

CITY COURT : CITY OF WHITE PLAINS
COUNTY OF WESTCHESTER : STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Felony
Hearing

SAM CHAPMAN,

Defendant.

-----X

February 20, 1980

Before: HON. JAMES B. REAP, JUDGE

Appearances:

CARL A. VERGARI, DISTRICT ATTORNEY by SUSAN HEINY, ESQ.,
Assistant District Attorney for the People

JOHN MCGINNITY, ESQ., Attorney for the Defendant

JUNE B. STRAUSS
Court Reporter

THE COURT: People against Sam Chapman.

MISS HEINY: The People are ready.

MR. MCGINNITY: Ready, Your Honor.

THE COURT: Okay, put your first witness on. This courtroom will be cleared of all witnesses except for the first witness for the prosecution. Anybody who is going to testify in this case, leave, please.

MISS HEINY: Your Honor, the People presume the defendant waives a reading of the complaint.

MR. MCGINNITY: No, I'd like to have the complaint read.

THE COURT: You would?

MR. MCGINNITY: Yes, Your Honor.

THE COURT: The charge here is that a Detective Kenneth Ellman of the Westchester County Society for Prevention of Cruelty to Children, accuses the defendant of having committed an offense at 135 South Lexington Avenue in this City on the eighteenth day of November, 1979 at six p.m.. And the charge is committing the offense of assault in the second degree, a violation of Section 120.05

Subdivision 1 of the Penal Law. The Officer says that the defendant, Sam Chapman, with intent to cause serious physical injury to another person did cause such an injury to a person or to a third person as follows:

At the date, time and place I have mentioned, you did hit one Charrise Gilbreath with both arms with a belt requiring her to receive medical treatment and requiring seventeen stitches. The above allegations are made by the complainant on direct knowledge and also the statement of Charrise Gilbreath. It is signed under penalty of perjury by Detective Kenneth Ellman and dated.

Would you like a copy?

MR. MCGINNITY: For some reason, I never received a copy in the file but for the time being, it is all right.

THE COURT: Okay.

MISS HEINY: Your Honor, the People would request that if the defendant has any witnesses that they be --

THE COURT: I have taken care of that, Miss.

I put them all out.

MISS HEINY: I'd like to call Charrise Gilbreath.

C H A R R I S E G I L B R E A T H, having been first duly sworn, hereby testified as follows:

THE COURT: Give our stenographer your name and keep your voice up so the People out there can hear you.

THE WITNESS: Charrise Gilbreath, 135 South Lexington Avenue.

DIRECT EXAMINATION BY

MISS HEINY:

Q Charrise, how old are you?

A Thirteen.

Q What is your date of birth, Charrise?

A June 28, 1966.

Q Okay, Charrise, do you know the difference between right and wrong?

A Yes.

Q Do you know what it means to tell a lie?

A Yes.

Q Do you understand what it means to testify

under oath?

A Ahem; yes, I do.

Q Okay. Drawing your attention to the eighteenth of November, 1979 at about six p.m., could you tell the Court what, if anything, you were doing?

A First I was watching television.

Q You were watching television?

A Yes.

Q Where were you watching television?

A In the livingroom.

Q In the livingroom of your home?

A Yeah.

Q Okay, and what is the address of your home?

A 135 South Lexington Avenue.

Q Is that in White Plains?

A Yeah.

Q Was there anybody else in the home?

A Yes.

Q Who was there?

A My sister, brother and my father.

Q What happened after you were watching television?

A He cut off the television and my father cut off the television and asked me to heat up some raviolis.

Q What happened while you were heating up the Raviolis?

A I went in the back because I forgot to put water in the raviolis to make the sauce. Then I went back to get some and he said, "Can't you say 'excuse me'?" And I said, "Excuse me", and I put the water in. Then I don't know what happened after that. I forgot and then I went in the bathroom because he hit me with the rag and I was trying to wipe off the water because it was wet.

Q Okay. What happened after he hit you with the rag?

A He hit me with the belt.

Q Okay. When you say "he", who are you referring to?

A My father.

Q Who is your father; what is his name?

A Sam Chapman.

Q Do you see the man that hit you with the belt in court today?

A Yes.

Q Could you point to him, please?

A Right there. (pointing)

MISS HEINY: I'd like the record to reflect the witness identified the defendant Sam Chapman.

THE COURT: It may.

Q Charrise, what did you say happened after he hit you with the dish rag?

A I said something and then I went in the bathroom and wiped off the water because the dish rag was wet. Then he said he was getting the belt. Then he got the belt and he hit me.

Q How many times did he hit you?

A I don't know; I don't remember.

Q Did he hit you more than once?

A Yeah.

Q Where did he hit you with the belt, Charrise?

A On my arms.

Q On your arms. Did you have any injury as a result of the defendant's hitting you with that belt?

A Yes.

Q What kind of injury did you have?

A A scar.

Q Did you receive any medical attention?

A Yeah, I went to the hospital and got stitches.

Q What hospital did you go to?

A -White Plains.

Q White Plains Hospital. What did they do there?

A They gave me stitches.

Q How many?

A Fifteen.

Q Do you have any marks as a result of this injury?

A Yes.

Q What kind of mark do you have?

A A little scar.

Q You have a scar?

A Yes.

Q On which arm is the scar?

A The left.

Q The left arm. Okay, Charrise, thank you.

THE COURT: Can I see that?

THE WITNESS: (Indicating)

THE COURT: Stand up, miss, so the gentlemen
can see.

THE WITNESS: I can go?

THE COURT: No, not yet.

Your witness.

CROSS EXAMINATION BY

MR. MCGINNITY:

Q Charrise, actually Sam Chapman is your step
father; is that not so? He's your step father/

A Yes.

Q And how long before this happened had Sam
been living with you in your house?

A I forgot; I don't know. I wasn't counting.

Q Several years?

A Several years.

Q Was it a long time?

A Ahem.

Q That he lived with you?

A Yes.

Q And your mother?

A Ahem.

Q And they are married; aren't they?

A Ahem.

Q Your mother is married to Sam Chapman; isn't she?

A Yes.

Q Does Sam work every day?

A Yeah, except Sunday.

Q Where does he work?

A I don't know. Before he worked at a diner.

Now he works at North Castle.

Q That's a diner too; isn't it?

A Yes.

Q Aren't they owned by the same people; the one diner and the other?

A I don't know.

Q You don't know, okay. And is he working there now, presently, to your knowledge?

A As North Castle.

Q Yes.

A Yes.

Q And do you know if Sam gives money to your

mother?

A Yeah, he does.

Q And prior to this incident, had Sam ever hurt you before?

A No.

MISS HEINY: I'm going to object, Your Honor. That is beyond the scope of a felony hearing.

THE COURT: Sustained, as to the last question.

MR. MCGINNITY: As to whether he ever hit her previously?

THE COURT: Do you object to that too?

MISS HEINY: I do. It is beyond the scope of my direct.

THE COURT: What do you say to that?

MR. MCGINNITY: The point is she put in a very short case regarding the injury. Intent is a part of this case; the intent of the defendant to injure the child. That's obviously part of the crime.

THE COURT: Right.

MR. MCGINNITY: If we can show that he never -- part of our defense here is to show that there was no intent to injure her. Any prior incident that had occurred with this child prior to the incident that is being charged would indicate that he's habitually hitting and abusing the child. --

THE COURT: And if he didn't it is negative intent.

MR. MCGINNITY: No, that's not my position. My position is to show that he has -- my position through the testimony of the complaining witness to show that he never hurt this child previously. That it's not my fault that the District Attorney did not bring out any facts, prior facts that may have shown that he may have caused injury to the child.

THE COURT: I'm going to sustain the objection. It is irrelevant.

MR. MCGINNITY: Your Honor, it is not irrelevant.

THE COURT: It is irrelevant.

MR. MCGINNITY: It may show he had no intent to hurt the child. Would you take it subject to connection?

THE COURT: No, sorry. I made my ruling.

MR. MCGINNITY : Exception.

THE COURT: Exception granted.

Q Charrise, are you afraid of Sam?

A No.

Q Now when this incident occurred, had you come home from school; is that what happened?

A No, there wasn't no school that day.

Q There was no school?

A It was Sunday.

Q It was a Sunday. Was your mother working at the time?

A Yes.

Q And had you injured yourself previously, previous to this action? Had you hurt your arm?

A It was broke.

Q How did that happen?

A I was in the laundramat and I fell off the pole.

Q You did what?

A Fell off the pole trying to get something for my brother and sister.

Q Is this a public laundramat here in White Plains?

A Yes.

Q When did that happen?

A I don't know.

Q Did it happen a month before this incident; a month or two months before?

A It was -- let me == when's Halloween? That's when it was.

Q The end of October. It happened on Halloween?

A Yeah.

Q And you say you broke your arm?

A Yeah, my wrist.

Q Was it the same arm that this scar is located on?

A Yes.

Q Is that your left arm?

A Yes.

Q And did you receive medical attention for that

broken arm? Did a doctor treat you?

A Yes.

Q Did he put a cast on your arm?

A Yes.

Q Would you stand up, Charrise, and show the Court where that -- at the time on November 18, 1979 -- where that cast extended; from where it went, from where to where?

A About here.

Q Indicating below the elbow?

A Yeah.

Q And did it go all the way around the arm?

A Yeah, at first and then it was cut off.

Q It was cut off?

A Half of it.

Q Half of it was cut off; the arm started to heal; is that correct?

A No.

Q What is correct?

A Because I went in the hospital because I had a tumor and so he had to take the tumor out.

Q So he cut half of the cast off?

A Yeah.

Q Now, was the cast sharp in -- was there an edge on the cast?

MISS HEINY: Your Honor, I'm going to object to this line of questioning. I've allowed defense counsel a little latitude.

THE COURT: If there is a preexisting injury it could have been as a result of that injury?

MR. MCGINNITY: In all fairness to the Court, we are not attempting to show there was a preexisting injury to the exact place where the injury occurred. We are attempting to show that a cast was placed upon the arm because of a prior existing injury on the same arm where the injury complained of occurred and we are attempting to show, and I'm attempting to lay a foundation here in fairness to my adversary, to show that the cast itself might have caused the injury. That's the purpose of the question.

THE COURT: It is okay; go ahead.

Q Would you show the Court again, could you

stand up, please. Would you pull your sleeve up all the way, Honey. When they cut the cast off, would you please show us where that cast was?

A (Indicating)

Q Are you indicating below the area of where the scar is?

A Yeah.

Q Okay, thank you.

THE COURT: Let me get it straight. Where was the whole cast originally?

THE WITNESS: The same place I had it.

THE COURT: The cast was never extended further than below the elbow?

THE WITNESS: No.

THE COURT: Where was it after?

THE WITNESS: Below the elbow.

THE COURT: What did they cut, miss?

THE WITNESS: The top of the cast.

THE COURT: So now it became half as big?

THE WITNESS: Yes.

THE COURT: It is still below the elbow.

Q Now, was there any part of the cast up here that was sharp in any way?

A The end of it.

Q The end of the cast.

MR. MCGINNITY: Your Honor, at this time I ask the District Attorney to produce the statement of the witness, Charrise, the written statement.

THE COURT: Okay.

MISS HEINY: I would like the record to reflect that I'm handing up to the Court and to the defense attorney copies of the statement written, given by the witness, Charrise Gilbreath, for the purposes solely of cross examination.

Q Now Charrise, I show you the last page of the hand-written statement and ask if that is your printed name, if you printed that name at the bottom of that statement?

A Ahem.

Q That's your name; that's your signature printed? Now I ask you, Charrise, to read from the middle of the statement where it starts, "as soon as".

A Where at?

Q Do you see where it says, "as soon"?

A Yes.

Q Could you read that down to the end of the page?

A To myself?

Q No, would you read it out loud to the Court so the Judge can hear the statement.

A "As soon as I said" --

Q Slowly and loudly, Charrise, so we can all hear.

A "As soon as I said that, Sam took his belt off his pants and started hitting me with the belt so I started walking towards the hallway while he was still hitting me and Sam was grabbing my cast with one hand and hitting with the other". Go ahead?

Q Go ahead.

A "I then told Sam that he might break my arm again but Sam didn't care. He just kept on hitting me on the neck and arms and shoulders. He then pushed me into my room", and that's it.

Q Okay, Charrise. Thank you.

Now is it possible, Charrise, that the cast when Sam was pulling you by the arm and the cast, that that cast may have cut your arm at that time?

MISS HEINY: I object to that.

THE COURT: We haven't established that the cast she was still wearing --that she was still wearing the cast.

MR. MCGINNITY: I beg your pardon.

Q Was your cast still on at that time?

A Yes.

MISS HEINY: I'm going to object, Your Honor. The witness cannot testify to what could have possibly caused the injury. It is speculation on her part.

THE COURT: I'll overrule that. I'll allow it.

Q Is it possible that when Sam -- do you remember what you've just read, Charrise. Is it possible and I don't want to put words in your mouth, but is it possible that when Sam Grabbed you by the arm when you

were in the hallway that the edge of the cast cut your arm; is that possible?

A I don't know, I don't know.

Q Do you in fact know whether it was the cast or it was the belt that was hitting you with that cut your arm?

A No.

Q Do you know how your arm became cut?

A No.

MR. MCGINNITY: I have no further questions,
Your Honor.

REDIRECT EXAMINATION BY

MISS HEINY:

Q Charrise, I just have a couple of questions. After you were in the bathroom wiping your arm after he hit you with the rag, did the defendant hit you with anything?

A After?

Q After he had hit you with the rag.

A Yeah, the belt.

Q He hit you with the belt. And you testified before he hit you more than one time with the belt.

A Yeah.

Q And he hit you on your left arm?

A Yeah.

Q And I believe in the statement that you had just read you had also said that at one time he hit you very hard and you saw your arm was bleeding; is that right?

A Ahem.

MISS HEINY: I have no further questions.

THE COURT: Was your arm bleeding before you were hit with the belt?

THE WITNESS: I don't know.

THE COURT: You don't know. Was it bleeding when you were wiping with the rag?

THE WITNESS: No.

THE COURT: It was not?

THE WITNESS: No.

MR. MCGINNITY: May I ask a few on recross examination?

THE COURT: Yes.

RE CROSS EXAMINATION BY

MR. MCGINNITY:

Q Charrise, the rag bus iness was a dish towel that he had hit you with in the beginning; is that what you testified to?

A Yeah.

Q Didn't you also testify that he was hitting you on both arms with the belt?

A Yeah, he was.

Q Were you bleeding or injured in any part of your body except for the one --

A No.

MR. MCGINNITY: No further questions, Your Honor.

THE COURT: Thank you. You can step down, Miss.

(Whereupon, the witness was excused at this time)

MISS HEINY: Your Honor, at this time pursuant to Section 180 and 190.30 of the Criminal Procedure Law, I'd like to offer into evidence the Medical Records of Charrise Gilbreath from White Plains Hospital dated November 18, 1979.

MR. MCGINNITY: I object to the offer of this

There's history in there, Your Honor, which from statements that is clearly hearsay." I have no objection with regard to the diagnosis only but with regard to the statement purportedly made at the time the child was admitted, not admitted but treated at the hospital, I object to that portion of the record and ask that it be excluded.

THE COURT: You better come up and show me what you are talking about. I don't see it.

(Attorneys approached the bench)

THE COURT: Objection overruled. This is a complaint made by the patient and the patient is here and you can cross examine and ask her.

MR. MCGINNITY: I can't cross examine the person who wrote the report.

THE COURT: But you can cross examine the patient who allegedly made the statement. The person who wrote that down is just a scribe; that's not hearsay.

MR. MCGINNITY: I'm not attempting to controvert the record by the statement of the patient. I'm trying to indicate that the record is improper

because it deals with the history portion of what the patient may or may not have said to the person who made the report. I can't cross examine that person. The report is clearly inadmissible as to the history.

THE COURT: I don't agree, I'm sorry. Overruled.

MR. MCGINNITY: Exception.

THE COURT: Granted.

(Hospital Record so marked as People's Exhibit #1 in evidence)

MISS HEINY: The People would call Detective Kenneth Ellman.

K E N N E T H E L L M A N, having been first duly sworn, hereby testified as follows:

DIRECT EXAMINATION BY

MISS HEINY:

Q Detective Ellman, how are you employed?

A I'm employed as the Chief of Detective of the Westchester County S.P.C.C.

Q What is the nature of your employment?

A What did you say?

Q What is the nature of your employment?

A I investigate crimes against children and allegations of abuse and neglect.

Q What is your status?

A I'm a peace officer under the Criminal Procedure Law 120.30.

Q Drawing your attention to the night of November 18, 1979 at approximately 7:30, did you have occasion to respond to White Plains Hospital?

A Yes, I did.

Q What was the purpose of your response to White Plains Hospital?

A We had received a complaint that a child had been abused and that we responded for investigation.

Q Who did you see at White Plains Hospital?

A I entered the Emergency Room and spoke to the physician on duty and the nurse on duty who informed us as to who the victim was.

Q And when you speak of the victim, who are you speaking of?

A I'm speaking of Charrise Gilbreath.

Q Did you see Charrise Gilbreath at that time?

A Yes, I did.

Q Did you observe any injury on Charrise Gilbreath?

A Yes, I did.

Q What was the nature of that injury?

A The nature of the injury was on her arm. She had received numerous stitches and she had a laceration; I believe it was in excess of two inches.

Q Which arm was that?

A If I may just check my notes.

THE COURT: Yes, you may.

A Left arm.

Q Did you come to know how these injuries were inflicted?

A I questioned the child and she informed me how they were inflicted.

Q And what did the child tell you?

A The child told me that her stepfather Sam Chapman had assaulted her with the belt repeatedly causing these injuries on her left arm and other injuries.

Q Did you have occasion to speak to this person

that she indicated caused the injury?

A Yes, I did.

Q Do you see that person in court today?

A Yes, I do.

Q Can you point that person out for the Court, please?

A (pointing)

MISS HEINY: Let the record reflect that Detective Ellman indicated the defendant.

THE COURT: Yes.

Q You indicated that you had spoken to the defendant.

A Yes, I did speak to the defendant.

Q What did you say to the defendant?

A When I spoke to the defendant, I immediately read him his Miranda warning before I questioned him in any capacity. After reading this warning to him, I explained to him the reason why I was present and discussing this matter with him.

Q What specifically did you say to the defendant?

A I read him Miranda warning off the yellow card

supplied to our department by the Division of Criminal Justice Services and I advised him that he did not have to speak with us, that if he does speak with us he may stop speaking to us at any time he wishes, that he's entitled to an attorney. That if he cannot afford an attorney, the Court will appoint one for him free of charge.

After explaining these different rights to him, I asked if he understood them. He said he did. Then I asked does he still wish to talk to us and he said he does.

Q Where did this conversation take place?

A I originally met with Mr. Chapman in his home.

Q What if anything did Mr. Chapman say to you relative to Charrise Gilbreath?

A Mr. Chapman advised me that he had struck the child with a belt and he produced the belt and surrendered it to me.

Q And where was this?

A This was in his home in White Plains where he resides and where the child resides.

MISS HEINY: I have no other questions.

MR. McGINNITY: I have no questions, Your Honor.

THE COURT: Okay, thank you, Officer.

(Whereupon, the witness was excused at this time)

MISS HEINY: The People rest, Your Honor.

THE COURT: Do you want to make any motions?

MR. McGINNITY: Yes, Your Honor, I'd like to make a motion.

I'd like to make a motion to dismiss the complaint against the defendant on the grounds that no reasonable connection has been made out by the People regarding how this injury to the child took place. In effect, the child testified during her brief testimony that number one, she did not know how the incident took place, although she did testify and there is no issue here before the Court that the child was struck with a belt.

I submit to the Court that it is highly unlikely and there is no evidence on the record to show how a leather belt could have caused such an injury.

However, to the contrary, when I asked the child on cross examination where in fact the cast that she said was on her arm could have caused the injury, she said she did not know but she did testify that the edge of the cast which was directly below where the injury took place was sharp; had a sharp edge upon it. In addition to that, she testified that the cast that the defendant grabbed her by the arm in the hallway and apparently when he was going after her, this was apparently at a time after he had hit her with a wet towel.

We only know that he hit her several times, according to the testimony, with a belt but we do know that there is a strong possibility that the injury may have been caused by the cast on the arm.

I submit to the Court that the complaint in order to show a reasonable connection between the injury and the complains as formed by the People must show that apparently the belt which was -- obviously was hitting the child -- which caused this injury and in fact if that were the case, that he had intent to cause such a severe injury to the child.

The reason we are here today is because the injury is a severe one. Obviously, fifteen stitches or seventeen stitches, whichever it was, is a severe injury and there is no excuse for it. However, if the intent of the defendant was not to cause this severe injury but in fact to correct the child for what we don't know, because the record does not disclose that, then in fact there was no intent to an assault in the second degree but in fact what it was was an intent by the defendant to correct the child.

The Court does not have sufficient evidence to go forward here to indict, to refer this matter to the grand jury based upon the very small amount of testimony that the D.A. has thought proper to present here today and for these reasons, I ask the Court dismiss the complaint.

THE COURT: Motion denied.

Do you intend to have your client testify, sir?

MR. MCGINNITY: No, Your Honor.

THE COURT: The defendant is held for the grand jury and bail is continued.

Thank you.

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I, JUNE B. STRAUSS, hereby certify the foregoing as a true and accurate transcript of the proceedings taken by me.

June B. Strauss

<u>PEOPLE'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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