

Eric W. Clarke #13177  
Washington County Attorney  
33 North 100 West #200  
St. George, Utah 84770  
(435) 301-7100

FIFTH DISTRICT COURT

WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff,  vs.  RUBY FRANKE, Defendant.	STATEMENT OF DEFENDANT IN SUPPORT OF GUILTY PLEA AND CERTIFICATE OF COUNSEL  Criminal No. 231501764  Judge John J. Walton
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I, RUBY FRANKE, hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

**NOTIFICATION OF CHARGES**

I am pleading guilty to the following crime(s):

<u>No.</u>	<u>Crime &amp; Statutory Provision</u>	<u>Degree</u>	<u>Punishment Min/Max and/or Minimum Mandatory</u>
1	AGGRAVATED CHILD ABUSE, Section 76-5-109.2(2)+(3A), Utah Code Annotated, 1953, as amended.	Second Degree Felony	1-15 years in the Utah State Prison and a fine in the amount of \$10,000.00, plus a 90% surcharge Plus a \$53.00 Court Security Fee.

3	AGGRAVATED CHILD ABUSE , Section 76-5-109.2(2)+(3A), Utah Code Annotated, 1953, as amended.	Second Degree Felony	1-15 years in the Utah State Prison and a fine in the amount of \$10,000.00, plus a 90% surcharge Plus a \$53.00 Court Security Fee.
5	AGGRAVATED CHILD ABUSE , Section 76-5-109.2(2)+(3A), Utah Code Annotated, 1953, as amended.	Second Degree Felony	1-15 years in the Utah State Prison and a fine in the amount of \$10,000.00, plus a 90% surcharge Plus a \$53.00 Court Security Fee.
6	AGGRAVATED CHILD ABUSE , Section 76-5-109.2(2)+(3A), Utah Code Annotated, 1953, as amended.	Second Degree Felony	1-15 years in the Utah State Prison and a fine in the amount of \$10,000.00, plus a 90% surcharge Plus a \$53.00 Court Security Fee.

I have received a copy of the Information against me. I have read it, or had it read to me, and I understand the nature and the elements of the crime(s) to which I am pleading guilty.

The elements of the crime(s) to which I am pleading guilty are:

COUNT 1: AGGRAVATED CHILD ABUSE, a second degree Felony, in that the defendant, intentionally or knowingly, inflicted upon a child (RF) serious physical injury or, having the care or custody of such child, caused or permitted another to inflict serious physical injury upon said child (and such serious physical injury involves physical torture), in violation of Section 76-5-109.2, Utah Code Annotated, 1953, as amended.

COUNT 3: AGGRAVATED CHILD ABUSE, a second degree Felony, in that the defendant, intentionally or knowingly, inflicted upon a child (RF) serious physical injury or, having the care or custody of such child, caused or permitted another to inflict serious physical injury upon said child (and such serious physical injury includes conduct toward a child that causes severe emotional harm), in violation of Section 76-5-109.2, Utah Code Annotated, 1953, as amended.

COUNT 5: AGGRAVATED CHILD ABUSE, a second degree Felony, in that the defendant, intentionally or knowingly, inflicted upon a child (EF) serious physical injury or, having the care

or custody of such child, caused or permitted another to inflict serious physical injury upon said child (and such serious physical injury includes conduct toward a child that causes severe emotional harm), in violation of Section 76-5-109.2, Utah Code Annotated, 1953, as amended.

COUNT 6: AGGRAVATED CHILD ABUSE, a second degree Felony, in that the defendant, intentionally or knowingly, inflicted upon a child (EF) serious physical injury or, having the care or custody of such child, caused or permitted another to inflict serious physical injury upon said child (and such serious physical injury includes any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions), in violation of Section 76-5-109.2, Utah Code Annotated, 1953, as amended.

I understand that by pleading guilty I will be admitting that I committed the crime(s) listed above. I stipulate and agree that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the Court to accept my guilty plea and prove the elements of the crime(s) to which I am pleading guilty:

*From approximately May 22, 2023 until August 30, 2023, in Washington County, Utah, the defendant, Ruby Franke, intentionally or knowingly inflicted and allowed another adult to inflict serious physical injuries upon her children that were ages 9 (EF) and 11-12 (RF) as more fully described below.*

*(Count 1) The defendant's actions involved the physical torture of RF. Initially RF was forced to do physical tasks for hours and days at a time. These included wall-sits, carrying boxes full of books up and down stairs, and working outside. Eventually RF was forced to do outside labor without shoes and in the summer heat. He was forced to stand in the direct sunlight for several days. He was forced to remain outside at all hours of the day and night for extended periods of time. These actions resulted in repeated and serious sunburns with blistered and sloughing skin. RF was denied adequate water for several of the days he was required to remain in the summer heat, and he was punished when he secretly consumed water. He was denied sufficient food, and when given food he was given very plain meals (e.g. rice and chicken) while others in the house ate regular and more flavorful meals. He was isolated from other people and denied all forms of entertainment including books, notebooks, and electronics.*

*In addition, after RF attempted to run away in July, his hands and feet were regularly bound. Binding included being tied to the defendant and to weights. Many times, the binding included using two sets of handcuffs, one on RF's wrists and one on his ankles. At times, with RF lying on his stomach, ropes were used to tie the two sets of handcuffs together so that his arms and lower legs were lifted off the ground. The bindings resulted in injuries to RF's wrists and ankles where the handcuffs cut through the skin and damaged the muscle/tissue. These injuries were treated with homeopathic remedies and covered with duct tape. Then the bindings were placed on top of the duct tape.*

*Specific instances of abuse committed by the defendant include (1) kicking RF while wearing boots, (2) holding his head underwater , and (3) cutting off oxygen by placing her hands over his mouth and nose.*

*(Count 2) The actions described above caused severe emotion harm to RF due to the fact that they began in May and escalated throughout the summer months. Additionally, the defendant and another adult regularly sought to indoctrinate RF and convince him that he was evil and possessed., And that he needed to willingly be obedient to avoid punishments. And that the punishments were necessary to repent. He was also told that everything that was being done to him were acts of love.*

*(Count 3) The defendant's actions also caused severe emotional harm to EF. Other than binding and the specific instances of abuse RF was subjected to, EF was subjected to the same treatment as her brother: she was isolated and forced to do the physical tasks, remain outside, and denied food and water. She was also repeatedly told she was evil and possessed, the punishments were necessary for her to be obedient and to repent, and these things were being done to her in order to help her. EF was convinced that she was evil and needed to go through these things in order to repent.*

*(Count 4) The defendant's actions caused two or more physical injuries to EF. She was forced to work outside in the heat barefoot. She was also forced to run barefoot on dirt roads for an extended period of time. EF's feet were repeatedly injured by, and she was repeatedly sunburned. When examined on August 30, these wounds were apparent by scabs, blisters, and sloughing skin.*

#### **WAIVER OF CONSTITUTIONAL RIGHTS**

I am entering these pleas voluntarily. I understand that I have the following rights under the constitutions of Utah and of the United States. I also understand that if I plead guilty I will give up all the following rights:

**Counsel.** I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the Court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me.

I (have not) (have) waived my right to counsel. If I have waived my right to counsel, I have done so knowingly, intelligently, and voluntarily for the following reasons:

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If I have waived my right to counsel, I certify that I have read this statement and that I understand the nature and elements of the charge(s) and crime(s) to which I am pleading guilty. I also understand my rights in this case and other cases and the consequences of my guilty plea.

If I have **not** waived my right to counsel, my attorney is LaMar J. Winward. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty plea.

**Jury Trial.** I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

**Confrontation and cross-examination of witnesses.** I know that if I were to have a trial: a) I would have the right to see and observe the witnesses who testified against me; and (b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

**Right to compel witnesses.** I know that if I were to have a trial, I could call witnesses if I chose to, and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

**Right to testify and privilege against self-incrimination.** I know that if I were to have a trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

**Presumption of innocence and burden of proof.** I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crime(s). If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charge(s) beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed the crime(s) stated above.

**Appeal.** I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty. I understand that if I wish to appeal my sentence I must file a notice of appeal within 30 days after my sentence is entered.

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

## **CONSEQUENCES OF ENTERING A GUILTY PLEA**

**Potential penalties.** I know the maximum sentence that may be imposed for each crime to which I am pleading guilty. I know that by pleading guilty to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

I know that in addition to a ninety percent (90%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

**Consecutive/concurrent prison terms.** I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have plead guilty, my guilty plea now may result in consecutive sentences being imposed on me. If the offense(s) to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the Court to impose consecutive sentences unless the Court finds and states on the record that consecutive sentences would be inappropriate.

**Plea Agreement.** My guilty plea is the result of a plea agreement between myself and the prosecuting attorney. All the promises, duties, and provisions of the plea agreement, if any, are fully contained in this statement, including those explained below:

1. The defendant agrees to plead "GUILTY" to: COUNT 1: AGGRAVATED CHILD ABUSE, a second degree felony; COUNT 3: AGGRAVATED CHILD ABUSE, a second degree felony; COUNT 5: AGGRAVATED CHILD ABUSE, a second degree felony; COUNT 6: AGGRAVATED CHILD ABUSE, a second degree felony;
2. The State agrees to "DISMISS": COUNT 2: AGGRAVATED CHILD ABUSE, a second degree felony; COUNT 4: AGGRAVATED CHILD ABUSE, a second degree felony;
3. The defendant shall submit to a Pre-Sentence Investigation with Adult Probation and Parole.
4. The defendant agrees to serve a prison term.
5. The sentence received for Count 1, Count 3, Count 5, and Count 6 are to be served consecutive to each other.

6. The defendant agrees to testify truthfully against Jodi Hildebrant (and in return the Washington County Attorney's Office agrees to remain neutral regarding future hearings before the Utah Board of Pardons and Parole).

**Trial judge not bound.** I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge.

**Deportation.** I know, and it has been explained to me, that a criminal conviction may have adverse immigration consequences. Further, I know and understand that a criminal conviction could result in my removal and deportation. My attorney has advised me that Immigration Law is a specialized field, that my attorney is not an immigration lawyer, and that I would need to consult with an immigration specialist if I want further advice on that subject.

**Enhanced Penalties for Future Convictions.** I have been informed that the plea I am entering will result in a conviction. I have been further informed that my plea could be used in the future to increase the severity of future criminal offenses and/or increase the severity of the sentence that I might receive for convictions of criminal offenses.

**Waiver of Preliminary Hearing.** I understand I have a right to a preliminary hearing at which the State of Utah would carry the burden of proof to present to the court sufficient evidence to show that there is probable cause that I committed the offenses with which I am charged and that at the conclusion of that hearing failure of the State to produce such evidence may lead to charges being reduced or dismissed and that by entering in this agreement I am waiving my right to said preliminary hearing.

#### **ACKNOWLEDGMENT OF FIREARM RESTRICTION**

**Firearm restriction as a result of a conviction from entering a plea.** If my conviction is the result of a guilty or no contest plea, I acknowledge that before entering my plea my attorney or the prosecuting attorney informed me that:

A conviction in this case will classify me as a restricted person;

As a restricted person, I may not possess a firearm. This means I cannot purchase, transfer, or own a firearm. I cannot have a firearm in my physical possession, own a firearm, or be perceived by others to own a firearm, and I cannot exercise control over a firearm;

There will be additional criminal charges and penalties if I possess a firearm, which include: For a Category I restricted person, charges for a second degree felony: 1-15 years in prison, up to \$10,000 +90% surcharge. For a Category II restricted person, charges for a third degree felony: 0-5 years in prison, up to \$5,000 +90% surcharge.

I acknowledge and understand that, by pleading guilty or no contest: I will be a restricted person; upon conviction, I must forfeit possession of each firearm I possess; and I will be in violation of federal and state law if I possess a firearm.

**Firearm restriction as a result of a conviction from trial.** If my conviction is the result of being found guilty at trial, I acknowledge that my attorney, the prosecuting attorney, or the court verbally informed me that:

I am now a restricted person;

As a restricted person, I may not possess a firearm. This means I cannot purchase, transfer, or own a firearm. I cannot have a firearm in my physical possession, own a firearm, or be perceived by others to own a firearm, and I cannot exercise control over a firearm;

There will be additional criminal charges and penalties if I possess a firearm, which include: (For a Category I restricted person, charges for a second degree felony: 1-15 years in prison, up to \$10,000 +90% surcharge. For a Category II restricted person, charges for a third degree felony: 0-5 years in prison, up to \$5,000 +90% surcharge.

I acknowledge and understand that I am now a restricted person; I must forfeit possession of each firearm that I currently possess; and I will be in violation of federal and state law if I possess a firearm.

#### **DEFENDANT'S CERTIFICATION OF VOLUNTARINESS**

I am entering this plea of my own free will and choice. No force, threats, or unlawful influence of any kind have been made to get me to plead guilty. No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by my attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

I am satisfied with the advice and assistance of my attorney.

I am 41 years of age. I have attended school through the 12<sup>TH</sup> grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.


I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental



disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.

**I understand that if I want to withdraw my guilty plea, I must file a written motion to withdraw my plea before sentence is announced. I understand that for a plea held in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty. I will only be allowed to withdraw my plea if I show that it was not knowingly and voluntarily made. I understand that any challenge to my plea made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C of the Utah Rules of Civil Procedure.**

12-18-23  
Date

  
RUBY FRANKE  
Defendant

#### CERTIFICATE OF DEFENSE ATTORNEY

I certify that I am the attorney for RUBY FRANKE, the defendant above, and that I know she has read the statement or that I have read it to her; I have discussed it with her and believe that she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.

12-18-23  
Date

  
LAMAR J. WINWARD  
Attorney for Defendant  
Bar No. 3528

#### CERTIFICATE OF PROSECUTING ATTORNEY

I certify that I am the attorney for the State of Utah in this case against RUBY FRANKE, defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offense(s) is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered defendant. The plea negotiations are fully contained in the Statement in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea is entered and that the acceptance of the plea would serve the public interest.

12/16/2023  
Date


/s/ Eric Clarke  
ERIC CLARKE #13177  
Attorney for Plaintiff

**ORDER**

Based on the facts set forth in the foregoing Statement and the certification of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds that defendant's guilty plea is freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty plea to the crime(s) set forth in the Statement be accepted and entered.

12/18/23  
Date

  
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JOHN J. WALTON  
District Court Judge

