

1 A. No. That day?

2 Q. Right. The hospital interview.

3 A. I don't recall having done that, no.

4 Q. Okay. Was the child in bed or sitting?

5 A. She was sitting in bed.

6 Q. She was sitting up in bed?

7 A. Right.

8 Q. All right. And that was during the two to three
9 hour interview?

10 A. Yes.

11 MS. BALDWIN: I have no further questions, Your
12 Honor.

13 MR. PROCTOR: No further questions, Your Honor.

14 THE COURT: All right. May she be excused?

15 MR. PROCTOR: Yes, Your Honor.

16 THE COURT: Counsel?

17 MS. BALDWIN: Yes, Your Honor.

18 THE COURT: All right. You may be excused.

19 MR. PROCTOR: We have no further witnesses,
20 Your Honor.

21 MS. BALDWIN: And Judge, I have a recall on
22 Beverly Troupe, just to introduce some things into evidence,
23 and also at this time, Judge, I'm asking that this hearing
24 continued so that Dr. Mujica can make he appearance. I know
25 the Court has heard a lot of things about what Dr. Mujica has

1 said about what's in his investigations and it leads me to even
2 further believe --

3 THE COURT: That's fine.

4 MS. BALDWIN: -- that he needs to be here.

5 THE COURT: I'll continue. I'm going to take
6 your witness out of order to testify --

7 MS. BALDWIN: Right.

8 THE COURT: -- but not as a rebuttal witness.

9 MS. BALDWIN: Right.

10 THE COURT: You're going to clear up what you
11 had --

12 MS. BALDWIN: Yes, sir.

13 THE COURT: -- I already told y'all about --

14 MS. BALDWIN: Yes, sir.

15 THE COURT: -- a future date.

16 MS. BALDWIN: Yes, sir.

17 THE COURT: Okay.

18 MS. BALDWIN: I just wanted to make sure we
19 were on record.

20 THE COURT: All right. Well, let's bring in
21 the witness.

22 THE BAILIFF: Who is she?

23 MS. BALDWIN: Beverly. She should be out in
24 the hall. Judge, may I look in the file? One of these things
25 we don't have to do.

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(Bench conference, off the record)

BEVERLY TROUPE ENOCH

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BALDWIN:

Q. Okay. Beverly, at the age of fifteen, is it true or not true that you were seen by a Dr. Gold. I believe you gave that testimony yesterday; is that correct?

A. Correct.

Q. Counsel asked you if you and any proof of what Dr. Gold's findings were; you remember that?

A. Yes.

Q. Okay. And these was what you testified to and what your understanding was for the purposes of medical diagnosis that he gave you; right?

A. Correct.

Q. Now, why had you seen Dr. Gold.

A. I just went in there for an examination.

Q. Okay. Were there any allegations that you had been sexually abused at that time?

A. Umm. Not sexual abuse. It's just that they -- they foster parents knew that I was with a guy and they just wanted to make sure I was okay.

Q. Okay. So if it says that you were forced to have sex, you know, outside of the medical report, is that what you

1 went in for?

2 A. Umm. I believe so, yes.

3 Q. Okay. And I'm going to ask you to look at what just
4 put in front of you that's labeled -- we'll make this
5 Petitioner's 1. Applicant 1 --

6 MR. PROCTOR: I'm sorry. A.

7 MS. BALDWIN: A-1 then. Okay.

8 MR. PROCTOR: We need to keep it separated.

9 MS. BALDWIN: I just wanted to make sure.

10 Okay. Thank you. We'll make this Applicant's 1 --

11 MR. PROCTOR: A.

12 MS. BALDWIN: A1?

13 MR. PROCTOR: A.

14 MS. BALDWIN: A?

15 MR. PROCTOR: Just A.

16 Q. (BY MS. BALDWIN) Okay. And looking at Exhibit A, do
17 you recognize that particular exhibit?

18 A. Yes.

19 Q. Consist of -- should consist of six pages. Okay.
20 Consisting of six pages; do you see what I'm talking about?

21 A. Yes.

22 Q. Okay. Was this a record that you received after
23 request from your doctor?

24 A. Yes.

25 Q. And was this record provided to you by the doctor's

1 office?

2 A. Yes.

3 Q. Has the record been altered or changed in any way?

4 A. No.

5 MS. BALDWIN: At this time, Your Honor, I would
6 ask that Exhibit A be admitted into evidence. All right.

7 THE COURT: Wait a minute.

8 MR. PROCTOR: Well, I mean -- I'm not sure why
9 we would be admitting this exhibit, but my problem is they
10 aren't -- it isn't really authenticated. I mean, it's in a
11 way -- she's not a custodian of the records and --

12 MS. BALDWIN: Doesn't have to be. She does not
13 have to be. Under the new Rules of Procedure, you do not
14 have -- anybody with personal knowledge of the record can
15 authenticate the record and the record can be entered under the
16 new Rules.

17 MR. PROCTOR: I don't know if she has personal
18 knowledge of these medical --

19 MS. BALDWIN: She -- she has personal -- we're
20 not talking about the preparation of the record. We're talking
21 about whether or not she received the record from --

22 THE COURT: Wait a minute, counselor.

23 MS. BALDWIN: -- I'm sorry.

24 THE COURT: The notations are made in this
25 record are not hers?

1 MS. BALDWIN: No, sir. They don't have to be.

2 THE COURT: Then how is it not hearsay?

3 MS. BALDWIN: Because she can testify -- we're
4 not talking about --

5 THE COURT: She came to testify about the
6 doctor's diagnosis.

7 MS. BALDWIN: Well, that's an automatic hearsay
8 exception when you're talking about a statement based on
9 purposes of diagnosis.

10 THE COURT: No, no. It's an automatic
11 exception of what she told the doctor and he based his
12 diagnosis on what she told --

13 MS. BALDWIN: Exactly. But that's --

14 THE COURT: -- what he puts in this record and
15 what his conclusions are is not admissible. You need to get
16 him to certify that this a record kept in the normal course of
17 business -- just like you do any business record.

18 MS. BALDWIN: And Judge, according to the
19 changes in the Rules, which occurred a couple of years ago --

20 THE COURT: Where are the changes?

21 MS. BALDWIN: -- this is one of those things
22 that can happen.

23 THE COURT: I do not feel this --

24 MS. BALDWIN: Okay.

25 THE COURT: -- does it, but I'm going to

1 enter under the record -- for the record. My opinion is, I'm
2 not going to let her testify to what's in the record, because I
3 don't think it's admissible.

4 MS. BALDWIN: Well, then the record will speak
5 for itself. It says what it says.

6 THE COURT: I'll enter it into the record.
7 It's admitted for record purposes only A1.

8 MS. BALDWIN: Okay. Well, he says it has to be
9 A, it can't be a 1.

10 THE COURT: Well, whatever it's marked, it's
11 admitted.

12 MS. BALDWIN: 1A -- I put an A on there, Judge.

13 THE COURT: Okay. We're good to go.

14 MS. BALDWIN: All right. Do you want me to
15 give this to the court reporter now?

16 THE COURT: Yeah.

17 (Applicant's Exhibit A is marked)

18 Q. (BY MS. BALDWIN) All right. Now, you've talked
19 about seeing Dr. Gold; is that correct?

20 A. Yes.

21 Q. And basically, it's your understanding, from seeing
22 Dr. Gold, that there had been no sexual activity there -- that
23 occurred with you ever; is that correct?

24 A. Right.

25 Q. And he made that statement to you for the purposes

1 of diagnosing your condition?

2 A. Right.

3 MS. BALDWIN: I have nothing further of this
4 witness, Your Honor.

5 CROSS EXAMINATION

6 BY MR. PROCTOR:

7 Q. I'm not clear on why you went to see him?

8 A. It was because I went -- I left the club -- some
9 Boys Club of America with a guy that I had just met, and the
10 foster -- and an hour or two later, I got back and the foster
11 mom was there to pick us up. And she saw us standing and she
12 asked me if I knew him, and I said, "I had just met him." And
13 she had some -- she just wanted to go for an examination to
14 make sure everything was fine.

15 Q. Let me show you -- I'm sure you recall your
16 affidavit that is submitted along with this Applicant Claim for
17 Actual Innocense; is that your signature?

18 A. Yes.

19 Q. Okay. This is the affidavit that you state that's
20 in the Court's file?

21 A. Uh-huh.

22 Q. Now, if you could read what I have -- the sentence
23 that I have marked on here aloud.

24 A. Read it out loud?

25 Q. Yes.

1 A. "Sexual molestation of my person happened in foster
2 care and started in the year of 1993 by the foster parent,
3 Mr. James B. Sanders, as I told a couple of people in the State
4 of Texas."

5 Q. Okay. Now, these medical records that you obtained
6 from Metroplex Hospital, apparently, this examination was done
7 in '94; June of '94. That's the date on the examination, the
8 notes that the doctor made --

9 THE COURT: Counsel, I didn't let the medical
10 records into evidence. They're not in the evidence.

11 MR. PROCTOR: Well, Your Honor, she
12 testified --

13 THE COURT: They're just part of the record of
14 the proceeding.

15 MR. PROCTOR: -- she testified as to why she
16 went to be examined, and that's the point I'm getting at.

17 THE COURT: Well, you can't go into the records
18 if you're not impeach her on what she testified to; they're not
19 in the record. And I'm not going to consider them.

20 MR. PROCTOR: Okay. You're not going to
21 consider them. Okay.

22 Q. (BY MR. PROCTOR) In terms of your testimony then,
23 you just stated that a foster mother thought you may have been
24 sexually active so you went to get this examination; however,
25 in your affidavit in 1993, you alleged you'd been sexually

1 molested.

2 A. Uh-huh.

3 Q. So how is that consistent?

4 A. Well, I look at sexual molestation of everything
5 sexual with a child. He made -- the foster father, himself,
6 made some accusations of wanting to do some things with me at
7 times, and I looked at that as sexual molestation -- in which
8 he tried to on numerous occasions. Nothing necessarily
9 physical, but making accusations and telling that he wanted to
10 have sex and he never did -- and which we never did.

11 Q. Huh-huh. You never did it, but you called it sexual
12 molestation.

13 A. Right. I consider sexual molestation; in my mind
14 that I was -- that he was trying to accomplish with me and
15 making gestures.

16 Q. Okay.

17 MR. PROCTOR: Okay. No further questions, Your
18 Honor.

19 MS. BALDWIN: Nothing further of this witness,
20 Your Honor.

21 THE COURT: All right. You may step down. As
22 I understand, that's all the witnesses?

23 MS. BALDWIN: That's it.

24 THE COURT: I'm going to reset this case -- to
25 a future date and y'all are going to have to get that, but let

1 me tell you, don't get that date until you have the coordinator
2 call me and check with my schedule. I guess, the doctor is
3 going to have to fly in from Las Vegas?

4 But get in touch with me, they have my number
5 and everything. All right. You have anything further?

6 MS. BALDWIN: Nothing further at this time,
7 Your Honor, from the Applicant.

8 THE COURT: All right.

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10 (End of proceedings)

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THE STATE OF TEXAS)

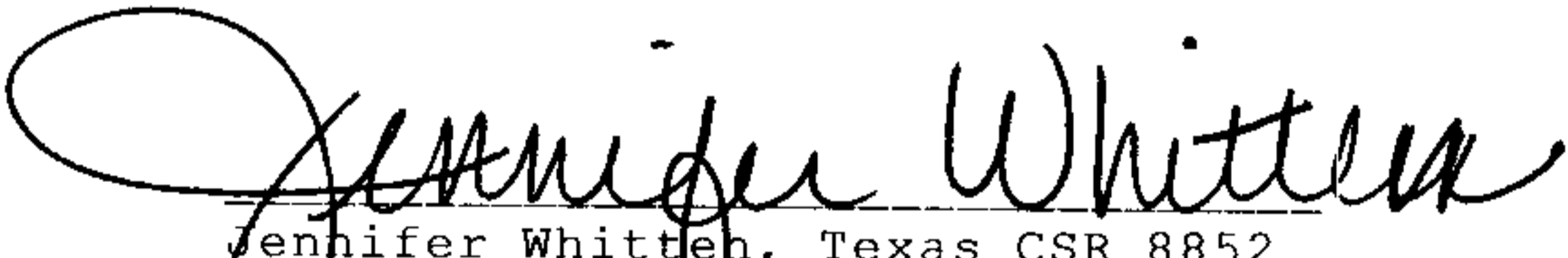
COUNTY OF BELL)

I, Jennifer Whitten, Deputy Court Reporter in and for the Bell County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported to me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$_____ and was paid/will be paid by _____.

WITNESS MY OFFICIAL HAND this the _____ day of _____, 2011.



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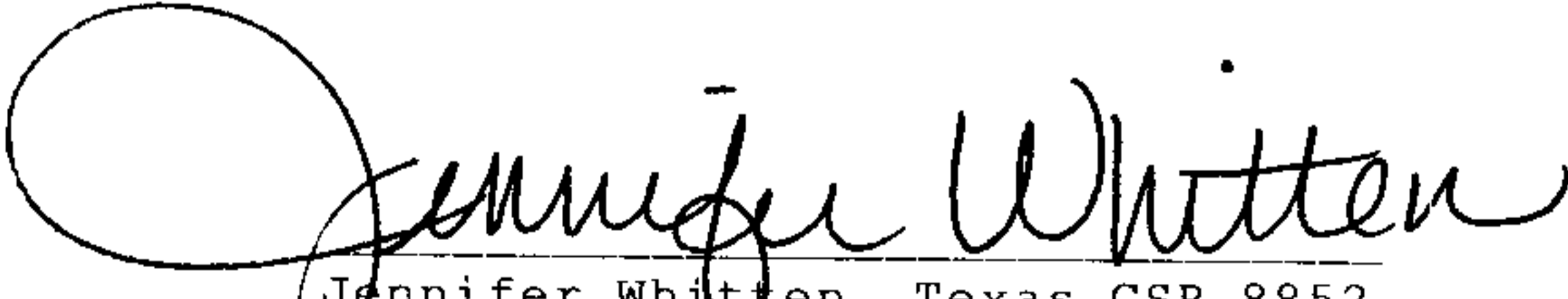
CAUSE NO. 35279

THE STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 27TH JUDICIAL DISTRICT
BRIAN KEVIN TROUPE) BELL COUNTY, TEXAS

I, Jennifer Whitten, Deputy Court Reporter in and for the 27th District Court of Bell County, Texas, do hereby certify that the following exhibits constitute true and complete duplicates of the original exhibits, excluding physical evidence, tendered in an offer of proof or offered into evidence during the Post Conviction Writ Evidentiary Hearing in the above-entitled and numbered cause as set out herein before the Honorable Bill Bachus, Judge of the 27th District Court of Bell County, Texas, and a hearing beginning February 23, 2011.

I further certify that the total cost for the preparation of this Reporter's Record is \$_____ and was paid/will be paid by _____.

WITNESS MY OFFICIAL HAND on this, the ____ day of _____, 2011.



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REPORTER'S RECORD
VOLUME 3 OF 3 VOLUMES

CAUSE NO. 35279

THE STATE OF TEXAS) IN THE DISTRICT COURT
VS.)
BRIAN KEVIN TROUPE) 27TH JUDICIAL DISTRICT
)
) BELL COUNTY, TEXAS

EXHIBIT VOLUME

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