

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

WILLIE DORRELL MINOR,

*

Petitioner,

*

v.

*

CC-95-1118.60

STATE OF ALABAMA,

*

Respondent.

*

AFFIDAVIT OF LORETTA LOWERY

State of Alabama

County of Tuscaloosa

BEFORE ME, the undersigned Notary,

Cheryl K. Muglach, on this 20th day of December, 2007, personally appeared Loretta Lowery, known to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath, deposes and says:

1. My name is Loretta Lowery (my last name was formerly German). Last year, I retired as a captain of the Tuscaloosa Police Department after 30 years of service on the force. I still live in Tuscaloosa, Alabama. I make this affidavit on personal knowledge.

2. In 1995, I served as a Youth Aid Investigator on the Tuscaloosa Police Department. My primary responsibility was investigating cases of child abuse. In this capacity, I interviewed witnesses, which, depending on the case, could include the suspected abuser, parents, the victim, the victim's siblings, neighbors, physicians, nurses, teachers, and other persons with knowledge of the family and their circumstances. In my investigations, I took photographs of victims of alleged abuse, and conducted polygraph examinations. In addition, I was involved, in conjunction with the Department of Human Resources, in finding placement for children who were in danger. In this capacity, I sometimes also worked with the Tuscaloosa Children's Center. In doing so, I had occasion to work with Dr. Michael Taylor in assessing the need to obtain forensic medical evidence in certain investigations. Furthermore, I have experience presenting cases to the district attorney at the Children's Center where a determination could be made about whether prosecution was appropriate. Finally, I sometimes worked with other law enforcement agencies, such as the Homicide Unit, when cases implicated various branches of the police force.

3. I was on call the night of April 15, 1995. That evening, the police dispatcher called me to the Druid City Hospital (DCH). While I cannot recall my precise time of arrival at the hospital, according to the report of Alabama Department of Human Resources (DHR) worker Steve Baten, I arrived at approximately midnight. I have no reason to dispute that account. The reason



I was called to DCH was a severely injured two-month-old boy named E'bius Jennings. After assessing the situation, I would have notified the line supervisor, Lieutenant Larry Lee, that DHR personnel would be required and we notified DHR accordingly. One of DHR's responsibilities in a case of suspected child abuse is to create a "safety plan" to ensure that abused children and their siblings will be cared for and secure while the incident of abuse is investigated and until all the children's safety can be assured. In connection with such safety plans, DHR may send in a "homemaker" to observe the children's living situation, or may set-up child care for the children. ¹²⁻²⁰⁻⁹⁵ With Lieutenant Lee's approval, I would have called for DHR support, and that is why Mr. Baten came to the hospital.

4. Later that night, shortly after midnight on the morning of April 16, 1995, E'bius Jennings expired. At that time, the Homicide Unit was called in and assumed the lead role in the case. After a child dies, the Youth Aid Division ceases to lead the investigation, and the Homicide Unit begins doing so. In a given case, the Youth Aid Division will remain as involved in the investigation as the Homicide Unit wishes. In the case of the Jennings baby's death, Officer Stan Bush was the lead investigator from the Homicide Unit. At the request of Officer Bush, I attended the interviews of Lakeisha Jennings, the mother of the deceased child, and Willie Minor. I was also present during some discussions Officer Bush had with Dr. Perry Lovely, who had treated E'bius Jennings, but I did not have any one-on-one conversations with Dr. Lovely or the other medical providers.

5. I have independent recollections of the manner in which Officer Bush conducted his investigation, and I have become aware of additional aspects of the investigation through a review of Mr. Baten's report, a subsequent DHR Report completed by Priscilla Hinton on June 6, 1995, and transcripts of testimony from Mr. Minor's trial. (I believe that I was on the witness list during Mr. Minor's grand jury proceedings, but I cannot recall if I testified. Testifying in court in cases that were prosecuted was another regular aspect of my work.)

6. During Mr. Minor's 1996 trial, Officer Bush stated that he eliminated Lakeisha Jennings as a suspect at approximately 1:55 a.m. on April 16, 1995, the morning that E'bius Jennings died. However, in my professional opinion and based on the investigation we conducted, there was no evidence at that time that would have eliminated Ms. Jennings as a suspect. Rather, this was a circumstantial case in which a lot more investigation was needed to find out what had happened to the baby. That night, of course, we learned that severe trauma had been inflicted on the baby. However, neither parent admitted to harming the baby, and no one saw the harm inflicted. As such, there was no way to determine what had happened until law enforcement received the autopsy findings and had conducted a substantial investigation. While questioning the mother and the physicians to ensure that the mother's story was consistent with the medical information is an important step, that step alone is far from sufficient evidence to draw a conclusion about the mother's guilt or innocence.

7. Before eliminating any parent as a suspect, I would have asked that parent to submit to a polygraph examination. I know that no polygraph examinations had been conducted at the time Mr. Bush claimed to have eliminated Ms. Jennings as a suspect. I do not know whether polygraph examinations were later administered to Ms. Jennings and Mr. Minor. Regardless, before narrowing the list of subjects, it would have been essential to interview not only the

parents, but also the child's other care givers. In interviewing the other care givers, it is important not only to determine how they treat the child who was abused, but to determine their impressions of how the parents and other care givers treated the abused child. From the investigation we completed that evening, I know that Mr. Bush had not taken those steps before eliminating Ms. Jennings as a suspect. I am also now aware based on the testimony provided at trial that Mr. Minor's other family members often cared for the baby before the time he died. It therefore would have been standard practice to ask those family members about their care for the child and their impressions of how Ms. Jennings and Mr. Minor cared for the baby. Based on my involvement in the investigation during the early morning hours of April 16, 1995, I know that Officer Bush and I did not interview a single member of Mr. Minor's family about the care of the baby before 1:55 a.m., when Officer Bush eliminated Ms. Jennings as a suspect.

8. It is also my understanding that Ms. Jennings had two other children. Before eliminating anyone as a suspect, I would have wanted to speak with those two children. Based on training and experience, I know that child abuse is often part of a pattern. In a family where one child is abused, it is often the case that the child was previously abused and/or that other children in the family have been abused. From my participation in the early stages of this investigation, I know that Officer Bush did not interview Ms. Jennings' surviving children prior to eliminating her as a suspect. In fact, during Officer Bush's interview of Ms. Jennings, she stated that she was the sole provider of discipline to the three children. She stated that Mr. Minor did not discipline the children. Before eliminating Ms. Jennings as a suspect, I would have looked into the manner in which she disciplined the children. There is no indication in Mr. Baten's recounting of the interview that Officer Bush followed this line of inquiry, nor do I recall him doing so.

9. In addition to speaking with other caregivers and the other children, it was part of my practice to interview neighbors and other third parties, such as doctors or teachers, who would have had experience with the children and parents in question. In this case, I recall that Ms. Jennings lived in Creekwood Village, an apartment complex in Tuscaloosa formerly known as Robinson Gardens. In a circumstantial case, it often would have been my practice, and consistent with that of the Youth Aid Division generally, to interview several neighbors in the apartment complex to determine whether they had heard or seen anything out of the ordinary on the night when E'bius died. I also would have wanted to question the neighbors more broadly regarding either parent's interactions with the deceased child and the other children in the home. I would have asked the neighbors whether they had any general impressions about the relationship of the parents to the three children. It is now my understanding that certain neighbors have stated that Ms. Jennings indicated a desire to abort E'bius during her pregnancy, or to induce a miscarriage. This would have rendered me far less likely to eliminate Ms. Jennings as a suspect. I know, because I was at the hospital with Officer Bush, that he took none of these steps prior to eliminating Ms. Jennings as a suspect at 1:55 a.m., shortly after her baby died.

10. Moreover, even if Officer Bush had strong reason to suspect Mr. Minor on the night of the death, he should have been willing to reconsider his conclusions if contradictory evidence arose. I am now aware that Ms. Jennings testified at trial that E'bius fell from the couch while under her care on the day of his death. When asked how the baby fell off the couch, she replied that he could have rolled off. As an investigator of child abuse, I was trained and it has been my

experience that abusive parents regularly attribute their children's injuries to falls from beds or couches. This is one of the most common excuses provided by caregivers for a child's injuries in cases where abuse is suspected. In this case, I know both from my training and my experience as a parent that Ms. Jennings' explanation is particularly implausible, because a two-month-old baby is not capable of rolling itself over. Therefore, her statement, which could not have been true, should have caused the investigators to reconsider her credibility more broadly. Indeed, in my review of the testimony, I learned that before she testified that E'bius could have rolled off the couch, Ms. Jennings already had testified that the baby could not "roll over or turn over," but "whatever position" she "would lay him in, he pretty much would stay there." These statements would have caused me, or any other reasonable officer, to have serious questions about Ms. Jennings' potential involvement in her child's abuse.

11. In my training and experience, further questions about a witness's credibility are raised when his or her statements are not consistent with those made by other witnesses. Here, during our interview with Ms. Jennings, she explained that the baby had not been ill before his death. Based on my review of Mr. Baten's report, however, I am now aware that Ms. Jennings' grandmother, a retired nurse, stated that Jennings had called her earlier on the day in question and stated that the baby was suffering from diarrhea. In my experience, this contradiction would have raised further questions about Ms. Jennings' credibility because we also are trained that questions are raised when parents give incomplete or inconsistent medical histories.

12. Based on the foregoing, I have serious reservations about the conclusions that Officer Bush reached regarding the proper suspects in this case, particularly given the minimal investigation and lack of evidence at the time he testified to having eliminated Ms. Jennings as a suspect. As a Youth Aid Officer, I had interactions with Officer Bush prior to the E'bius Jennings case in 1995. I had some interactions with him while he served in his prior position as a traffic officer, and regularly saw him at police headquarters.

13. Based on my review of Mr. Baten's report and the subsequent DHR report, I also have serious reservations about the completeness of the DHR investigation and the conclusions drawn in this case. Here, the primary purpose of the DHR worker was to ensure that Ms. Jennings' remaining two children were safe. Based on my review, however, Mr. Baten's report is more personal than factual. For instance, Mr. Baten's report states that "Willie Minor should be regarded as a suspect regardless of whether or not criminal evidence would support any guilt." Again, based on my interviews with the parents and involvement in the investigation on the night that E'bius died, I do not know how such a conclusion would be drawn. This statement by Mr. Baten is particularly surprising given that he did not attend the interview we conducted with Mr. Minor at DCH. While Mr. Baten goes on to note that "[i]t will be important to gain further knowledge about Lakeisha as well," my reading of the report suggests that Mr. Baten also prematurely eliminated Ms. Jennings as the possible abuser.

14. Specifically, my reading of the steps Mr. Baten took with respect to ensuring the safety of Ms. Jennings' other two children supports that conclusion. The report states that Mr. Baten counseled Ms. Jennings' grandfather to advise Ms. Jennings not to allow Mr. Minor to be alone with the remaining two children until the case was resolved. It is not clear to me why Mr. Baten concluded that the children were safe with Ms. Jennings, but not with Mr. Minor, on the morning

of the death. As discussed above, there was not sufficient evidence at that time to conclude that Ms. Jennings was not responsible for the death. Moreover, I do not understand why Mr. Baten concluded that Mr. Minor should be considered a suspect regardless of whether evidence would support that conclusion. As I have discussed, there was not enough information to exclude either parent as a suspect. Therefore, I would not have sent either Ms. Jennings or Mr. Minor home to the other children as Mr. Baten allowed for Ms. Jennings. As I mentioned, DHR's duty is to ensure the safety of the other children, and in a case like this, I would have sent the children to other family members or other safe caregivers until we could determine what happened. Various options were available to Mr. Baten to ensure the children's safety in the days, and even weeks, following the baby's death. For example, he could have placed the children in the care of Ms. Jennings' parents or grandparents, and advised them also not to permit Ms. Jennings to be alone with the children, given the fact that evidence did not exist to eliminate her as a suspect in the death of E'bious. It is not clear to me why Mr. Baten did not take this approach. It is my view that Steve Baten could not have concluded, based on the information in his report and the investigation in which I had participated at DCH, that the two Jennings children were safe in their home.

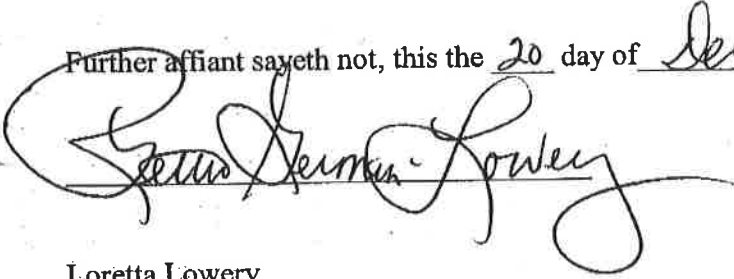
15. Based on my experience in such cases, DHR also should have conducted a more thorough investigation in the days after the death of E'bious, to ensure that Ms. Jennings' two surviving children were safe. It appears from Mr. Baten's report and the subsequent DHR report dated June 6, 1995 that Mr. Baten did not visit the Jennings home. It is surprising to me that another DHR worker, who did not have Mr. Baten's familiarity with the case, was asked to conduct the follow-up investigation. Additionally, it is surprising to me that DHR examined the other children while Ms. Jennings, her mother, and her grandmother were present. Based on my experience and training, DHR staff should have interviewed the remaining two children while they were alone, and certainly without Ms. Jennings being present. The interviewer should have conducted a lengthy interview to establish trust with the children, and then through open-ended questions determined the children's experiences with and attitudes toward Mr. Minor and Ms. Jennings. As noted, DHR staff should have interviewed family physicians, neighbors, and other family members to add to the impressions gained from the children. From my experiences at the hospital on the night that E'bious died, I know that Mr. Baten was present for the interview of Ms. Jennings, but not Mr. Minor. DHR staff should have conducted thorough interviews of both Lakeisha Jennings and Willie Minor. From my review of the DHR records, it does not appear that this was done. Rather, for reasons not known to me, Mr. Baten assumed that Ms. Jennings was a fit parent, and his colleagues at DHR did not question this conclusion. Similar to Mr. Baten's initial report, the June 6, 1995 DHR report states that "[t]he children have never been spanked by Willie Minor," but mentions nothing about the manner in which Ms. Jennings cared for or disciplined the children.

16. I am now aware that Officer Teena Williams was present at the hospital on the night of E'bious's death. I know Officer Williams from my years on the force, but I do not recall her being around DCH on the night in question. I do not recall calling her to the hospital after I had arrived. I am aware that Officer Williams was related to Ms. Jennings, and based on my knowledge of and experience with Officer Bush, ~~it would not surprise me that he would have a favorable impression of Ms. Jennings because she had police officers in her family.~~ Officer

Bush, who I know later stepped down from the police force due to a domestic incident, was an officer who would "shoot from the hip."

17. Finally, I am now aware that my former sister-in-law was a juror during Mr. Minor's 2001 trial. I was unaware of her service at the time. Similarly, I recently was informed by Mr. Minor's current attorneys that my former husband, Ed German, was Mr. Minor's former probation officer. I was unaware of this at the time of my investigation of E'bious's death.

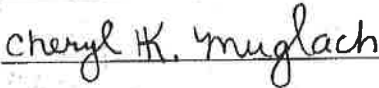
Further affiant sayeth not, this the 20 day of Dec., 2007.



Loretta Lowery
4808 28th St. E.
Tuscaloosa, AL 35404

Subscribed and sworn to before me, this 20th day of December, 2007.

CHERYL K. MUGLACH



NOTARY PUBLIC

My commission expires: _____, 20____.

**NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 26, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

