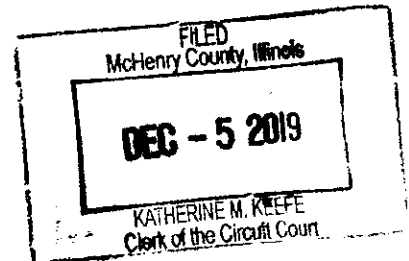


IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT  
COUNTY OF MCHENRY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff, )  
 )  
vs. )  
 )  
Joann Cunningham )  
Defendant. )

19 CF 289



**FACTUAL BASIS FOR DEFENDANT'S PLEA OF GUILTY**

Now come the People of the State of Illinois, by and through Patrick D. Kenneally, State's Attorney for McHenry County, and present the following recital to the court of the evidence that the State would present at trial with respect to Count II, First Degree Murder, that supports the elements of the offense to which the Defendant is pleading guilty.

On April 18, 2019 at approximately 8:00 a.m., Crystal Lake Police responded to 94 Dole Ave. in Crystal Lake after receiving a call from Defendant Andrew Freund that his son, Andrew Thomas Freund Jr. (hereinafter "AJ"), born October 14, 2013, was missing. During the course of the investigation, police learned that AJ lived at 94 Dole Ave. in Crystal Lake, McHenry County, Illinois, with Defendant Freund, Defendant Cunningham (AJ's biological mother), and Parker Freund (AJ's biological brother, born December 30, 2014).

Upon arrival at the home, police observed the interior of the house to be in significant disorder, with clutter leaving very little floor space. In the basement, police had to move garbage bags in order to clear a path on which to walk. Upon moving the garbage bags, police observed cockroaches scatter. Outside of AJ's room, police observed a sliding chain lock capable of securing AJ's room from the outside. Inside

AJ's room, police observed mouse droppings. Police further observed that the windows in AJ's room were secured shut with screws.

During Defendant Cunningham's interview on April 18, 2019, she denied having any knowledge of AJ's whereabouts. She stated that she and Defendant Freund had put AJ to bed the night before and when she woke up the next morning, AJ was missing.

During his interview on April 18, 2019, Defendant Freund described AJ as "stubborn and headstrong." He stated further that AJ believed that he was the "leader, if we suggest that he needs to stop watching a movie and put away the toys, if that's not what he wants to do, he may not do it...in his mind, he's the leader and he doesn't have to listen." Defendant Freund stated further that AJ was subject to "spankings" and "time outs" as a form of discipline. During the April 18, 2018 interview, Defendant Freund and police engaged in the following exchanges:

**Police:** Sure. What would his behavior be to constitute that kind of ah, response [spanking].

**Defendant Freund:** Well it would have to be pretty dramatic. Ah, lying, I mean. Lying in our house is like zero tolerance. You know, and that cannot happen, and that's just not one lie, it would have to be a multiplicity of lies or the same lie being told about the same incident, you know, and let's say his refusal to understand that we already know the answer, you know, and let's say his refusal to understand that we already know the answer, you know, we don't ask questions because we don't know the answer.

**Police:** So you give him a couple chances?

**Defendant Freund:** Oh yeah always. Always. And I think this is what you're driving at is, after that second time, the third time and it's still, no, I didn't do it or at that point, then the answer changes to something else, on top of it, that's, you know, where the line issue becomes really out of control. A situation as parents, we can't just say oh, well it's okay.

**Police:** Right

**Defendant Freund:** You told a lie.

**Police:** We can't accept that kind of behavior

**Defendant Freund:** No, you can't.

**Police:** What happens?

**Defendant Freund:** It goes back to the discussion about severity, and I'm sure there's a whole pan of play of other factors that come into play. And I mean, I suspect that could be endless but ah, you know if the lying is just, so egregious and so you know, over the top ah, I'm trying to think of...perhaps combined with disobedience, ah, and maybe something other, you know, some other thing that, you know, has been prescribed not to do. Ah, he might be put in his room for many hours, because we've learned in the past that you know, these theoretical two minute time outs, they have no effect on him. None whatsoever.

**Police:** When was the last time that you had to use that extended time out?

**Defendant Freund:** Ah, maybe a couple weeks ago, I, I don't know, last weekend, I mean extended time outs they go, they're different. I mean sometimes if the behavior is really egregious, it might be an afternoon.

**Police:** ...It's just an odd dynamic with, with all these different leadership roles going on in the house, and we'll get back to the time out stuff.

**Defendant Freund:** (UI), yea we will, and that's fine, and, I, I'm glad you asked the question. Because it's really actually a very good question. And the simple answer is, ah, AJ has, at times been, the disruptive force in the house. I mean if it's gonna be between Parker or AJ, it's gonna be AJ that's the disruptive force. As a consequence, Joanne and I tend to give Parker a little more leeway..."

During the April 18, 2019 interview, Defendant Freund indicated further that Defendant Cunningham was primarily responsible for caring for Parker and AJ. In

support, he described his grueling work schedule during the week. Defendant Freund indicated that he works as “in-house counsel” for a group of companies located in Riverside, Illinois that do mortgage lending and residential construction, among other things. Defendant indicated that he wakes up at 4:30 a.m., takes the 6:12 a.m. train from Crystal Lake to Ogilvie Transportation Center in Chicago. From Ogilvie, Defendant Freund walks to Union Station and takes a subsequent train to Riverside. Defendant Freund indicated that he generally returned home from work at around 9:15 p.m. Defendant Freund indicated further that at this time, both AJ and Parker were generally still up and he would assist with putting them to bed – “brushing teeth, washing hands, you know, saying the evening prayers and stuff like that.”

During the course of the investigation, the FBI and the Crystal Lake Police were able to extract cellphone data from Defendant Freund’s iPhone pursuant to a search warrant. The iPhone data revealed that at approximately 3:00 a.m. on April 15, 2019 a google search was done for “child CPR.”

During a subsequent interview on April 24, 2019, Defendant Freund revealed AJ’s ultimate fate. During the “second part” of the interview, Defendant Freund indicated that AJ had died at some point on the evening of April 14, 2019 after Defendant Cunningham had engaged in “some hitting” and AJ had been placed in a cold shower. Defendant Freund indicated that he was woken up by Defendant Cunningham at 3:00 a.m. on April 15, 2019 and was told by Defendant Cunningham that AJ was not breathing. Defendant Freund indicated further that they conducted an internet search on his phone for child CPR. After realizing that AJ was dead, Defendant Freund indicated that he told Defendant Cunningham he would “handle it” and placed AJ’s remains in a large plastic tote in the basement. Defendant Freund indicated further that on April 17, 2019, he drove AJ out to a rural area outside of Woodstock, Illinois and buried his body in a shallow grave. In explaining how AJ ended up in a cold shower, Defendant Freund explained:

It-it wasn't intentional. Um. There were, in the past, um. Joanne would hit him and there often times I had to interceded and stop that from happening and I tried to convince Joanne that, that's not the way to go, ok. And now he-he's 5. So she had come up with the idea of putting him in like a cold shower as punishment.

During the "third part" of the interview, Defendant Freund stated in summary that AJ was in the cold shower for 20 minutes. Defendant Freund indicated further that AJ was being punished by Defendant Cunningham for hiding underwear that he had soiled. Defendant Freund indicated further that both he and Defendant Cunningham were upstairs periodically walking in and out of the bathroom where the cold shower was running. Defendant Freund indicated further that he would have let AJ out of the shower anytime he was ready to tell the truth. Defendant Freund indicated further that he eventually took AJ out of the shower and put AJ to bed "naked and wet."

During the "fourth part" of the interview and with respect to the cause of AJ's death, Defendant Freund, when describing the reason for AJ's punishment, stated:

Yeah. So sh-she [Defendant Cunningham] found this un-ya know, like a couple pair of underwear under the-the closet door and um, she asked him about it, well ya know why it-it was there. And he wouldn't-he wouldn't tell her and then um, so I think if I recall correctly, I came in and spanked him. But again, it just, ya know, my hand on his butt. Um. And he still wouldn't admit why the underwear was there, so that's when he started going in the shower.

Other than spanking AJ, Defendant Freund denies engaging in any other physical abuse with respect to AJ. During the "fourth part" of the interview, Defendant Freund stated further:

Police:...What is is saying when he's in the shower? Being spray. What's he saying?

**Defendant Freund:** He's saying, "I'll tell you the truth." Ok, tell us. The he wouldn't.

**Police:** So more spraying?

**Defendant Freund:** Well ya know, more staying in the shower.

**Police:** And then he call, and then I'll tell you the truth again?

**Defendant Freund:** Yeah. And the so. Go in. No truth. Shower continues.

When describing the abuse, Defendant Freund stated:

Yeah. Um. So while he was being questioned, ya know, she was like taking the spray nozzle thing and putting it like right in his face. Sometimes lose his balance and fall in the tub. Um. I-I-S-I don't remember it being as bad as other nights, where it was just pure, ya know, physical punishment, hitting.

On April 24, 2019, Defendant Freund led authorities to AJ's body, which was buried in a shallow grave in rural Woodstock, Illinois. A subsequent autopsy performed by Dr. Mark Witeck, forensic pathologist, revealed multiple blunt force injuries to the head, torso, and extremities, including

- A) Severe swelling of head soft tissues with multiple bruises and abrasions;
- B) Severe swelling of brain;
- C) Multiple abrasions and contusions of torso and all four extremities;
- D) Bilateral inhaled blood in lungs; and
- E) Patterned injuries of small circular abrasions on central forehead (these circular abrasions matched the pattern of the detachable shower head's spray-face).

If called to testify, Dr. Witeck would testify that AJ died of "craniocerebral trauma (head injuries) due to multiple blunt force injuries to the head. If called to testify, Dr. Witeck would testify further that AJ's injuries were consistent with child abuse and not consistent with hypothermia or falling.

At trial, the State would also present evidence that in the years and months prior to his death, AJ had previously been the victim of a number of prior incidents of child abuse, torment, and callous neglect at the hands of Defendant Cunningham. The following is a list of the witnesses the State would call and a summary of their expected testimony:

Janelle Venet

Janelle Venet lives at 105 Dole Ave. in Crystal Lake, Illinois. On October 31, 2017, Defendant Cunningham arrived with AJ at her house to "trick-or-treat." Venet observed that AJ had a substantial amount of medical tape wrapped over his head and torso. Venet observed further that AJ's face was covered in Vaseline and that clumps of his hair were missing. Venet inquired as to whether AJ was a mummy for Halloween. Defendant Cunningham indicated that he was not dressed as a mummy, rather those bandages were applied after AJ "accidentally spilled boiling water all over himself."

On a snowy winter night at around 10:30 p.m. in 2017 or 2018, Venet was walking her dog in front of Defendant Cunningham and Defendant Freund's home. She observed Parker to be in a running car in the driveway with the doors open and only wearing a diaper. She heard Parker yelling, "Daddy, I'm cold." She heard Defendant Cunningham and Defendant Freund arguing inside the home. She then observed AJ after he jumped out from behind a pile of black plastic bags and yelled "boo." Venet inquired of AJ what they were doing outside so late. He said, "they were going to a hotel if mom and dad don't kill each other." Defendant Cunningham then came out of the house and confronted Venet. She told Venet, "you better not fuckin call the cops on us." When Venet tried to engage Defendant Cunningham, Defendant Cunningham responded, "leave me the fuck alone."

James Rossow

James Rossow lives at 105 Dole Ave. in Crystal Lake, in close proximity to Defendants Freund and Cunningham. On Halloween in 2017, AJ and Defendant Freund arrived at his home while trick-or-treating. He observed AJ to have a number of

bandages on various parts of his body. Defendant Freund explained to Rossow that the injuries were caused by AJ having spilled boiling water on himself.

Adam Lamberti

Lamberti has been employed at BCU Credit Union in Crystal Lake for the past several years. Defendant Freund and Defendant Cunningham maintained deposit accounts and two auto loans at BCU from approximately the fall of 2016 to the Spring of 2018. Defendant Cunningham would request to speak with Lamberti when conducting her affairs at BCU.

On three occasions in the spring of 2018, Lamberti noticed significant bruising on AJ, who accompanied his mother on her visits to BCU. On the first occasion, Lamberti noticed that AJ had an extremely dark black eye and bruises on his neck and arms. Upon Lamberti inquiring as to the cause of these injuries, Cunningham stated that AJ had "accidentally fallen down the stairs." On the second occasion, approximately three weeks after the first, Lamberti observed that AJ had a cut and black and blue bruises on his arms and face. Cunningham explained to Lamberti that AJ had entered their basement and hit himself with power tools. On the third occasion, Lamberti observed AJ to have bruising to his face. Cunningham did not offer an explanation as to the cause of these injuries.

Scott Barfuss

Barfuss is employed as a lawyer at Father and Son's Home Improvement in Riverside. Prior to Defendant Freund's arrest, he also worked at Father and Son's Home Improvement. Barfuss and Freund had worked together for approximately three years and were the only two lawyers employed by the company.

At the end of March or early April, 2019, Defendant Freund had brought AJ to work. Barfuss observed that AJ had significant bruising and cuts on his forehead and the side of his face. After inquiring as to the cause of the injuries, Defendant Freund replied that AJ "fell down the stairs."

David Lewis and/or other staff at Gottlieb Memorial Hospital



On March 18, 2018, David Lewis was working as a social worker at Gottlieb Memorial Hospital in Melrose Park. On that date, Defendant Cunningham was transported to the ER after being found asleep in her car with fresh track marks up and down her arms. Defendant Freund and AJ subsequently arrived at the hospital. David Lewis observed bruising to AJ's face and forehead.

Jessica Crabtree

Jessica Crabtree has been friends with Defendant Cunningham for the past five years. In 2019, Crabtree observed AJ to have injuries to his face on two occasions. On the first occasion, Defendant Cunningham claimed that AJ was burned by a pot of water. On the second occasion, Defendant Cunningham stated that AJ had fallen down the stairs while sleepwalking.

Officer Kimberly Shipbaugh and Dr. JoEllen Channon, MD

On December 18, 2018, Defendant Cunningham called the police to report that her suboxone medications had been stolen by her paramour, Daniel Nowicki. Upon arrival at the 94 Dole residence, police observed the house to be "disgusting" – the ceiling was falling down, the floor was torn up, the children's bedroom smelled like feces, and there was dog urine on the floor. Police observed a large bruise on AJ's hip toward the back. Defendant Freund indicated that the bruise was caused by the dog.

AJ was subsequently taken to Northwestern Hospital in Woodstock and was examined by Dr. Channon. During the examination, Dr. Channon reported contusions to AJ's upper lip and right hip. During the course of the interview, AJ began by saying that the injuries were caused by the family dog. In private, AJ revealed to the doctor that a belt made the mark on his hip, but stated it was caused by "someone not in [his] family." AJ then stated that his Mom did not "mean to hurt him."

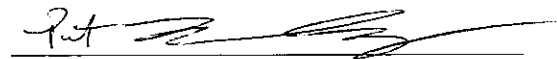
Officer Michael Maloney

Officer Maloney is employed as a Crystal Lake Police Officer. During the course of the investigation and through numerous subpoenas, Officer Maloney was able to acquire access to Ms. Cunningham's iPhone Data, both on the phone itself and Ms. Cunningham's iCloud Account.

- From the iCloud Account, Officer Maloney located a video with a file date stamp of March 4, 2019 at 1:55 p.m. This video depicted Defendant Cunningham recording AJ as he lay on a bare mattress in a crib located at the 94 Dole Ave. residence. AJ appeared to have small white bandages covering areas on both his forearms and a cloth bandage wrapped loosely around his waist. There were wounds and bruises on his arms and waist. AJ is also holding a large blue ice pack over his face that when removed revealed severely swollen eyes covered with large dark and red bruising. During the video, Defendant Cunningham is berating AJ for soiling the mattress. During Defendant Freund's April 24, 2019 interview, he stated that Defendant Cunningham caused these injuries to AJ.
- From the iPhone, Officer Maloney was able to locate a video with a file date stamp of March 17, 2019 at 11:31 a.m. The video depicts Defendant Cunningham, Defendant Freund, Parker, and AJ at St. Thomas the Apostle Church in Crystal Lake. AJ has significant bruising to his forehead.
- From the iPhone, Officer Maloney was able to locate a video with a file date stamp of March 27, 2019 at 8:22 p.m. This video depicted Defendant Cunningham cornering AJ in the bathroom at the 94 Dole Ave. residence and confronting him as it appears that AJ had said that he was going to get her in trouble with "someone." AJ has visible cuts and bruising to his face and forehead. Defendant Freund begins profanely and in a menacing and aggressive tone interrogating AJ on who he is "going to get her in trouble with". At one point she tells him not to "bullshit her," asking AJ if he thinks she is "dumb and does not know the answers to the questions she is asking." She then grabs him by the throat and pushes him against the wall, insisting that he tell her who he is going to get her in trouble with until AJ chokes for air. After AJ says he loves his family, Defendant Cunningham responds, "bullshit, you don't show it." Defendant Cunningham then positions her face inches from AJ's, asking him if she, Parker, or Defendant Freund "do evil in this house." To which AJ responds, "no, just me." She then asks AJ why he wants bad things to happen to Parker.

Answering her own question, she says, "is it cause he [Parker] sees through your fake ass bullshit." After AJ says "he just wants to be alone and not have anyone around him," Defendant Cunningham replies, "you are alone, in your room all day." AJ responds saying, "I just don't want a family," to which Defendant Cunningham yells, "you don't have one...that's Daddy included." She then says, "you have Daddy all mixed up." She continues, "you really think Daddy would choose you over me and Parker." She then says that Defendant Freund thinks AJ is a "liar" and "manipulator" and "he knows your plans." Defendant Cunningham than tells AJ that he "thinks he can do whatever the hell he wants." Thereafter, she puts her mouth to AJ's ear and screams, "it doesn't matter, it doesn't matter none of it is gonna happen [AJ living alone with his father]...ever!"

Respectfully submitted,



Patrick Kenneally  
McHenry County State's Attorney