gonna tell him? You tell me what I should tell him.

A: That I would never hurt my son.

Q: I don't think you tried to. But I think an accident happened tonight. To a little man that you loved. But to a little man that you owe the honest truth to, right? I'm sorry you're in this position, dude. But all I can do is tell you I will help you anyway I can as long as you're honest with me. That's all I can offer you. You lay out what happened and I'll tell you what I think our best options are You know what I mean?

A: Mm-hmm.

Q: How did it happen?

[Silence]

Q: You know your son loves you, don't you?

A: Yeah.

Q: Why did he love you?

A: Cause I'm his father. His daddy.

Q: What did that mean to him? As a two and a half month old baby?

A: Everything.

Q: And he believed in you, didn't he? That blind faith they have at that age, even as a little kid. Don't ruin that by lying on him. For your own sake, don't do that. That will

APPENDIX C

eat you up. To dishonor him like that. And I know you know about honor cause I can tell you were raised with that being important too, weren't you?

A: Yeah, actually, I didn't have a dad growing up.

Q: It's not easy.

A: He died at the age of 49. Bone cancer.

Q: How old were you when he died?

A: It was the same year that I bought my house.

Q: I don't think it's ever easy losing a parent no matter how old you are. I lost my mom two years ago. It doesn't get easy. I'll still have nights where you just sit there and start crying for no reason and think what the hell am I crying for? It's just that hole, you know? But you can't compound that loss that you have now of your son with a lie on top of it, you know what I mean? You can't add to that. It's gonna tear everybody up.

A: I'm starting to feel like everybody is probably upset with me.

Q: I think they're upset, the ones that are, because they know that's not how it happened. And they just want you to be honest. And I think part of it is they go, he deserves the truth. Your fiancée, she'll never have closure without the truth. You [48:00] know? There won't be a closure for her. They'll always be questions that will eat her up and in turn will affect her kids. It's kinda that slow-ball thing that will build and build, another lie to cover it, lie to cover it. The biggest thing you can do as a man is to stand up and say that was my son, I love him and always will love him. This is what happened. I can't change it. I can't go back in time. If you would, you could, wouldn't you?

A: Yep.

Q: You'd give anything to go back. But we can't. All we can do is go forward. If you want my help going forward, you gotta tell me. We can work through this. You gotta let it go, dude. Let that pain go. Stop holding back. Stop fighting the tears that I know you're fighting. You want him to be at peace? And you do know that this is not gonna happen until the honest truth comes out. And it will come out. But it needs to come out from his dad, not from an investigation. Do you want my help? It's never easy to say you want help.

A: Everybody wants help. I need help.

Q: Okay. Well, you take a step forward and I'll take a step forward. I'm here to help. Let me help you, let me help your family get through this. But we gotta do it with honesty.

[Silence]

Q: I'll do everything I can.

A: I just feel like I lost everything.

Q: Last time I checked, you still get four kids and they still need you. And yeah, you made a mistake today. You screwed up. But out of respect and honor for Tyler, you better not use him as a scapegoat. You don't lie about your son like that. You know that. Right? You don't lie about your son. That's not you. That's not him. You stand [52:55] up and you be a man like you want your son to do if he was in your position. Right? Wouldn't you?

A: Yeah.

Q: So tell me how the events went tonight? What really happened?

APPENDIX C

A: [sniffing]

Q: What time did it all start?

A: Um, I don't know what time it was. [crying]

Q: What's the first thing you remember? Let's take it step by step. Just you and I. You gotta let it go.

A: I just rather it was me.

Q: That's just a parent, we all want that don't we? But it's not. And you are still here. But it's the memory of you want to be your dad lying? Is that what you want everybody to remember? How did it happen? How did we get to this spot right now?

A: I wish I wasn't in this spot right now.

Q: I know. Me too. But we can't change where we are. You know? You must be the man you want Tyler to see you be. You know what I mean? Cause I truly believe they're watching and they know. What can I help you think you need? You said you need help. What kind of help? Do you need help being strong to tell the truth? Is that part of it? Do you feel like you're not strong enough to tell the truth?

[58:39]

A: I almost feel like I'm not going home tonight.

Q: Why?

A: Because it doesn't matter what the truth is.

Q: It does matter. It doesn't look good if you lied. You know that.

A: I mean, what happens?

Q: Well tell me the truth of what happened.

A: I just feel like I won't see my other two kids grow up. Am I right?

Q: I don't know. If this was an accident like you say, then why wouldn't you?

A: If it was an accident, it was a big accident.

Q: Exactly. If you did something wrong, will there be consequences? Yeah. Is that a forever consequence? No.

A: What do you mean by that?

Q: A case where God forbid you took your kid out in the woods and shot him. You know what I mean? This was an accident. Now, what the accident was or how it happened, I want to hear it from you and not from the ME's office.

A: Yeah, well. The way I look at it I just feel like I'm not going home.

[1:00:14]

Q: Whether you are or you aren't, if you tell me the truth, I can't be honest with you and tell you what's going to happen. But I can't tell you where this train is going if you can't tell me what track we're on.

[Silence]

Q: I'm here to listen, man. I promised your son. I stood next to that bed and I promised I would find out what happened and make sure his family was okay. I'm not breaking a promise to him. Tell me what happened. The dog story's not true.

[1:02] You know that I and I know that. It didn't happen. Tell me what is what happened.

APPENDIX C

You need to tell the truth.

[1:02:50]

A: Even if the truth came out, what is going to happen?

Q: Depends on what the truth is. You're asking me what's going to happen with this truth, which I don't know what this truth is. I don't have an answer yet. If not, I gotta wait for the autopsy and evidence and photos. It could be hours and hours and hours of examining things. I don't want your son to go through that. He needs his dad to be honest and just say this is what happened. And I can say okay, here's our options. He's honest. We don't worry. Just like when you're a kid and you got in trouble for something.

A: I honestly am not sure what happened.

Q: What do you remember? You just remember losing your cool? Was he crying? Being fussy? Mm-hmm. And you were working on about two or three hours sleep probably?

A: Not much.

Q: Yeah. And you couldn't get him to quit crying, could you? It happens. More than you know. It doesn't mean you intended anything to happen. Right? It's a big difference. Tell me how it happened. What room were you in when it happened? In his room? Or does he always stay with your room?

A: He stays in our room in his pack n play.

Q: Okay. And that's where it happened? Were you trying to sleep? Yeah. And he wouldn't quit crying, would he? Look at me. Look at me. It's okay. He forgives you.

A: [Crying hard]

Q: How did it happen, Anthony?

A: [Sobbing]

Q: How did it happen, buddy? Let it go.

A: [Sobbing] I just feel like I won't see my other kids.

Q: You'll see them.

A: When?

Q: We gotta get through this. You'll need counselors, your kids your gonna need counselors, your fiancée's gonna need to talk to somebody. I mean –

A: Am I going to jail or what? What's going to happen?

Q: I will be honest and tell you exactly when I know what happened. Okay? I know you were trying to sleep and he wouldn't let you sleep and you snapped. And what happened when you snapped? What did you do?

A: I honestly can't remember what happened.

Q: What do you remember? And I know you remember some of it.

A: Just him not being responsive.

Q: Before that. You shook him, didn't you? That's where the bruising comes from. Right?

A: Nothing was done intentionally.

Q: No, it wasn't. That's what I'm talking about. You got your hours of sleep, all the hours you're working, trying to budget for that many people on today's salaries. You

APPENDIX C

know? So you woke up, or you were trying to sleep and he wouldn't let you sleep. You remember picking him up out of the pack n play? Then what did you do? Did you shake him? Did you squeeze?

A: I didn't shake him, I didn't squeeze.

Q: What'd you do?

A: I can't help you unless you're honest about it, dude.

Q: You lost it. It happens. People have breakdowns.

[1:09]

A: Yeah, but people also go to jail, too.

Q: And people also get help. They get out.

A: I know, but I'm gonna lose everything

Q: Are you?

A: My house, my job.

Q: Are you gonna lose everything? I would give up all of that to honor my son. To be honest. To be a man about it. And so would you. I know that in you. You don't care about the material things.

A: No, but I care about everybody else.

Q: You got a lot of family, look how many people showed up there. You don't think they'll all chip in and help out?

A: Nobody has money though.

Q: They'll all make it work. It's not about money. It's not. It's not about money.

A: Well, that's easy for you to say.

Q: I ain't got it. I'll be honest with you. You know what I was doing when I got your phone call tonight? I was on the phone with my credit card trying to figure out how the fuck I'm gonna pay another monthly payment. I ain't got it. I'm a single dad.

A: I really don't remember what happened.

Q: Yeah, you do. And something happened the night before, too.

A: You know that – the dog really did –

Q: That was how you fell?

A: That's how I fell.

Q: So how did he get the injuries tonight on his head? Cause I'm gonna back over and get a search warrant and go through the house with a fine tooth comb and then we'll find out. And that looks so much worse, dude.

A: So, I mean ---

Q: Did you hit him with something?

A: Nope.

Q: Did you throw him? Yeah. What'd you do? I can tell you if you tell me what happened I can tell you what we're looking at and how I can help. That's all I can tell you. You've already told me you were trying to sleep. He was in the pack n play. He wouldn't settle down. He's crying and fussing, right? Then what happened? What happened when you got up and you couldn't take it anymore and you broke? Then what happened? You know. Don't lie to yourself. Don't lie. What did he hit his head on? Anthony. What did he hit his head on?

A: Nothing.

APPENDIX C

Q : Yeah. Did you hit him in the head?

A: No, I –

Q: Then how did he get the big injury to his head? I haven't lied to you yet. Don't lie to me. The only thing I ask is that we're honest with each other. That's the only way I can help you. Is to go and say he was honest with me. Come on. Come on. Let's walk through it together. Step by step. I will make sure you see your kids. I will make sure you can see your fiancée.

A: So after this probably they'll want nothing to do with me.

Q: So it's better to lie about it?

A: Mm-hmm. It was an accident.

[1:14:13]

Q: Tell me.

A: It was an accident.

Q : What happened? You lost your cool. That happens, man.

A: It's not supposed to.

Q: Well, it's not supposed to, but does it? Does it? Yeah. And it did today. It happened at the shittiest time it could have, didn't it? With the one person you never thought you'd lose your cool with, huh? Yeah. Did you just backhand him? Try to get him to be quiet? Then, what? I can't tell you what we're looking – and how we're gonna get through this if you don't help me. Come on Anthony, you gotta be honest/. You're strong enough to be honest. And you loved that son of yours enough to be honest.

A: I loved all of them.

Q: Yeah. And you owe them all honesty. And it's time to step up and be honest. It's time to step up and be the man, be the father. What happened, Anthony? What happened in that little instance of a breakdown? What happened? Don't try to outthink it.

A: I'm not.

Q: I want to know. Are you scared?

A: Yeah.

Q: I know. I promised your son.

[1:16:50]

A: Because I know as well as you do I'm not going home tonight. Right?

Q: Depends on what you did. And I'm guessing maybe not from the look on your face. I'm thinking you might not be. You know what you're gonna do, though? You're gonna come to peace with things.

A: Yeah, but I don't want to go to jail. I don't think that would be the answer for me.

Q: Maybe go and see a counselor.

A: To be honest with you, I honestly think I have split personalities. I need – I'm being honest with you. I need help with my anger and my mood swings.

Q: And is that what happened today? Mood swings just hit?

A: And I feel like I have split personalities. And that scares me.

APPENDIX C

Q: Mm-hmm. What happened? What triggered it today, just that he wouldn't quit crying? And then what did you do? If you wanna get better, you gotta be honest.

A: I do want to get better.

Q: Then let's get these demons off your back.

A: I need help.

Q: Yeah. Then let's get it.

A: And I don't think jail is the answer.

Q: Jail might be a tonight answer. Not a long term answer. But I can't tell you that until I know what happened.

A: But I don't want to lose what I have, that's what I'm saying.

Q: But you know what? Sometimes to get to this place, this better place, to get your anger and your issues under control –

A: My fiancée won't have a place to live.

Q: She'll have a place to live. That's not going anywhere right now. That's not.

A: I'm behind in my house payments and –

Q: That's not going anywhere.

[1:18:48]

A: My car.

Q: That's not going anywhere. Your kids will have stuff. Your kids will be taken care of. I know resources we can get her in touch with .to help out with situations. Okay? We know people to talk to say let's help this family out. Dad had a breakdown. It built up and built up and built up. But if dad's not willing to be honest I can't step up and ask for help. You know what I mean? So you gotta man up over here and say Tony, this is what I did. Help me. Look at me and say that.

A: Will you help me?

Q: Yes! I will help you. Tell me what you did and we will get through this.

[1:19:50]

A: I know but – you're gonna take me to jail.

Q: No, I'm not going to take you to jail right now. I'm trying to figure out what the best option is. May not be one of the options tonight but it might be, depends on what you tell me. I'm not gonna lie to you and blow smoke up your ass and tell you weren't not going to. I'm gonna tell you if that's what has to happen tonight, it does. But if you truly have issues you need help with, that we need to get you that help.

A: I do. I truly do.

Q: So tell me what happened then, Anthony.

[1:20:20]

A: I just feel like I have split personalities.

Q: What – what happened when you lost it tonight? This is your leap of faith. What happened?

APPENDIX C

A: It was an accident.

Q: Tell me about it. You gotta get it out there if you want to fix it. Come on, man. I'm right here.

A: Can you promise me I'm not going to jail?

Q: No, I won't lie to you. I won't lie to you.

A: Cause I can't. I gotta get things in order.

Q: You know what? I will make sure those things gets in order.

A: I'm supposed to be at work tomorrow.

Q: I will make sure things get put in order. I will help you with that. If you have to do jail time, I will make sure things are in order. That your fiancée and kids are someplace safe.

A: My two kids – my twins are with my ex –

Q: You know I know that family. I already told you that. They'll be fine. You need to worry about getting help for you. It's just like an alcoholic admitting their problem. You have to admit this is what I did. Help me get back – how do I make myself better? Right? And that first step is telling me what happened so we can start a plan to get through it.

A: I'm tired.

Q: Mm-hmm. What we'll do is you tell me what happened and tell me what things have to get in order and be taken care of and what phone calls we need to make.

A: I don't have my boss's phone number or anything.

Q: I can find whatever number we need to find. Tell me what happened tonight, Anthony. Let's take that first step together right now.

A: I'm scared.

Q: I know you're scared. And all I can tell you is I'm right here. And like I said, I will be there every step. Okay? How long after she left today did you try to go and try to lay down or were you already laying down when she left?

[1:24:26]

A: Probably like an – maybe 35 minutes after she was gone.

Q: You went and laid down. Did you put him in the pack n play or was he already in there?

A: I think he was already in there.

Q: Ok. So you laid down. And he was crying or fussing or what?

A: Crying, fussing.

Q: You just gonna tell him to be quiet and he wouldn't be quiet or what?

A: Just get his pacifier and stuff.

Q: And then what was the final thing that just snapped?

A: I don't know.

Q: Okay. Then what did you do? What do you remember?

[1:25:08]

A: I just remember trying to revive him.

APPENDIX C

Q: You know what you did. Earlier you said you knew what you did. You were scared to tell me. Do you want my help? Then tell me.

A: I need help.

Q: Yeah, I know you do. But unless you're willing to tell me, I can't help you. I can't. I can't help you unless you let me. Let me help you. Tell me what happened. The truth of what happened to your son. What happened when you lost your temper in that bedroom. You gotta be honest. You got to if you want to get better and you want help. You lost your temper when he wouldn't quit crying, didn't you? Right? And what did you do?

A: I don't know, it just happened so far.

Q: You know. It's easier to say you don't. I know. But the amount to love your son, I know you know. I know you know what happened.

A: I just lost everything.

[Phone vibrating]

Q: I know you know what happened, Anthony.

A: Can I see who that is?

Q: Don't answer. Probably wondering when you're coming back. Alright? Your brother or her?

A: My brother's girlfriend.

Q: They're probably wondering what time they need to pick you up. I'm gonna tell you right now what my response to your fiancée or anybody else with this is. Is gonna be we sat down, we cried, we talked, and you admitted what you did. Because that's what they need to hear. Is that you were ultimately the dad. You know what I mean? They don't need to hear about you being scared, or hemming or hawing about whether or not you were gonna tell the truth. That's not what they need stuck in their mind. That's what your fiancée needs to hear. She needs to hear that you sat down in this room with me and cried and told me about your son and about how big a mistake you made and how sorry you were. Same thing I need to be able to tell the prosecutor. How big a mistake he made, how sorry he is, and how much he needs help.

A: I do.

Q: I can't tell him all those things if you're not being honest, dude. You see my problem here? So Anthony, I'm gonna ask you. This is me asking you right now. What happened? Tell me what I'm supposed to tell them that you answer to me was. You've already told me I tried to lay down, he wouldn't quit crying, I gave him his pacifier. I gave him a – did you give him a bottle? Just gave him his pac, you tried to get him to be quiet and lay down, and I snapped. And I lost it. We're right so far, right? Yeah. And what happened when you lost it? I need that answer so I can tell them honestly from my soul honestly that you were a man about it and were honest and that you need some help. Cause I'm not gonna lie to them and say yep, he told me – you know what I mean? If I'm gonna go to bat for you, right now is the time you gotta step up and tell me.

A: Will I be able to see her tonight?

Q: I don't see why we couldn't see her tonight. The only way she wouldn't is if maybe she went to someone's house and took a tranquilizer or something to go to sleep, I don't know if she has any of those, Xanax or whatever. But we'll see about getting

APPENDIX C

her to see you. Yeah. That's not a problem. Tell me what you did. After you snapped, what happened? How did it go? Let's take that first step together of you getting help, okay?

A: I need to see a psychiatrist.

Q: What do you want me to tell them?

A: That I need help.

Q: Because you did what? What happened?

[1:32]

Q: I can't fix this for you without your help.

A: I'm scared.

Q: I know. And all I can tell you is that I'll be there. It's the only promise I can make. I don't make promises I can't keep. But I promised to be there every step of this, didn't I?

A: Can I have it in writing?

Q: That I will be there every step? What do you want, that I will be there every step?

A: Yeah.

Q: I'll keep this case. It'll be mine, no one else's case. I'll be the one that goes through it. I'll be the one that talks to the prosecutor. Okay? I'll be the one that talks to your fiancée.

A: I just want to see her right now.

Q: Be honest with me and I will make that happen. I told you that. I'm not trying to keep her from you. But she needs to know when I ask her to come see you, that you've been honest.

[1:33:53]

A: Yeah. I'm being honest and I'm going to jail tonight.

Q: You're being honest and you're taking the first step forward.

A: But you just said it yourself.

Q: What, that you're going to jail? Depends on what you did. From the sounds of it, from the little bit you told me, that may be the option for tonight. And I will tell them that one of the things is that you need to talk to the jail nurse, there's a shrink down there that we can get to talk to you. These are all steps that we've got to take. But Anthony there's not a magic wand to say okay, you were honest, we'll get you fixed and then it's all better. It's gonna take steps.

A: I'm not saying that but also saying at the same time going to jail is – is not like fixing what I have wrong with me.

Q: No, it's not. But for tonight it might be what we have to do.

A: yeah, but I'll be there all weekend.

Q: This isn't an overnight fix, bud. I wish I could say that and get a shrink here tonight and they could fix you.

[1:34:57]

APPENDIX C

A: I'm not gonna be able to see my kids. I got my divorce coming up.

Q: Ok.

A: I got so much.

Q: Your number one priority right now is to be honest for your son. Right?

A: Yeah.

Q: So, let's do this. Together. Tell me what happened and I will call her and see what we can do so you can see her. And I will see what our options are for tonight. Once I know the details I can say these are our options. What happened when you lost it?

A: I just lost it.

Q: And what'd you do? Did you pick him up? Did you shake him?

A: No.

Q: Did you just squeeze him? Did you throw him down? What? Anthony I can't help you unless you be honest. I can't.

A: I want to be honest.

Q: Then be honest. For Tyler, be honest. He deserves that. Doesn't he? You owe him that. This is where you gotta start going, you know what? Maybe this isn't about me but about Tyler. I need to be honest for him and not be scared for his sake. For his memory. Tell me what happened when you lost it.

[Phone vibrating]

Q: You gotta believe.

A: I want you to believe me that it was an accident.

Q: I do. I think you snapped and had a breakdown. But unless you're gonna tell me what happened, it's hard for me to believe you when you already lied. So I need you to be honest. You want me to go to bat for you. I'll go to bat. But not if you're not honest. I believe it was an accident. I don't think you intended it.

A: No, because –

Q: And when you did it you went holy shit, what did I just do? Didn't you. Yeah. And What did you do? I'm here. This is your chance. I believe in you as a person. I don't think you're a bad guy. And I know you want to do the right thing. And I know you love your son.

A: I do love my son. I love all my kids. And I love Tyler.

Q: So tell me what happened.

A: I just need help.

Q: What happened?

A: [Crying] I didn't mean any of this to happen.

Q: Okay, what happened?

A: So you're really gonna help me?

Q: Yeah, cause I think you're gonna tell me the truth.

A: Cause I need help.

Q: I know you do.

A: I think I have split personalities that I can't help.

Q: What happened though?

A: Pretty much everything you know.

Q: You gotta tell me. And show this wasn't intentional?

APPENDIX C

[1:43:09]

A: It was an accident.

Q: Then if it's an accident you got to tell me.

A: I couldn't sleep. I couldn't fall asleep cause he was crying and upset and I gave him his pacifier and picked him up and we have like a queen size air mattress in our room. So I basically was just bouncing him off the bed. And before you know it he was unconscious. And I tried –

[1:43:30]

Q: Were you throwing him down on the bed or just bouncing him – I guess I don't understand. You picked him up. Right? Show me how you had him. You had him over the bed like this? Or were you over him or what?

A: No, I was just, I was sitting on the bed with him and bouncing him off the bed. It's an air mattress.

Q: And you were just throwing him harder and harder on the bed weren't you? Cause he wouldn't quit.

A: I guess that women have a higher tolerance than guys when it comes to babies, I guess.

Q: Do you have wood floor in the bedroom?

A: Yeah, but it's carpeted.

Q: You missed the bed, didn't you?

A: No, I really didn't.

Q: Then how'd he get the big goose egg on his head? I mean, that's a big knot.

A: I know.

Q: From?

A: Keep bouncing him off the bed.

Q: Oh, you were throwing him head first on it?

A: No.

Q: How? I don't understand. If you're throwing him down on the bed, right? Are you sitting next to him doing it? Or are you standing? What are you doing?

A: No, I was actually sitting on the bed. Just bouncing him. Just bouncing on the bed.

Q: Not like gentle little bouncing, throwing him down.

A: Just little –

Q: Don't – you can't try to sugarcoat it

A: No, I'm not sugarcoating it. It was a little more than a little bounce. But it was on the bed. It wasn't on the floor or nothing else involved.

Q: Well, he had to hit something else hard enough to put a goose egg on his head. Is there a table or nightstand there?

A: There's a table but I'm being honest with you there. He didn't hit anything. He didn't hit no table or –

Q: How many times do you think you threw him onto the bed?

A: I don't know. I honestly don't know.

Q: Are we talking three or four or twenty or thirty?

A: It was a few times.

APPENDIX C

Q: Like three or four or twenty or thirty? What are we closer to?

[1:46:10]

A: Seven, eight times.

Q: Ok. And then at what point did you realize he was unresponsive?

A: When he wasn't crying anymore.

Q: So you did it until he quit crying. You were throwing him down out of anger, weren't you? It's okay to admit.

A: You don't believe me though.

Q: I believe you were throwing him on the bed. But I think that goose egg is from something hard, whether it's the edge of the bed, it's not from throwing him that hard.

A: The whole entire bed is an air mattress bed. The whole thing – you plug it into the wall and pump it up.

Q: You bounce.

A: Well yeah, but he never fell off the bed, that's what I'm trying to tell you. He never fell off the bed. He never hit nothing. He never hit the floor. I guess being that small –

Q: Well yeah, he's two months old. And you were doing it out of anger, you weren't doing it to play with him, cause you were mad and you snapped. Did you fall the night before like you said though?

A: That I did.

Q: Did he hit his head then?

A: Yeah. That's how he got this bruise here on the sides like I said. That night the dog did –

Q: But you realize throwing him like that is just like shaking him? You knew that. Didn't you? In your heart, you knew. Why – I guess – I know you said it's cause you snapped. But I guess I don't understand what made you think of throwing him on the bed. Were you just like shut up when you were throwing him? You know what I mean? Was it kinda one of those – just shut up?

[1:48:13]

A: Be quiet, stop crying, please.

Q: But it wasn't, initially you said you were bouncing him on the bed. There's a big difference between bouncing him on the bed and –

A: Bouncing him on the bed.

Q: Yeah.

A: There's a light bounce and a harder bounce.

Q: That's not a bounce, that's a throw. There's a big difference. You and I are the same size, we throw someone down on the bed, you know. Were you catching him when he bounced up? So you just – like that?

A: Yep.

Q: Like how high were you going with your hands? I'm trying to picture this. You're a big guy –

APPENDIX C

[1:48:53]

A: I'm sitting on the bed and he's in front of me. And I'm just bouncing him. Bouncing him on the bed.

Q: If you're on the edge of the bed---

A: How I'm sitting like this, and one foot like that.

Q: So where's the edge of the bed?

A: The edge of the bed would be right here. So I'm actually positioning myself on the bed, sitting on one way just like this.

Q: Here's the bed. Here's the bed, right? Show me where you were sitting.
Like on the side?

A: I'm sitting off like that.

Q: Ok. So you're bouncing here.

A: And then he's -

Q: Next to you. At the head of the bed or the foot of the bed?

A: That's the head of the bed.

Q: So head of the bed is here. You're sitting here and you're --- right? What's over here, a wall or just open?

A: That's the bed and that's the floor.

Q: Is there a footboard to the bed.

A: No, you can't set the airbed on anything or it'll pop.

Q: Let me see if...Do you feel better at all? Do you feel like anything is off your chest a little bit?

A: Yeah, now I'm worried about what's gonna happen to me now.

Q: Let me see your phone.

A: My family's gonna be worried.

Q: Her number's under there too?

A: My brother's, my ex wife's.

Q: I'm gonna go in the other room and [indistinguishable] and I don't want to find out you have a twelve gauge shot gun under there, you know what I mean? What do you have in this cartridge?

A: My driver's license and my car keys in this pocket.

Q: I'm just gonna take this because I don't like leaving people in here with stuff, you know what I mean?

[1:51:26]

A: Can I use the bathroom?

Q: Sure thing. Let me just call her and we'll go from there. Sit tight, okay?

A: Alright.

[1:59]

Q: You got more you want to tell me, don't you?

A: No.

Q: It's not just from bouncing him off the bed. Okay, my officers are at the house with a search warrant. The ME, that's the one who just called, said the injuries are not

APPENDIX C

from just bouncing off the bed. Now, if he missed the bed and threw him onto the floor or a table – something else happened than bouncing him off the bed.

A: He never hit nothing. I'm telling you the truth. He never hit nothing.

[2:00:00]

Q: What else happened? Cause it's not just from bouncing him off the bed. I can't...listen, it's not consistent with the injuries, Anthony.

A: I'm telling you the truth. You're talking about a knot on his head.

Q: Yeah. How did he get the big knot on his head?

A: By bouncing him on the bed.

Q: No. That air mattress isn't hard enough to cause that type of a knot. He would hit and do this, but not cause that type of a knot.

A: He never hit anything. He never hit the floor.

Q: Could he have hit the wall?

A: Nope.

Q: Did he hit your knee?

A: Nope.

Q: Did he hit anything?

A: Nope.

Q: He had to hit something because it's not just from bouncing him off the bed. Show me like in this area here, show me how hard you were throwing him.

A: I was just bouncing like this.

Q: No way.

A: Yeah.

Q: That's not – this, this is playing with a baby on a bed. Bouncing, bouncing. That's not what it was. You yourself said you snapped, you lost your cool, you lost your temper. You talk about multiple personality and you thought that's what caused it. Okay? Then you're trying to make this about bouncing him off the bed.

A: It was a little more than a little play bounce.

Q: That's not what you just showed me.

[2:01:21]

A: It was a – a harder bounce. You know. He never hit the wall. He never hit the floor. He never hit no dresser.

Q: Did something happen before you bounced him on the bed?

A: No.

Q: Then what happened when he quit crying?

A: I tried to revive him and call 911.

Q: Where'd you do that?

A: Where they found him in the family room.

Q: Why'd you carry him into the family room to do that?

A: Because it was dark in the bedroom. And I just moved him out of there. That's all. That's the truth. That's the whole honest to god truth. I'm being honest with you whether you know it or not.

APPENDIX C

Q: And you know I want to believe, you know that.

A: Yeah, but I feel like you don't –

Q: I don't believe 100% because I don't think the injuries that I saw – I saw your son laying in the bed. I saw a two month old baby with bruises all over his chest and his abdomen that were more than a day old. And I saw the bruising on the jaw that you talked about. I saw the lump on the side of his head.

A: Yeah, but I told you that my two year old son has low iron. And when he falls, he bruises right away.

[2:02:53]

Q: But the bruising that I could see on him there...and there's gonna be deep tissue bruising that only shows when they do an autopsy. But those injuries are more consistent with someone getting angry, losing their cool, and throwing the child down. And I could see that. And you thought you were bouncing off the bed. Was he hitting the floor?

A: He was not hitting the floor. I swear to God, I'll swear on the Bible.

Q: Ok. I guess I don't understand why you would've left the bedroom though. You said it was dark in there – it was the middle of the day.

A: Well I got shades that I keep closed.

Q: Ok.

A: I just felt like taking him to the family room cause I thought that would be –

Q: When I go over there and rip up the carpet am I gonna find fresh saliva or blood on there?

A: Nope. Nothing. Nothing, you won't. Nothing at all.

Q: What was your reasoning for bouncing him? Were you angry and you figured you couldn't throw him against the wall and the bed was –

A: No, I told you. I couldn't get no sleep. I was tired. I took a half day. And she left.

And I basically stayed there and he was sleeping and all of a sudden he woke up and he was crying. So I lost my cool. With my own son.

[2:04:27]

Q: Were you taking any medication? Are you on any medication?

A: Nope.

Q: Any nonprescription shit?

A: Nope.

Q: Ok. I'll wait for the callback from the officer on the scene and ME and your fiancée.

A: And what are you gonna do for me?

Q: I'll start with your fiancée. That is our first stop. And we'll go from there.

A: I'm sure my brother and my soon to be ex-wife will want to know what's going on.

Q: I'm not sure if I want to tell your soon to be ex-wife any of your business right now.

APPENDIX C

A: I don't know what's going to happen with the child support because it comes out of my check.

Q: That's not your problem right now. Your problem right now is what happened with your son dying today.

A: Ok, now can you be honest with me now?

Q: I can tell you that we're looking at...that...you snapped with your son. You didn't shake him like people say. But you're the dad. You need help.

A: I really do.

Q: But then you tell me – I'm gonna be telling the prosecutor whether you're honest or not but then he's gonna ask, well, what did he do? He said he did this. You know what I mean? That's sugarcoating. And they have an issue with that.

A: I'm not really sugarcoating it. I'm just showing you what I done, how I did it, the way that I was...

Q: You knew you could hurt your son doing that. You're not stupid. You know you don't throw a two month old down repeatedly on a bed. Pick him up, throw him back now. But let me see what they say. Detectives are going to the house, look at the bed, look at the pictures, and maybe we can understand it better. Then I'll make a phone call, let you take a piss or whatever you need to do. Still trying to wrap my head around it. It's a tough one. I wasn't there, I've never been to your house and I can't picture it, you know what I mean? If you told me what happened in this room, I can see it, I know what happened. I think there's a little more to it than what you're telling me and that you don't want to tell all of it because you don't want to get in trouble. I think that's part of it. You're holding back some of it.

A: I'm really – that's pretty much it.

Q: Pretty much it – that's my concern.

A: That's –

Q: That's my concern and I'm being honest with you.

A: I mean, so...

Q: I'm being honest with you. I don't think you're being 100% honest with me.

A: I really am.

Q: And that's why I need to look at the bedroom, see some pictures, so I can get my head wrapped around it. Then I have to talk to the prosecutor, the ME. We've got time yet.

[2:07:59]

A: Is there really any way I can take a –

Q: Piss?

A: In the bathroom?

Q: Yeah, sit tight just a minute, Anthony.

[2: 09]

Officer: Sir, step out with me here. Right down this hallway.

[2:39]

APPENDIX C

Q: Here's what we got. Um, no answer from her and no answer from your brother. Could they be somewhere together?

A: No, he lives out at a lake house at Middle Lake --

Q: No signal?

A: Yeah, he gets a signal.

Q: I'll keep trying to call.

A: His wife might answer hers.

Q: Her name is in your phone also. What's that under?

A: Tanya T.

Q: I'll try to call her also. I need to go to your house for the search warrant. She's not there. Okay? They are gonna lodge you tonight like we talked about. But we're gonna see what all we've got. So Officer -- excuse me, Corporal Vandersalt is going to transport you down to the jail tonight and I will probably be talking to you tomorrow morning.

[2:40:25]

A: As far as what?

Q: To let you know what I found out the house, what's going on, and what your fiancée had to say. You know what I mean? You will get through this. Okay? You just need to remember who you're doing this for and being strong for.

A: I need help.

Q: I know you do. And you keep that in mind, okay? But we'll get you down there so you can get some sleep tonight or try to and tomorrow I'll come and talk to you in the morning. I gotta get over to your house and help her on the search warrant part and see if there's anything on the bedroom or floor like we talked about. Okay? You'll be okay.

A: Can you drop off--

Q: I can't take money in that tour.

A: You can't just drop this off at my house?

Q: What is it?

A: Just my stuff, some money --

Q: I can't, I can't take all that stuff.

A: I'm not gonna need them at the jail.

Q: She can get the stuff at the jail, though. They'll let her sign out something. They won't let me take that stuff because then it's, oh shit, where did it go? You took it as evidence, you didn't log it.

A: I really don't need it.

Q: Well, you won't be there forever. We'll see what happens. Just think about your son. That's who you need to be strong for. He does have to put the jewelry on you when you ride in the car. So put your hands behind your back for him.

A: I got a shoulder --

Corporal: If you want, we can have you released, just give me a little less release if I got two on there. Give me your right arm first.

[2:42:10]

APPENDIX C

A: Are you still gonna help me?

Q: Mm-hmm. Yup. And I was already talking to the prosecutor and I told him you need to get some help –

A: What does he have to say about that?

Q: He says he wants to look into everything. He's waiting to find out what the autopsy says. If the autopsy is consistent with what you're saying, we're good. But if the autopsy shows something totally different, you know what I mean? That's why I said, you need to make sure you're being honest with me. 'Cause it's gonna show on the autopsy. You know what I mean? Is there anything else? I need to know now. I need to know. Or else it's gonna look really bad for you.

[2:42:46]

A: Yeah. I might've squeezed him a little too hard.

Q: You were squeezing him too?

A: A little too hard.

Q: Sit down for a second. You don't mind if Corporal Vandersalt stays in here, do you?

A: No.

Q: You ever squeeze him today too?

A: A little bit too hard.

Q: And is that when he quit breathing?

A: No, that's not when he quit breathing. Just I feel like, I kinda picked him up because he was crying and I was like, please stop crying, please, you know, I need some sleep. And I was squeezing him and that's when I started bouncing him hard off the bed.

[2:43:20]

Q: And you were standing up at that point, you weren't sitting next to him?

A: No, I was –

Q: Oh, you were still down next to him?

A: Yeah.

Q: Okay. Do you think that when you were squeezing him, um – well, he's an issue that – let's back up for a second. Before you were in here and it was kinda on your own free will like we talked about. You weren't under arrest. But now you've got the handcuffs on you. Before we talk anymore I do wanna make sure you understand your rights. Do you know what I mean? Cause you are handcuffed right now. 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 an attorney, you have the right to his presence. If you cannot to hire a lawyer, one will be appointed at public expense to represent you before any questioning if you wish one. Do you understand those? Okay?

So, do you wanna tell me what you were just telling me?

[2:44:26]

APPENDIX C

A: No.

Q: You were squeezing him? How many times were you squeezing him?

A: Just twice.

Q: What happened when you squeezed him? What did he do?

[2:44:30]

A: He kinda lost his breath.

Q: Where were your hands?

A: I just had my arms wrapped around his stomach or head and just –

Q: Well, did you have him like this? Did you have him like this? How did you have him?

A: Kinda like – like in a bear hug.

Q: So you had him in a bear hug and you were squeezing him? Telling, “please, please” right?

A: Yeah, but I let him go. And then he was fine. And then he started crying some more.

Q: And that’s when you started throwing him?

[2:45:00]

A: I bounced him off the bed.

Q: Okay, just a second ago you said you squeezed him like that twice?

A: Yeah.

Q: Okay. So you squeezed him in a bear hug twice and kinda quit breathing and you let him go and then he started breaking again? Both times?

A: Yep.

[2:45:23]

Q: How long did he quit breathing for?

A: Well, a few seconds.

Q: Is there anything else? Cause it’s gonna show on the autopsy, and I’m gonna be honest with you. The reason I’m gonna come see you in the afternoon is guess where I’m gonna be first thing in the morning?

A: Yeah, I know.

Q: So I’m gonna know first thing in the morning. So Anthony, I pray that you’re being honest with me and now, you gotta make sure it’s all out on the table.

A: That’s everything. It’s all out on the table.

Q: What about the big goose egg on his head? Cause your fiancée told me that wasn’t there the night before, just the jaw.

A: I told you that was from bouncing on the bed.

Q: You’re saying a big goose egg on the side of his head is from bouncing on the bed. Okay. Is there any way --

A: And he didn’t hit the floor, he did not hit anything, he did not –

APPENDIX C

Q: There was nothing in the bed that maybe you didn't know was under the covers.

A: No.

Q: Where there covers on it?

A: Yeah, there were blankets on it.

Q: Do you remember specifically throwing him on his head?

A: I wasn't throwing him on his head.

Q: What were you throwing him on when you were doing it? Cause you said you were doing it from here to here. Was he bouncing straight back up and you adjusted, you know what I mean? What was he laying on? To get that mark on his head, he had to hit his head.

A: He was on the bed. He was on the bed.

Q: Right, but where were you throwing him on, when he was throwing on the bed, what part of his body was hitting the bed?

A: Here.

Q: What part of his body?

[2:46:45]

A: His whole body was hitting the bed.

Q: Like on his back, you're saying?

A: Yeah.

Q: Was some of it on his front?

A: No.

Q: Every time it was on his back.

A: Yeah.

Q: What makes you think he would end up with just a big lump on one side of his head?

A: I don't know. Maybe bouncing him too hard, maybe? I don't know.

Q: Well all of it was too hard, we know that. You and I talked about that. Well, if that's consistent with the autopsy tomorrow, yeah, I'm gonna help you, I'm gonna talk to the prosecutor, I'm gonna tell him to get someone you can talk to, you know what I mean?

A: But there was no table, there was no wall –

Q: But that wouldn't change it. That's what I'm trying to get you to understand. That wouldn't change it. It doesn't change what happened. If you missed and hit the floor, that doesn't make it any worse, that doesn't make it any better. That's just the truth.

A: And I'm telling the truth.

Q: That's why we talked about it earlier, you can't outthink the truth. You gotta just be the truth.

A: I'm being honest with you. That's the truth. That's it.

Q: Okay. Well, don't talk to people down at the jail tonight. They don't know shit about what you're going in there for. So, just go in, lay down, try to close your eyes –

A: Do you think that I'm telling you the truth now?

Q: I think you're about 90% telling me the truth.

A: I think I'm 100%.

APPENDIX C

Q: Okay. And I hope you are like I told you. I hope you are.

A: He didn't hit the floor, he didn't hit the wall –

Q: And it will show that and she – the doctor that's doing it is the expert at this stuff and she will be able to tell me if what you described could cause the injuries he has. Do you know what I mean? Then I'll know for sure. Okay? If I didn't believe you were being about 90%, we wouldn't be leaving this room right now, we'd still be sitting here? Do you know what I mean?

A: Mm-hmm.

Q: Okay? I think you're a man that made some mistakes, you made a bad choice, whether it was from not enough sleep, a mental issue like you said, maybe you snapped, whatever it was. But you're gonna get some help.

A: I need it –

Q: We talked about how there was consequences for our actions. But there's a future.

A: I feel like I lost everything now.

Q: Guess who can get it back? Only you. And one of the ways to do that is be honest, remorseful, step up and be a man about what happened and move on.

A: Yeah, but I worked hard enough now to get where I'm at. I just felt like I lost everything.

Q: You can get it back, too. Okay? Go with him so I can go over to the house so I can get [indistinguishable] tonight. Is there anything else in your pockets or anything? I know we had your wallet and ID and –

A: Nope.

Q: A couple debit cards and twenty bucks?

A: I had my cards for work, and –

Q: That's what you put back in this pocket here?

A: Yeah.

Q: I'll be down early afternoon to see you.

APPENDIX D

STATE OF MICHIGAN
IN 14TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

THE PEOPLE OF THE
STATE OF MICHIGAN,

File No. 13-063270-FC

Plaintiff,

Hon. WILLIAM C. MARIETTI

vs.

ANTHONY CASANOVA,

Defendant.

DALE J. HILSON (P57726)
Muskegon County Prosecutor
Attorney for Plaintiff
Hall of Justice, Fifth Floor
Muskegon, MI 49442
(231) 724-6435

FRED JOHNSON, JR. (P36283)
Muskegon County Public Defender
Attorney for Defendant
141 E. Apple Ave.
Muskegon, MI 49442
(231) 724-6585

ORDER RE: DEFENDANT'S MOTION TO SUPPRESS STATEMENTS
MADE BY THE DEFENDANT

At a session of said Court, held in the Hall of Justice in the
City of Muskegon, County of Muskegon,
State of Michigan, this 16 day of May, 2014

PRESENT: Hon. WILLIAM C. MARIETTI
Circuit Court Judge

On Defendant's motion requesting suppression of defendant's statements made during
the interview recorded on audio/video disc, Attachment 1, the Court having entertained the
arguments of counsel and otherwise being fully informed in the premises,

NOW THEREFORE, IT IS HEREBY ORDERED that those statements made by
defendant recorded on Attachment 1 which transpire before 7:32 (as measured on the
Attachment), are admissible in this matter.

APPENDIX D


IT IS FURTHER ORDERED that those statements made by defendant recorded on Attachment 1 which transpire after 7:32 (as measured on the Attachment), and before the advising of rights against self-incrimination, per *Miranda*,¹ are *not* admissible as they are in violation of defendant's rights under the 5th Amendment to the United States Constitution.

IT IS FURTHERED ORDERED that those statements made by defendant recorded on Attachment 1 which transpire after the administration of *Miranda* warnings are admissible in this matter.

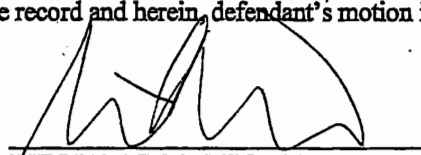
THEREFORE, for the reasons stated on the record and herein, defendant's motion is GRANTED in part and DENIED in part.

APPROVED AS TO FORM ONLY:

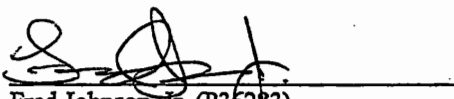
DALE J. HILSON (P57726)
Muskegon County Prosecutor


Dale J. Hilson (P57726)
Muskegon County Prosecutor

BUSINESS ADDRESS & TELEPHONE
Attorney for Plaintiff
Hall of Justice, Fifth Floor
Muskegon, MI 49442
(231) 724-6435


WILLIAM C. MARIETTI, P17085
Circuit Court Judge

FRED JOHNSON, JR. (P36283)
Muskegon County Public Defender


Fred Johnson, Jr. (P36283)
Muskegon County Public Defender

BUSINESS ADDRESS & TELEPHONE
Attorney for Defendant
141 E. Apple Ave.
Muskegon, MI 49442
(231) 724-6585

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 somewhere between 2 and 2½ hours as best as I can tell,
2 the defendant was finally placed in handcuffs and
3 eventually was lodged.

4 The totality of those circumstances
5 convince me that a reasonable person would not have felt
6 free to terminate this interrogation after that 7:32 mark
7 on the audio disc. So any statements between defendant's
8 question about what was going to happen to him at the 7:32
9 mark and when he was finally advised of his right to
10 remain silent etcetera under the provisions of the Miranda
11 v Arizona decision, would not be admissible because he had
12 not been advised of his rights. And I find that he was in
13 custody under the test.

14 Now, Miranda warnings are given and
15 the defendant contends that even the post-Miranda
16 statements are also inadmissible and relies on essentially
17 the Siebert case. Now the Siebert case, that's S-i-e-b-e-
18 r-t, is a US Supreme Court case that dealt with a
19 situation of a pre-Miranda confession repeated in a post-
20 Miranda setting. The Siebert court seemed to be concerned
21 with the fact that the two parts of the interrogation were
22 parts of a continuum which it would have been unnatural to
23 refuse to repeat at the second stage what had been said
24 before. That's not what happened here.

25 When asked post-Miranda, "Do you want

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

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APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 to tell me what you were just telling me?", the defendant
2 said "No". That no was not an unequivocal statement that
3 he didn't want to talk, because following that statement
4 of no and following another question the defendant told
5 him something different than what he had been saying
6 throughout the course of the interview that started around
7 7:00. Throughout that interview he'd been talking about
8 bouncing the child off a mattress or something to that
9 effect. Now we move into actually squeezing the child too
10 hard, so he's telling him something different. So there's
11 nothing unequivocal about the statement "no" that he
12 wanted to somehow terminate the interrogation.

13 And also it could be interpreted as no
14 I don't want to tell you the same thing I been telling
15 you. And that's important also in the context of what
16 Siebert was concerned about because Siebert was concerned
17 about the situation and again I've seen those situations
18 too where the investigating officer takes a confession
19 supposedly in a pre-custody setting, then gives the
20 Miranda warnings and confession is essentially repeated.
21 That is not what happened here. This defendant gave a
22 different story as to what transpired between he and the
23 alleged victim after the Miranda warnings were given than
24 before. And so the Siebert concerns aren't really
25 manifest here as far as I'm concerned.

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

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APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 The statement, as I said, was
2 different. And so between being told he was in custody
3 and making a statement about squeezing the victim too
4 hard, there was simply some idle conversation between the
5 defendant and the detective about what was going to
6 happen. That lasted for just a few short minutes and at
7 one point then my understanding of the video was,
8 Detective Nanna asked, and this was pre-Miranda, Mr.
9 Casanova if there was anything else he needed to know and
10 he said he needed to know where it was going to look bad
11 for the defendant. And for the first time then that I can
12 tell, the defendant started talking about squeezing hard
13 and gave a few more details in response to some general
14 questions before the officer stopped abruptly and said
15 wait a minute, we need to back up a minute because you're
16 in custody now; I have to give you Miranda warnings. Now
17 fortunately for my determination this has been preserved
18 on an audio recording because after listening to the
19 context of that conversation and the tone of voice the
20 detective had when he abruptly stopped the process and
21 gave Miranda and the fact that he was standing up actually
22 it looked to me like the detective was putting on his coat
23 and he was getting ready to go because he was going to go
24 and execute this search warrant. So that evidenced to me
25 there was no contemplation on the officer's part that he

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 was now going to take a post-Miranda repeat of a
2 confession that was made pre-Miranda. He was going to
3 leave. And when the defendant started talking about this
4 squeezing then the officer stopped and said wait a minute,
5 I'm going to give you Miranda now. And then he did
6 question him after that.

7 So this appears to me, this business
8 about not mirandizing him, or not giving Miranda warnings,
9 I don't think mirandize is a word, we use it all the time,
10 but not giving his Miranda warnings before getting this
11 initial comment about squeezing, I don't think there was
12 anything calculated about that. I don't think there was
13 anything flagrant about that on the officer's part. I
14 don't think there was anything intentional on his part or
15 anything done specifically to undermine the protections
16 that are afforded by Miranda. It was inadvertence on the
17 officer's part. It is clear to me he had no intention of
18 pursuing any further comments from the defendant. He had
19 his coat on and he was leaving. Matter of fact the
20 defendant put his coat on and he was in cuffs and he was
21 about to be taken away when these comments started coming
22 forth.

23 So any reviewing court, don't just go
24 by listening to the record that we're making here today.
25 Any reviewing court is not doing justice, and I want to be

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 clear to the Court of Appeals when and if they review
2 this, they are not doing justice in this case if you do
3 not listen to and look at the audio/video recording
4 because we're determining something here that has to be
5 seen and has to be heard. I've looked at it, I've seen it
6 and I've heard it and I'm convinced that this is not a
7 Seibert situation. I realize there was very little time
8 lapse between the pre-Miranda and post-Miranda statement
9 and there were no intervening circumstances. The
10 immediately antecedent circumstances were not related to
11 the questioning but rather talk about what the detective
12 was going to do after the defendant was lodged. In fact,
13 the defendant gave every indication - the detective gave
14 every indication, in this Court's opinion based on what I
15 saw and what I heard, that the questioning was over.
16 Because he even told the defendant you know, I've got to
17 go take care of this search warrant now; I'm going to come
18 back tomorrow afternoon and question you after I gather
19 more information. So there's nothing calculating about
20 this in my opinion. Nothing flagrant, nothing done here to
21 deliberately undermine the Miranda decision to get a pre
22 and post-Miranda confession.

23 In the context of over a two-hour
24 interview in which nothing was mentioned about squeezing
25 too hard until moments before the Miranda was given, I

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 find no causal connection between the first statement
2 about squeezing too hard and the post-Miranda statement
3 which mentions squeezing and went into considerable more
4 detail about that.

5 Now, notwithstanding the fact that
6 Miranda warnings were given, the post-Miranda statement
7 would have to be suppressed unless the prosecution can
8 establish, again by a preponderance of the evidence, that
9 the statement was voluntary. That's a separate issue from
10 the question of whether Miranda warnings were given and of
11 course both parties understand the Cipriano, C-i-p-r-i-a-
12 n-o, test is the standard by which we examine questions of
13 voluntariness as it relates to a confession. And there
14 are a few of those factors that would support a finding of
15 lack of volition. For example, the stress of the
16 defendant certainly must have been under after learning
17 just based on his testimony here a few hours before that
18 his son has passed away and coming from the hospital
19 directly to the police station. His lack of sleep that he
20 testified to here of 2 or 3 hours in the last 24 hours and
21 it was clear he was tired and he put his head down and
22 that he was stressed.

23 There are considerably more factors
24 that weigh in favor of voluntariness. This was an adult,
25 not a juvenile. He was equipped with a high school

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 degree, so an educated person. The custody and
2 interrogation lasted about 2½ hours. I mean, I don't
3 think that's an unreasonable lengthy interrogation or
4 custody because some of that time was spent as we know
5 with him napping and some of the time the officer was out
6 of the room and I don't find that to be anything that
7 would suggest coercion or involuntariness. In fact, he
8 was, before he made those statements, advised of his
9 constitutional rights under the Miranda v Arizona
10 decision.

11 There isn't any issue in this case of
12 any unnecessary delay in bringing him before the
13 Magistrate. This questioning was done in the evening.
14 The defendant was not injured in any way. The defendant
15 wasn't, at least to this Court's observations and
16 listening to the tape, intoxicated or under the influence
17 of anything at the time. He wasn't deprived of food. He
18 wasn't abused. He wasn't threatened. And the tone of the
19 interrogation, as I said, was certainly not intimidating.
20 I've heard intimidating tones in interrogation before.
21 This don't even come close to that as far as I'm
22 concerned.

23 There were no promises of leniency. I
24 want to be clear about that because there's some
25 indication perhaps in the defendant's brief that maybe

APPENDIX D

(Videotape, 4-11-14, 1:34:59)

1 that was involved here. The detective simply offered to
2 help the defendant if he was truthful by informing his
3 significant other and the prosecutor and being with him
4 every step of the way. That's not a promise of leniency
5 in any interpretation that I can come up with.

6 So the totality of the circumstances
7 in this case, preponderate in favor of a voluntary post-
8 Miranda statement.

9 So to clarify my ruling here then, it
10 is my ruling that from 7:32 until the defendant was
11 advised of his Miranda rights the statements the defendant
12 made would not be admissible. From the time that he was
13 advised of his Miranda rights forward his statements are
14 admissible. OK.

15 MR. HILSON: Thank you Judge.

16 THE COURT: Court is in recess.

17 MR. JOHNSON: Thank you your honor.

18 (Court in recess at 2:55:00)

19 -oOo-

ORDER OF APPOINTMENT

28028

STATE OF MICHIGAN 14th JUDICIAL CIRCUIT MUSKEGON COUNTY	CLAIM OF APPEAL AND ORDER APPOINTING COUNSEL	CASE NO. AND SUFFIX 13-63270 FC
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Court Address
COUNTY BLDG., MUSKEGON, MI 49442

Court Phone No.
231-724-6389

People of THE STATE OF MICHIGAN V <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; font-size: 0.8em;">Defendant Name, Last</td> <td style="width: 33%; font-size: 0.8em;">First</td> <td style="width: 33%; font-size: 0.8em;">Middle</td> </tr> <tr> <td>CASANOVA</td> <td>ANTHONY</td> <td></td> </tr> </table>	Defendant Name, Last	First	Middle	CASANOVA	ANTHONY		<table style="width: 100%; border: none;"> <tr> <td style="width: 70%; font-size: 0.8em;">Date of Birth, Address, Inmate Number (if known)</td> <td style="width: 30%; font-size: 0.8em;">12/04/1972</td> </tr> <tr> <td colspan="2" style="font-size: 0.8em;">CHARLES EGELER RECEPTION & GUIDANCE CENTER 3855 COOPER STREET JACKSON, MI 49201-7518</td> </tr> <tr> <td colspan="2" style="text-align: right; font-size: 0.8em;">948019</td> </tr> </table>	Date of Birth, Address, Inmate Number (if known)	12/04/1972	CHARLES EGELER RECEPTION & GUIDANCE CENTER 3855 COOPER STREET JACKSON, MI 49201-7518		948019	
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Offense Information											Terms of Incarceration							Intermediate Sanctions						
											Minimum			Maximum							Probation			
Description	PACC Code	H	C	A	S	Y	M	D	Y	M	D	K	P	J	Y	M	D	R	F	O				
HOMICIDE/FELONY MURDER	750.316-B					Life			Life				X											

H=Habitual C=Conspiracy A=Attempt S=Solicitation Y=Year M=Month D=Day K=Consecutive P=Prison J=Jail F=Fine O=Other

The defendant claims an appeal from a final judgment or order entered on 10/27/2014 in the 14th Circuit Court, MUSKEGON County, Michigan by Judge WILLIAM C. MARIETTI 17085. Copies of the final judgment or order being appealed and docket entries are attached for the Court of Appeals, appointed counsel, and Michigan Appellate Assigned Counsel System.

RECEIVED

On 10/27/2014, the defendant filed a request for appointment of counsel and a declaration of indigency.

IT IS ORDERED:

STATE APPELLATE DEFENDER OFFICE

645 GRISWOLD, PENOBSCOT BLDG., SUITE 3300

Name of Appellate Counsel

Address

DETROIT, MI 48226

313-256-9833

APPELLATE DEFENDER OFFICE

City, State, ZIP Code

Telephone No.

Bar No.

Is appointed counsel for the defendant in post-conviction proceedings. If appointed counsel can not or will not accept this appointment, he/she shall notify the court immediately. Copies of the final judgment or order being appealed and docket entries are attached for appointed counsel and Michigan Appellate Assigned Counsel System (MAACS).

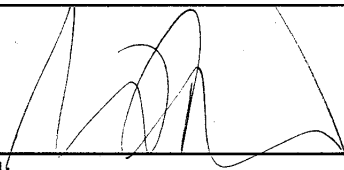
The court reporter(s)/recorder(s) shall file with the trial court clerk the transcripts checked below and any other transcripts requested by counsel in this case not previously transcribed. Transcripts shall be filed within 28 days for pleas or 91 days for trials from the date ordered or requested [MCR 7.20(B)]. Reporter(s)/recorder(s) shall be paid as provided by law.

Transcripts Ordered	Reporter/Recorder Name	Other Description	Previously		Reporter Number	Date(s) of Proceeding
			Ordered	Filed		
MOTION	CD: 11-13-13					11/13/2013
MOTION	CD: 12-30-13					12/30/2013
MOTION	CD: 1-14-14					01/14/2014
MOTION	CD: 2-18-14					02/18/2014
MOTION	CD: 3-31-14					03/31/2014
HEARING	CD: 4-11-14					04/11/2014
MOTION	CD: 4-21-14					04/21/2014
JURY TRIAL	CD: 9-23-14					09/23/2014
JURY TRIAL	CD: 9-24-14					09/24/2014
JURY TRIAL	CD: 9-25-14					09/25/2014
SENTENCE	CD: 10-27-14					10/27/2014

The clerk shall immediately send to counsel a copy of the transcripts ordered above or requested by counsel as they become available. The clerk shall forward documents upon request by counsel [MCR 6.433].

ORDER OF APPOINTMENT

11/21/14
Date



WILLIAM C. MARIETTI
Judge

17085
Bar No.

CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this claim of appeal to appointed counsel, defendant, court reporter(s)/recorder(s), prosecutor, Court of Appeals, and the Michigan Appellate Assigned Counsel System (MAACS). I also mailed a copy of the final judgment or order being appealed and the docket entries to appointed counsel, the Court of Appeals, and MAACS. I also mailed a copy of the defendant's request for appointment of counsel to appointed counsel, the prosecutor, and MAACS.

11/21/14
Date


Signature