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DISTRICT OF OREGON
PORTLAND, OREGON

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

28 U.S.C § 2254

Elizabeth Diane Downs,

Plaintiff,

v.

Sonia Hoyt, Supt., OWCC,

Defendant

Case No.

CV '96-900 - ST 4

Petition for Writ

of Habeas Corpus

VOLUME III

MEMORANDUM IN SUPPORT
OF PETITION

PET. EX. 23

DOWNES_PCR 014485

1
2
3 3. WITNESS COERCION

4 In January, 1989, it came to Diane's attention that
5 Christie was confiding to peers that she had been coerced by
6 State agents to lie in Court, and that in truth her mom was
7 not the perpetrator (Appendix 39).

8 One year later, Christie would make these same confessions
9 to a telephone-caller, not realizing her words were being
10 tape-recorded (Appendix 5, 15, 64). This deception played on
11 Christie may not seem "nice", but it increases the credibility
12 of Christie's confessions. Fifteen-year old Christie thought
13 she was confiding to a thirteen-year old girl a thousand miles
14 away. So relaxed was Christie during this conversation that
15 she can be HEARD yawning and casually flipping through a
16 magazine. Christie could have hung up at any time. In fact,
17 this was her THIRD conversation with this person. Christie
18 exhibited no signs of stress or duress. She agreed to future
19 conversations.

20 This is a far cry from the manic SESSIONS the State's
21 attorney's admit THEY forced on Christie in their endeavor to
22 coerce Christie to say her mom shot her.

23 When asked by peers, in non-threatening arenas, Christie
24 admits she was coerced by State attorneys to lie (Appendix 1,
25 2, 3). When coerced by State agents to lie and lie again,
26 Christie is incapacitated by distress. That coercion started
from the moment Christie came into contact with State agents.

1 As a result of hypocalcemia, Christie suffered a stroke,
2 which required the ingestion of massive doses of Dilantin
3 (Appendix 47, page 368). This drug, which causes mental
4 confusion, was administered all during the time Christie was
5 being interrogated by the State agencies, who were intent on
6 convicting Diane. Mr. Jagger knew that leading questions
7 asked of a traumatized, eight-year old child whose mental
8 facilities were being compromised by a powerful, mind
9 altering drug, would render said child incompetent to testify
10 to the truth of matters she could no longer discern. But
11 trial counsel failed to challenge the competency of Christie's
12 testimony.

13 It must be noted in Appendix 46 that Parke Davis, who
14 produces Dilantin, warns that mental confusion is "the most
15 common manifestation" of Dilantin USE--not over use. It comes
16 with the territory whether the user is toxic or not. The very
17 fact that Diane visited her daughter over 60 times in the
18 hospital and Christie later asked Evelyn Slaven why her mom
19 only visited 2 times proves mental confusion and memory loss.

20 Paula Krogdahl questioned Christie on June 2, 1983. The
21 nurse's report states, "1400--Paula from CSD here questioning
22 patient. Detective Hurrey also in room. Patient tearful."
23 (Appendix 47, page 547). According to Dr. Lagios' notes 5
24 hours earlier, "Patient's Dilantin level fluctuates and is
25 low. I would recommend re-loading her with extra Dilantin"

1 (Appendix 47, page 338). So at 9:15 a.m. that morning, Dr.
2 Lagios ordered 200 mg. EXTRA Dilantin and 200 mg. EXTRA
3 Dilantin to be administered every 12 hours. This was ordered
4 after Dr. Miller had increased Christie's Dilantin level two
5 days earlier (Appendix 47, page 384). That means, 5 hours
6 after Christie was "loaded up" with Dilantin, Ms. Krogdahl
7 from the DA's office questioned Christie.

8 There were many more sessions such as these. All of these
9 discussions, combined with the massive doses of Dilantin
10 administered to Christie, and fluctuations affected her
11 memory.

12 5-26-83--Patient denies that she recalls any details of the
13 events leading to her hospitalization. She appears
14 genuinely confused about how her trauma occurred (Appendix
15 47, page 330).

16 5-27-83--1300-1500--Dr. Wilhite and Detective Tracy in to
17 talk with patient regarding how injuries were received
18 (Appendix 47, page 532). This two-hour discussion produced
19 a report that can be read in 30 seconds (Appendix 59).

20 5-27-83--1700-1800--Outside in wheelchair with DA friend
21 (Appendix 47, page 532).

22 5-30-83--0930--Dr. Wilhite here. Talked with patient about
23 her injuries, explaining what happened to her...Christie
24 just repeated, "I don't know" (Appendix 47, page 539).

25 6-2-83--1400-1500--Paula from CSD here questioning patient.
26 Detective Hurrey also in room. Patient tearful (Appendix
47, page 547). It should be noted that whatever Ms.
Krogdahl said to Christie had such an impact that the next
day it was noted, "Quite fussy and doesn't want to
communicate this AM. Appears and acts depressed" (Appendix
47, page 340).

6-7-83--1230--Interviewed by father, Paul Alton from DA
office, William Furtick (Appendix 47, page 558).

1 6-7-83--(Dr. Miller's report)--Christie's a bit "down"
2 today because of interview earlier...Christie still fails
to remember details of shooting (Appendix 47, page 348).

3 On the 27th, while Christie had a fever of 100 degrees and
4 had been complaining of discomfort (Appendix 47, page 331) Ms.
5 Krogdahl wedged this invalid into a wheel chair with pillows
6 so she could take Diane's daughter (IV bottle and all) out of
7 the hospital, UNATTENDED, to question her for one hour
8 (Appendix 47, page 532). Not by ANYONE'S wildest stretch of
9 imagination (except Ms. Krogdahl's) was Christie strong! An
10 hour later Christie was complaining that her shoulder hurt
11 badly, so the IV was removed (Appendix 47, page 533). What
12 happened to Christie while Ms. Krogdahl was dragging her and
13 the IV bottle around? That was only the beginning. Diane and
14 her family witnessed these health-endangering interrogations
15 and tried to protect Christie--to no avail when CSD stepped in
16 to bar family contact and provide free reign for Ms. Krogdahl
17 and the D.A.'s office, June 2, 1983, while Diane was in
18 surgery (Abs. 24).

19 Christie's enforced isolation by State agencies, which
20 forbade contact with her family, served to further taint
21 Christie's ability to apply the concept of "truth" and "lie".
22 Dr. Peterson testified (Appendix 89, pages 779-781):

23 "...Christie was now asking why her mother had only visited
24 her two times in the hospital.

25 Q. (Jagger) Did you...explain to her that her mother had
visited her...in fact many occasions in the hospital?

1 A. No.

2 Q. Did you even think that a child getting information
3 from a number of different sources...that she [mom] was
4 somehow or another a suspect...combined with the fact that
5 everybody...was still being able to see her, but her mother
6 could not; didn't you ever think that that might have some
7 effect on what Christie Downs might think about the
8 situation?

9 A. Yes.

10 Q. ...the more she [mom] was away, the more Christie Downs
11 might think there really was something wrong? ...And she
12 might think that if some other people thought that she
13 [mom] did it, that maybe she really did it. Even that alone
14 might cause her [Christie] to think that maybe she really
15 did it?

16 A. Yes."

17 So, the State-employed psychologist, who knew nothing of
18 the Dilantin administration and effects, testified that even
19 under non-toxic conditions, Christie's isolation would be
20 enough to taint her perceptions and render her testimony
21 incompetent. And that's exactly what happened.

22 On September 27 and 28, 1983, Prosecutor Hugi met with Dr.
23 Peterson to devise a strategy and set a time table to make
24 Christie the State's witness against her mom (Appendix 50,
25 page 2032).

26 Less than a week after the prosecutor's strategy session,
27 Dr. Peterson hit Christie with police accusations against her
28 mom, with the divorce of her mom and her sister's cremation
29 (Appendix 50, page 2033). In effect, Christie was cut to the
30 core of her soul with the horrible "reality" that she was all

1 alone, helpless, and dependent on the people who accused her
2 mom of murder. The strategy wasn't to build a wall of
3 comforting truth around Christie, but to build a wall of doubt
4 between her and her mom.

5 Diane met with her daughter in the park on October 2, 1983
6 (Danny was asleep in the car). The visit was made possible by
7 Steve Downs, who had flown to Oregon to visit with the
8 children who were being kept in a foster home. He called
9 Diane to let her know he had Christie and Danny and invited
10 her to visit with them in violation of Court Order. An
11 opportunity to hold her children moved Diane to agree to that
12 meeting in the park.

13 When Christie asked her mom who shot her, Diane honored her
14 promise to the police not to tell, so as not to tamper with
15 Christie's memory (Appendix 50, page 2041 and Appendix 89,
16 page 776). On November 14, 1983, Christie reported this fact
17 to Dr. Peterson. Clearly, Christie did not know the person
18 who shot her--even in November.

19 Christie's earliest and purest recollection of events was
20 "genuinely confused" (Appendix 47, page 330). She told
21 detectives she had no knowledge of how she was injured
22 (Appendix 59). She told surgeons she didn't know what
23 happened (Appendix 47, page 539) and pediatricians (Appendix
24 47, page 348).

25 But this is not what the State wanted to hear, so they sent

1 Christie to Psychologist Dr. Peterson every Monday. The
2 eight-year old was clearly led from not knowing to wondering
3 to speculating (based on others opinions)--until she was ripe
4 for the District Attorney's investigator to walk in with all
5 the State's answers. The Court need only read the notes of
6 the State-employed psychologist to realize the method of
7 coercion that brought Christie to bear false witness against
8 her mom in court.

9 Even after Christie was coerced to speak lies, when she was
10 compelled to reach into her memory to draw a picture of the
11 shooter, Christie's unconscious mind produced the left-handed
12 man with the Levi jacket and short shag hair-cut who really
13 was her attacker (Appendix 29). The girl apparently has no
14 conscious recollection of the man shooting her. That is
15 almost certainly because she could not see him during the
16 attack and probably only caught a glimpse of his face, though
17 the left-hand would've been visible protruding between the
18 front bucket seats.

19 The bullets both entered below and slightly to the left of
20 Christie's left nipple and exited at the back of her neck
21 indicating she was not standing or sitting, but was laying.
22 The blood spatter on the ceiling, also proves Christie's
23 position to be laying in the back passenger seat(Appendix 21).

24 Christie was coerced to give false testimony. She
25 testified, erroneously, that she was sitting behind the

1 driver's seat when she was shot, and that Daniel was sleeping
2 behind the driver's seat (Appendix 72, pages 671,683). She
3 could neither have been sitting, nor have been positioned
4 behind the driver's seat where Daniel slept.

5 When the prosecutor pressed Christie, on re-direct to
6 definitely place her mother, Christie said: "Not Close"
7 (Appendix 72, page 691). When asked if her mother was in the
8 car when the shooting happened, Christie shook her head, "No",
9 which caused the prosecutor to back peddle quickly into asking
10 if her mother was halfway in the car and halfway out. Again,
11 Christie shook her head, "No", at which point, the prosecutor
12 decided Christie was tired.

13 What would cause Christie to say things that weren't
14 possible, and then gradually eke out the truth? Coercion, and
15 the gradual weakening of that coercive effect. That coercion
16 is the subject of this piece of new evidence.

17 On January 17, 1990, Dena Reinhardt called Christie at the
18 home of her adoptive parents (Appendix 15). Ms. Reinhardt
19 pretended to be a 13-year old girl who just wanted to be
20 friends with 15-year old Christie. As a result of that
21 contact, Ms. Reinhardt asked Christie if she remembered what
22 happened.

23 "Ms. Reinhardt says that Christie said she did not, but
24 that she saw her mom, and there was no gun in her hand.
25 Christie said that her mom was away from the car, and that
she (Christie) did not know what happened...This
conversation was not tape recorded. Ms. Reinhardt was

1 rather excited by the information she heard in this
2 telephone conversation, so she decided to call again the
3 next day and try to get Christie's statements on tape. In
4 particular Ms. Reinhardt wanted to tape record the
5 statement that Christie did not believe her mother shot
6 her."

7 The taped conversation reveals many telling facts that help
8 clear up why Christie would say the things she did in court
9 (Appendix 64, pages 32-33):

10 C: But, they just, they knew that, you know, they, that she
11 did it and I should say that she did it. You know.

12 D: But you really didn't remember it, huh?

13 C: Huh-uh (no).

14 D: ...you think she really didn't do it, huh?

15 C: I couldn't tell you. I mean, I don't know who did it.

16 D: Yeah, really.

17 C: And I couldn't say if she did it or if someone else did,
18 cuz I don't know.

19 Why doesn't she know who did it or what happened? Why does
20 she swear to this day, she didn't see the man? She couldn't
21 have possibly seen him as he shot her because the front
22 passenger seat blocked her view of him (Appendix 26). The
23 nurse who carried Christie into the hospital testified that
24 she had to move the front passenger seat forward to reach
25 Christie (Appendix 83). It was pushed all the way back on its
26 tracks to permit Cheryl to curl up and sleep on the front
floorboard. This is evidenced by the location of the pool of
blood in the front, passenger quadrant carpet. The seat had

1 to be rolled far back in order that Cheryl could occupy that
2 space. The driver's seat was run forward so Diane, who is
3 5'5", could reach the gas pedal.

4 Given the trajectory of the bullets and the directionality
5 of the blood spatter, it is known, Christie was laying in the
6 back passenger seat with her neck curled forward. In this
7 position, it would have been impossible for her to see the man
8 in the driver's seat; but she would see her mother through the
9 side window. In fact that's the only face she would be able
10 to see.

11 An examination of Dr. Peterson's notes reveals that is the
12 reason Christie gave for blaming her mom after she met with
13 Ray Broderick of the DA's office. "I could see her face"
14 (Appendix 50, page 2057 and Appendix 89, page 800, line 21).
15 And she could. Heather Plourd testified that Diane was afraid
16 Christie would blame her for what happened because when
17 Christie was shot she raised up and Diane was the first person
18 she saw (Appendix 91, page 418).

19 Christie saw her mom's face through the side window from
20 where she lay on the back seat. Diane testified, she saw her
21 daughter through that window. Christie testified, her mother
22 was "not close", that she was not in the car, and later
23 confided to a "13-year old kid," that her mom was away from
24 the car.

25 So why would Christie say her mom "did it" in 1984?

1 (Appendix 64, pages 31-37):

2 D: ...he just talked to you over and over about what
3 happened and wanted you to tell him who it was?

4 C: Yeah.

5 D: So you finally just said your mom, cuz he was bugging
6 you so much, you just wanted him to shut up already?

7 C: Yeah (chuckle). (Page 31)

8 D: ...they told you it was the right thing to do and you
9 wanted to do the right thing so you did it? They told you
10 it was the right thing to do, huh?

11 C: I (mumbles) the person is my attorney and that's who
12 Fred is.

13 D: Uh-huh (yes).

14 C: That's who I'm living with. He's the guy who...He works
15 for me. (Page 33)

16 D: ...if you think you don't really remember, you should
17 tell somebody...if you told Fred or Joanne, they wouldn't
18 probably--say like, um get mad at you huh?

19 C: Probably. I don't know. That's why you don't say
20 something cuz you don't know.

21 D: But that's what they told you to do when you testified
22 though, huh?

23 C: Yeah.

24 D: Really. So, OK, if they don't--if--they want you to say
25 what they want you to say though, huh?

26 C: Yep (yes). (Page 37)

Christie has been the victim of coercion and suppression
for so long that she's afraid to force the truth into the
light. It's not a matter of "is she telling the truth now or
was she telling the truth then." When in company of the

1 State's agents, Christie's voice has never been her own.

2 Some might argue that Christie is just a nice kid who
3 doesn't want to say anything to offend people--therefore she
4 just let Ms. Reinhardt put words in her mouth so to speak.
5 Not so. Christie wasn't hesitant to report that Ann Rule did
6 not tell the truth in her book (Appendix 64, page 42). When
7 you consider Ms. Rule based her book on the State's distorted
8 version of this case, Christie was in effect saying the State
9 did not tell the truth.

10 In 1990, Christie believed she was talking to someone who
11 really wanted her to tell the truth for truth's sake. It
12 would be ludicrous for the State to suggest that Christie is
13 "making this up to help her mother", somehow. Diane has been
14 vocal over the years concerning the man who attacked them. If
15 Christie's intention was to somehow help her mom, she
16 certainly knows to claim seeing the man. But Christie
17 strongly asserts, "I don't know who did it...I couldn't say if
18 she did it or someone else did, cuz I don't know." (Appendix
19 64, pages 32-33); because she doesn't know.

20 And the reason she doesn't know hinges on the fact the
21 State's agents have completely reconstructed Christie's memory
22 to suit their own desires.

23 Christie testified Cheryl was sitting in the front seat
24 when she was shot (Appendix 72, page 672)--but reality is
25 Cheryl was shot in the right side when the attack came from

1 the left. One bullet passed through her body at an upward
2 angle and lodged in the FLOOR. Cheryl could NOT have been
3 sitting anywhere, let alone sitting in the front seat.

4 She testified Cheryl was shot first, then her mom leaned
5 OVER the seat and shot Danny and then her mom STOOD up and
6 shot her (Appendix 72, page 667). This could never have
7 happened. The fifteen degree angle of decline (trajectory)
8 that matched Christie and Danny would have been altered if the
9 shooter had hesitated or stood.

10 Christie testified no one ever suggested her mom was a
11 suspect in the shooting (Appendix 72, pages 679-680):

12 "(Jagger): You never remember ever thinking that...my
13 mother must have done it because of what other people are
saying?"

14 (Christie): Nope."

15 And yet Dr. Peterson's notes are filled with Christie's
16 anguished cries "about police accusations" (Appendix 50, page
17 2033), and the family "won't go to AZ because everyone thinks
18 she done it" (Appendix 50, page 2036), and "why did mom visit
19 only 2X in hospital? They think maybe she done it" (Appendix
20 50, page 2045), and mom's boyfriend "decided he didn't want to
21 be with her because maybe she done it" (Appendix 50, page
22 2052).

23 So successfully did the State brainwash Christie that she
24 still believes she was sitting behind the driver's seat when
25 she was shot (Appendix 64, page 13) even though all the

1 scientific evidence proves that was impossible.

2 The very fact that Christie was coerced to sign an
3 affidavit stating, "I testified at my mother's trial...I told
4 the truth" (Appendix 5), while in the same affidavit,
5 verifying, "I received a telephone call...I did not know that
6 she was recording our call," evidences the coercion alleged
7 with regard to Christie at the hands of the State. In the
8 face of admitting she believed she was confiding that she lied
9 in court to a 13-year old kid, Christie is coerced to deny the
10 truth, yet again and say her mom "did it". The State's
11 coercion of Christie is not only alleged, but proven to be
12 ongoing, and this new evidence of coercion and admission of
13 "not knowing" would have made a difference in the outcome of
14 the Downs trial in 1984.