

**VOLUME II OF II**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County

**S.C. SUPREME COURT**

R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

FILIBERTO GARCIA CAMPOS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000777  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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- 1 Q Okay.
- 2 A You -- it -- it's adopted -- she was adopted -- my  
3 wife's mother was adopted, so we're related somehow or  
4 another ---
- 5 Q Okay.
- 6 A --- if you follow that.
- 7 Q Okay. Yeah. Tell -- tell the jury what kind of  
8 worker the -- Mr. Garcia was.
- 9 A Very good worker. He -- on time; did everything we  
10 asked him to do; never had no problem with him.
- 11 Q Did you have a second shift for a while at EMR?
- 12 A Yes, ma'am.
- 13 Q And what were the hours of the second shift?
- 14 A It went from -- I think it was 5:30 to 4 in the  
15 morning or 5:30 to 5. It's been a while since we had it.  
16 But I think it -- somewhere around the 5:30 time to -- to 5  
17 or 5:30 in the morning.
- 18 Q And do you recall if Filiberto worked that shift?
- 19 A Yes, he did.
- 20 Q And when did he change from working that shift?
- 21 A I don't have the exact date. It was -- let's see.
- 22 Q In 2012 was he working second or first shift?
- 23 A That -- he would be on -- I hate to tell you -- I  
24 really ---
- 25 Q That -- oh, that's ---

- 1 A Can't give you exact date.
- 2 Q Before or -- were you aware of the birth of his  
3 daughter, Madison?
- 4 A Yes.
- 5 Q Okay. Before and -- and during her birth, was he on  
6 first shift or second shift?
- 7 A I'm sorry. I can't ---
- 8 Q No problem. No -- no worries. He -- but then, he  
9 eventually worked first shift.
- 10 A Yes, ma'am.
- 11 Q Do you -- what are the hours for first shift?
- 12 A The scheduling hours are 6 to 2:30.
- 13 Q Six a.m.?
- 14 A Six a.m. to 2:30.
- 15 Q And then, I think that there's been testimony that, at  
16 times, y'all worked overtime a little bit?
- 17 A Yes, ma'am.
- 18 Q All right.
- 19 A Quite a bit.
- 20 Q How -- were you able to converse with Filiberto?
- 21 A Yes.
- 22 Q Did he speak good English?
- 23 A Broken English.
- 24 Q Okay. Were -- are there workers at EMR that also  
25 don't speak English as their first language?

DIRECT EXAMINATION BY MS. ZMROCZEK - BILLY PATTERSON 70

- 1 A Yes, ma'am.
- 2 Q And was -- did he communicate with them?
- 3 A Yes, ma'am.
- 4 Q Did he talk about his family to you at all?
- 5 A Yes, ma'am.
- 6 Q Tell the jury what he told you about his family.
- 7 A Usually, he came in, in the afternoons. I would ask  
8 him how they were doing from being that we're somewhat  
9 related, of course, and I did have to get along at EMR. So  
10 most time he would say they were pretty good. They -- the  
11 baby was sick or that, you know, she had doctor's  
12 appointment. The -- the boy was always good. Cameron's  
13 always been a good kid. So -- but I -- that was basically  
14 it. We didn't get into details, I mean.
- 15 Q Do you know what kind of role Tracy had -- Tracy, the  
16 -- his wife, in the relationship?
- 17 A She was the caretaker.
- 18 Q Okay. Did she work?
- 19 A Off and on. I don't remember her working -- maybe one  
20 or two months when she was -- after she moved here.
- 21 Q Okay. And do you know where they moved from?
- 22 A I want to say Chester.
- 23 Q Okay.
- 24 A Yeah.
- 25 Q And after -- did you ever see Tracy and Filiberto

- 1 interact?
- 2 A Yes.
- 3 Q How often? Often enough to make an opinion on who was
- 4 in control of the ---
- 5 A Yes.
- 6 Q --- relationship?
- 7 A Yes.
- 8 Q Okay. Who was in control of the relationship?
- 9 MR. MCNAIR: Objection: speculation.
- 10 THE COURT: Sustained.
- 11 Q To your knowledge and what you observed, simply from
- 12 your observation, is Filiberto an assertive person?
- 13 A No.
- 14 Q Were you aware of Tracy having any mental or medical
- 15 conditions?
- 16 A Aware as -- no. I ---
- 17 Q Okay. Was she able to interact normally with people?
- 18 A Yes.
- 19 Q Okay. And what, if anything, do you know about what
- 20 happened in September?
- 21 A September?
- 22 Q Of -- of the -- when Madison passed.
- 23 A Oh. Sorry.
- 24 Q That's okay. Sorry.
- 25 A It's been a while.

DIRECT EXAMINATION BY MS. ZMROCZEK - BILLY PATTERSON 72

1 Q Yeah. Let me ask it -- let me -- let me rephrase it.

2 That's a very ---

3 A Yeah.

4 Q --- poor question. Let me rephrase it. Did you spend  
5 any time around Madison?

6 A Limited.

7 Q Okay. What -- how would you describe her size and  
8 weight?

9 A She was small, underweight for her size -- or for her  
10 age.

11 Q Did -- were -- did you ever -- when -- do you recall  
12 the last time you saw her?

13 A Can't give you specific months or whatever. But it  
14 was -- I would say probably three months before he got ---

15 Q Before he got arrested?

16 A --- arrested ---

17 Q You can say ---

18 A --- incarcerated.

19 Q It's okay.

20 A Hate to put it that way.

21 Q That's all right. And at that time did you have any  
22 concerns about her needing to go to the hospital due to her  
23 weight or appearance?

24 A No. Again, she was small, but she -- as far as we  
25 know, she was being taken care of. There was medical

1 doctors -- you know, visits and stuff, so . . .

2 Q And since then you haven't had any interaction with --  
3 with Filiberto or ---

4 A No.

5 Q --- Tracy, have you? Okay.

6 Thank you. Please answer any questions that the state  
7 may have.

8 CROSS-EXAMINATION

9 BY MR. MCNAIR:

10 Q Hey, Mr. Patterson.

11 A Hey, how you doing?

12 Q Who told you about Madison's doctor's appointments?

13 A The wife.

14 Q Okay. She said she's taking Madison to the doctor?

15 A We would talk about in -- just, you know, in general,  
16 that she had a doctor appointment be coming up or, you  
17 know, she'd been to the doctor.

18 Q Was Mr. Garcia there when she was saying those types  
19 of things?

20 A No. This is at our house. It's just private  
21 conversation, me and her.

22 Q All right. Now, you mentioned sometimes y'all worked  
23 later than your -- your shift hours. But y'all do punch in  
24 and punch out at EMR, correct?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. MCNAIR - BILLY PATTERSON 74

1 Q All right. So have you seen this report, this EMR  
2 report, before, reflecting employees' hours?

3 A No, sir. I do not have privy to that report.

4 Q Okay. But this would accurately reflect the hours  
5 that Mr. Garcia would've worked, correct?

6 A I would assume so.

7 Q Okay. Now, you mentioned you saw Madison  
8 approximately three months before, I guess, Mr. Garcia got  
9 arrested?

10 A Yes, sir.

11 Q Did you hold her?

12 A No, sir.

13 Q I'm going to try not to show you a bad photo. I'm  
14 going to show you State's Exhibit 13. Is that the way her  
15 face appeared when you saw her three months ---

16 A No ---

17 Q --- prior to her death?

18 A No, sir.

19 Q Okay. And if you had seen a face that looked like  
20 that, if you had seen her like that, what would you have  
21 done?

22 A Me and my wife would've talked definitely about  
23 getting something done.

24 Q Is it apparent to you that something's wrong with that  
25 child?

REDIRECT EXAMINATION BY MS. ZMROCZEK - BILLY PATTERSON 75

1 A Yes, sir.

2 Q Okay. Thank you.

3 THE COURT: Redirect?

4 MS. ZMROCZEK: Just one follow-up question, Your  
5 Honor.

6 REDIRECT EXAMINATION

7 BY MS. ZMROCZEK:

8 Q As you -- when you saw her in -- approximately three  
9 months before her death, what -- did you -- did you see her  
10 without clothes on or was she ---

11 A No, ma'am. She had clothes on.

12 Q Okay. So you weren't able to see her ribs?

13 A No, ma'am.

14 Q Okay. You -- but you were able to see her face?

15 A Yes, ma'am.

16 Q And you -- you stated that she appeared small?

17 A Yes, ma'am. She was premature, so, I mean ---

18 Q Okay.

19 A --- it was ---

20 Q Thank you.

21 A --- obvious.

22 THE COURT: All right. Thank you very much, sir. You  
23 may step down.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness exited the witness stand.)

DIRECT EXAMINATION BY MS. ZMROCZEK - ASHLI MITCHELL 76

1 THE COURT: Any objections to this witness being  
2 excused?

3 MS. ZMROCZEK: None, Your Honor.

4 THE COURT: Thank you, sir. You're free to go. (To  
5 Ms. Zmroczek) You may call your next witness.

6 MS. ZMROCZEK: Your Honor, we call Olivia -- and I'm  
7 sorry. I'm making sure I get her -- actually, we call  
8 Ashli Mitchell.

9 THE COURT: All right. Is she out -- is she out ---

10 MS. ZMROCZEK: Yes.

11 THE COURT: --- front?

12 (Off the record briefly.)

13 (Whereupon, the witness came forward.)

14 ASHLI MITCHELL, having been first duly sworn,  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Ms. Mitchell, tell the jury where you work.

19 A I work with the Department of Social Services.

20 Q And what are your duties at the Department of Social  
21 Services?

22 A I am a human resource specialist II, a treatment  
23 worker in family preservation.

24 Q Okay. And have you been involved in the case with Mr.  
25 Garcia?

1 A I have. Yes, ma'am.

2 Q And as part of your duties, do you have to meet with  
3 him and interview him and -- and explain the process of --  
4 of -- of DSS is involved?

5 A I do. Yes, ma'am.

6 Q And have you been able to do that every time without a  
7 translator?

8 A I have met with him, I think, twice without a  
9 translator. But every other time has been with a  
10 translator.

11 Q Okay. Does he -- does he understand English?

12 A Yes. He did when I met with him.

13 Q Okay. And then, is it -- did he have a full  
14 understanding of how the system worked, or is it something  
15 -- it -- was he familiar with all your services or what you  
16 were providing, or -- or is this something that he was not  
17 -- he did not appear to be familiar with?

18 A I don't -- I don't exactly go into each case and tell  
19 them about services. It kind of goes on a case-by-case  
20 basis. I did explain to him that in this case, we wouldn't  
21 be offering services. And he appeared to understand that.

22 Q Okay. And have you had any contact with any members  
23 of his family outside of this country?

24 A Yes, ma'am, I have.

25 Q Okay. And have they been recently involved in the

CROSS-EXAMINATION BY MS. MAYES - ASHLI MITCHELL 78

1 case -- or trying to become recently involved in the case?

2 A Yes, ma'am.

3 Q Okay. Thank you. Please answer any questions that  
4 the state may have.

5 CROSS-EXAMINATION

6 BY MS. MAYES:

7 Q And just to clarify, you became involved because after  
8 Cameron was removed from the care of Mr. Garcia and -- and  
9 Ms. Roach, DSS became his legal guardian, correct?

10 A That's correct.

11 MS. MAYES: Nothing further.

12 THE COURT: All right. Thank you very much, ma'am.  
13 You can step down.

14 (Whereupon, the witness exited the witness stand.)

15 THE COURT: What ---

16 MS. ZMROCZEK: Your Honor, may we take a -- a quick  
17 break?

18 THE COURT: Yeah.

19 MS. ZMROCZEK: Thank you.

20 THE COURT: Ladies and gentlemen, let me get you to  
21 step back in the jury room. Please have no conversation  
22 about the case. I'll get you back out here shortly.

23 (Whereupon, the jury exited the courtroom at 1:59  
24 p.m.)

25 MS. ZMROCZEK: Sorry, Judge.

DIRECT EXAMINATION BY MS. ZMROCZEK - TRACY ROACH 79

1 THE COURT: All right. We'll be at ease.

2 (Off the record from 1:59 p.m. until 2:07 p.m.)

3 THE COURT: All right.

4 MS. ZMROCZEK: So, Your Honor, at this time we call  
5 Tracy Roach.

6 THE COURT: All right. Ms. Roach, if you'd just  
7 please come around, ma'am, to be sworn.

8 (Whereupon, the witness came forward.)

9 (Off the record briefly.)

10 TRACY ROACH, having been first duly sworn,  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q Ms. Roach, were you subpoenaed to -- to court today?

15 A Yes, I was.

16 Q And do you intend on offering any testimony? When I  
17 ask you questions about this case, how are you going to  
18 answer them?

19 A I'm going to plead the Fifth Amendment.

20 Q To each and every question that I ask you?

21 A Yes, ma'am.

22 THE COURT: Okay. All right.

23 MS. ZMROCZEK: Your Honor, I would just ask that the  
24 Court declare this witness unavailable at this time.

25 THE COURT: Now, and just so the record's clear -- and

DIRECT EXAMINATION BY MS. ZMROCZEK - TRACY ROACH 80

1 -- and I'm going to -- y'all correct me if I misquote  
2 anything. Ms. Roach earlier had entered a plea and was  
3 sentenced by the Court, and she has since filed a motion to  
4 have that sentence reconsidered, as well as has filed an  
5 appeal. Is that correct, Ms. Roach?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. And so based upon -- based upon  
8 that situation and that exposure, she is opting to claim  
9 her rights under the Fifth Amendment and remain silent.  
10 And we certainly would honor that. So we will -- Ms.  
11 Roach, I'm going to let -- allow you to step down and just  
12 excuse you from these proceedings, then.

13 THE WITNESS: All right. Thank you.

14 THE COURT: Okay?

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: All right. Are we ready now to proceed,  
17 Ms. Zmroczek?

18 MS. ZMROCZEK: Ready, Your Honor.

19 (Whereupon, Ms. Mayes and Ms. Zmroczek conferred.)

20 MS. MAYES: One moment, Your Honor.

21 THE COURT: All right.

22 (Off the record briefly.)

23 MS. ZMROCZEK: Okay. We're ready, Your Honor.

24 THE COURT: All right. (To the bailiff) Let's bring  
25 the jury in, please.

DIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS 81

1 (Off the record briefly.)

2 (Whereupon, the jury entered the courtroom at 2:12  
3 p.m.)

4 THE COURT: All right, ladies and gentlemen. Thank  
5 you for that courtesy of allowing us to take that break.  
6 We will go ahead and proceed with your next witness, Ms.  
7 Zmroczek.

8 MS. ZMROCZEK: Thank you, Your Honor. We call Olivia  
9 Woods.

10 THE COURT: All right.

11 (Off the record briefly.)

12 (Whereupon, the witness came forward.)

13 OLIVIA WOODS, having been first duly sworn,  
14 testified as follows:

15 (Off the record briefly.)

16 DIRECT EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Ms. Woods, will you tell the jury where you work?

19 A Lexington County DSS.

20 Q And what are your job duties?

21 A I am a child abuse and neglect investigator.

22 Q Okay. And -- and as a child abuse and neglect  
23 investigator, do you have training -- or do you go through  
24 training for analyzing or evaluating environments for  
25 safety and risk assessments?

DIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS 82

1 A Yes, ma'am.

2 Q And do y'all do that in -- in every situation in which  
3 you're involved?

4 A Yes, ma'am.

5 Q Are you aware that a member of -- that someone that  
6 works in your office with you in your area went out to the  
7 house at [REDACTED] Edmund Highway?

8 A There was nobody from our office before my  
9 investigation that went out to the home.

10 Q Okay. Before your investigation?

11 A Correct.

12 Q And -- but then, once that investigation ensued, there  
13 are several dates that someone went out to the home,  
14 correct?

15 A That -- the mentor program that we had.

16 Q Okay.

17 A A worker went out to the home.

18 Q All right. And if I read the dates to you -- January  
19 25th, 2013?

20 A May I look back at the notes -- or ---

21 Q Absolutely.

22 A You said January 29th?

23 Q Yeah. Sorry. Bad handwriting.

24 A There was a member of the -- from the mentor program  
25 that did go out to the home.

- 1 Q Okay. And that -- and that was 2013?
- 2 A Yes, ma'am.
- 3 Q And then, what was the next -- what was the date of  
4 the next visit?
- 5 A Then the next visit that she actually made contact ---
- 6 Q Yes.
- 7 A --- with the family? It would have been a scheduled  
8 home visit on January 30th, 2013.
- 9 Q Okay. And then, when was the next contact? And when  
10 you say "contact with a home visit," she at that time took  
11 notes and was able to see that -- she was able to visualize  
12 the -- all of the children in the home at that time?
- 13 A No. I can't speak to what she actually did.
- 14 Q Right.
- 15 A I can ---
- 16 Q Right.
- 17 A --- only just read the records that we have.
- 18 Q Okay. Does the report reflect that -- that she would  
19 do that?
- 20 A It does seem that she was in the home and she did  
21 observe Cameron and Madison in the home on January.
- 22 Q Okay. And then, the next one -- what -- what is the  
23 next date you have?
- 24 A February 7th.
- 25 Q Observation at that time as well?

DIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS 84

1 A There was.

2 Q Okay. And the next date?

3 A January -- I'm sorry -- February 14th.

4 Q Okay. Observation on that date as well?

5 A Yes, ma'am.

6 Q The next date?

7 A March 13th, 2013.

8 Q Okay. Observation of Cameron and Madison that day?

9 A Yes, ma'am.

10 Q Okay. The next date?

11 A I believe it's February 27th.

12 Q Okay. Yeah. Yeah. I know it went out of order. My  
13 -- my records did that as well.

14 So February 27th, and then March 13th, and then the nt  
15 date after that?

16 A The next day that I have is April 8th.

17 Q Okay. And observation on that date as well?

18 A Yes, ma'am.

19 Q Okay. And the next day after that?

20 A May 14th.

21 Q Okay. Was there one April 26th?

22 A Yes, ma'am, there was.

23 Q Okay. And April 26th, a face-to-face visit and saw  
24 the children?

25 A Correct.

1 Q Okay. And then, May 14th?

2 A May 14th. Yes, there was a -- a home visit.

3 Q Okay. And what -- what's the -- when's the last date  
4 that they were discharged from -- from this investigation?

5 A The last time -- well, it wasn't actually an  
6 investigation.

7 Q Okay. I mean, a -- or providing services?

8 A The last date in the home was May 14th, 2013.

9 Q Okay. And then, when was the -- when was the case  
10 discharged from your office?

11 A From the mentor office, it was closed in the system on  
12 June 24th.

13 Q Okay. Throughout the -- seven, eight, nine -- the  
14 nine contact visits, was there any reports or indications  
15 or concerns of any abuse or neglect to either children  
16 noted?

17 A Like I said, I can't speak to what -- what she -- what  
18 she saw. Any cases where it's -- like, a low-to-moderate  
19 risk, if there is any high-risk concerns, they immediately  
20 send it back to our office for investigation.

21 Q And did they ever get sent back to your office?

22 A They did not.

23 Q Okay. And were you subpoenaed by the -- the  
24 government to testify in this case?

25 A By the state?

1 Q Yes.

2 A Yes, ma'am.

3 Q Okay. Please answer any questions they may have for  
4 you.

5 CROSS-EXAMINATION

6 BY MS. MAYES:

7 Q Hi. And, Ms. Woods, just I have a few follow-up  
8 questions about that.

9 A Okay.

10 Q You were subpoenaed by the state in this case because  
11 of your involvement, specifically with Cameron G.  
12 correct?

13 A Correct.

14 Q And because you initially went out to the home of the  
15 defendant, Mr. Garcia, and Tracy Roach about nine days  
16 after Madison's death, correct?

17 A I believe so. The date that we went out was -- I  
18 think it was September 9th, I ---

19 Q September ---

20 A --- believe.

21 Q --- 9th?

22 A Yes, ma'am.

23 Q Okay. And so seven days after her death?

24 A Correct.

25 Q And the reason that you went out there was because at

1 that point in time, it was known that even though Mr.  
2 Garcia had not been arrested yet, nor had the codefendant,  
3 Tracy Roach, it was known that, for Cameron's safety, he  
4 needed to be removed from the home, correct?

5 A That's correct.

6 Q Now, moving on to the questions that were posed about  
7 this mentor program, and -- and just to clarify, you're a  
8 DSS worker, correct?

9 A Correct.

10 Q The Department of Social Services?

11 And you're actually a -- a social worker or a  
12 caseworker in that regard, correct?

13 A That's correct.

14 Q This mentor program that you mentioned that's the one  
15 who conducted the checks that Ms. Zmroczek was just asking  
16 you about, are they employees of DSS?

17 A They are not.

18 Q Okay. So they're not DSS caseworkers such as  
19 yourself?

20 A Correct.

21 Q And the South Carolina Mentor Program is a volunteer  
22 program; is that correct?

23 A That's correct.

24 Q And essentially, what happened is there had been a  
25 report that did not concern Madison. It was a report of

1 neglect concerning Cameron, correct?

2 A That's correct.

3 Q And that report would've been about six months or  
4 seven months or even nine months before Madison's ultimate  
5 death, correct?

6 A That's correct.

7 Q And because it was that neglect report concerning  
8 Cameron, it was referred to the South Carolina Mentor  
9 Program to do home checks, correct?

10 A That's correct.

11 Q And you have with you the records verifying the dates  
12 of those?

13 A Yes, ma'am.

14 Q Now, just to clarify, the first actual contact would  
15 have been a worker going to the home and leaving a note on  
16 the door January 29th, but that was not face-to-face  
17 contact, correct?

18 A That is correct.

19 Q So the first, initial contact was January 30th,  
20 correct?

21 A Yes, ma'am.

22 Q And then, the last, as you testified to, was May 14th  
23 of 2013, correct?

24 A Correct.

25 Q And those were all -- those visits between January and

1 the last one in May were all prescheduled visits, correct?

2 A Yes, ma'am.

3 Q So ultimately, the family knew or was aware that the  
4 DSS worker would be coming that day, correct?

5 A The mentor worker? Yes, ma'am.

6 Q Yes. I'm sorry. Clarify -- yes. The mentor worker.

7 A That's correct.

8 Q Would have been aware that they were coming that day?

9 A Correct.

10 Q So all of these visits being prescheduled, she knows  
11 they're coming; they show up; and at some point, they come  
12 inside the home and then observe the children, correct?

13 A That's correct.

14 Q Now, these aren't medical exams, are they?

15 A No, ma'am.

16 Q And the last one, I believe your testimony was, was  
17 May 14th, 2013. So we're talking about when Madison was 9  
18 months old, correct?

19 A That's correct.

20 Q Nothing further.

21 MS. ZMROCZEK: I just have a few follow-ups questions,  
22 Your Honor.

23 THE COURT: Yes, ma'am.

24 REDIRECT EXAMINATION

25 BY MS. ZMROCZEK:

REDIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS 90

1 Q In the reports that were provided to you, does it  
2 specifically address safety concerns? Is there an area  
3 that they have to address whether or not there are safety  
4 concerns?

5 A They -- the worker pretty much just put in -- into the  
6 system what -- what she observed in the home.

7 Q Okay. And so if she saw -- and you referred to her as  
8 Madison. If she saw Madison, she would refer to that?

9 A If she saw any concerns?

10 Q No. No. If she saw Madison, she would put Madison's  
11 name.

12 A Correct.

13 Q Okay. And that did appear in every contact visit?

14 A I believe so. Yes, ma'am.

15 Q Okay. And who was the primary -- who was the -- the --  
16 -- the primary contact -- who did the mentor-worker program  
17 and DSS work with ---

18 A For the ---

19 Q --- to set these visits up?

20 A For the mentor case?

21 Q Yes.

22 A From what I've looked back and saw, she -- the worker  
23 contacted -- the telephone that was with -- with Ms. Roach.

24 Q With Ms. Roach?

25 And this concern with Cameron had to do with the

1 schooling-education issue, correct?

2 A That's correct.

3 Q Thank you.

4 MS. MAYES: Nothing further.

5 THE COURT: All right. You may step down, ma'am.

6 Thank you.

7 (Whereupon, the witness exited the witness stand.)

8 MS. ZMROCZEK: Any objection to them being released,

9 Your Honor?

10 THE COURT: Any ---

11 MS. MAYES: No objection from the state, Your Honor.

12 THE COURT: All right. You're free to go. Thank you.

13 All right. You may call your next witness.

14 MS. ZMROCZEK: Thank you. We call Pat Lucas.

15 (Off the record briefly.)

16 (Whereupon, the witness came forward.)

17 PAT LUCAS, having been first duly sworn,

18 testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Ms. Lucas, tell the jury where you work.

22 A I work for a program called BabyNet.

23 Q And will you explain to the jurors what BabyNet is?

24 A BabyNet is the state's early-intervention program,  
25 designed to serve children from birth until the day before

DIRECT EXAMINATION BY MS. ZMROCZEK - PATRICIA LUCAS 92

1 their third birthday, if they show significant  
2 developmental delay or are at risk for significant  
3 developmental delay.

4 Q And were you -- was BabyNet asked to participate in  
5 services regarding an infant with the name Madison Garcia?

6 A Yes. I did an intake visit on Madison.

7 Q And who was your primary contact with that intake?

8 A Mother.

9 Q Okay. And did you have any interaction with the  
10 father, Mr. Garcia?

11 A No, I did not.

12 Q Okay. Did -- when did that first interaction take  
13 place?

14 A I had a telephone contact, I believe, prior to the  
15 intake. The intake, which is how we assess children for  
16 eligibility, was actually in the home on September 5th,  
17 2012.

18 Q And tell the jury about that assessment.

19 A There are too types of assessments in BabyNet. The  
20 type of assessment that was completed on Madison was based  
21 on her diagnosis of trisomy 21, which we call "Down  
22 syndrome." In her case a child -- or any child with Down  
23 syndrome is anticipated to need help to reach their  
24 developmental milestones. And so I don't need to show that  
25 a delay exists. In that case when I have medical

1 information about the diagnosis, such as trisomy 21, all I  
2 did was complete what we call the "intake paperwork."

3 Q And then, explain what happens after -- after someone  
4 is taken into BabyNet's services.

5 A After intake a child is seen by an early  
6 interventionist/service coordinator. The way that person  
7 is determined is based on the parent's reading information  
8 that we in BabyNet provide so that the parent can choose  
9 which intervention agency they want to use for services.

10 The interventionist goes to the home. Most of BabyNet  
11 services are in the home. The interventionist will do a  
12 developmental assessment on the child. And then a service  
13 plan is set up.

14 And in BabyNet we use the initials I.F.S.P.:  
15 individualized family service plan. And that's a way that  
16 the interventionist, as she's visiting, can help the child  
17 reach developmental goals based on a parent's concern or  
18 based on needs that are anticipated because of a medical  
19 diagnosis. The interventionist also visiting has her role  
20 -- most of them are women -- has her role as service  
21 coordinator. In that capacity she would arrange for any  
22 kind of therapy that might be needed, such as speech  
23 therapy, physical therapy, or occupational therapy.

24 Q And in this -- in Madison's case, which service was  
25 selected for -- or for you?

DIRECT EXAMINATION BY MS. ZMROCZEK - PATRICIA LUCAS 94

1 A If by "service" you mean who came after my intake ---

2 Q Right.

3 A --- visit? And most people don't know all the ins and  
4 outs of BabyNet. So the mother selected the intervention  
5 agency that goes by the name of "Easter Seals of South  
6 Carolina." They were the ones to whom the intake  
7 information was sent for them to pick up services after my  
8 intake visit.

9 Q So after your intake visit, do you have any more  
10 involvement with the -- with the family?

11 A Generally, I do not have any more contact with a  
12 family unless the family has some concerns about the  
13 services that the child's receiving and they want to talk  
14 over that with me.

15 Q Okay. And so that initial intake was in September of  
16 2012. Did you have an occasion to do an -- an -- another  
17 intake or have a different contact later on after -- after  
18 these services from Easter Seals?

19 A The -- the only other contact was when Mom called and  
20 asked to have another BabyNet intake completed because  
21 services had been closed. And once a child is closed to  
22 BabyNet services, the only way to come back through and  
23 resume those services is by going through another intake.

24 Q And when was that call made?

25 A I'd have to look at the record.

1 Q Okay.

2 MS. ZMROCZEK: May I approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 A Okay. Thank you.

5 (Off the record briefly.)

6 A Okay. So we received an office in the -- a call in  
7 the office and it says: "Mom calls" ---

8 MS. MAYES: Objection to hearsay.

9 THE COURT: Sustained as to any hearsay.

10 MS. ZMROCZEK: Okay.

11 Q Yeah. You can't say what anybody said.

12 A Oh.

13 Q But just tell me the date. Sorry.

14 A Oh. March 23rd, 2013, it looks like.

15 Q And when does your ---

16 A It's not my handwriting.

17 Q And so -- certainly. And when is it indicated that  
18 the last contact was made?

19 A On April 12th of 2013, a message was left for me,  
20 canceling the appointment that we had set up for an intake  
21 and a message was left that she would call to reschedule  
22 the appointment.

23 Q Okay. And you kept saying "she." To whom are you  
24 referring when you say "she"?

25 A To Madison's mother, Tracy Roach.

CROSS-EXAMINATION BY MS. MAYES - PATRICIA LUCAS

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1 Q Okay. To your knowledge, who was the primary  
2 caregiver?

3 A The mother ---

4 MS. MAYES: Objection ---

5 A --- was.

6 MS. MAYES: --- to speculation.

7 THE COURT: Sustained.

8 MS. ZMROCZEK: But I asked to her knowledge, Your  
9 Honor. She did an intake.

10 THE COURT: If she knows from her intake.

11 Q To your knowledge, who was the primary caregiver?

12 A When I went to the home visit for the intake, the  
13 mother indicated that she was the primary caregiver.

14 Q Thank you. Please answer any questions the state may  
15 have.

16 A Thank you.

17 CROSS-EXAMINATION

18 BY MS. MAYES:

19 Q And the reason it was indicated to you that she was  
20 the primary caretaker is because they didn't even tell you  
21 that he was living in the home, correct?

22 A I was told that he lived outside of the area.

23 Q Because they're going to lose their food stamps if  
24 they find out -- if ---

25 MS. ZMROCZEK: Objection ---

1 Q --- anybody ---

2 MS. ZMROCZEK: --- Your Honor.

3 Q --- finds out he lives in the home.

4 THE COURT: Sustained.

5 MS. MAYES: I'll rephrase that.

6 Q So the information that you received at intake was  
7 that Mr. Garcia wasn't in the home, correct?

8 A Correct.

9 Q And in addition to that, you're the one who actually  
10 set up the Easter Seals appointment, correct?

11 A I am not.

12 Q Well, you made the referral for Melissa Juergens from  
13 Easter Seals?

14 A We sent the paperwork over to the supervisor. The  
15 supervisor assigns the interventionist.

16 Q Okay. So Easter Seals is definitely a referral that's  
17 available through BabyNet, correct?

18 A If the parent chooses that intervention agency, yes.

19 Q Okay. So Easter Seals was an option available to the  
20 family. And in fact, Easter Seals was there and giving  
21 services in the home, correct?

22 A I don't know.

23 Q Oh, you -- okay. So you weren't aware that Easter  
24 Seals had been in the home and, in fact, was in the home in  
25 -- in December of 2012 and had contact with Mr. Garcia?

REDIRECT EXAMINATION BY MS. ZMROCZEK - PATRICIA LUCAS 98

1 A Correct.

2 Q Okay. And then, all of those canceled appointments  
3 that you mentioned in the year 2013, were you aware that he  
4 was laid off from work and actually in the home as well?

5 A I don't know anything about canceled ---

6 Q Okay.

7 A --- appointments except the intake appointment.

8 Q Thank you. Nothing further.

9 MS. ZMROCZEK: Just a few follow-up questions.

10 REDIRECT EXAMINATION

11 BY MS. ZMROCZEK:

12 Q Any information that was provided to you about who  
13 lived in the home or didn't live in the home would've been  
14 provided by Tracy Roach?

15 A Correct.

16 Q Thank you. I have nothing further.

17 THE COURT: All right.

18 MS. ZMROCZEK: I'd ask that this witness be excused.

19 THE COURT: Any objection to this witness being  
20 excused?

21 MS. MAYES: No objection from the state, Your Honor.

22 THE COURT: All right. Thank you very much, ma'am.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: You're free to go.

25 THE WITNESS: Okay. Thank you.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 99

1 THE COURT: Appreciate you being here.

2 (Whereupon, the witness exited the witness stand.)

3 THE COURT: You may call your next witness.

4 MS. ZMROCZEK: Thank you, Your Honor. We call  
5 Christopher Watkins.

6 THE COURT: All right.

7 (Whereupon, the witness came forward.)

8 (Off the record briefly.)

9 CHRISTOPHER WATKINS, having been first duly  
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. ZMROCZEK:

13 Q Mr. Watkins, can you tell the jury where your  
14 employed?

15 A I'm employed at Stillinger Investigations. It's a  
16 local private-investigations firm here in Columbia.

17 Q And how long have you been employed there?

18 A Since 2010.

19 Q And how do you become a private investigator?

20 A I'd -- I began working with the president of the  
21 company, Brian Stillinger, back in 2010. He's been a  
22 licensed private investigator for 18 years.

23 Q And were you retained to assist in the defense in this  
24 case?

25 A I was.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 100

1 Q And are you being paid for your testimony?

2 A I'm not being -- no.

3 Q Okay. So explain to the jury how that works, then.

4 A How -- how ---

5 Q You ---

6 A The assignment?

7 Q Right.

8 A Okay. We -- we have a contract -- or -- yeah --  
9 contracted by your office, I believe in 2014, and -- and  
10 received -- received the case -- discovery. And we opened  
11 a case at our office.

12 Q Okay. And are -- are -- are y'all paid for your time  
13 that you've put into -- to the case?

14 A We -- we're paid through the Office of Indigent  
15 Defense.

16 Q Okay. And how much do you get paid an hour?

17 A \$50 per hour.

18 Q All right. Tell -- what is digital forensics?

19 A Digital forensics is a area of forensic science  
20 dealing in the securing and processing of evidence taken  
21 from digital devices, such as laptop -- our computer, cell  
22 phones, for the use in all kinds of litigation.

23 Q Is -- in your role at Stillinger Investigations, do  
24 you participate in -- in digital-forensic examinations?

25 A I do. I'm a private investigator. And I -- at our

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 101

1 office I specialize in criminal defense and digital-  
2 forensic investigations.

3 Q And how many analysis -- digital-forensic analysis  
4 have you completed?

5 A Hundreds.

6 Q And are those on -- what kind of devices are they on?

7 A Mostly computers -- computers or cell phones -- smart  
8 phones, some tablets here and there.

9 Q Have you ever been qualified as an expert in digital  
10 forensics?

11 A I have. I was qualified in South Carolina Family  
12 Court, Circuit Court, and United -- United States federal  
13 court.

14 MS. ZMROCZEK: Your Honor, at this time we would move  
15 this witness as an expert in digital forensics.

16 THE COURT: Any objection?

17 MR. MCNAIR: No objection, Your Honor.

18 THE COURT: All right. Without objection.

19 MS. ZMROCZEK: Thank you.

20 Q What was your role regarding digital-forensics  
21 investigation in this case?

22 A In this matter I received -- well -- well, there's a  
23 few things that I've done. There were some reports that  
24 were produced and provided from Lexington County Sheriff's  
25 Department from Investigator Michael Phipps that he had

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 102

1 completed. I had -- and I had also acquired copies of the  
2 forensic -- forensic images of a eMachine laptop computer  
3 and a SD card that was taken from a Sanyo camera that was  
4 found in the home.

5 Q What -- and just briefly on the phone, what -- what  
6 review of the phone -- was this the -- I'm showing you  
7 State's 60. Is this the phone that you're referring to?

8 A I didn't have the phone itself. I had the report  
9 provided by Investigator Phipps.

10 Q Okay. And what did a review of those text message  
11 from that phone ---

12 A Okay.

13 Q --- show?

14 A I found that there were a total of -- there were four  
15 text messages that were received on the device from a  
16 contact listed as Tracy. One -- the first message was  
17 dated Tuesday, August 27th, 2013. And it was received at  
18 11:31 a.m. from the contact associated with Tracy. And it  
19 reads: "Come home at lunch and buy me three Budweiser."  
20 The message status on the report indicates that the message  
21 was read. It also indicates that the message was deleted.

22 On -- the next message, on Thursday, August 29th,  
23 2013, a text message was received at 1:57 p.m. from the  
24 telephone number associated with Tracy that states -- that  
25 reads: "Buy me a blue 20/20, please." The message status

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 103

1 indicates that the message was not read.

2 On -- on the same date, another message at 2 -- 2:12  
3 p.m. -- that's August 29th -- from the same contact  
4 associated with Tracy, says -- another message reads: "Buy  
5 me a blue 20/20, please." The status of this message  
6 indicates that the message was not read.

7 On Friday, August 30th, a text message was received at  
8 2:07 p.m. from the contact associated with Tracy. And it  
9 reads: "Buy me a blue 20/20, please." Now, a blue 20/20  
10 is a type of flavored, fortified wine that -- that was  
11 being referred to.

12 Q And does the phone indicate that there was any  
13 activity on the date of September 2nd?

14 A There was -- there was no text message or any other  
15 communication activity on September 2nd, 2013.

16 Q Okay. Moving to the -- I think you said eMachine --  
17 tell the -- the jury what that is.

18 A Okay. I -- I received a report that was completed by  
19 Investigator Phipps for the laptop. It was a laptop  
20 computer. The make was an eMachine. It was found at the  
21 home.

22 And in my review of that report, there was an Internet  
23 search that read -- the -- the search term was "how long  
24 does trazodone show up in a 2-month infant." The date of  
25 this search was October 1st, 2012. Now, trazodone is an

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 104

1 antidepressant prescription drug.

2 Q Okay. When you reviewed the eMachine, were there also  
3 photographs on there?

4 A Well, what -- so this -- this was with the -- the  
5 report that was provided by Michael Phipps -- or completed  
6 by him. What I've -- what I also requested is a copy of  
7 the forensic image, so we're talking about a -- a complete  
8 -- basically a mirror image of the hard drive that was  
9 found in that computer.

10 And what I did is I examined that image to -- to  
11 verify a few things. First of all, the report that was  
12 completed by Mr. Phipps was -- was done with a software  
13 called "Magnet Forensics Internet Evidence Finder," which  
14 is a great tool. It's a forensic tool that uncovers  
15 Internet evidence.

16 So it's not a complete analysis of a machine. So I  
17 wanted to complete a -- a more thorough analysis, because  
18 there was a few questions that I had when I saw that  
19 particular search term. First of all, is there any way to  
20 verify who used the computer. I think that's important.

21 So first of all, I -- I wanted to verify that the date  
22 that the -- that search was correct. And I -- I was able  
23 to verify it was searched on October 1st, 2012.

24 So then, I wanted to determine who -- who used the  
25 computer. I -- referring back to the smartphone report

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 105

1 that I just mentioned with the text messages, there was a  
2 -- the number -- or the -- the e-mail address associated  
3 with that phone was -- and I'm going to read it to you --  
4 bettogarcia273@gmail.com. What I did is I -- I ran a  
5 keyword search on that machine to see if this e-mail had  
6 ever came up on the machine. There were no matches.

7 So then, I also -- I -- I looked to see if there was  
8 any other e-mail activity. And there -- I found two e-mail  
9 addresses associated with Tracy Roach. And I'll read those  
10 out: bgctmr@yahoo.com; it had Tracy Roach appended to  
11 that. And the second was tracy.roach@aol.com.

12 Q Was there any indication that -- that Filiberto Garcia  
13 ever used this computer?

14 A There was not.

15 Q Okay. How were the searches completed, in English or  
16 in Spanish?

17 A I did not find any Spanish searches.

18 Q Were the English searches -- used words that were  
19 spelled correctly?

20 A Say that again? I'm sorry.

21 Q Did the English -- so the searches were done in the  
22 English language?

23 A They were, yes.

24 Q Okay. And were they done in a -- a correct -- correct  
25 grammatical and spelling of the English language?

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 106

1 A It would appear to be. Yes. I didn't see any -- any  
2 common misspellings, anything like that.

3 Q Okay. Did you find any pictures on the computer?

4 A I did. Yes.

5 Q Okay. The pictures -- you said you also reviewed an  
6 SD card.

7 A I did.

8 Q Where did the SD card come from?

9 A The SD card came from a Sanyo camera -- digital camera  
10 that was found at the home.

11 Q Did the pictures on the computer relate to pictures on  
12 the Sanyo camera?

13 A I found pictures on the computer that were also  
14 present on the SD card from the Sanyo camera. I found also  
15 additional pictures that were taken by a Sanyo camera. I  
16 can't verify the model or a serial number with these  
17 pictures. But I could see, in the metadata of a lot of  
18 these pictures, that they were taken with a Sanyo camera.  
19 And these pictures were not present on the SD card.

20 (Whereupon, Ms. Zmroczek and Ms. Mayes conferred.)

21 Q I'm showing you what's been marked for ID purposes --  
22 and I'm going to read out a lot of numbers, so bear with me  
23 -- Defendant's 30, 27, 22, 26, 20, 21, 16, 15, 14, 13, 42,  
24 43, 41, 31, and 32 and ask if you can -- just if you  
25 recognize and can identify them.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 107

1 A Yes.

2 MS. ZMROCZEK: Your Honor, at this time -- I can read  
3 the list again or just ask that these be moved into ---

4 THE COURT: Any ---

5 MS. ZMROCZEK: --- evidence.

6 THE COURT: --- objection to those photographs?

7 MS. MAYES: Not to those photographs, Your Honor.

8 THE COURT: All right.

9 THE COURT REPORTER: Ms. Zmroczek ---

10 THE COURT: They're in without -- those photographs

11 ---

12 MS. ZMROCZEK: Oh.

13 THE COURT: --- are in without ---

14 MS. ZMROCZEK: Thank you.

15 THE COURT: --- objection.

16 (Off the record briefly.)

17 (Whereupon, Defendant's Exhibits 13, 14, 15, 16, 20,  
18 21, 22, 26, 27, 30, 31, 32, 41, 42, and 43 were  
19 entered into evidence.)

20 Q Can you tell the jury what metadata is?

21 A Certainly. Metadata is a technical term that means  
22 data about data. An example of this would be time and date  
23 stamp appended to -- to the picture ---

24 Q Were you ---

25 A --- to a picture.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 108

1 Q Were you able to obtain metadata in reference to the  
2 pictures that you found on the SD card and the computer?

3 A I was.

4 Q Okay. I'm going to show you what's -- is entered as  
5 Defendant's 13. Can you tell the jury what date that  
6 picture was taken?

7 A The metadata associated with this picture indicated  
8 that this picture was taken on Thursday, March 5th, 2009.

9 Q Okay. And Defendant's 14?

10 A Same date: Thursday, March 5th, 2009.

11 Q And Defendant's 15?

12 A Same date.

13 Q And 16?

14 A Same date.

15 Q Okay. Now I'm going to show you Defendant's 20. What  
16 does that -- what date does it indicate that that picture  
17 was . . .

18 A All right. There were several photos depicting a --  
19 snowfall ---

20 Q Okay. I'm ---

21 A --- like this ---

22 Q --- showing Defendant's 20 and Defendant's 21.

23 A Yes.

24 Q Okay.

25 A Now, there were two dates associated ---

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 109

1 Q Okay.

2 A --- with several -- several of these photos. So these  
3 -- the ones you just showed me, that is dated December  
4 26th, 2010. And also I wanted to -- to -- to explain that  
5 -- I wanted to verify that date, because there was a  
6 discrepancy with some of the time and date stamps on these  
7 photos. Referring to the Columbia Metropolitan Airport's  
8 weather-history records, there was a snowfall reported in  
9 West Columbia on December 26th of 2010.

10 Q Okay. All right. And Defendant's 22, what date was  
11 that taken?

12 A Date associated with that was June 7th, 2009.

13 Q Okay. Defendant's 26, what date does that indicate  
14 that picture was taken?

15 A That one is dated April 13, 2013.

16 Q Okay. Defendant's 27?

17 A Same date.

18 Q Defendant's 30?

19 A That is dated February 8th, 2013. Now, there were  
20 other photos in this sequence of photos where you can  
21 clearly see that there is -- there's a birthday cake.  
22 There's --

23 Q Defendant's ---

24 A --- that it's ---

25 Q --- 31 and 32, are you referring to the items in the

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 110

1 background?

2 A I am. And ---

3 Q Okay.

4 A --- there were others associated with this that were  
5 -- that are not included. But they depict a birthday cake  
6 and also a sign that -- that reads: "Happy birthday,  
7 Cameron." And because of this I can say that the time and  
8 date stamp on these photos are -- is not correct. They --  
9 it indicate -- for all the photos that you just put up,  
10 February 8th, 2013. Cameron Garcia's birthday is March

11 [REDACTED].

12 Q Okay. So there -- so some of the time and date stamps  
13 appear to not line up with the dates ---

14 A Correct.

15 Q --- of the pictures?

16 And explain to the jury how that happened.

17 A Okay. So this is -- these pictures were taken with a  
18 Sanyo digital camera. And on this camera, when you first  
19 power it on, you are asked to input the date and time. So  
20 you're manually entering in a date and time for that  
21 camera. So it is subject to user error.

22 Now, I've -- it -- on -- on these cameras, if it goes  
23 without power for a -- a certain period of time, the device  
24 will actually reset. And next time you -- you power it  
25 back on, you'll be asked to input the date and time again.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 111

1 Q Okay. So this picture was either taken, according to  
2 this camera, on February -- February of 2013 or, if it was  
3 actually on Cameron's birthday, in March of 2013, correct?

4 A Correct.

5 Q Okay. And that would be seven months after July of  
6 2013 -- or 2012? Sorry.

7 A That would be 2013.

8 Q Okay. And Defendant's 41, what date was that taken?

9 A Is there a number associated with that picture? I'm  
10 sorry. I found it. It's -- the date of that picture was  
11 May 18th, 2013.

12 Q Okay. Defendant's 42?

13 A That picture is dated August 18th, 2012.

14 Q And Defendant's 43?

15 A August 1st, 2012.

16 Q Are you aware of the date of birth of Madison Garcia?

17 A July ■, 2012.

18 Q Did -- so did those pictures appear to be similar or  
19 at -- they're taken around the appropriate time?

20 A They are consistent with the time of birth. I can't

21 ---

22 Q Thank you. That's word I was looking for.

23 A I can't verify that they were actually taken at that  
24 specific time.

25 Q Okay. And were you asked to only select pictures of

CROSS-EXAMINATION BY MR. MCNAIR - CHRISTOPHER WATKINS 112

1 Mr. Garcia and Madison, or were there pictures of Ms. Roach  
2 and Madison as well?

3 A It -- I -- I looked for pictures for both Mr. -- Mr.  
4 Garcia and Madison and also Tracy Roach and Madison and  
5 found there were only about four or five pictures in total  
6 of Tracy Roach and -- and Madison together.

7 Q And that was a total of how many photos,  
8 approximately? Between the ---

9 A Just -- just the ones from the -- well, I mean,  
10 because there were thousands of pictures on the -- on the  
11 computer. So of the ones that were taken from the Sanyo,  
12 there were anywhere from 800 to 1,000.

13 Q Okay. Thank you, Mr. Watkins. Please answer any  
14 questions that the state may have.

15 CROSS-EXAMINATION

16 BY MR. MCNAIR:

17 Q How you doing, Mr. Watkins?

18 A Good.

19 Q So all the pictures were taken of Mr. Garcia, which  
20 would imply, I guess, Ms. Roach could've been taking those  
21 pictures of her child, correct?

22 A There is no way for me to know that.

23 Q That's right. Now, on that Sanyo camera, the last  
24 picture of Madison was dated April 13th, 2013, correct?

25 A Yes, sir.

- 1 Q And that picture number was 987. And the way this  
2 camera works is that when it takes pictures, they're  
3 sequentially ordered, correct?
- 4 A That is -- that's true. Yes, sir.
- 5 Q Okay. And -- from 987, the next picture is 988. And  
6 that is a picture of Madison -- Madison in a casket, dated  
7 September 7th, 2013, correct?
- 8 A Which number did you read?
- 9 Q 988, the next photo ---
- 10 A Okay.
- 11 Q --- after 987, is dated September 7th, 2013?
- 12 A That's correct.
- 13 Q And that's the picture of Madison in a casket?
- 14 A That's correct.
- 15 Q So there's 4 1/2 months there where there were no  
16 pictures?
- 17 A It appears so.
- 18 Q Okay. Now, regarding the computer, you mentioned  
19 there was a search about traxodone [sic] in an infant on  
20 October 1st, 2012, correct? And it was how long does  
21 trazodone show up in a 2-month infant?
- 22 A Yes, sir. October ---
- 23 Q Okay.
- 24 A --- 1st, 2012.
- 25 Q And was -- was there also a search on that day that

CROSS-EXAMINATION BY MR. MCNAIR - CHRISTOPHER WATKINS 114

1 said if mother takes prescription drugs, can it show up in  
2 a 2-month-old baby urine? Do you recall seeing that search  
3 as well?

4 A Something to that effect.

5 Q Okay. All right. Now, when that search was done,  
6 Madison was about 2 months old. Are you aware of that?

7 A I am.

8 Q Okay. So another 11 months transpired prior to her  
9 death?

10 A (Nodded head up and down.)

11 Q Now, are you aware that trazodone was not one of the  
12 drugs found in her system at her death?

13 A I am. I'm aware of that. Yes.

14 Q And are you aware that that computer was in the  
15 bedroom where the defendant was known to stay?

16 A I don't know where the computer was found.

17 Q You don't know that it was found in the master  
18 bedroom?

19 A I know it was found in the home that both defendants  
20 lived in.

21 Q Okay. Now, anybody can log onto a computer, right?

22 A Sure.

23 Q Okay. And we don't know whether or not Mr. Garcia was  
24 present or not, if -- if Ms. Roach did conduct that search,  
25 do we?

1 A When I -- when I spoke with Mr. Garcia, it -- it was  
2 very apparent to me that his -- his English skills were  
3 broken. And I even had him try to read some of -- some of  
4 my notes, and he couldn't do it.

5 Q I'm not asking you whether he typed the search.

6 A Okay.

7 Q I'm asking you: There's no way for us to know if he  
8 was present when that search was conducted?

9 A There's no way for me know that.

10 Q Are you aware if he -- if he typed in searches on his  
11 phone in English?

12 A I'm not aware of that.

13 Q Did you review his Web history?

14 A The -- it doesn't show what the search -- what the  
15 search term is on the Web history found on the smartphone.

16 Q Were those Web sites in English?

17 MS. ZMROCZEK: Your Honor, may we approach?

18 THE COURT: Yeah.

19 MR. MCNAIR: I'm not getting into the ---

20 MS. ZMROCZEK: Okay.

21 MR. MCNAIR: --- content.

22 MS. ZMROCZEK: Okay.

23 THE COURT: Just ---

24 MS. ZMROCZEK: That's -- okay.

25 THE COURT: Okay.

CROSS-EXAMINATION BY MR. MCNAIR - CHRISTOPHER WATKINS 116

1 MS. ZMROCZEK: That -- thank you.

2 Q Those Web sites were written in English, weren't they?

3 A It appeared some of them were and some of them were in  
4 Spanish.

5 Q Okay. Are you aware that that -- those pills were in  
6 the common area of the house, in the living room, in plain  
7 view?

8 A I'd find -- I mean, I wasn't there. I ---

9 Q Okay. So you haven't reviewed the crime-scene photos?

10 A I have.

11 Q Okay. You don't recall seeing the pills that were in  
12 the bag being in plain view in the living room?

13 A There was a bag in the -- in the living room that the  
14 pills were found to be contained in. Yes.

15 Q Okay. And the -- the bottles were in the living room  
16 and in the kitchen in plain view?

17 A There were.

18 Q Okay. So just because somebody conducted some  
19 computer search, that doesn't tell us whether or not he was  
20 aware of it or saw it or participated in it, does it?

21 A No.

22 Q Okay. Now, did you review or see any photos obtained  
23 from Mr. Garcia's cell phone?

24 MS. ZMROCZEK: Objection, Your Honor.

25 MR. MCNAIR: I'm not ---

REDIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 117

1 MS. ZMROCZEK: May we ---

2 MR. MCNAIR: --- getting into the ---

3 MS. ZMROCZEK: Okay.

4 THE COURT: All right. All right.

5 A There ---

6 Q Did you ---

7 A --- were -- there ---

8 Q --- review any photos obtained from Mr. Garcia's  
9 phone?

10 A There were some photos in the report.

11 Q Okay. And did you see photos of Madison on the phone?

12 A I don't think so.

13 Q Okay. You don't recall seeing newborn photos?

14 A I don't recall.

15 Q You don't recall that the last photo of Madison on his  
16 phone was November 24th, 2012?

17 A I don't recall.

18 Q Okay. That's all the questions I have.

19 MS. ZMROCZEK: I just have one follow-up question,  
20 Your Honor.

21 THE COURT: That's fine.

22 REDIRECT EXAMINATION

23 BY MS. ZMROCZEK:

24 Q Mr. Watkins, is it your job to determine who was on  
25 that computer or simply provide information for -- to --

REDIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 118

1 for the jury to make their determination?

2 A My job is to find information and report the facts, as  
3 -- as the -- as they are, as they exist.

4 Q Thank you. No further -- no further questions.

5 MR. MCNAIR: Nothing further, Your Honor.

6 THE COURT: All right. Thank you very much, sir. You  
7 may ---

8 MS. ZMROCZEK: We ask ---

9 THE COURT: --- step down.

10 MS. ZMROCZEK: --- this witness be excused.

11 (Whereupon, the witness exited the witness stand.)

12 THE COURT: Any objection to this witness being  
13 excused?

14 MR. MCNAIR: No objection, Your Honor.

15 THE COURT: All right. Thank you, sir. You're free  
16 to go.

17 MS. ZMROCZEK: Your -- Your Honor, our last witness is  
18 going to be lengthy and -- and -- and ---

19 THE COURT: All right.

20 MS. ZMROCZEK: --- we may need ---

21 THE COURT: We'll take a short break. (To the jury)  
22 Folks, let's take a short break here. If you need  
23 something from the -- refreshment-wise, let the bailiffs  
24 know, and we'll get started back in just a few minutes,  
25 okay? Please have no conversation about the case.

DIRECT EXAMINATION BY MS. ZMROCZEK - BETH HOLLIMAN 119

1 (Whereupon, the jury exited the courtroom at 3:04  
2 p.m.)

3 THE COURT: All right. We'll be at ease, then, for a  
4 few minutes.

5 (Off the record from 3:04 p.m. until 3:18 p.m.)

6 THE COURT: All right. Let's bring the jury in.

7 (Off the record briefly.)

8 (Whereupon, the jury entered the courtroom at 3:18  
9 p.m.)

10 THE COURT: All right, folks. You may ---

11 MS. ZMROCZEK: Thank you.

12 THE COURT: --- call your next witness.

13 MS. ZMROCZEK: We call Beth Holliman.

14 (Whereupon, the witness came forward.)

15 BETH HOLLIMAN, having been first duly sworn,  
16 testified as follows:

17 (Off the record briefly.)

18 DIRECT EXAMINATION

19 BY MS. ZMROCZEK:

20 Q Ms. Holliman, will you please tell the jury where  
21 you're employed?

22 A I'm employed that Lexington County Sheriff's  
23 Department as an evidence custodian.

24 Q Okay. As part of your job, do you receive evidence  
25 from different cases involved in your -- with your agency?

CROSS-EXAMINATION BY MS. MAYES - BETH HOLLIMAN 120

1 A Yes, we do.

2 Q Okay. As part of this case, did you -- did you  
3 receive several calendars in -- related to this case?

4 A We received sealed packages that were said to contain  
5 personal business documents.

6 Q Okay. And were those personal business documents all  
7 items that were located in and around the house?

8 A According to the reports, yes. They were located at  
9 the residence.

10 Q And were they in English or in Spanish?

11 A Initially, I did not know what they were in. Upon  
12 trial preparation we did determine that they were in  
13 English.

14 Q Thank you. Please answer any questions the government  
15 may have.

16 CROSS-EXAMINATION

17 BY MS. MAYES:

18 Q Do you have with you your documentation concerning  
19 where the laptop was found?

20 A I believe I do. Yes.

21 Q Where was it found? That would be the eMachine  
22 laptop.

23 A It was located in the master bedroom.

24 Q Nothing further.

25 MS. ZMROCZEK: I have nothing further, Your Honor.

1 THE COURT: All right. Thank you very much, ma'am.  
2 You may step down.

3 (Whereupon, the witness exited the witness stand.)

4 MS. ZMROCZEK: And, Your Honor, at this time we'd  
5 enter the stipulation.

6 THE COURT: All right. Ladies and gentlemen, there is  
7 a -- a statement that was made by Ms. Roach that the  
8 parties have stipulated to or -- and a stipulation is  
9 simply an agreement. So the parties have agreed that this  
10 statement is admissible. And so we'll -- what we're going  
11 to do is, because the statement is in evidence, it can be  
12 published to you. And so we're going to present that to  
13 you now, the contents of that statement.

14 MS. ZMROCZEK: Thank you. Mr. Stancil, will you  
15 please read verbatim, word for word, the -- the portions of  
16 the statement.

17 MR. STANCIL: Yes, ma'am. (As read): "In the week  
18 prior to Madison's death, the defendant stated she would  
19 get up and be on autopilot. She stated that she would feed  
20 her children, but had stopped self-care, grooming, and  
21 regular bathing. She was asked if, during this time, she  
22 had concerns about her ability to care for her children.  
23 And she replied, 'Not about their direct care.' And she  
24 was concerned about her ability to care for herself.

25 "The night before Madison's death, the defendant

1 stated she had been sleeping on the couch. She stated she  
2 was not feeling particularly good on September 2nd, 2013.  
3 So she spent the majority of the day napping on the couch.

4 "She reported that she fed Madison at noon and put her  
5 in her crib. She stated that Madison was not crying at  
6 that time.

7 "She stated that Madison was on a feeding scheduled to  
8 be fed every three to four hours. The defendant stated she  
9 last checked on Madison after the defendant ate lunch  
10 around one or two that afternoon and saw that she was  
11 asleep.

12 "She stated that Madison's father and the couple's son  
13 went out at -- at approximately three or four o'clock in  
14 the afternoon. She reported that Madison's father returned  
15 around five or six that afternoon and the defendant was  
16 still sleeping.

17 "She stated that she slept most of the day because she  
18 had been drinking. She reported that Madison's father  
19 discovered Madison's body at eight or nine that night.

20 "When he told the defendant that Madison had died, the  
21 defendant stated that she thought, No. She's okay. She  
22 can't be.

23 "She stated that the -- that they then called the  
24 ambulance and followed them to the hospital, where Madison  
25 was pronounced dead. She stated that she was not charged

1 for two weeks after Madison's death. She stated she had  
2 spoken to police, but thought it was part of normal  
3 investigation into the sudden death of a child and not a  
4 criminal investigation.

5 "The defendant was asked about the report that she had  
6 missed several doctor's appointments, and she replied that  
7 she missed the six-month checkup and had to cancel the one-  
8 year checkup. She stated that Madison last saw the doctor  
9 November of 2012. She stated that the reason for poor  
10 follow-up -- follow-up was a lack of transportation and  
11 anticipation that the family would be moving from the area  
12 in the near future.

13 "She was asked about the reported ulcers that Madison  
14 had at the time of her death. And the defendant responded  
15 that she thought it was diaper rash. She stated that she  
16 was treating that and believed it was yeast infection

17 "She was asked about the reported diagnosis of failure  
18 to thrive. And she responded that she was unaware that  
19 Madison had been called that.

20 "She was asked about the report that Madison had  
21 psychiatric medications in her system at the time of her  
22 death. And she responded that the medications must have  
23 been there from birth.

24 "She stated that she did not breast-feed Madison and  
25 stated that she had not given psychiatric medication to her

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 124

1 children. She asked -- she was asked about the statements  
2 her son gave investigators about being giving -- given  
3 sleeping pills. And she replied that he must have meant  
4 his vitamins that he took at night."

5 THE COURT: All right.

6 MS. ZMROCZEK: Your Honor, we call Filiberto Garcia-  
7 Campos.

8 THE COURT: All right. Mr. Garcia, if you'd please  
9 come around, sir.

10 (Whereupon, the witness came forward.)

11 (Off the record briefly.)

12 FILIBERTO GARCIA, having been first duly sworn,  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. ZMROCZEK:

16 Q Filiberto, tell the jury how old you are.

17 A Thirty-five.

18 Q Do you understand and speak English?

19 A Yeah.

20 Q A lot or a little bit?

21 A Little bit.

22 Q Okay. Are you nervous? You okay?

23 A Yeah. I'm fine.

24 Q Okay. Make sure to keep your voice up. Where were  
25 you born?

- 1 A Mexico.
- 2 Q What year?
- 3 A '80.
- 4 Q Okay. When did you come to the United States?
- 5 A I come to U.S.A. in 1997.
- 6 Q How did you come to the U.S.A.?
- 7 A Legally.
- 8 Q Illegally?
- 9 A Yeah.
- 10 Q Are you here illegally now?
- 11 A Yeah.
- 12 Q Why did you come to the United States illegally?
- 13 A I came for making more money, little more better.
- 14 Q Okay. How did you -- when you -- when you lived in  
15 Mexico, with whom did you live?
- 16 A Excuse me?
- 17 Q Who did -- who did you live with?
- 18 A My mom and my sisters.
- 19 Q Okay. Where -- and where was your father?
- 20 A My father die.
- 21 Q Tell the jury how he died.
- 22 A My daddy die when I got 2 years old.
- 23 Q How many years?
- 24 A Two years.
- 25 Q Okay. And you said your mom and your sisters, you

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 126

- 1 lived with?
- 2 A Yeah.
- 3 Q Are they still there?
- 4 A Yeah.
- 5 Q Okay. Do you -- have you seen them?
- 6 A Unh-unh.
- 7 Q You have to say "yes" or "no."
- 8 A No.
- 9 Q Okay. Do you speak with them?
- 10 A Yeah.
- 11 Q How often do you speak with your family?
- 12 A For telephone.
- 13 Q How -- how many time -- how much time?
- 14 A One hour/two hours.
- 15 Q Okay. How -- how -- how frequently?
- 16 A Every week.
- 17 Q Every week?
- 18 A (Nodded head up and down.)
- 19 Q Okay. When you first came to the United States, where
- 20 did you go?
- 21 A South Carolina.
- 22 Q South Carolina?
- 23 A (Nodded head up and down.)
- 24 Q Where in South Carolina?
- 25 A York.

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 127

- 1 Q Okay. Why did you go to York?
- 2 A Because I got a one uncle that pay for me for come to  
3 right here.
- 4 Q Okay. Come -- so -- and he paid who?
- 5 A They pay -- they pay for me come right here. Pay  
6 1,700.
- 7 Q Okay. And -- and what did you do when you were in  
8 York?
- 9 A Work.
- 10 Q What kind of work?
- 11 A I work in a nursery?
- 12 Q In what type -- what kind?
- 13 A Nursery.
- 14 THE INTERPRETER: In a nursery.
- 15 Q Oh. Oh. In a nursery?
- 16 A (Nodded head up and down.)
- 17 Q With plants?
- 18 A Yeah, with plants.
- 19 Q Okay. Sorry.
- 20 A My first job.
- 21 Q Okay. And how long did you live in York?
- 22 A Like five/six year.
- 23 Q Five or six years?
- 24 A (Nodded head up and down.)
- 25 Q When did you meet Tracy Roach?

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 128

1 A I meet Tracy Roach in 2001.

2 Q Tell the jury how you met her.

3 A I met her -- I cutting grass outside, my yard. So she  
4 come -- she come all the time, like then I start -- and  
5 then -- and she wanted me ---

6 THE COURT REPORTER: I ---

7 MS. ZMROCZEK: Okay.

8 THE COURT REPORTER: I'm sorry. I -- I can't  
9 understand ---

10 MS. ZMROCZEK: Okay.

11 THE COURT REPORTER: --- the witness, Your Honor.

12 THE COURT: If -- if he needs to speak in Spanish and  
13 then ---

14 MS. ZMROCZEK: Okay.

15 THE COURT: --- if you translate it ---

16 MS. ZMROCZEK: Yeah. Yeah. The -- if -- it -- it --  
17 I know that -- that you want to speak in English. But the  
18 court reporter is having a little hard time and the jury  
19 might too. So you can go ahead and answer in Spanish and  
20 then she'll translate it for you, okay? Okay.

21 Q So you were telling us -- telling the jury how you met  
22 Tracy.

23 A I used to be -- I used to cut the yard in my home, and  
24 then she would walk by daily. And one day she said hello.  
25 And so this went on for a while. And then one day she came

- 1 by. She gave me her phone number and I started  
2 communicating with her on the phone.
- 3 Q How long were you friends before you started dating?  
4 A One year.
- 5 Q Okay. And did you ever live with her?  
6 A No.
- 7 Q When was the first time you lived with her?  
8 A In 2005.
- 9 Q In 2005?  
10 A (Nodded head up and down.)
- 11 Q And do you have any children?  
12 A No.
- 13 Q At that time you did not?  
14 A No.
- 15 Q When did you have your first child?  
16 A In 2006.
- 17 Q And tell the jury: Was that child with Tracy?  
18 A Yes.
- 19 Q Okay. And boy or a girl?  
20 A Boy. Boy.
- 21 Q Okay. Where did you live with -- what was -- what's  
22 his name?  
23 A Cameron Alexander Garcia.
- 24 Q Okay. And where did you and Cameron and Tracy live?  
25 A In Chester.

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 130

- 1 Q Okay. When did you move to Chester?
- 2 A In 2007.
- 3 Q Okay. What kind -- did you work when you lived in  
4 Chester?
- 5 A No. In Chester I wasn't working.
- 6 Q Okay. When -- did you own any vehicles?
- 7 A Yes.
- 8 Q What vehicles did you own?
- 9 A A Beretta.
- 10 Q And what vehicles did Tracy own?
- 11 A One Mustang.
- 12 Q Okay. When did you buy your truck?
- 13 A The truck I bought in 2006.
- 14 Q Have you seen all of the pictures that -- that have  
15 been put up of the truck?
- 16 A Yes.
- 17 Q When you bought it, did you put -- did you make any  
18 changes to the rims or -- or dress it up?
- 19 A Yes.
- 20 Q What year was that?
- 21 A In the same year.
- 22 Q Okay. When you lived in Chester?
- 23 A Yes.
- 24 Q So that -- when you bought it is when you made the  
25 modifications?

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 131

- 1 A Yes. That's when I bought the rims and the headlights  
2 and everything.
- 3 Q Was that before or after Madison was born?
- 4 A It was a long time ago.
- 5 Q A long time before?
- 6 A Yes.
- 7 Q Okay. When did you buy the Tahoe?
- 8 A I bought it in 2012.
- 9 Q And why did you buy a -- an -- another car?
- 10 A I bought it for my family, for my children.
- 11 Q Who drove that car mostly?
- 12 A The mother of my children.
- 13 Q Okay. When did you move to West Columbia?
- 14 A I moved here to West Columbia in 2009.
- 15 Q Did you move -- who did you move with?
- 16 A With my -- with my son and his mother.
- 17 Q And do you remember when Tracy got pregnant with  
18 Madison?
- 19 A Yes.
- 20 Q Tell the jury: Did you know there were problems that  
21 Madison was going to have?
- 22 A Yes.
- 23 Q How did you know about that?
- 24 A Because she went to get a checkup. And they told her  
25 that the child was going to come out with problems.

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 132

- 1 Q Did you want to have a child with problems?
- 2 A Yes.
- 3 Q And -- and, of course, I meant: Did you want to keep
- 4 her?
- 5 A Yes. Because she was already on her way.
- 6 Q Did Tracy want to keep her?
- 7 A No.
- 8 Q What did you tell her when she said she didn't want to
- 9 keep her?
- 10 A I told her to have her that way.
- 11 Q Were you at the hospital when Madison was born?
- 12 A No. Because there was nobody to take care of my son.
- 13 I don't have family here. And I stayed with him.
- 14 Q You stayed with Cameron?
- 15 A In -- yes. We only waited until they put her into the
- 16 room. And then we -- he and I went back.
- 17 Q Okay. Did Madison come home the next day?
- 18 A No. She was in the hospital.
- 19 Q For how long was she in the -- how long was she in the
- 20 hospital for?
- 21 A I don't recall very well. But I think it was about a
- 22 month.
- 23 Q Okay. Did you visit her in the hospital?
- 24 A Every day after I got out of work.
- 25 Q Every day after you got off work?

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 133

- 1 A Yes. Her mother waited for me to get out of work to  
2 go see her.
- 3 Q What is this picture?
- 4 MS. ZMROCZEK: It's Defendant's 42, Your Honor.
- 5 A Of my daughter.
- 6 Q This what she looked like in the hospital?
- 7 A Yes.
- 8 Q And you've -- sorry. And you visited her every day?
- 9 A Yes.
- 10 Q Describe her -- describe your visits to the jury in  
11 the hospital.
- 12 A How?
- 13 Q Were you able to hold her and feed her?
- 14 A Oh. Yes. I would go in right there where they have  
15 all the babies. I would hold her in my arms. And then I  
16 would give her the bottle. And the doctors were teaching  
17 me how to feed her.
- 18 Q And was Tracy with you?
- 19 A Yes. But she would leave and they would -- and I  
20 would stay there by myself.
- 21 Q Were you working when Madison was born?
- 22 A I don't remember.
- 23 Q Were you working second shift or first shift?
- 24 A I think it was the first shift.
- 25 Q Okay. And did a lot of people at the hospital speak

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 134

1 English or Spanish?

2 A In English.

3 Q Were there people that spoke Spanish?

4 A No. No. Not that I would notice. I didn't see any.

5 Q All right. Describe -- describe what she looked like  
6 in the hospital. And do you know how much she weighed when  
7 she was born?

8 A No.

9 Q Was she big or little?

10 A Little.

11 Q Did she ever get big?

12 A No.

13 Q Did that worry you that she didn't get big?

14 A Yes.

15 Q What did you do about that?

16 A Well, I would tell her mother to -- to feed her well.

17 Q Okay. Did you know if Madison was being fed?

18 A Yes.

19 Q Okay. How did you know?

20 A Because I was asking her mother.

21 Q And -- and what was her mother telling you?

22 A That she was feeding her.

23 Q Okay. Did -- were you out of work for a period of  
24 time?

25 A Yes. When they laid me off.

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 135

1 Q What did you do during that period of time?

2 A Okay. Well, I -- because I don't really like to be  
3 idle without doing anything, I would go outside and I'd do  
4 things: working on the car or work on the yards or  
5 something like that.

6 Q Okay. Did you ever have any interaction with Madison  
7 when you were not working?

8 A Yes.

9 Q And was she growing at -- was she big or little then?

10 A Little, the same.

11 Q What was your job in the family?

12 A Working and bringing money home to pay the bills.

13 Q Did you have a bank account?

14 A No.

15 Q Who handled or managed all -- what did you do with the  
16 money when you went to work -- when you brought it home  
17 from work?

18 A I would give it to the mother of my children.

19 Q Okay. And -- and -- and when we say the mother of  
20 your children, are you talking about Tracy Roach?

21 A Yes.

22 Q And what was Tracy's role in the family?

23 A Her role was to take care of the children.

24 Q If she -- do you think that she was doing that?

25 A Yes.

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 136

- 1 Q What made you think she was doing that?
- 2 A Because I would ask her.
- 3 Q Did you ever see people at your house?
- 4 A No.
- 5 Q Did people come to your house to help Madison after --
- 6 after she came home from the hospital?
- 7 A No.
- 8 Q Do you ever remember going to the doctor's office with
- 9 Tracy?
- 10 A No.
- 11 Q Okay. Do you ever remember seeing people with DSS
- 12 come to the house?
- 13 A Yes.
- 14 Q Did you understand why they were there?
- 15 A Yes. A little.
- 16 Q Okay. Who spoke with the people that worked with DSS
- 17 when they came to your house?
- 18 A Tracy.
- 19 Q Okay. Who did the grocery shopping?
- 20 A Ella -- I'm sorry. She.
- 21 Q And was there ever -- ever a time that you started to
- 22 do the grocery shopping?
- 23 A Yes. Toward the end I did.
- 24 Q And -- and when say "towards the end," what -- what do
- 25 you mean by that?

- 1 A When she started to be kind of weird.
- 2 Q When she started to be kind of weird?
- 3 A Yes.
- 4 Q Who -- who started to be kind of weird?
- 5 A She.
- 6 Q Is she Tracy?
- 7 A Yes.
- 8 Q Okay. And tell the jury what you mean when you say
- 9 she started to become weird.
- 10 A Weird is that she wasn't like she was before.
- 11 Q How -- how long before Madison's death did that
- 12 happen?
- 13 A For about two months/one month.
- 14 Q Okay. Did you ever feel like she wasn't able to take
- 15 care of the children?
- 16 A No.
- 17 Q Did you do the dishes in the house?
- 18 A Yeah. Because she would fill it up and she wasn't
- 19 cleaning the house anymore. So I would get home and I
- 20 would come home and I'd see it, and I would wash them
- 21 because I didn't want it to look so full anymore.
- 22 Q Did you ever wash bottles?
- 23 A Yes.
- 24 Q Every day?
- 25 A No. Every now and then, when I saw that they were

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 138

1 accumulating, like four or five of them, then I would wash  
2 them.

3 Q Did you think Madison was not getting food?

4 A No. What was the question?

5 Q That -- that was the question.

6 Filiberto -- State's 9 -- did you do this to your  
7 child?

8 A No.

9 Q Did you know that your child looked like this?

10 A No.

11 Q Tell the jurors how that's possible.

12 A How?

13 Q Tell them -- tell the jury if you ever saw her look  
14 like that.

15 A No.

16 Q Did you ever hold her?

17 A Yes.

18 Q Did you ever change her diaper?

19 A Sometimes.

20 Q Did you ever play with her?

21 A Yes.

22 Q Did Tracy ever play with her?

23 A Not a lot.

24 Q Did things change -- you said towards the end ---

25 (Off the record briefly.)

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 139

1 Q Towards the end before you were arrested and Madison  
2 died, what kind of -- what kind of -- how often did you  
3 hold Madison?

4 A Every time I saw her.

5 Q Was there ever a time that you were not allowed to see  
6 her?

7 A No.

8 Q Let's talk about the weekend of Labor Day weekend. Do  
9 you remember that weekend?

10 A Yes.

11 Q Okay. Do you remember Monday on Labor Day?

12 A Yeah.

13 Q What happened on that Monday?

14 A That's the day that she died.

15 Q Did -- how do you know she had died?

16 A Because that day I couldn't hear any noises or sounds  
17 or anything.

18 Q How did you normally hear noises or sounds?

19 A So she had a monitor that was connected to the wall.

20 Q And where was the monitor -- who -- who had control of  
21 that monitor?

22 A Her mother.

23 Q Did Tracy sleep on the couch?

24 A Yes.

25 Q Why?

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 140

- 1 A To better hear the -- our daughter.
- 2 Q And you said you did not hear her?
- 3 A I didn't hear the question.
- 4 Q Sorry. You did not hear her on Monday?
- 5 A No.
- 6 Q And what did you do?
- 7 A And -- and that's when I went to look. It was in the  
8 evening that I went to check. And -- and then I found her  
9 dead.
- 10 Q What did -- did you have a cell phone?
- 11 A No.
- 12 Q Did you have one or -- or did it just not have  
13 minutes?
- 14 A I had a telephone, but I didn't have minutes.
- 15 Q Who -- who usually put the minutes on the phone?
- 16 A Tracy.
- 17 Q Did you know how to do that?
- 18 A No.
- 19 Q Did you know how to use the computer?
- 20 A No.
- 21 Q Who used that computer?
- 22 A Tracy.
- 23 Q When you went in to Madison's room on that Monday,  
24 what's the next thing you did?
- 25 A I went in and I saw her and I saw that she was upside-

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 141

1 down ---

2 THE INTERPRETER: I'm -- I'm sorry.

3 A --- upside-up. And I got closer and I saw that she  
4 was dead. And I ran out to the store to call 9 -- 911.

5 Q Did you go to the first store?

6 A Yes.

7 MS. ZMROCZEK: Your Honor, at this time we would like  
8 to publish and put into evidence Defendant's 11, which is  
9 the 911 call.

10 THE COURT: If there's ---

11 MS. MAYES: There's a ---

12 THE COURT: --- no objection.

13 MS. MAYES: --- stipulation as to that, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, again,  
15 this is a recording of a 911 call. The state and the --  
16 the defense have stipulated to its admissibility. In other  
17 words, they've agreed. So that -- we're not going to have  
18 to go through witnesses to qualify that -- that -- that  
19 piece of evidence. So it -- it is in evidence, and we're  
20 going to play it for you at this time.

21 (Whereupon, Defendant's Exhibit 11, previously marked  
22 for identification, was entered into evidence.)

23 (Whereupon, the recording was replayed in the  
24 courtroom in the presence of the jury.)

25 THE INTERPRETER: "So hello. How are you? What's

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 142

1 going on?"

2 "I think that my daughter is -- is dead because she's  
3 very sick."

4 "You think she's dead?"

5 "Yes. She's very dry."

6 "Is -- is she there with you at the store?"

7 "No. She's with her mother right now."

8 "Can you talk to her mother and to find out if she's  
9 breathing or not?"

10 "No. She's not breathing anymore. She's already  
11 dry."

12 "I have an address for you home. That's [REDACTED] Edmund  
13 Highway?"

14 "Yes. Yes."

15 "And what is your name?"

16 "Filiberto Garcia."

17 "What is your name?"

18 "Garcia -- Filiberto."

19 "And is there a -- a phone number where I can call you  
20 in case I need to get in touch with you?"

21 "No. Because I don't have a phone right now."

22 "Okay. I'm going to send the ambulance to your home  
23 right now."

24 "Thank you very much. I appreciate it."

25 Q Was that you on the 911 call?

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 143

- 1 A Yes.
- 2 Q What happened next?
- 3 A I went back to the home.
- 4 Q And then what happened?
- 5 A And I waited for the ambulance and I picked her up.
- 6 And I waited for them to arrive to give them -- give her to
- 7 them.
- 8 Q Where was Cameron?
- 9 A He was with us.
- 10 Q And where was Tracy?
- 11 A On the sofa.
- 12 Q Had you been fighting with Tracy that weekend?
- 13 A Yes.
- 14 Q Tell the jury why.
- 15 A For the same reason that she wouldn't let me see the
- 16 -- the child, the -- my daughter.
- 17 Q When would -- when -- when would she not let you see
- 18 your daughter?
- 19 A It was before that happened.
- 20 Q Okay. How long before that happened?
- 21 A Two or three days.
- 22 Q Why wouldn't she let you see her?
- 23 A She would feed her, and then she put her to bed.
- 24 Q And did you ask to see her?
- 25 A Yes.

DIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 144

- 1 Q And did she let you?
- 2 A No. She said that she needed to sleep.
- 3 Q Could you hear her on the monitor?
- 4 A Before she died, yes.
- 5 Q Okay. Do you drink beer?
- 6 A Yes. But every now and then.
- 7 Q Does Tracy drink beer?
- 8 A Yes. She started ---
- 9 Q When?
- 10 A --- she started.
- 11 Before -- before my child died. I noticed that I
- 12 would drink beer and I had beer at home. And then I
- 13 started noticing that there were less beer; that it was --
- 14 we were running out of beer.
- 15 Q Did she send you text messages to buy beer?
- 16 A Yes. She would send me texts.
- 17 Q Did you -- did you buy the beer?
- 18 A No. I wouldn't buy her beer.
- 19 Q And then what happened when you didn't buy her beer?
- 20 A Well, she would get mad. And that's when we would
- 21 start fighting. So I would just leave the house so that I
- 22 -- not to continue arguing.
- 23 Q How long before Madison died did this start happening?
- 24 A For about a month.
- 25 Q But you were still able to see Madison, except for

- 1 those few days before?
- 2 A Yes.
- 3 Q Did you give Madison any medicine or -- or pills?
- 4 A No. Never.
- 5 Q Did you know that Tracy had pills?
- 6 A I knew that she had -- that Tracy had pills and that  
7 she took medication, but I didn't know what they were. And  
8 I knew that she had a bag and she had a lot of pills in  
9 there, but I didn't know what kind of medications they  
10 were.
- 11 Q Did you think that she was giving that medicine to  
12 Madison?
- 13 A No.
- 14 Q What would you have done if you knew?
- 15 A I would've told somebody.
- 16 Q What would you . . .
- 17 MS. ZMROCZEK: Beg the Court's indulgence.
- 18 THE COURT: Yes, ma'am.
- 19 Q When was the last time you saw Madison before Monday?
- 20 A On Friday.
- 21 Q Did she look sick?
- 22 A No.
- 23 Q What was she wearing?
- 24 A Some clothing that was all closed up.
- 25 Q Did you see her without her clothing?

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 146

1 A No. With clothing.

2 Q If you saw her without clothing and you saw her ribs,  
3 what would you have done?

4 A I would've taken her to emergency.

5 Q Did you ever take her to the emergency?

6 A Yes. Once.

7 Q When she was -- was that a -- was that when she was  
8 just born?

9 A Yes.

10 Q And why did you take her to the emergency then?

11 A Because her mother told me that she was sick. So we  
12 -- we loaded her up and we took her immediately.

13 Q Did you -- what kind of things did you buy for  
14 Madison?

15 A I bought her chair, her bed, her clothes.

16 Q Did you ever know that Tracy was hurting Madison?

17 A No.

18 Q Did you let Tracy hurt Madison?

19 A No.

20 Q Did you intend for Madison to die?

21 A No. I love her.

22 Q Please answer any questions the government has.

23 CROSS-EXAMINATION

24 BY MS. MAYES:

25 Q Mr. Garcia, you and your wife and Cameron and Madison

1 were living in that same house there out on Edmund Highway  
2 from the time she was pregnant with Madison until was  
3 Madison was born, all the way up until the day she died,  
4 correct?

5 A No.

6 Q When Madison came home from the hospital after being  
7 born, she came home to that same home that she died in,  
8 correct?

9 A Oh. Yes.

10 Q And, Mr. Garcia, you just testified that the last two  
11 to three days of Madison's life, when you were off of work  
12 and in that same house with Madison, that the reason that  
13 you did not go check on your child is because Tracy  
14 wouldn't let you? Is that what you said?

15 A Yes.

16 Q Mr. Garcia, the night that your daughter died and you  
17 came home from the hospital, this officer, this detective,  
18 was at your house, talking to you in the yard.

19 A Yes.

20 Q And you told this detective that you did not check on  
21 the baby when you woke up because her room was on the other  
22 side of the home. Do you remember that?

23 A Yes.

24 Q Okay. I just wanted to get that straight. So you  
25 talked to the detective that night, verbally, and you put a

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 148

1 statement in writing -- it's the statement in evidence --  
2 that not one time have you ever said until today that you  
3 didn't check on Madison because your wife wouldn't let you,  
4 correct?

5 A I'm -- I'm getting confused with -- it's just that ---

6 Q Okay. Well, let me ask this: You told this  
7 detective, Detective Gooding, that you woke up around one,  
8 you made food, and went back to bed.

9 A Yes.

10 Q And you said that your wife, Tracy, had been sick the  
11 last couple of days?

12 A Yes.

13 Q And had been sleeping on the couch, correct?

14 A Yes.

15 Q So your wife is sick and sleeping on the couch?

16 A Yes.

17 Q And you're home that entire weekend?

18 A Yes.

19 Q All right. Now, let's take a look at exactly what  
20 went on that weekend. And first of all, just to clarify

21 ---

22 (Whereupon, the interpreter and the defendant  
23 conferred.)

24 Q --- you are here in the courtroom ---

25 THE INTERPRETER: He wants a drink of water.

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 149

1 MS. MAYES: Okay.

2 THE COURT: Yes.

3 MS. MAYES: Okay?

4 THE INTERPRETER: Okay.

5 Q You were here in the courtroom when Ms. McLain from  
6 your workplace, EMR, came and testified, correct?

7 A Yes.

8 Q And there are certain time sheets in evidence about  
9 the days that you worked in the summer of 2013. All right.  
10 So based on that information, in July you're off multiple  
11 days after July 4th, and then multiple days at the end of  
12 July. In fact, from July 28th all the way through the 31st  
13 and Thursday, Friday, Saturday into August 4th, you had a  
14 weeklong vacation?

15 All right. Now, in August you're off every single  
16 weekend. And then, August 31st -- I want to talk about  
17 that, because it's the weekend that is at issue here.

18 All right. You got off on Friday, August 30th, at 2  
19 p.m.

20 MS. ZMROCZEK: Your Honor, he's not -- the -- these  
21 aren't questions. And so if -- if -- if -- if ---

22 THE COURT: Well ---

23 MS. ZMROCZEK: --- we can get them in the form of a

24 ---

25 THE COURT: I -- I ---

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 150

1 MS. ZMROCZEK: --- question just so ---

2 THE COURT: Well, I ---

3 MS. ZMROCZEK: --- he can answer.

4 THE COURT: Here's the thing. If -- if you could just  
5 ask somebody in English throughout -- she's having to break  
6 it in pieces for the interpreter.

7 MS. ZMROCZEK: Okay.

8 Q You recall getting off on -- on Friday at 2:30 p.m. on  
9 August 30th?

10 A I don't remember.

11 Q Okay. I'll show you the time card, State's Exhibit  
12 67. And this is you, Filiberto Garcia-Campos. Your clock-  
13 out time is 1431, which is 2:31 p.m. Correct?

14 A Yes.

15 Q Okay. So you get off work at 2:30, and you come home  
16 to the house, correct?

17 A Yes.

18 Q Okay. And then, you're home that Friday night,  
19 Saturday, Sunday, and Monday, correct?

20 A Yes. Yes.

21 Q During all of this time, the month of July, the month  
22 of August, into the day that Madison died, you had contact  
23 with her, didn't you?

24 A Yes.

25 Q Now, you and Tracy had been together about 12 years;

1 isn't that right?

2 A Yes.

3 Q And you had both shared responsibilities for Cameron,  
4 right?

5 A Yes.

6 Q So you -- you know what a baby needs in terms of food  
7 and how often they need to be fed, don't you?

8 A Yes. But it's different between the boy and a girl.

9 Q All right. So your testimony is that you can't feed a  
10 girl?

11 A No. That's not it.

12 Q So you can feed Madison?

13 THE INTERPRETER: Did you say you can?

14 MS. MAYES: You can.

15 A Yes. Yes. But her mother always had the time. She's  
16 the one that gave her food.

17 MS. MAYES: I'm sorry, Ms. Translator.

18 THE INTERPRETER: I'm sorry.

19 MS. MAYES: I could not hear your response.

20 A Yes. But her mother had time, and she's the one that  
21 always gave her, her food.

22 Q Okay. So her mother had time and always gave her, her  
23 food. Mr. Campos, you get off from work, when you do work,  
24 every day at 2:30?

25 A Yes. But I didn't like -- I have never liked sitting

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 152

1 at home, just watching TV. So I had time, so I always  
2 wanted to be doing something. And that's why I would  
3 always get out of the house and I would spend my time doing  
4 something -- playing with my child or doing something else.

5 Q All right. Playing with your -- your child Cameron?

6 A Yes.

7 Q So you couldn't be bothered to feed your daughter?

8 A Yes. I would feed her every now and then. But the  
9 responsibility was of her mother. That's why I wouldn't  
10 let her work: so that she would be home, taking care of  
11 the child.

12 Q Mr. Campos, when you're home, it's your responsibility  
13 as well to feed your daughter. Do you agree with that?

14 A No. Because in our country, the one that takes care  
15 of the daughter is the mother, not the father.

16 Q You're not in your country, Mr. Campos. You are in  
17 the United States of America. You are in Lexington County.  
18 You cannot feed your daughter, yes or no?

19 A I'm not really familiar with the laws of the United  
20 States. Do you understand me? I am illegal. I don't  
21 know.

22 Q And you're off every weekend in the month of August  
23 when your daughter is starving to death, aren't you?

24 A Yes. Yes. But I thought that my daughter was taken  
25 care -- that my wife was taking care of my daughter, of my

1 girl.

2 Q You have to feed your daughter every three hours. And  
3 you're living in the same house. And it's a single-wide  
4 mobile home, correct?

5 A Yes. But it's her mother that's at home all day long.  
6 And she's the one that's -- that has to feed her and every  
7 how often. And I don't know when she gave her, her -- her  
8 meal. What I did was work and provide for paying the bills  
9 and all of that.

10 Q And when you're home all day and you don't hear a  
11 sound from your child day after day after day, it's not  
12 your job, right?

13 A How? I beg your pardon?

14 Q It's not your job to feed your daughter, is it?

15 A No. It's the mother's.

16 Q And just to clarify exactly what was going on in that  
17 house, you were getting almost \$700 a month for your  
18 daughter?

19 A Yes. But I never touched that money.

20 Q And you're getting \$500 a month in food stamps?

21 A (No audible response.)

22 Q Correct?

23 A Yes. But that was for the children, for them. I -- I  
24 didn't touch that money.

25 MS. MAYES: Beg the Court's indulgence?

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 154

1 THE COURT: Yes, ma'am.

2 (Whereupon, Ms. Mayes and the court reporter  
3 conferred.)

4 Q Mr. Campos, you say you didn't touch that money. An  
5 -- an August purchase by your family for \$258 and 181 items  
6 ---

7 A But who made that purchase? She did.

8 Q She may have made the purchase. You're saying you  
9 didn't eat the food: the hamburger buns? the hotdog buns?

10 A No. I don't eat American food. I only eat Mexican  
11 food.

12 Q Tortilla crusted jalapeno spear? La Costeno pintos?

13 A Well, every now and then, she would buy me some  
14 things. But I did not -- I would always buy my food  
15 separately. I'd go to the Mexican store and buy Mexican  
16 food.

17 Q Tomatillos and jalapenos?

18 A (No audible response.)

19 Q Now, let's talk about what happened on September 2nd,  
20 the day that Madison died. On that date, as you told the  
21 officer, you got up around one. Why were you waking up at  
22 one?

23 A Because that's when I felt hungry and I got up to fix  
24 something to eat.

25 Q Okay. What were you doing before one?

- 1 A I was sleeping.
- 2 Q Okay. And in fact, that whole weekend how much Tecate  
3 and Budweiser did you and Tracy drink?
- 4 A I did not drink with her.
- 5 Q Who drank the three cartons of Tecate?
- 6 A Those were mine, but I bought them on Saturday.
- 7 Q Okay. Well, let's start there. I'm going to show you  
8 the two pictures, State's Exhibit 25 and 34. Okay.  
9 There's a carton of -- an empty carton of Tecate here, an  
10 empty carton of Tecate here, and an empty carton of Tecate  
11 on top of the empty carton of the 24-pack of Budweiser. So  
12 the Tecate is yours and the Budweiser is Tracy's?
- 13 A Yes. But -- yeah. But those cartons had been there  
14 for a while. It's just that she didn't clean the house.  
15 She wouldn't throw the -- the trash away. I was the one  
16 that was throwing the trash away.
- 17 Q So the carton -- well, first of all, the Budweiser was  
18 purchased on Saturday.
- 19 A I didn't buy it.
- 20 Q All right. So the receipt from Food Lion on Saturday  
21 at seven o'clock at night, 7:24 p.m., that was Tracy?
- 22 A I think so. Yes.
- 23 Q Okay. So Tracy went and bought the 24-pack of  
24 Budweiser and bought the Tecate. And both of that happened  
25 on Saturday?

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 156

- 1 A I think -- let me -- wait. Let ---
- 2 Q Okay.
- 3 A --- me -- let me recall. It's just that it's been so
- 4 long ago. I'm not -- I don't recall exactly.
- 5 Q Okay. So when Tracy went and bought that 24-pack of
- 6 Budweiser at 7:24 on Saturday night, Madison was there with
- 7 you, wasn't she?
- 8 A Yes. She was sleeping.
- 9 Q Okay. And Madison had a car seat for a car, didn't
- 10 she?
- 11 A Yes.
- 12 Q And she had a bath that was in your room in the master
- 13 bedroom, correct?
- 14 A Yes. That's where we bathed the children.
- 15 Q Where we bathed the children?
- 16 A What?
- 17 Q You said we bathed the children, correct?
- 18 A No. She bathed the girl, the -- my daughter. She was
- 19 the one who bathe her.
- 20 Q You can't give her a bath or change her degraded
- 21 diaper?
- 22 A (No audible response.)
- 23 Q Yes or no?
- 24 A She was the one that changed her. She never told me
- 25 that the diaper was disintegrating or anything.

1 Q But you couldn't be bothered to check?

2 A Because -- because we were always fighting over the  
3 same things. She always said that she wanted to keep the  
4 baby in her bedroom, and she wouldn't let me see her after  
5 that.

6 Q Even when you're home alone with her?

7 A Yes.

8 Q Now, I want to take you -- give you a chance to take a  
9 look at these photos. This is going to be State's Exhibit  
10 77, State's Exhibit 75, and State's Exhibit 76. Do you  
11 recognize where these photos were taken?

12 A Yes.

13 Q All right. That's your house, correct?

14 A Yes.

15 MS. MAYES: This would be State's 75, 76, and 77 for  
16 evidence.

17 THE COURT: Any objection?

18 MS. ZMROCZEK: I -- I haven't seen them, Your Honor.

19 (Whereupon, Ms. Zmroczek and Ms. Mayes conferred.)

20 MS. ZMROCZEK: No objection.

21 THE COURT: Without objection, those are in evidence.

22 (Whereupon, State's Exhibits 75, 76, and 77 were  
23 entered into evidence.)

24 Q Now, 75 is a picture of Madison's baby seat, right?

25 A Yes.

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 158

1 Q 77 is her carrier?

2 A Yes.

3 Q That -- in the living room, correct?

4 A Yes.

5 Q And 76 is what? Tell us what that is.

6 A That's the speaker for the monitor.

7 Q It's the baby monitor and unused bottles?

8 A Yes. But those bottles, she never use them because  
9 she couldn't latch onto those bottles.

10 Q And where is this a picture -- what part of the house  
11 is this a picture of?

12 A It's inside her bed -- her bedroom.

13 Q Inside whose bedroom?

14 A Madison's bedroom.

15 Q Now, did I understand you to testify earlier today  
16 that you don't remember seeing anyone come to your home;  
17 you don't remember seeing Melissa Juergens from Easter  
18 Seals at your home when you came home from work on December  
19 11th, 2012?

20 THE INTERPRETER: What's the date? I'm sorry.

21 MS. MAYES: December 11th.

22 A I don't remember the day, but I do remember seeing  
23 her.

24 Q Okay. And I believe your testimony earlier today is  
25 that you didn't remember taking Madison to Brookland

1 Pediatrics when she got her last checkup -- the last weight  
2 check?

3 A Her mother took her.

4 Q Mr. Campos, you weren't working that day. You're --  
5 you did not work that day. And the reason you didn't work  
6 that day was so that you could go that appointment with  
7 her, correct?

8 A I don't remember that.

9 Q Okay. So you're not saying it didn't happen; you're  
10 just saying you don't remember?

11 A Yes. I don't remember. Yes. She's the one that --  
12 that had the notes on -- on the dates. But that's why I  
13 don't remember.

14 Q Now, you testified earlier that you are illegal.

15 A Yes. I am illegal.

16 Q And in fact, all of the cards that you have, they're  
17 all fake, aren't they?

18 THE INTERPRETER: Excuse me. Can you repeat the  
19 statement. All of the ---

20 MS. MAYES: Yes.

21 THE INTERPRETER: --- cards?

22 MS. MAYES: Yes. His ID cards.

23 A Yes. I got them from the Mexican store. I didn't  
24 know that they were fake.

25 Q All right. I want to show you State's Exhibit 74.

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 160

- 1 A This is from Mexico. This is the Padrigo one.
- 2 Q All right. The card that you have that says South  
3 Carolina Driver's -- South Carolina ID" is fake, isn't it?
- 4 A The blue one?
- 5 Q The one that says "South Carolina ID"?
- 6 A Which one is that one?
- 7 Q What about the one that says "South Carolina Permanent  
8 Resident"?
- 9 A I don't know. Can you show it to me?
- 10 Q Well, first of all, the black wallet is yours,  
11 correct?
- 12 A Yes.
- 13 Q And the black wallet that had \$400 in it on the day  
14 you were arrested was yours?
- 15 A Yes.
- 16 Q Now, if you look here at State's Exhibit 45, there's a  
17 card that says "South Carolina ID."
- 18 A This one?
- 19 Q That one. You bought that at the Mexican store,  
20 didn't you?
- 21 A Yeah.
- 22 Q You didn't -- you didn't buy that -- you didn't go to  
23 the highway department and pay a fee and get that like  
24 everyone else?
- 25 A No.

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 161

1 Q And you have a conviction for a criminal offense in  
2 2008, which is providing false information to police,  
3 correct?

4 A Yes. Yes. Because I'm illegal.

5 Q And for the year 2012, you filed taxes and your salary  
6 was \$38,000 a year, correct?

7 A Yes.

8 Q And that year, when you filed taxes, you got over  
9 \$6,000 in a tax return from the government, correct?

10 A Yes.

11 Q Here's a copy of that tax return, State's Exhibit 12  
12 [sic]. And on this tax return, you claimed Cameron and  
13 Madison as dependents, right?

14 A Yes.

15 Q And you got \$1,000 back for each of those children,  
16 didn't you?

17 A For each one of them or for all of them?

18 Q For each one.

19 A Yes.

20 Q Correct.

21 A Correct.

22 Q And then, in addition to Cameron and Madison, who did  
23 you claim?

24 A My niece and my nephew.

25 Q Your niece and your nephew? You mean Laura and Luis?

CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 162

1 A Yes.

2 Q Are they real, Mr. Campos? Do they actually exist?

3 A Yes, they exist.

4 Q They exist, but they have I-10 numbers, which means  
5 they're not citizens, are they?

6 A No. But when I went to get my taxes prepared, they  
7 told me that I could include nieces and nephews were under  
8 the age of 18.

9 Q Mr. Campos, those two children never lived with you on  
10 Edmond Highway, correct?

11 A No. But why didn't they tell me that? They never  
12 said that I couldn't claim them.

13 Q Nobody told you, you couldn't claim two dependents who  
14 don't even live with you, and you -- you got \$1,000 back  
15 for those two children, who weren't even your dependents?

16 A So then, why did they accept the taxes?

17 Q Because you lied on the taxes, Mr. Campos; isn't that  
18 correct?

19 A No. I didn't lie. They accepted those papers from my  
20 niece and nephew. They accepted them.

21 Q Mr. Campos, on 9/2, on September 2nd, the day that  
22 Madison died, you went to the store. You went to Food  
23 Lion, and you bought food. Do you remember that?

24 A I -- what -- what kind of food to see if I remember?

25 Q Okay. I'm going to show you the receipt for Food

1 Lion. And on September 2nd, at 3:18 in the afternoon,  
2 around the time you told this officer you had gone to get  
3 something and then you came back, you went to Food Lion and  
4 got Juanita's Menudito, Little Beef Franks, grape soda,  
5 cola, and fruit punch. And here's the receipt.

6 A Yes. This I did buy.

7 Q Okay. And then you came back home, where you're wife  
8 was sick on the couch, and you made food in the kitchen,  
9 right?

10 A I don't remember that.

11 Q And no one checked on Madison until 9:30 at night?

12 THE INTERPRETER: Did you say 9:30 at night?

13 MS. MAYES: Nine-thirty at night.

14 A What date?

15 Q The day she died.

16 A Yes. That's the time when I went to see her.

17 Q Mr. Campos, isn't it true that it was Cameron who told  
18 you to go check on Madison, because he had not heard her  
19 make a sound all day long?

20 MS. ZMROCZEK: Objection, Your Honor.

21 THE COURT: All right. Hold on. What's the  
22 objection?

23 MS. ZMROCZEK: I -- I can't -- I haven't been able to  
24 cross-examine Cameron on what he did or didn't say. It's  
25 hearsay.

REDIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 164

1 MS. MAYES: I'll rephrase it.

2 THE COURT: All right.

3 Q Cameron knew that somebody needed to check on Madison,  
4 didn't he?

5 A No. He didn't say anything to me.

6 Q But you couldn't be bothered to check on her until  
7 9:30, when she was laying in bed with pressure sores in the  
8 same position she'd been in for days? Yes or no?

9 A No. Because the mother, she -- she didn't know -- how  
10 can I say it? She told me that -- she told me that she was  
11 fine; that she was sleeping, not to wake her up.

12 Q Not to wake her up for a week or two weeks or an  
13 entire month?

14 A No. I don't know, because that was her job.

15 Q That was her job and not yours?

16 A Yes. It was hers.

17 Q Nothing further.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Filiberto, was your wife sick or crazy?

22 A I think that she was crazy.

23 Q Did you know it at the time?

24 A No. Until those last months. That's when -- that's  
25 when she she started with all of that. That's when it

REDIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 165

1 started happening.

2 Q Right before that -- right before Madison died?

3 A Yes.

4 Q Did you use that fake ID to buy medicine?

5 A No.

6 Q Did you use that tax money to buy the medicine that  
7 poisoned your daughter?

8 A No.

9 Q What will happened to you, regardless of whether  
10 you're convicted or not?

11 MR. MCNAIR: Objection.

12 MS. MAYES: Objection.

13 THE COURT: Sustained.

14 Q What will happen because you're illegal?

15 A Immigration already has a hold on me.

16 Q A hold, meaning what?

17 MS. MAYES: Objection, Your Honor. He's not qualified  
18 to answer that question.

19 THE COURT: Sustained.

20 Q Did you know that you're wife was going to poison your  
21 daughter?

22 MS. MAYES: Objection, Your Honor: not responsive to  
23 cross.

24 THE COURT: Sustained.

25 Q Would you -- would you have drunk beer that weekend if

REDIRECT EXAMINATION BY MS. ZMROCZEK - FILIBERTO GARCIA 166

1 you knew your wife was going to poison your daughter?

2 THE COURT: All right.

3 MS. MAYES: Objection: not based on facts in  
4 evidence.

5 THE COURT: All right. Come on up here.

6 (Whereupon, a bench conference was held off the record  
7 in the presence of the jury, but out of the hearing of  
8 the jury.)

9 (Off the record briefly.)

10 Q Did you want Madison to die?

11 THE COURT: Okay.

12 MS. MAYES: Objection ---

13 THE COURT: Let's take ---

14 MS. MAYES: --- not responsive.

15 THE COURT: Let's take a break. Ladies and gentlemen,  
16 please have no conversation about the case. We're going to  
17 take a short break.

18 (Whereupon, the jury exited the courtroom at 4:54  
19 p.m.)

20 MS. ZMROCZEK: Your Honor, that last question -- I --  
21 I know that they were objecting that they said wasn't in  
22 response to cross. But it absolutely was. They were  
23 asking about his intentions to not care for his daughter.  
24 So that's why I asked about his intention.

25 THE COURT: Well, he -- he responded to it.

RE-CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 167

1 MS. ZMROCZEK: I'm sorry?

2 THE COURT: He responded to it.

3 MS. ZMROCZEK: Oh, okay. Well ---

4 THE COURT: He said -- well, okay. Well, just so the  
5 record's clear, overrule the objection. And then, his  
6 response was no.

7 MS. ZMROCZEK: Okay. Thank you. I -- I -- that's  
8 all. I just didn't ---

9 THE COURT: Okay. All right. Well ---

10 MS. ZMROCZEK: --- I just didn't ---

11 THE COURT: --- we're just going to take a short  
12 break. Mr. Garcia needed to use the restroom. So if  
13 anyone else needs to, we'll take a short break.

14 (Off the record from 4:55 p.m. until 5:03 p.m.)

15 THE COURT: While she's doing that, let's go ahead and  
16 get the jury back in, please. Mr. Garcia, if you'd come up  
17 and have a seat. Thank you.

18 (Whereupon, the witness came forward.)

19 (Off the record briefly.)

20 (Whereupon, the jury entered the courtroom at 5:03  
21 p.m.)

22 RE-CROSS-EXAMINATION

23 BY MS. MAYES:

24 Q Mr. Garcia, you got a question just a few moments ago  
25 about your tax money. You didn't spend your tax money on

RE-CROSS-EXAMINATION BY MS. MAYES - FILIBERTO GARCIA 168

1 food for Madison, did you?

2 A No.

3 Q And her food was sitting around with dust on it inside  
4 your house until after she died, and then it ended up on  
5 top of the high chair when police got there, ten days  
6 later?

7 A That food -- every now and then, she would give her  
8 Gerber. But she hardly ever gave her any of the Gerber  
9 food. She would give her something else. How do you say  
10 it? It was a -- a tin can.

11 Q She would, but not you?

12 A That's right. Her.

13 Q Nothing further.

14 THE COURT: All right. Thank you very much. You may  
15 step down.

16 (Whereupon, the witness exited the witness stand.)

17 THE COURT: All right. Anything further from the  
18 defense?

19 MS. ZMROCZEK: Your Honor, the defense rests.

20 THE COURT: All right. Ladies and gentlemen, the  
21 defense has rested their case. And just as I did at the  
22 close of the state's case, I have legal matters that I have  
23 to take up at the close of the defense's case. And I'm  
24 going to do that this afternoon. That'll take a little bit  
25 of time. So what I'm going to do is I'm going to excuse

1 you. We'll recess for the afternoon as far as the jury's  
2 concerned.

3 I'll just give you a -- kind of a snapshot of what  
4 we'll be looking at tomorrow. When you come back tomorrow,  
5 with the defense having rested their case, that closes all  
6 the evidence in the case. So what I anticipate is that  
7 when you come back tomorrow, we'll -- the attorneys and  
8 myself will -- will talk this evening. I'm not sure  
9 exactly what order we'll do it in.

10 But tomorrow will be basically what we call "argue and  
11 charge," or "charge and argue." But they are going to have  
12 an opportunity to address you with their closing arguments.  
13 I'm going to give you the charge on the law. Once you have  
14 all of that, you'll then be in a position to go back into  
15 your jury room and -- and have the case for your  
16 consideration.

17 Now, it is my understanding that somebody needs to be  
18 at a graduation, and I'm not going to interrupt that. So  
19 if we -- if we start at 10:30 tomorrow, will that give --  
20 give you time?

21 THE BAILIFF: Yeah. He's -- he's affirming that.

22 THE COURT: Okay. 10:30, then. If I could ask that  
23 -- that all of you be back here at 10:30, ready to go,  
24 we'll -- we'll proceed at that point. Okay?

25 Again, same instructions as you -- as you've had all

1 week: Please let your family and friends know that you do  
2 anticipate -- don't -- don't talk about the case at all.  
3 But you can tell them that you anticipate getting the case  
4 at some point tomorrow. And so more than likely, you'll be  
5 able to talk to them next time you see them about all that  
6 -- you know, whatever they're curious about.

7 But ask them to hang on one more night and -- and just  
8 allow you to put your minds at rest and ease and get a good  
9 night's rest and then we'll come back tomorrow and we'll --  
10 we'll hopefully finish up. Okay?

11 So if everyone else will please remain seated, folks,  
12 we'll see you 10:30 tomorrow morning.

13 (Whereupon, the jury exited the courtroom at 5:08  
14 p.m.)

15 (Off the record briefly.)

16 THE COURT: And I apologize, not mentioning something  
17 to y'all. What -- one of the jurors, his -- his little  
18 girl graduates from middle school or -- there's some little  
19 graduation he needs to be at. And -- and ---

20 MS. ZMROCZEK: In the morning, you mean?

21 THE COURT: In the morning.

22 MS. ZMROCZEK: Oh, okay. Okay.

23 THE COURT: So that's why we're starting at 10:30.

24 MS. ZMROCZEK: Okay.

25 THE COURT: Because it's in the morning, he can get to

1 that and -- and then he said he could be here by that time,  
2 so that's the reason for a late start tomorrow.

3 But at this point, let me -- let me take up any  
4 motions at the close of all the evidence.

5 MS. ZMROCZEK: Your Honor, at this time we would ask  
6 that, again, the directed verdict be granted. Based on  
7 *State v. Avery*, we feel like that there is no substantial  
8 -- there is no substantial circumstantial evidence that  
9 shows that Mr. Garcia acted or did not act with extreme  
10 indifference, as is required by the statute. And for those  
11 reasons, we would ask that the directed-verdict motion be  
12 granted.

13 THE COURT: All right. And -- and -- and again, I --  
14 as -- as I mentioned yesterday, Ms. Zmroczek, I do think  
15 it's a -- a question of fact. Depending on how the jury  
16 views the evidence, I think there is evidence in the  
17 record, depending on the way they view it, that they could  
18 convict or acquit.

19 And so I think that evidence is in the record,  
20 depending on how the jury views it. And that's their  
21 province. And so I won't interrupt or interfere with that.  
22 And so I'll respectfully deny that motion.

23 Anything else? We need to talk about the charge. I  
24 know you've just passed me a cite of a case that you  
25 believe defines extreme indifference, which I haven't

1 looked at. But I ---

2 MS. ZMROCZEK: And I'll e-mail the same to -- I'll e-  
3 mail the cite to the solicitors.

4 THE COURT: Okay.

5 MS. ZMROCZEK: But that was the only thing I could  
6 really see, Your Honor.

7 THE COURT: Let me ---

8 MS. MAYES: What is the case name?

9 MS. ZMROCZEK: *State v. Jarrell*.

10 THE COURT: Let -- let -- go ahead -- jot this down,  
11 if you would, Suzanne. It's -- it's 350 S.C. -- or 350  
12 S.C. 90.

13 MS. MAYES: Okay.

14 THE COURT: And it's *State v. Jarrell*, J-a-r-r-e-l-l.  
15 I haven't read it. Amy just passed it to me. I pulled it  
16 up on Westlaw, but I haven't looked at it yet.

17 Let me do this: The -- I have a draft of a charge.  
18 Let me -- before y'all leave here, I'm going to -- I'll do  
19 it now. I'm going to shoot it over to Hope and have her  
20 make a copy for y'all. Y'all can have that, look at it  
21 this evening, and then let -- let us come back at 9:30 in  
22 the morning and, if there's any additions or changes or  
23 anything we need to do to it, we'll -- we'll go over that  
24 at that point.

25 MS. MAYES: Okay.

1 THE COURT: Okay?

2 MS. MAYES: Your Honor, the charges that the state  
3 would foresee are the standard charges on -- on direct and  
4 circumstantial evidence ---

5 THE COURT: Okay.

6 MS. MAYES: --- expert witnesses, and proximate cause  
7 all being the charges within the Court's bench book.

8 THE COURT: Okay. All right. And like I said, if you  
9 have anything else and whatever, we'll -- we'll -- we'll  
10 deal with that at 9:30. And what -- why don't we do this:  
11 It -- Maryann, you -- you don't need to be here till 10.

12 THE COURT REPORTER: Yes, sir.

13 THE COURT: At 9:30 if y'all would, when you -- when  
14 you get up here, just come on back to the chambers and  
15 we'll -- we'll chat back there. And then, we can come out  
16 and put on the record anything that needs to be put on the  
17 record.

18 So if there's nothing else for this afternoon, we'll  
19 -- we'll -- we'll be adjourned for the afternoon. But hang  
20 here and -- and go ahead and let me give you this draft  
21 that I've pieced together here.

22 THE COURT REPORTER: So we're off the record now?

23 THE COURT: Yeah. We're done.

24 -----(Off the record briefly.)-----

25 MS. ZMROCZEK: Your Honor, since we have the court

1 reporter still here and everybody's still in the courtroom,  
2 I forgot to renew one of my objections that I wanted to  
3 make sure I did. I know.

4 THE COURT: Are you shut ---

5 MS. ZMROCZEK: Don't kill ---

6 THE COURT: --- down?

7 MS. ZMROCZEK: --- me, court reporter.

8 THE COURT: Are you good?

9 THE COURT REPORTER: Yes, sir.

10 MS. ZMROCZEK: I'm sorry.

11 THE COURT REPORTER: Yes, sir.

12 THE COURT: All right. We're -- we're back on the  
13 record. Ms. Zmroczek?

14 MS. ZMROCZEK: Sorry, Your Honor. Thank you. I just  
15 was -- after my verdict -- or renew the directed-  
16 verdict motion ---

17 THE COURT: Yes, ma'am.

18 MS. ZMROCZEK: --- you asked if I had any other  
19 motions. And at this time again, Your Honor, I would renew  
20 the objection to the entry of the photographs, which we had  
21 already discussed, just especially in light of -- of some  
22 of the jurors' reactions ---

23 THE COURT: Okay.

24 MS. ZMROCZEK: --- with the tears. And I just wanted

25 ---

1 THE COURT: Well ---

2 MS. ZMROCZEK: --- to make sure that was preserved.

3 THE COURT: Out -- out of abundance of caution, let --

4 let -- let's -- what I'll do is just we'll just note that

5 you want to preserve all prior objections made during the

6 course of the trial, and those are all noted in the record.

7 And so we'll do that.

8 MS. ZMROCZEK: Thank you.

9 THE COURT: Okay? All right.

10 (Whereupon, the proceedings were adjourned at 5:15 p.m.)

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1 TRIAL DAY 5 - 06/05/15

2 (Whereupon, the proceedings were resumed at 11:15 a.m.)

3 THE COURT: All right. While we're waiting -- well,  
4 we don't need to wait terribly long for that. I -- let me  
5 go ahead, though, because I want to make sure. The charge  
6 -- the -- the draft that I gave y'all, the only changes  
7 that I've made to that, I included the lengthy, more  
8 detailed direct- and circumstantial-evidence charge. And I  
9 included the proximate charge -- proximate-cause charge.  
10 Other than that, it's -- it's as I gave it to you  
11 yesterday. Does that seem to be appropriate?

12 MR. MCNAIR: Yes, Your Honor.

13 MS. ZMROCZEK: Yes, Your Honor.

14 MS. MAYES: Yes, Your Honor.

15 THE COURT: Okay. And I'm just looking -- looking it  
16 back over just to make sure that's what -- exactly what  
17 I've got. Are we ready to proceed?

18 MS. MAYES: Yes, sir, Your Honor.

19 MS. ZMROCZEK: Yes.

20 THE COURT: All right. Let's bring the jury in,  
21 please.

22 (Off the record briefly.)

23 (Whereupon, the jury entered the courtroom at 11:16  
24 a.m.)

25 THE COURT: All right. Ladies and gentlemen, welcome

1 back. I hope everyone had a good evening and you're ready  
2 to proceed.

3 As I told you yesterday, the evidence in the case has  
4 -- is closed. The state and the defense have presented all  
5 of the testimony and the evidence that they're going to  
6 present. And so that closes the evidentiary portion of the  
7 trial. And it gets us to this portion of the trial where  
8 the attorneys are going to have an opportunity to argue to  
9 you or to address you with what we call closing arguments,  
10 or final summation.

11 You recall, when we started this trial, that I told  
12 you that the things that the attorneys shared with you in  
13 their opening statements was not evidence. They're not  
14 under oath; they're not on the witness stand. So it's  
15 important that you understand that the evidence portion is  
16 closed.

17 As I told you their opening statements is not  
18 evidence, the same goes to their closing arguments.  
19 They're going to share with you what they believe the  
20 evidence in this case has shown. And even though what  
21 they're going to share with you is -- is not evidence,  
22 they're going to talk about the evidence and what they  
23 believe it -- it -- it has shown in this case. So it's  
24 important that you listen carefully as they address you  
25 with those remarks.



1 I will tell you that this is the hardest part of my  
2 job. Because I have to sit there and I can't respond to  
3 anything that they say. They have the last argument. And  
4 it's done that way for a reason. It's because they have  
5 the burden of proving this case and each and every element  
6 beyond a reasonable doubt. And we'll talk about that  
7 later, as I get closer to the end of my final arguments.

8 But that burden of beyond a reasonable doubt is the  
9 highest burden in American jurisprudence. And it's done  
10 that way for a reason. Because you've all been brought  
11 here and sat through five days of testimony -- or four days  
12 of testimony to answer a very important question of fact:  
13 Is Filiberto Garcia guilty of homicide by child abuse?

14 And if you weren't provided the facts that you need,  
15 your guidance will be the law. The only facts in evidence  
16 came from the testimony from that witness stand and these  
17 items.

18 We have no duty as the defense. We could've sat back  
19 and not asked any questions, not objected, and not put up  
20 any evidence. And even though we did put up a case, that  
21 does not change the burden. That doesn't mean we have to  
22 now prove beyond a reasonable doubt that he's not guilty:  
23 That -- that -- that burden always remains with my  
24 colleagues.

25 The reason that we did put up evidence -- and I want

1 to talk about that in a -- just a little bit -- was because  
2 just as Dr. Luberoff testified yesterday, you can only make  
3 an informed decision when you have more facts. I want to  
4 tell you kind of how I'll proceed so hopefully it won't get  
5 too confusing. I want to talk about my biggest fear,  
6 discuss that with you; I'll get it out on the table.

7 I want to talk about the state's case. I want to  
8 address our case. I want to address exactly what Mr.  
9 Garcia testified to, and then do a little final discussion  
10 on the law.

11 Now, Judge Russo is going to give you the charge, and  
12 he's going to tell you what the law is and that you must  
13 follow it. And you were all selected because both my  
14 colleagues at this table and my -- and myself determined  
15 that you could be impartial and follow your duty.

16 My biggest fear -- there's no question as to what my  
17 biggest fear is. My biggest fear is that -- and if I were  
18 the prosecution, I don't blame them. I would do it; I  
19 would take these pictures and I would just parade them in  
20 front of you. And I would say, How can this happen? How  
21 did he not know? And then I'd sit down.

22 Because my biggest fear is that they want you to make  
23 this determination of his guilt on emotion. And the law  
24 will instruct you that that is improper. It's -- it would  
25 dishonor Madison's death to find her father guilty based on

1 emotion.

2 I imagine the state's going to come up and they're  
3 going to argue about justice and justice for Madison.  
4 Justice and justice for Madison are two different things.  
5 Justice is upholding the constitution, listening to the  
6 facts, and holding the burden to their -- the state to  
7 their burden.

8 The -- the standard isn't how could he not have known,  
9 how could he not have known. That's not the standard. And  
10 that's not the law.

11 The state put up several witnesses beginning with the  
12 EMS worker. And if you recall, I asked him how did he get  
13 there, the 911 call. There was a very specific reason that  
14 we, the defense, had to put that 911 call in there.  
15 Because you can hear (1) who made the call; and (2) you  
16 could hear the emotion in his voice.

17 I asked the EMS worker, "Describe what you saw at the  
18 scene." Profoundly emaciated.

19 I -- the pictures that showed him and that they will  
20 show you were taken at autopsy. And he says, "That --  
21 that's what she looked like." We don't know that that's  
22 what she looked like when she was found.

23 We know that she was found with vomit in her pharynx  
24 and stool in her diaper. And in the -- I recall arguing  
25 with several witnesses about the stool and what was that

1 important.

2 Well, why that's important is because she was being  
3 fed. She was being fed something. She was being fed  
4 something by Tracy Roach, because Tracy Roach had to find a  
5 way to get those drugs into her system.

6 And Filiberto is washing the bottles and he's seeing  
7 the bottles. And should he have done a better job? Should  
8 he have taken over the feeding responsibilities too?  
9 That's not the standard.

10 Yeah. The answer is yes; he probably should have.  
11 But he didn't. But that doesn't mean he's guilty of  
12 homicide by child abuse.

13 The state wants you to ignore the drug evidence in  
14 this case. The toxicologist got up and said those drugs  
15 were ingested within 12 hours of her death, within 12  
16 hours. And the state, I imagine, is going to come up and  
17 argue: So what? So she had drugs in her system.

18 These weren't little drugs, and these were a lot of  
19 drugs for a lot of -- 150-pound adult male was the average.  
20 We're not talking about a small, 36-week, premature child.  
21 Those drugs had no business in this system.

22 And the state, I imagine, is going to come up and  
23 argue: It doesn't matter. The judge is going to tell you  
24 that there is proximate cause and if starvation is the  
25 proximate cause, then he should be found guilty.

1           No. That's, again, not the standard. He has to know  
2 that she was being starved or know that she was being  
3 drugged and do nothing about it. And not just do nothing  
4 about it, but act with extreme indifference.

5           I believe Mr. McNair, in his opening, said: "He sat  
6 there and watched her die like a potted plant." And if you  
7 recall the witnesses that came up here and they sat in this  
8 chair and they raised their hand and ask yourselves how  
9 many of them said he was bad father.

10           How many of them said he was not a provider? How many  
11 of them said he didn't care? Not one. Not one witness  
12 said that.

13           Donna Kelly, the neighbor, testified that Mr. Garcia  
14 worked on his truck. She saw him outside, working on his  
15 truck. And they'd have made a big, big deal about these  
16 trucks and these rims. And it's a reason -- one of the  
17 reasons that we put these pictures in through the digital  
18 forensics expert. And that's because, if you think about  
19 all the pictures that Detective Gooding put in about the  
20 cars and the rims and look at them and then they're shiny  
21 and they're pretty and they're clean, implicating that Mr.  
22 Garcia cared more about his cars than his child and/or he  
23 spent money on his cars and not his children and not  
24 Madison.

25           But now we know that those pictures came -- those

1 pictures from 2008-2009 show that he had those rims. In  
2 fact, he went out and bought a Tahoe when they were having  
3 a second child. These are things -- these are things that  
4 a -- a father who cares about his family does.

5 They're going to say the drugs don't matter because  
6 she still would've starved to death. And that's contrary  
7 to the evidence that they put up there. On Monday,  
8 September 2nd, after fighting with his wife, who clearly  
9 has problems -- clearly has problems -- and he didn't go  
10 into her bag. And the state says it's -- it was in a  
11 common area. Okay.

12 But he did not go in this bag. He did not know what  
13 these medicines were for. They didn't call a pharmacist to  
14 say that he picked them up. We couldn't call Tracy because  
15 she's in the Department of Corrections because she pled  
16 guilty to this crime of homicide by child abuse.

17 They're going to say: Well, it was starvation and if  
18 the drugs moved her death along, it doesn't matter. It  
19 does matter. Recall Dr. Welsh, expert, testified that he  
20 has done -- countless, I think, was his number -- countless  
21 autopsies. He's the one -- he's the one person that  
22 determines cause of death.

23 And did he determine the cause of death to be  
24 starvation? No. He wrote it down: lethal neglect.

25 And then, my question to him: Is providing drugs --

1 psychotropic drugs to your child a form of lethal neglect?

2 Yes.

3 How could you not have known? I asked Dr. Luberoff.  
4 And I'll admit, I -- I did something that they tell us not  
5 to do in law school: Don't ever ask a question you don't  
6 know the answer to.

7 But I -- I just had to know. Can this kind of weight  
8 loss happen rapidly if someone's being drugged? Without  
9 hesitation, answer: Yes. Her answer, state expert in  
10 child abuse.

11 And the questions -- the reason I was asking that is  
12 because I have the same questions you do: Why would you  
13 not have noticed this?

14 And then, you get to hear the rest of the story. You  
15 get to hear Filiberto. You get to hear that yes, she did  
16 not go to the doctor; that Tracy did not take her to the  
17 doctor.

18 But DSS workers were coming to her house twice a  
19 month. And yes, she knew what to do to fool those DSS  
20 workers. And if this woman knew what to do to fool those  
21 DSS workers, I submit, she knew what to do to fool a man  
22 that all she had to do was make one phone call and he's  
23 gone; he's leaving the country.

24 She still gets her state checks. She still gets her  
25 WIC. She doesn't need his \$400 a week money.

1           They're going to put in evidence all the -- all the  
2 time that he was at work and the -- the money he made. And  
3 they're going to tell you that he lied on his taxes. He  
4 paid taxes. An illegal citizen, and he's paying taxes.

5           Does any of that mean that -- mean that he killed his  
6 child? No.

7           Neglect -- when -- when you think of the word neglect,  
8 you think about indifference, apathetic, uninvolved,  
9 unloving. And that was the reason for not just putting in  
10 awful death pictures of Madison. But that was the reason  
11 for putting in and showing you that, as the expert for the  
12 computer testified, a thousand pictures and there are maybe  
13 four or five with Tracy with Madison or the children.

14           But there are pictures of Filiberto caring for his  
15 children. Because that's what he did. Should he have done  
16 a better job? Yes. And there are statutes that he  
17 should've been charged under. Yes. But homicide by child  
18 abuse is not that statute.

19           Over and over, they're going to ask you: How could he  
20 not have known? You -- you -- you're allowed to convict  
21 him for doing nothing. No. What the statute says is that  
22 it's an act or an omission. And then, it goes on to say  
23 "with extreme indifference to human life."

24           That weekend, he testified, she was drinking beer and  
25 that she was going a little crazy and she wouldn't let him

1 see Madison. And then Monday he doesn't hear her because  
2 the monitor is gone, unplugged; it's not there. And he --  
3 what -- what does he do? He goes into the room, finds her,  
4 and calls 911. Because that's what somebody who cares  
5 does.

6 The question that you have to ask yourself,  
7 individually and collectively, as you deliberate is: Did  
8 his behavior or lack of behavior rise to the level of  
9 criminal intent? Did he exercise poor judgment? Yes.  
10 Does -- does exercising poor judgment arise to criminal  
11 intent? I submit, it does not.

12 The statute reads child abuse -- and the judge is  
13 going to tell you this -- or neglect is an act or failure  
14 to act which causes harm to the child's physical health or  
15 welfare, inflicted or allowed to be inflicted on the child,  
16 physical injury -- there was no testimony of that. In  
17 fact, there was opposite testimony: that there were no  
18 bruises, no broken bones.

19 The state, I -- I submit, is going to argue that they  
20 let the baby lie in bed for weeks and weekends at a time.  
21 And the very night that they called 911, these were the  
22 pictures that were taken. Detective Gooding testified that  
23 he smelled urine. And he also testified there was no urine  
24 and no stool in these cribs.

25 And as you look at these pictures and you look at the

1       setup, is this the baby room of -- of a -- of a person who  
2       doesn't care? Ask yourself. He goes to work every day.  
3       And it may sound odd coming from a female or feminist to  
4       say this, but it's his culture that the woman take care of  
5       the -- of the -- of the -- of the babies. Is it right? Is  
6       it wrong?

7               I -- and I agree with my colleague, Ms. Mayes. This  
8       ain't Mexico. This is USA, South Carolina, Lexington  
9       County, she said. You are in Lexington County. And unlike  
10       Mexico, we have that constitution that holds them to that  
11       burden.

12               Do I agree with his parenting skills of letting the  
13       woman stay at home? No. Is that criminal intent that  
14       rises to extreme indifference under the statute of homicide  
15       by child abuse? No.

16               Mr. -- Mr. McNair, in opening, said something that I  
17       absolutely agree with: You can't ignore a baby's cry.  
18       Absolutely agree with that. You can't. Because she'll  
19       keep crying.

20               And Tracy Roach didn't ignore that baby's cry. What  
21       she did was she silenced it with her medications. And not  
22       one state's witness came up and said he knew about it; he  
23       knew she was going to do it; and he let her.

24               He told you that he would wash bottles after they  
25       would accumulate. And they made a strong showing of all

1 the bottles in the sink and the food around -- around the  
2 counter. And what that shows to a man who goes to work and  
3 then comes home and plays with his son and goes outside and  
4 works on his car and, on the weekend and holidays, drink  
5 some beer -- but what he sees is food, empty bottles with  
6 remnants or formula or milk.

7 And he sees his child, who has always -- always been  
8 little. That was his testimony: always been little. This  
9 was the day she was born -- little.

10 Should she have gained more weight? Yes. Should he  
11 have taken a more active role? Yes. Is he guilty of  
12 extreme indifference? No.

13 Our system is admired all over the world for the  
14 protections it provides each and every one of us if we  
15 found ourselves sitting at that table where -- where  
16 Filiberto Garcia is sitting. You are the most important  
17 part of that system. And in some ways it's the hardest  
18 job, because you have the fate and the responsibility of a  
19 life's -- man's life in your hands. And that's a  
20 responsibility most people don't know and won't know.

21 And on the other hand, your job is easy because you're  
22 not asked to -- to figure out what happened, how she died,  
23 who did this. What you're asked to do is to look at the  
24 facts presented to you and say: Did the government meet  
25 their burden beyond a -- a reasonable doubt that he

1 committed this crime, this crime; not that he was  
2 neglectful, this crime of homicide by child abuse.

3 Typically, I have a -- a chart for reasonable doubt.  
4 I didn't bring that today. Or I did bring it; I'm not  
5 going to use it today.

6 Instead, reasonable doubt is a -- is a -- is a theory  
7 that -- and the judge -- it's a legal concept. And the  
8 judge is going to define what it is.

9 The best way that I can relate to you what it is, is  
10 -- is to tell a story. And I have six sisters. My poor  
11 dad just wanted one boy. But not one did he get. He got  
12 seven of us.

13 And I was the oldest, biggest mouth, a lot of  
14 responsibility. And I would always get in trouble, always  
15 -- always get in trouble for stuff that my sisters were  
16 doing. And I would get so mad.

17 And I would go upstairs and I would slam the door and  
18 go in my room. And then I'd come in and get the bite of  
19 soap. And as I'm telling this story, I'm thinking, My dad  
20 might be guilty of child abuse. But -- but this was also  
21 30-some-odd years ago.

22 He would come up in that room. And he'd swing the  
23 door open, and he'd bring me to the bathroom. And he'd  
24 make me take a bite of the soap. Because it -- I was  
25 acting like a child. But a lot of times it's because I

1 didn't do it; I didn't do what I was getting in trouble  
2 for.

3 So this one day, I was downstairs and my sister was  
4 downstairs and my parents were downstairs. My mom was in  
5 the kitchen. And I think it was -- I grew up in Louisiana.  
6 It -- it -- I keep thinking it was June. It was hot. And  
7 the windows were open, and the breeze is blowing through  
8 the wind, through the windows.

9 And my sister runs by the table, and she knocks off  
10 this glass. And it falls to the floor and it shatters.  
11 And I'm sitting well -- it's on the other side of the room.  
12 And I'm just laughing because I know that this time I'm not  
13 getting in trouble. I am not getting in trouble this time.

14 And my dad jumps up -- because he's watching a game.  
15 And he -- "Allison, get upstairs."

16 And I'm, like, Yes. Here comes the soap. Because I  
17 knew it was going to happen. And she goes upstairs and she  
18 -- you can hear her stomping the whole way.

19 And my dad gets up out of that chair, and my mom comes  
20 running out the kitchen. And I'm following them up the  
21 stairs, going, "Yes. Yes."

22 You hear the door slam. And that's when I knew it. I  
23 knew it was going to happen. And my dad busted in that  
24 room and he opens the door. And she's sitting on the bed.

25 And mom's behind him, going, "Don't."

1           And I'm, like, "Do it. Do it."

2           And he tells her to stand up. And as he does, giant  
3 breeze comes through the window and slams the door shut.  
4 And he stops.

5           And ladies and gentlemen, that stop is the best way  
6 that I can describe to you what reasonable doubt is. And  
7 unfortunately, she didn't get to taste the soap that day.  
8 But there were times later that she did.

9           As I turn this case over to you -- and I remind you  
10 that this is a homicide-by-child-abuse case. And I remind  
11 you that you have a duty -- and I've been doing this for  
12 many years. I'm an idealist. I believe firmly in the jury  
13 system.

14           Ladies and gentlemen, the Court is no better than each  
15 of you that sits in front of me. The Court is only as  
16 sound as the jury that it's made up of. And the jury is  
17 only as sound of each of these -- of each of you  
18 individuals.

19           And I am confident that when you review the evidence,  
20 that you will do so without passion and you will come to a  
21 decision and you will do your duty and you will find  
22 Filiberto not guilty.

23           And I can't claim orientate -- origination for that  
24 speech. That was Atticus Finch from "To Kill a  
25 Mockingbird." But every time I read it, it reminds me that

1 this is the -- the best system and that it's not just the  
2 few pictures that they put in. It's everything that you  
3 get to consider.

4 And I don't have the chance -- as I told you in the  
5 beginning, I don't have the chance to come up here and --  
6 and argue and -- and refute what the state is going to say.  
7 But what I would ask that you do is each and every time  
8 something that's said piques your interest, ask yourself,  
9 What would Ms. Zmroczek come up here and argue, or what  
10 would she say in response to that. And I ask that you do  
11 it.

12 You hold the state to its burden. You ask the tough  
13 questions. You light the candles for the constitution.  
14 And you do your duty, and you find Filiberto Garcia not  
15 guilty of homicide by child abuse.

16 THE COURT: Thank you, Ms. Zmroczek. Ms. Mayes?

17 MS. MAYES: May it please the Court?

18 THE COURT: Yes, ma'am.

19 CLOSING ARGUMENT BY MS. MAYES

20 MS. MAYES: One of the most difficult things in life  
21 is to accept something that you cannot change. And none of  
22 us can change what happened to Madison. And it forces us  
23 to accept a truth that's beyond difficult to accept.

24 Because the cold, harsh, ugly truth, the reality of  
25 her situation, is that they just didn't want her. They

1 just didn't care. And that's what happened to Madison.

2 It could've been prevented. It should've been  
3 prevented. Yet there was not an ounce of regret in his  
4 voice when he testified yesterday that it wasn't his job.  
5 It wasn't his job to feed his daughter.

6 Well, that's not the law of the State of South  
7 Carolina, nor will it ever be. Because our laws cover  
8 child abuse and neglect. And neglect -- the very  
9 definition of neglect can never be greater than what we've  
10 witnessed in this case.

11 He had every duty, every responsibility, and every  
12 reason to feed his daughter, to provide her health care,  
13 and to protect her from harm. But the reality that is so  
14 hard to accept, they just didn't want her.

15 There was a time when Madison was needed. When he  
16 lost his job and was home, laid off from January to June,  
17 they needed Madison's check. They were living off of  
18 Madison's check and food stamps.

19 And when you think of the evidence in this case,  
20 remember the uncontradicted testimony: That last doctor's  
21 visit was November 11th of 2012. And on that day Madison  
22 was weighed: just barely under a pound from what she  
23 ultimately died at almost a year later at 13 months.

24 But that last medical exam, the last time she ever saw  
25 a doctor, she was there. He was there, and so was the

1 mother. So was Tracy.

2 And the reason they both showed up is because Mary  
3 Kayse had made it absolutely clear to them: Madison's  
4 health is at great risk. She's not gaining weight. I've  
5 watched her eat. She can eat. Something's wrong.

6 So this baby, who had not managed to gain hardly  
7 anything over the course of a month suddenly gained 8  
8 ounces in three days because they know she's going to get  
9 put in the hospital and people are going to start asking  
10 questions if she doesn't gain weight. And in that three  
11 days, she gains the 8 ounces that she had to gain. They  
12 walk in there and they get her weighed, and then they  
13 vanish; go completely under the radar. And I submit, they  
14 vanished because there were things they didn't want anybody  
15 asking.

16 What would happen if she got put in the hospital?  
17 Well, there'd be a drug test. There would be a blood test  
18 that could ultimately detect blood -- detect drugs in the  
19 blood. But ultimately, what happened is they leave and  
20 that's it. She's never seen again.

21 And that whole time period of January to June, he  
22 wants to pretend he didn't know she wasn't getting health  
23 care? He's home every day. He knows full well she's not  
24 getting health care.

25 He could take her himself. He's got a working

1 vehicle. She had a baby seat.

2 They didn't want people asking questions. And the  
3 very last time that Melissa Juergens from Easter Seals  
4 showed up was December 2012. Who was there when she was  
5 getting ready to leave? He walks in the door. He sees  
6 her; she sees him. He knows who she is. She was wearing  
7 her Easter Seals shirt.

8 He doesn't want people in the house, asking questions.  
9 They might lose their food stamps with him living there.  
10 And from that moment on, Easter Seals is never allowed back  
11 in that house. No home health care, no BabyNet, no home  
12 nurse, nothing.

13 And again, he's laid off January to June. He knows  
14 full well Easter Seals never came back. He didn't want  
15 them to come back.

16 The very idea that he would take this stand yesterday  
17 and manufacture, for the first time while he's on the  
18 stand, this ridiculous story about: "Oh, well, you know.  
19 what? That final weekend when I was drunk on Tecate, my  
20 wife wouldn't let me see the baby." It's ridiculous.

21 The truth is exactly what he told Detective Gooding  
22 that very first night. That's when the truth was to be  
23 laid bare. Madison had just died. Law enforcement's at  
24 the house. He doesn't have time to make up a story, so  
25 what you get it the truth.

1           And the testimony about that was absolutely clear.  
2           There was no -- there was no story about, "Oh, my wife  
3           wouldn't let me see the baby, blah, blah, blah." He said,  
4           "My wife has been sick on the couch. And when she's on the  
5           couch, she's sleeping."

6           And then he said the baby had been sick but he hadn't  
7           checked on her. Well, what we know is that he had been off  
8           for days. And here we see, when we're talking about the  
9           month of July, even the days he does work and he's not off,  
10          he gets off at 2:30. When we're talking about August, he's  
11          home every weekend. And when he works, he gets off at  
12          2:30, once again.

13          And that Friday night of course he was home. He had  
14          got off at 2:30. And he's home all day Saturday; he's home  
15          all day Sunday. He's home all day Monday when he woke up  
16          at 1. Wouldn't it be odd to not hear from a 13-month-old  
17          toddler during all that time and to not see her? Of course  
18          it would.

19          He knows exactly what's going on. This was nothing  
20          new. Shutting up Madison, locking her away, not worrying  
21          about her for days, is something that had been going on for  
22          a while.

23          And that weekend, on that Sunday and then into that  
24          Monday, according to his own testimony, the first time he  
25          ever even attempted to check on Madison was 9:30 on Monday

1 night. And she was already dead. How long had she been  
2 laying there in what Hunter Reed, the EMS worker, described  
3 as her degraded diaper? Who knows. Days, that thing had  
4 been on her?

5 Did he even call her by her name? Did he ever say  
6 Madison? I heard him say: "the child. It was her  
7 responsibility to feed the child."

8 Well, according to his own statement, the wife is sick  
9 and sleeping on the couch. He knows she's not feeding  
10 Madison.

11 One thing that cannot be denied no matter what happens  
12 in this case -- and no matter what, things cannot be  
13 changed. One thing that cannot be denied is that the scene  
14 tells the real story. Because the way it went down is they  
15 find Madison late Monday night, the end of Labor Day  
16 weekend, that long -- that long weekend that started when  
17 he got off work at 2:30 on Friday. And then they go to the  
18 hospital. And when they come back from the hospital, law  
19 enforcement's there.

20 And you heard the testimony about Deputy Ryan securing  
21 that scene so nobody could get inside; nobody could change  
22 anything. So how law enforcement found it when they walked  
23 in is exactly how they left it and exactly how it had been  
24 for days.

25 Well, what they found is right in the middle of the

1 kitchen, the three empty cartons of Tecate and the empty  
2 carton of Bud. And then, of course, there's beer in the  
3 refrigerator. That's what had been going on all weekend.

4 And what did the kitchen look like? There were no  
5 bottles in the sink. You've got the photographs. You'll  
6 get a chance to review them when you get back there. In  
7 that sink there's not a single bottle.

8 Why would he even waste his time talking about a  
9 bottle washer? There's no bottle washer in that sink.  
10 There's no bottle washer in the kitchen. You'll see the  
11 evidence.

12 This is what was in the kitchen: curdled milk inside  
13 bottles. A couple of bottles had been sitting there for  
14 days in his plain view. He knows exactly what's going on.  
15 Anybody looking at that kitchen knows there's not a fresh  
16 bottle; she hasn't been fed.

17 The couch where Tracy was laying -- his bedroom with a  
18 bottle laying on the floor, who knows how long it's been  
19 there? But we know he's fed Madison before. We know he  
20 could if he wanted to. He's got a bottle in his room.

21 And from that very bed where he lays, all he's got to  
22 do is lift his head up and he sees the bathroom where  
23 Madison's bath is, from his bed a perfect view right there  
24 into the bathroom. And her little baby bath, stuff all  
25 over it, hadn't been used for days. He knows exactly

1 what's going on.

2 Baby lotion in his bathroom, but he can't even take  
3 off that degraded diaper. He can't even check on her. He  
4 can't even call a doctor. Because he just doesn't care.

5 You heard the testimony. It's not an issue of  
6 finances. He had \$400 in his wallet. This is a con  
7 artist. The testimony you heard yesterday came from a con  
8 artist who has a conviction for false information to  
9 police, somebody who knows how to go to the Mexican store  
10 and get enough fake IDs where he can get a job and file  
11 taxes.

12 And then, he files taxes, and that's all a lie too.  
13 He claims two kids that don't even exist. Or if they do  
14 exist, they've never been in his house. Thousands of  
15 dollars back from the government, and yet he takes the  
16 stand yesterday and for the first time, comes up with this  
17 ridiculous story that he wasn't allowed to see Madison.

18 Well, that story is so flimsy. It floats just about  
19 as well as that staged scene they tried to come up with.  
20 Remember how a moment ago I said it's the scene that tells  
21 the story? This is how they found Madison's high chair  
22 when police got there the night she died and in the early-  
23 morning hours of 9/3: pushed away in a corner, trash on  
24 top of it. There's her baby-food jars collecting dust.

25 And then when they come back on September 12th, well,

1 there you go: a manufactured scene with a clean baby chair  
2 and food on top, as if she's being fed. It's all a farce.

3 And from the time line of what we know, that final  
4 weekend, you heard his testimony that he's not the one that  
5 went to Food Lion and got the 24-pack of Budweiser on  
6 Saturday night. That wasn't him; that was Tracy.

7 Well, where were you? "I was at home with Madison.  
8 But she was asleep."

9 What? Didn't he testify that he wasn't allowed to see  
10 Madison? Well, it turns out the wife is gone; she's not  
11 even there. He's home alone with her Saturday night.

12 And the undeniable tragedy of it all is that she still  
13 could have been saved. You heard the uncontroverted  
14 medical testimony from Dr. Welsh and Dr. Luberoff: This is  
15 chronic starvation that's not a matter of days or weeks,  
16 but months. Dr. Luberoff's estimation was a minimum of two  
17 months.

18 And how odd that there's not a single photograph of  
19 Madison on his own phone for the entire year of 2013. And  
20 then, that camera that they found in the home, the last  
21 dated photo of Madison was April 13th, 2013, months before  
22 she died. How odd that there's no longer any photos of  
23 Madison.

24 Didn't she have a first birthday? She would've turned  
25 1 in July. How's there not a single photograph of her

1 first birthday?

2 How long had she been shut away and forgotten? And  
3 the testimony of Dr. Welsh was absolutely succinct: lethal  
4 neglect. Lethal neglect: no food and no health care, even  
5 though Madison not only had an SSI check, she had full  
6 Medicaid. They didn't have to pay a dime. All they had to  
7 do was dial a doctor or put her in the car and take her  
8 there.

9 The law in this case is actually quite simple. It's  
10 not like a murder case, where the state is required to  
11 prove malice aforethought or premeditation. The element or  
12 standard in cases of homicide by child abuse is extreme  
13 indifference to human life.

14 And the statute that covers homicide by child abuse  
15 requires three elements. These elements are that a person  
16 is guilty of homicide by child abuse if the person causes  
17 the death of a child under the age of 11 -- Madison, we  
18 know, was under the age of 11 -- while committing child  
19 abuse or neglect. And I'll get to that in a moment.

20 But as I stated previously, this case encompasses the  
21 very definition of neglect under our law. And the death  
22 occurs under circumstances manifesting an extreme  
23 indifference to human life -- indifference -- indifference.  
24 All I got to do is feed her, but it's not my job.

25 And the definitions under this statute make it even

1 more clear how applicable the horrific facts of this case  
2 are to the law. Child abuse or neglect means an act or  
3 omission by any person which causes harm to the child's  
4 health or welfare. When we use the word act or omission,  
5 that means doing nothing, just doing nothing. Harm to a  
6 child's health or welfare occurs when a person inflicts or  
7 allows to be inflicted upon the child physical injury or,  
8 as we have here, fails to supply the child with adequate  
9 food, clothing, shelter, or health care, and the failure to  
10 do so causes a physical injury or condition resulting in  
11 death. All of these definitions apply, and all of the  
12 elements in this case have been met.

13       When you evaluate the law and apply it to the facts,  
14 it covers neglect, as I've previously mentioned. And we  
15 know that chronic starvation is an ongoing event that, for  
16 Madison, resulted in the complete wearing away of any  
17 subcutaneous fat or adipose tissue. It was literally eaten  
18 up by her organs, her vital organs, in order for her to  
19 stay alive and just maintain a heartbeat and take a breath.

20       And in those final days, as Dr. Luberoff testified, or  
21 even the final weeks, would she have even been able to have  
22 any motor skills whatsoever? She couldn't roll over.  
23 She's laying there with the pressure sores. Could she even  
24 take a bottle? Could she even swallow?

25       Anybody who saw her would know she was gravely ill.

1 For the weeks that went on, anybody who looked at her would  
2 be great -- would know and recognize her to be gravely ill.

3 It was absolutely abundantly apparent to Hunter Reed  
4 as soon as he looked at her that night, held her in his  
5 arms. He said as soon as he held her, she didn't feel like  
6 a 1-year-old; she didn't look like a 1-year-old. And he  
7 had to check her age because he couldn't figure out how  
8 this 9-pounder who looked like she did, almost a skeleton,  
9 was somehow 1 years old.

10 Now, the judge will also charge you on something  
11 called proximate cause. Proximate cause means the cause of  
12 death. And here you've heard the testimony of Dr. Welsh  
13 and Dr. Luberoff that the cause of death is the denial of  
14 food; that she could not have maintained life in that  
15 condition. She could no longer survive with that extreme  
16 starvation.

17 But proximate cause, as the judge will charge you,  
18 includes that it doesn't have to be the sole cause. One or  
19 both or who knows also gave her drugs. So if the argument  
20 is, Well, that somehow contributed to it, even if there's  
21 no sound evidence to back it up, if that's the argument,  
22 well, that's not the law. The law is if she's in that  
23 state because of his actions and his neglect and the  
24 chronic malnutrition and starvation, then if she catches a  
25 cold and the cold contributes, the cause of death is still

1 starvation.

2 And it's the same whether we're talking about drugs,  
3 whether we're talking about an infection from diaper rash.  
4 All of it comes out of that first, initial, proximate  
5 condition. And that is the starvation. And that's the law  
6 as the judge will charge you.

7 And finally, I will address the law on reasonable  
8 doubt just briefly, because Your Honor is about to charge  
9 you on reasonable doubt. And his charge will be far  
10 greater than my summation of it.

11 But I ask that you remember that reasonable doubt does  
12 not -- it does not include every possible doubt. The law  
13 does not require that the state overcome every possible  
14 doubt. Reasonable doubt is proof that leaves you firmly  
15 convinced.

16 And in this case I submit the proof is absolutely  
17 clear. Madison fought to stay alive until there was  
18 nothing left in her to fight. So when you evaluate the  
19 evidence, when you look at her, evaluate this baby who  
20 struggled to achieve even the smallest amounts of progress.  
21 And she was getting there. And then remember the skin and  
22 the bones and the long, agonizing fight to the end because  
23 this case and the facts of this case demand that it be  
24 remembered and demand justice.

25 Let this be the last time -- it must be the last time

1 that a child starves to death in this state and in this  
2 county. And the tragedy is that he could've prevented it.  
3 He could've prevented it. But he refused to even lift a  
4 finger to aid her.

5 The correct verdict in this case is homicide by child  
6 abuse, that child abuse being neglect, lethal neglect, of  
7 Madison Garcia. Thank you.

8 THE COURT: Thank you, Ms. Mayes. Let me ask: My  
9 charge, it's -- it's not terribly long, probably ten  
10 minutes. Do y'all need a break before that, or are you  
11 ready to go -- just continue.

12 FOREPERSON: Go.

13 THE COURT: Continue? Okay.

14 MS. ZMROCZEK: Your Honor, could -- could we get a  
15 copy of that? Could we get it?

16 THE COURT: Of what? I ---

17 MS. ZMROCZEK: Of the ---

18 THE COURT: You've got -- you've got what I gave you  
19 earlier other than ---

20 MS. ZMROCZEK: Oh, okay.

21 THE COURT: --- those few changes.

22 MS. ZMROCZEK: Okay.

23 CHARGE OF THE COURT

24 THE COURT: Folks, during the course of the trial --  
25 well, when we started this case, you recall that I said

1 that you were the judges of the facts and I'm the judge of  
2 the law. And during the portion of the trial where the  
3 attorneys have been presenting to you the evidence and the  
4 facts, it's been appropriate for me to be up there out of  
5 the way. But we now have reached the portion of this trial  
6 where you and I are in this together: you as the judges of  
7 the facts and me as the judge of the law. So I come down  
8 to be with you to give you the law on the -- that applies  
9 in this case.

10 I'm going to read this verbatim. It's not terribly  
11 long. But I'm going to read it verbatim so that I don't  
12 misquote anything or leave anything out.

13 Mr. Foreman and members of the jury, you've heard the  
14 evidence and the arguments of both parties. I'm now going  
15 to explain to you the law which applies to this action.

16 The indictment charges the defendant, Filiberto  
17 Garcia-Campos, with the offense of homicide by child abuse.  
18 I remind you that the fact that the defendant was arrested,  
19 charged, and indicted in this case is not evidence in this  
20 case and it cannot be considered by you as evidence of  
21 guilt in this case, nor does it create any presumption or  
22 inference of guilt. The indictments simply are the formal,  
23 written instrument which brings a -- a charge into this  
24 Court. It is the charge made against the defendant. It is  
25 not in any way evidence in the case.

1           Now, I'm going to give you a copy of these  
2 instructions in written form to have with you back in the  
3 jury room. During your deliberations you may refer to  
4 these instructions to guide you in your decision-making.  
5 You must consider these instructions as a whole and not  
6 follow some and ignore others.

7           Now, the defendant has pled not guilty to the  
8 indictment. And that plea puts the burden on the state to  
9 prove the defendant guilty. A person charged with  
10 committing a criminal offense in South Carolina is never  
11 required to prove him- or herself innocent.

12           I charge you that it is an important rule of law that  
13 the defendant in a criminal trial, no matter what the  
14 seriousness of the charge may be, will always be presumed  
15 to be innocent of the crime for which the indictment has  
16 been issued unless guilt has been proven by evidence  
17 satisfying you of that guilt beyond a reasonable doubt.

18           This presumption of innocence does not end when you  
19 begin your deliberations. But it accompanies the defendant  
20 throughout the trial until you reach a verdict of guilt  
21 based on evidence satisfying you of that guilt beyond a  
22 reasonable doubt.

23           The presumption of innocence is not a mere legal  
24 theory. It's not just a legal phrase. But it is a  
25 substantial right to which every defendant is entitled

1 until you are -- unless you, the jury, are satisfied from  
2 the evidence of the guilt of the defendant beyond a  
3 reasonable doubt.

4 So what is a reasonable doubt in the law? Some of you  
5 may have served on jurors in civil case, where you were  
6 told that is only necessary to prove that a fact is more  
7 likely true than not true, such as by the greater weight,  
8 or the preponderance of the evidence. In criminal cases  
9 the state's proof must be more powerful than that. It must  
10 be beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that leaves  
12 you firmly convinced of the defendant's guilt. There are  
13 very few things in this world that we know with absolute  
14 certainty. And in criminal cases the law does not require  
15 proof that overcomes every possible doubt.

16 If, based on your consideration of the evidence, you  
17 are firmly convinced that the defendant is guilty of the  
18 crime charged, you must find the defendant guilty. On the  
19 other hand, if you think there is a real possibility that  
20 the defendant is not guilty, then you must give the  
21 defendant the benefit of the doubt and find him not guilty.

22 I remind you that during this trial, you had I have  
23 certain duties to perform. As the trial judge, it is my  
24 responsibility to preside over the trial of this case. And  
25 I also have the duty to rule on the admissibility of the

1 evidence offered during the trial.

2 I have the additional duty to charge you the law  
3 applicable to this case. Is it your duty as jurors to  
4 accept and to apply the law as I now state it to you. If  
5 you already have any idea as to what the law is or what the  
6 law ought to be and it does not agree with what I now tell  
7 you the law is, you must abandon your idea, because you are  
8 sworn to accept the law and apply the law exactly as I  
9 state it to you.

10 As I told you at the start of this case, the jury is  
11 the sole and the exclusive judge of the facts of a case.  
12 The law does not allow me to have an opinion about the  
13 facts in this case. This is a matter solely for you, the  
14 members of the jury, to determine. As jurors it is your  
15 duty to determine the effect, value, weight, and truth of  
16 the evidence presented during the course of this trial.

17 To determine the facts in this case, you're going to  
18 have to evaluate the credibility, or the believability, of  
19 the witnesses. And credibility simply means that: It just  
20 means believability. It becomes your duty as jurors to  
21 analyze and to evaluate the evidence and to determine which  
22 evidence convinces you of its truth. You can believe as  
23 much or as little of each witness's testimony as you think  
24 is proper.

25 You, the jury, should assess the credibility of each

1 of the witnesses. You may consider whether any witness has  
2 exhibited to you any bias, interest, prejudice, or other  
3 motive in the case. You may also consider the appearance  
4 and the manner of a witness while on the witness stand.

5 You do not determine the truth merely by counting the  
6 number of witnesses presented by each side. Throughout  
7 this process you have but one objective. And that is to  
8 seek the truth regardless of its source.

9 Now, the rules of evidence ordinarily do not permit  
10 witnesses to testify to opinions or conclusions. There's  
11 an exception to this rule that exists for witnesses that we  
12 call expert witnesses. A witness who, by education and  
13 experience, has become an expert in some art, science,  
14 profession, or calling may state an opinion as to the  
15 relevant and the material matter in which that witness  
16 claims to be an expert and may also state the reasons for  
17 the opinion.

18 You should consider any expert opinion received in  
19 evidence in this case and, like any other evidence, give it  
20 the weight that you think it deserves. An expert witness's  
21 testimony is to be given no greater weight than that of any  
22 other witness simply because that witness is an expert.  
23 Further, you're not required to accept an expert's opinion  
24 even though it's not contradicted.

25 Now, there are two types of evidence which are

1 generally presented during a trial. There's direct  
2 evidence and there's circumstantial evidence. Direct  
3 evidence directly proves the existence of a fact, and it  
4 does not require deduction. Circumstantial evidence is  
5 proof of a chain of facts and circumstances indicating the  
6 existence of a fact.

7 Crimes may be proven by circumstantial evidence. The  
8 law makes no distinction between the weight or value to be  
9 given to either direct or circumstantial evidence.  
10 However, to the extent that the state relies on  
11 circumstantial evidence, all of the circumstances must be  
12 consistent with each other and, when taken together, point  
13 conclusively to the guilt of the accused beyond a  
14 reasonable doubt. If these circumstances merely portray  
15 the defendant's behavior as suspicious, then that proof has  
16 failed.

17 The state has the burden of proving the defendant  
18 guilty beyond a reasonable doubt. And this burden rests  
19 with the state regardless of whether the state relies on  
20 direct evidence, circumstantial evidence, or some  
21 combination of the two.

22 Now, where a person inflicts a fatal injury on  
23 another, that other person -- and that other person dies as  
24 a later -- at a later time, you must be convinced beyond a  
25 reasonable doubt that the infliction of the first injury

1 was the proximate cause of the victim's death. Proximate  
2 cause is the direct cause; it is the immediate cause; it is  
3 the efficient cause. It is the cause that, without which,  
4 the death of the victim would not have resulted.

5 There must be a chain of causation from the time of  
6 the injury inflicted by the defendant until the time of the  
7 victim's death. Proximate cause does not necessarily mean  
8 that it occurred immediately prior to the death.

9 There may be more than one proximate cause. The acts  
10 of two or more persons may combine together to be a  
11 proximate cause of the death of a person. The defendant's  
12 act may be regarded as the proximate cause if it is a  
13 contributing cause of the death of the victim.

14 The fact that other causes also contributed to the  
15 death of the victim does not relieve the defendant from  
16 responsibility. The defendant's act need not be the sole  
17 cause of the death, but must be a proximate contributing --  
18 proximate cause contributing to the death of the victim.

19 Now, Mr. Garcia is charged with homicide by child  
20 abuse. The state must prove beyond a reasonable doubt that  
21 the defendant caused the death of a child under the age of  
22 11 while committing child abuse or child neglect.

23 Child abuse or neglect is an act or a failure to act  
24 which causes harm to the child's physical health or  
25 welfare. Harm to the child's physical health or welfare

1 means that the defendant either: (1) inflicted or allowed  
2 to be inflicted on the child physical injury; or (2) failed  
3 to supply the child with adequate food, clothing, shelter,  
4 or health care, and this failure caused a physical injury  
5 or condition which caused the death; or (3) abandoned the  
6 child, causing the child's death. The state must also  
7 prove beyond a reasonable doubt that the death occurred  
8 under circumstances showing an extreme indifference to  
9 human life.

10 Now, Mr. Foreman and ladies and gentlemen of the jury,  
11 as you return to your -- retire to your deliberations, I  
12 want to express to you the hope that each of you will be  
13 mindful of the importance of your responsibility. As the  
14 presiding officer of this Court, I am vitally concerned  
15 that whatever verdict you find will be the result of your  
16 going into the jury room and confining your consideration  
17 to the evidence and to the law that you've heard in this  
18 courtroom, weighing it fairly and impartially, as I have  
19 every confidence you will do.

20 Your verdict in this case cannot be based on sympathy,  
21 compassion, prejudice, or emotion or some other  
22 consideration that's not found in the evidence. Remember,  
23 your verdict must be unanimous..

24 Now, Mr. Camp, in the front of this notebook -- this  
25 notebook will be back in the jury room with you. And in

1 the front I've placed a form; it's a verdict form. At the  
2 top of it, it has the caption of the case.

3 There's only one charge in this -- in this -- in this  
4 case; that is the homicide by child abuse. So there are  
5 two options. Either you, the jury, would find the  
6 defendant not guilty or guilty, based on your view of the  
7 evidence.

8 Whatever verdict the jury does agree on, sir, I'd ask  
9 that you mark the appropriate spot on the indictment -- or  
10 -- excuse me -- on the -- on the sentencing sheet. And --  
11 and then, you'll -- you'll sign as the foreman. When you  
12 have reached a unanimous verdict, you can knock on the door  
13 and let the bailiff know that you've reached a verdict.

14 Now, what I'm going to do is I'm going to send you  
15 back into the jury room. But, Mr. Camp, don't begin the  
16 deliberations quite yet. I'm going to send you back there.  
17 I'm going to just quickly review with the attorneys to make  
18 sure that I haven't either misquoted anything or have left  
19 anything out. If I do need to make any changes to the  
20 instructions, I'll bring you out and -- and give those to  
21 you.

22 If there -- if the instructions are good as -- as I've  
23 given then, I'll then -- we'll collect these exhibits and  
24 you'll get the exhibits and the notebook. When you receive  
25 these items, that's your cue to begin your deliberations.

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Okay?

So if you'd please, step back into the jury room and await these items.

(Whereupon, the jury exited the courtroom at 12:31 p.m.)

(Off the record briefly.)

THE COURT: Are there any exceptions or objections to the charge from the state?

MS. MAYES: None from the state, Your Honor.

THE COURT: From the defense?

MS. ZMROCZEK: No.

THE COURT: Guys, it's going to be a little bit of a task here to go over with Maryann everything that's in evidence because, obviously, she came and pinched-hit ---

MS. MAYES: Uh-huh.

THE COURT: --- for Steve ---

MS. MAYES: Uh-huh.

THE COURT: --- in the beginning of the week. So let's -- if y'all will get with her.

MS. MAYES: Okay.

THE COURT: And, Hope, if you have ---

DEPUTY CLERK OF COURT: Yes, sir.

THE COURT: --- some help you can give in this ---

DEPUTY CLERK OF COURT: Yes, sir. I can do that.

THE COURT: And let's make sure that everything that's

1 supposed to be back with the jury is there.

2 (Off the record from 12:32 p.m. until 12:52 p.m.)

3 THE COURT: All right. Make sure you send Mr. Rios  
4 out.

5 (Whereupon, the jury began its deliberations at 12:52  
6 p.m.)

7 THE COURT: All right. It's my understanding that the  
8 jury has reached a verdict. Is the state ready to proceed  
9 to receiving the verdict?

10 MS. MAYES: Yes, sir, Your Honor.

11 THE COURT: Is the defense ready?

12 MS. ZMROCZEK: Yes, Your Honor.

13 THE COURT: All right. Please bring the jury in, sir.

14 (Off the record briefly.)

15 THE COURT: Folks, before the jury comes in, let me  
16 just remind -- tell them to hold on just ---

17 DEPUTY CLERK OF COURT: (To the bailiff) Hold up.

18 THE COURT: --- just a minute.

19 THE BAILIFF: Okay.

20 THE COURT: I -- I don't know what the verdict is. I  
21 -- I sit here as all of you do and -- and just wonder. But  
22 the thing is -- and what I tell juries all the time -- or  
23 folks all the time, that whether you agree with the jury's  
24 verdict or disagree with it, it's important that the jury's  
25 verdict is received in a professional manner. So I would

1 ---

2 MS. ZMROCZEK: I -- I just had one question for you.  
3 You did release the alternate, right?

4 THE COURT: Yeah.

5 DEPUTY CLERK OF COURT: Yes.

6 MS. ZMROCZEK: Oh, okay. I thought so.

7 THE COURT: But -- so the jury's verdict should be  
8 received in a professional manner. I -- I'm not  
9 insensitive to the fact that cases that involve the loss of  
10 -- of life tend to be highly emotional for the folks that  
11 are involved or affected. But I would ask that if you  
12 cannot or feel that you cannot contain your emotion,  
13 whatever the verdict may be, that you please remove  
14 yourself from the courtroom.

15 Because if there are any emotional outbursts, I'm  
16 going to have to take action and I don't want to do that.  
17 So again, I don't -- I don't ask you to agree or disagree.  
18 I simply ask that it be received in a professional manner.

19 Okay? So let's -- let -- go ahead and let's bring the  
20 jury in.

21 (Off the record briefly.)

22 (Whereupon, the jury entered the courtroom at 1:20  
23 p.m.)

24 THE COURT: Mr. Camp, has the jury reached a unanimous  
25 verdict, sir?

1 FOREPERSON: Yes, sir.

2 THE COURT: If you could please pass that to the  
3 bailiff for me, I ---

4 FOREPERSON: Yes, sir.

5 THE COURT: --- would appreciate it. Thank you.

6 FOREPERSON: (Complied.)

7 THE BAILIFF: Thank you.

8 THE COURT: All right. And if you would please  
9 publish the jury's verdict.

10 VERDICT OF THE JURY

11 DEPUTY CLERK OF COURT: (As read): "Indictment 2014-  
12 GS-32-1347, the State v. Filiberto Garcia-Campos, we, the  
13 jury, find the defendant, Filiberto Garcia-Campos, on the  
14 charge of homicide by child abuse, guilty of homicide by  
15 child abuse." And it is so signed by the foreman, dated  
16 June 5th, 2015.

17 Mr. Foreman, ladies and gentlemen of the jury, if this  
18 is your verdict, please indicate each of you by raising  
19 your right hand.

20 JURORS: (Raised right hands.)

21 DEPUTY CLERK OF COURT: All hands raised ---

22 THE COURT: All right.

23 DEPUTY CLERK OF COURT: --- Your Honor.

24 THE COURT: Thank you. Anything further from this  
25 jury?

1 MS. ZMROCZEK: We would ask that they be polled  
2 individually, Your Honor.

3 THE COURT: All right. Madam clerk, if you would  
4 please ---

5 DEPUTY CLERK OF COURT: Yes, sir.

6 THE COURT: --- poll the members of the jury, using  
7 their juror number.

8 DEPUTY CLERK OF COURT: Yes, sir. As I call your  
9 number, please hold your hand up where I can see it, where  
10 I can recognize you. I will ask you -- it's a two-prong  
11 question -- as to the verdict, was this your verdict and is  
12 it still your verdict. Once I ask the second part, then  
13 give me your response, please.

14 Juror No. 45, as to the verdict, was this your verdict  
15 and is it still your verdict?

16 JUROR: Yes.

17 DEPUTY CLERK OF COURT: Number 118, as to the verdict,  
18 was this your verdict and is it still your verdict?

19 JUROR: Yes.

20 DEPUTY CLERK OF COURT: 112, 45, as to the verdict,  
21 was this your verdict? Is it still your verdict?

22 JUROR: Yes.

23 DEPUTY CLERK OF COURT: Number 1, as to the verdict,  
24 was this your verdict? Is it still your verdict?

25 JUROR: Yes.

1           DEPUTY CLERK OF COURT: Number 30, as to the verdict,  
2 was this your verdict? Is it still your verdict?

3           JUROR: Yes.

4           DEPUTY CLERK OF COURT: Number 128, as to the verdict,  
5 was this your verdict? Is it still your verdict?

6           JUROR: Yes.

7           DEPUTY CLERK OF COURT: Number 19 -- oh. I apologize,  
8 Your Honor. He was the one that was excused.

9           THE COURT: All right.

10          DEPUTY CLERK OF COURT: Number 25, as to the verdict,  
11 was this your verdict and is it still your verdict?

12          JUROR: Yes.

13          DEPUTY CLERK OF COURT: Number 111, as to the verdict,  
14 was this your verdict? Is it still your verdict?

15          JUROR: Yes, ma'am.

16          DEPUTY CLERK OF COURT: Number 200, as to the verdict,  
17 was this your verdict? Is it still your verdict?

18          JUROR: Yes.

19          DEPUTY CLERK OF COURT: Number 83, as to the verdict,  
20 was this your verdict? Is it still your verdict?

21          JUROR: Yes.

22          DEPUTY CLERK OF COURT: Number 142, as to the verdict,  
23 was this your verdict? Is it still your verdict?

24          JUROR: Yes.

25          DEPUTY CLERK OF COURT: I think I -- did I get

1 everybody?

2 JUROR: (Gestured.)

3 DEPUTY CLERK OF COURT: No. I thought I missed you.  
4 What is your number, ma'am?

5 JUROR: 126.

6 DEPUTY CLERK OF COURT: I skipped right over you. I  
7 apologize. Number 126, as to the verdict, was this your  
8 verdict? Is it still your verdict?

9 JUROR: Yes.

10 DEPUTY CLERK OF COURT: Thank you. All jurors polled,  
11 Your Honor.

12 THE COURT: All right. Thank you very much, ma'am.

13 Ladies and gentlemen, I want to thank you for your  
14 service this week. And I know that -- it wasn't easy  
15 because it was a weeklong case. There were times I had you  
16 coming in early. We started a little bit late. I had you  
17 leaving early and it -- it -- jury service isn't easy, but  
18 it's even more difficult when you are involved in a  
19 weeklong trial and there's a lot of stopping and going.  
20 And sometimes you probably felt a little bit like a yo-yo.

21 But your -- your service it -- this week has been  
22 greatly appreciated. We can't do what we do here -- the --  
23 the work of the Court doesn't exist without good citizens  
24 such as yourselves that -- that assist us in doing the work  
25 that we do here.

1 I'm going -- you -- you've -- you've earned that  
2 exemption that I spoke about on Monday so that if you -- in  
3 the next -- balance of this year, all of 2016, and all of  
4 2017, if you receive a summons for jury service in circuit  
5 court, you can exercise that option on -- on that exemption  
6 and be excused. But I tell people all the time, it is just  
7 a -- it -- it is just an exemption. It doesn't mean you're  
8 not qualified to serve.

9 And if you do receive another summons and you wish to  
10 serve, I would encourage you to do so. It -- it's -- it's  
11 a very high honor. And it's a very high position that you  
12 find yourself in, in serving your community.

13 There -- many people say this, and I tend to agree  
14 with them, that -- that other than serving your country in  
15 the military, this is probably the greatest service you can  
16 give to your country. And so I appreciate that -- your  
17 service this week, the seriousness with -- within which you  
18 conducted your business. Everyone was very attentive  
19 throughout the course of the trial. And I appreciate that.

20 Now, I'm going to excuse you. But -- but I -- I tell  
21 juries all the time: You folks are the ones that heard  
22 this case and you've done the work. We're going to  
23 proceed, in -- in just a few moments, to the sentencing  
24 phase of -- of the trial, based on your verdict.

25 And so if you wish to be present for that, I certainly

1 would encourage you to remain if you wish to be here for  
2 that. But you also are free to go. So you -- you've got  
3 -- you -- either one of those options. And I have -- I  
4 have people all the time who some stay and some go. I have  
5 some cases where everybody leaves. I have some cases where  
6 everybody stays. It's -- it's just personal to you.

7 So if you would like to be excused and -- and you are  
8 excused -- if you'd like to leave, you're welcome to do  
9 that. But if you want to remain for the sentencing phase,  
10 you certainly are -- are welcome to do that as well. Okay?

11 And, Mr. Camp?

12 FOREPERSON: Yes, sir.

13 THE COURT: We -- Hope's going to need you to ---

14 FOREPERSON: Uh-huh.

15 THE COURT: --- sign the indictment as the foreperson.  
16 So if you would do that.

17 All right. At this -- at this stage I want to take up  
18 any motions that may be at the -- after the reading of the  
19 verdict.

20 (Whereupon, the jury exited the courtroom at 1:27  
21 p.m.)

22 MS. ZMROCZEK: Thank you, Your Honor.

23 THE COURT: Yes ---

24 MS. ZMROCZEK: With ---

25 THE COURT: --- Ms. Zmroczek.

1 MS. ZMROCZEK: --- with -- with no disrespect to the  
2 jury, since members of them are still here, we would ask,  
3 by my count -- that the verdict be set aside. By my count  
4 there were 16 witnesses and at least 100 exhibits, Your  
5 Honor. The jury, by my time clock, was out about 14  
6 minutes. Your Honor, we would certainly assert that that  
7 certainly -- that was not enough time to have any sort of  
8 meaningful deliberation. And we would ask that the verdict  
9 be set aside and ---

10 THE COURT: Well, I -- obviously, I'm not in the jury  
11 room. And it -- it -- it may very well just speak to the  
12 strength of the state's case. And -- and so I'm going to  
13 respectfully deny your motion to set aside the verdict on  
14 that ---

15 MS. ZMROCZEK: Thank you.

16 THE COURT: --- on that ---

17 MS. ZMROCZEK: And then, lastly ---

18 THE COURT: --- motion.

19 MS. ZMROCZEK: And then, lastly, Your Honor, we would  
20 respectfully renew all of our objections specifically to  
21 the -- all of the objections, but specifically to the  
22 photos that were produced.

23 THE COURT: All right. And those are 'all -- that's --  
24 those are certainly noted. And as -- as -- the Court's  
25 ruling on those earlier will stand.

1 All right. Is the state ready to -- anything further  
2 from the defense?

3 MS. ZMROCZEK: (Shook head from side to side.)

4 THE COURT: Is the state ready to proceed to  
5 sentencing?

6 MS. MAYES: Yes, sir, Your Honor. And just briefly,  
7 as a matter for the record, I do want the record to reflect  
8 that throughout the trial, both the state and the defense  
9 were using the overhead projector for use of the exhibits  
10 and many, many of the photos were exhibited to the jury  
11 throughout the trial by means of the overhead projector.

12 THE COURT: All right.

13 MS. MAYES: I'm going to go ahead and pass up the  
14 sentencing sheet at this time.

15 THE COURT: Yes, ma'am. All right. I'll be more than  
16 happy to -- to hear from the state with regards to the  
17 issue of sentencing. And if there is anyone who wishes to  
18 address the Court, I'll be happy to hear from them.

19 MS. MAYES: Yes, sir, Your Honor. As the Court is  
20 aware, there was the prior record from 2008 for providing  
21 false information and a public disorderly conduct. That  
22 was out of Chester County.

23 Regarding sentencing, Your Honor, per the statute, the  
24 sibling of Madison, which is Cameron G. is the  
25 surviving victim. His foster parents, who have been

1 raising him since time of this ordeal, Cliff and Christina  
2 Derienzo, are here, Your Honor, and they would like to  
3 present victim-impact testimony on Cameron's behalf.

4 THE COURT: All right.

5 MS. ZMROCZEK: Your Honor, just to preserve the  
6 record, I object to this testimony.

7 THE COURT: On what basis?

8 MS. ZMROCZEK: On the basis that, Your Honor, they --  
9 they were not -- they actually stayed with some other  
10 people for a while and that there have been numerous  
11 psychological reports that I have not been provided  
12 regarding the counseling and what's -- what's been  
13 discussed with the child. I know that DSS had letters  
14 from Mr. Garcia that he kept trying to communicate with his  
15 child during the time that -- before he was taken away, and  
16 -- and they weren't allowed to do so, Your Honor.

17 It just -- I feel like that the victim-impact  
18 statement from an unrepresentative person who is a minor and who  
19 has not been able to be evaluated is -- is just a --  
20 unfairly prejudicial.

21 THE COURT: All right. I don't -- I don't see how the  
22 Court can refuse to allow a victim ---

23 MS. ZMROCZEK: Certainly.

24 THE COURT: --- to have ---

25 MS. ZMROCZEK: I understand, Your Honor.

1 THE COURT: --- be heard.

2 MS. ZMROCZEK: I was just preserving ---

3 THE COURT: And so I ---

4 MS. ZMROCZEK: --- that issue.

5 THE COURT: --- I -- I would respectfully overrule  
6 that objection. And I will hear from -- from the victims.

7 MS. ZMROCZEK: Uh-huh.

8 MS. MAYES: Your Honor, Cameron is 9 years of age.

9 THE COURT: All right.

10 (Whereupon, Ms. Mayes and Ms. Zmroczek conferred.)

11 MS. MAYES: He has been living with the Derienzos.

12 This is -- they are foster parents. This is a DSS  
13 placement. They -- he's been with them for over a year.  
14 They have their own children as well, and he has  
15 assimilated into the family. And they are pursuing  
16 adoption.

17 THE COURT: All right. Be happy to hear from you,  
18 ma'am.

19 MS. DERIENZO: Thank you very much. I would ask that  
20 the Court please consider the following statement when  
21 rendering a sentence for Filiberto Garcia. (As read):  
22 Cameron entered our home as a broken child, hesitant to  
23 trust. He has spent several months adapting to a new life  
24 and continues to work on building that trust.

25 Cameron asks us frequently if he will be allowed to

1 stay in our home. And every night he asks us, "Are you  
2 tucking me in?" Even after all of this time, he is still  
3 unsure if we really mean it.

4 My husband and I attempt to assure him every day that  
5 he isn't going anywhere; our love will never change; not a  
6 night will go by that he will not be tucked in or that his  
7 needs will not be met in our home.

8 His future relationships will forever be impacted by  
9 the occurrences in his biological home, as they have  
10 crafted a foundation of fear to trust. The reality is that  
11 no matter how much love we show Cameron or the fact that  
12 we've never once missed a night tucking him in, he will  
13 never fully trust us, considering the persons that he  
14 trusted most in this life betrayed him by neglecting his  
15 needs and ending the life of his sister, Madison.

16 Cameron speaks frequently of specific instances that  
17 took place in his biological home. His negative memories  
18 can be triggered at any time from things such as food,  
19 words, holidays, events, and so forth. For instance,  
20 Cameron speaks frequently about being left alone and taking  
21 care of Madison. Cameron says he would get Madison from  
22 her crib when he could and take care of her.

23 Cameron also speaks of begging to feed Madison, only  
24 to be turned away. He says he knew that she needed to eat  
25 at 7 years old but doesn't understand why they wouldn't

1 feed her.

2 Cameron still asks us before he gets anything to eat  
3 in our home, and that's including a glass of water. He has  
4 yet to grasp that basic comforts are given freely by people  
5 who love and care for him.

6 Cameron vividly talks about how dry Madison's mouth  
7 was and that it was so dry, it was hard for him to give her  
8 a bottle right before she died. He has told numerous  
9 accounts of this to any and everyone that would listen as  
10 perhaps a method of coping with this tragedy.

11 Cameron speaks about the night that Madison died and  
12 how she was in her crib with her eyes wide open. Cameron  
13 says he knows she was dead because her eyes wouldn't close  
14 and she would not cry.

15 Cameron talks about all of the flashing lights and  
16 sirens when she died. Even now when we pass an ambulance  
17 or a police car, he'll make a comment about, "That's who  
18 came to get Madison."

19 Cameron loved Madison. And throughout the course of  
20 his life, he'll always be taken back to that painful memory  
21 of her death by various experiences.

22 Even now Cameron references these memories if he sees  
23 a baby, if he hears her name, if he sees something on  
24 television about a baby, or if he hears sirens. These  
25 memories of her tragic life and death will always haunt him

1 throughout his days and potentially impact Cameron as he  
2 has his own family one day.

3 It's hard to predict the future. But I question if  
4 Cameron will ever be able to have a normal relationship  
5 based on the traumatic experiences suffered in his  
6 biological home.

7 Along with the impact that the homicide of Madison  
8 Garcia had on Cameron, I would ask that the Court can  
9 please consider the impact of his educational neglect when  
10 rendering your sentence. Cameron unfortunately was not  
11 allowed to attend school. His educational neglect has  
12 caused him to be years behind his peers, and he is  
13 currently enrolled in a first-grade -- first-grade  
14 classroom. And it's hard for him to understand why he is  
15 still learning kindergarten and first-grade concepts at the  
16 age of 9.

17 The impact this will have on him long-term, I assure  
18 you, is significant and overwhelming. Children can be very  
19 cruel and even more so as they age. I can only imagine the  
20 ridicule Cameron will face as a highschool student, should  
21 he be able to stay on track and enter the ninth grade as an  
22 18-year-old.

23 Cameron still continues to struggle with his everyday  
24 life skills. The educational foundation and guidance  
25 Cameron was entitled to receive by any parent was never

1 given to him. And throughout the course of his life, he  
2 will always endure the consequences of this neglect.

3 As you can see, no matter the home he's in, the school  
4 he's in, the positive experiences he may experience in our  
5 home and moving forward, he'll never be able to escape his  
6 past. I can promise you that every time Cameron revisits a  
7 memory, he is victimized to the extent all over again.

8 During the course of this trial, I -- I hear Cameron's  
9 biological father described at one point as being a doting  
10 father. I would ask that you think about this statement.  
11 The statement as truthful as staying -- saying that Madison  
12 Garcia is alive and in this courtroom right now.

13 Doting fathers are involved in their children's lives.  
14 They love them without reservation. And they'd do anything  
15 under their -- their capability to make sure that their  
16 children are taken care of. Doting fathers don't allow  
17 their -- allow their children to die at the hands of  
18 starvation.

19 I would ask the Court to consider imposing the maximum  
20 sentence of life in prison for Filiberto Garcia. Please  
21 think of how Madison suffered: the days, the weeks, and  
22 possible months of pain she endured, all while Cameron  
23 watched idly by.

24 Think of how much Cameron has lost in his nine short  
25 years of life. He lost his only biological sibling, his

1 biological parents, the ability to trust, good memories of  
2 his childhood, holidays and other celebrations with his  
3 sister, Madison, the ability to even tell her how much he  
4 loves her or even happy birthday. He misses the hugs from  
5 her and the ability to stand by Madison's side as she  
6 experiences major life stones throughout her life, as well  
7 as she to stand by his.

8 As Cameron ages, he'll never fully forget the past and  
9 be able to move forward. His life has been forever changed  
10 and impacted. I asked Cameron: "If you could say one  
11 thing to your dad, what will it be?" And I'll read that  
12 statement that Cameron wrote.

13 (As read): "Why didn't you feed Madison? It's your  
14 fault, Dad. You ruined my life. I miss Madison."

15 Justice was served recently, as Tracy Roach received a  
16 sentence of life in prison. Your Honor, there are people  
17 in this courtroom that love and support Madison and  
18 Cameron. We are all seeking the ultimate justice. That  
19 justice, Your Honor, would be to impose a maximum sentence  
20 of life in prison for Filiberto Garcia-Campos.

21 Please honor -- please, Your Honor, let Madison and  
22 Cameron's voice be heard and justice served today by  
23 imposing that maximum life sentence and, I would say, no  
24 less than life for a life lost way too soon. Thank you.

25 THE COURT: Thank you, ma'am.

1 MS. MAYES: That is all from the state, Your Honor.

2 THE COURT: All right. I want to thank both of you  
3 for -- for your service as foster parents. And it's  
4 incredibly special that the two of you have that kind of  
5 love for a little boy who you don't even know who you are  
6 coming to know, obviously. But I thank you for that  
7 service.

8 And I don't know a lot about the family courts. I  
9 don't -- I didn't practice in the family courts. But I --  
10 I -- I hope and pray that the adoption goes well and that  
11 that -- that will -- will come to fruition for you. Thank  
12 you.

13 MR. DERIENZO: Thank you.

14 THE COURT: All right. Ms. Zmroczek, I'll be more  
15 than happy to hear from you and then anyone else who may  
16 wish to address the Court.

17 MS. ZMROCZEK: Thank you. There is no one else. Mr.  
18 Garcia's entire family, since Cameron has been taken away  
19 from him, is in Mexico. His -- I've been on the phone with  
20 his mom and sister. His dad did pass away when he was 2  
21 years old.

22 He has worked continuously since he's been in this  
23 country. There is an ICE hold. He will be deported if and  
24 when he is ever released from prison.

25 He understands that even though he is 35 years old,

1 that any sentence is -- is -- is -- you know, it's a  
2 significant impact on his life. So Your Honor ---

3 THE COURT: I think the ---

4 MS. ZMROCZEK: --- is aware of the defense position as  
5 far as what statute he should've been -- he should have  
6 been convicted under. And I understand that that's an -- a  
7 problem for the legislature to address and not for us.  
8 But, Your Honor, we would ask that he -- you consider that  
9 he has been working full-time; that you look at the  
10 pictures.

11 I appreciate the victim-impact statement. But if you  
12 were able to see the Dickerson Center interview that  
13 occurred two weeks after this case, that it -- it's a  
14 completely different presentation of what Cameron said  
15 about his father -- not about his mother, but about his  
16 father, specifically. And I think that the pictures  
17 indicate that he did spend a lot of time with his children.

18 And I'm aware -- and we've said this from the  
19 beginning. He was not the perfect father, and he made  
20 several mistakes. Mr. Garcia does not wish to speak.  
21 Certainly, you can ask him, but he understands that this  
22 carries a 20 -- a 20-year mandatory minimum. And we would  
23 ask that the Court sentence him somewhere on the lower  
24 range to have a possibility to be deported. Thank you.

25 THE COURT: All right. Well, I don't know what --

1 you're right. I haven't seen the -- any other reports or  
2 anything of that nature. But even as -- I mean, in giving  
3 Mr. Garcia the full benefit of any possible doubt that he  
4 may have been a caring father or attentive father to his  
5 son, it -- it -- it's glaringly obvious that the victim,  
6 Madison, didn't receive any of that.

7 You -- you made a motion regarding the quickness of  
8 the jury's verdict. And it's an appropriate motion; I  
9 certainly don't criticize you at all for that. But just  
10 referencing that, I understand -- and -- and my response to  
11 was I think that more an indication of the strength of the  
12 state's case.

13 I don't think there's any -- I don't think there's any  
14 doubt in -- in this case -- you reference maybe a more  
15 appropriate statute. I -- the -- the charges in -- in --  
16 the -- the -- the statute in this case fits these actions  
17 like a glove. It's what the statute was written for.

18 This -- this was a complete neglect to the extent that  
19 -- that a little 1-year-old girl -- little girl suffered  
20 what I imagine to be probably the most horrific death a  
21 person can suffer. And -- and it was completely avoidable.

22 I understand -- and -- and I'm -- I'm going to make  
23 reference to something that -- that Mr. Garcia said on the  
24 stand. And -- and this has nothing to do -- and -- and  
25 although I agree with Ms. Mayes in her assessment on her

1 cross-examination that -- that this is the United States;  
2 this is not Mexico. So whatever your customs are in  
3 Mexico, that doesn't apply under the laws of this country.  
4 If you're going to live in this country, you're going to  
5 live by these laws.

6 I agree with that. But here -- here's where I take  
7 issue: Although I've done a little bit of study with  
8 regards to the Hispanic culture -- and I do understand that  
9 it is a culture that is dominated -- the -- the home is  
10 dominated by the female presence -- and that the things he  
11 had to say about it was the mother's duties in the home to  
12 provide those things, I -- I -- I understand that is part  
13 of the Hispanic culture.

14 But I'm confident that not only the Hispanic culture,  
15 but any culture on this globe, does not support a father  
16 who stands by as the mother neglects her duties and he  
17 watches his child literally waste away and die and that he  
18 has no right to step in and take over that role. I'm  
19 confident that is not the culture that Mr. Garcia came  
20 from. And -- and so -- and -- and I'm not aware of any  
21 culture on this planet that would support that conduct or  
22 that lack of conduct.

23 You asked for the minimum to -- to allow him to go  
24 back to his country. That -- that's not a consideration,  
25 as far as I'm concerned. I don't -- I don't look to just

1 move people who are here illegally and -- and move them  
2 out. I -- that's -- that's not my job. That -- we have a  
3 whole department in our government that deals with  
4 immigrants and illegal immigrants.

5 But my job is -- is that if you do decide to come into  
6 this country and live in this country, and if you decide to  
7 become a part of this community, that you obey the laws of  
8 this land. And if you don't, then there's a penalty to be  
9 paid for that, regardless of where you come from.

10 And -- and so being deported or the risk of  
11 deportation is -- is -- is absolutely not anything that I  
12 would take into consideration at all with regards to this  
13 case. I -- I judge this case as -- as though it were a  
14 naturalized, American citizen who committed this crime.

15 SENTENCE OF THE COURT

16 THE COURT: Having said that, on Indictment 2014-GS-  
17 32-1347A, the sentence of the Court is that you be  
18 committed to the South Carolina Department of Corrections  
19 for the remainder of your natural life. That is the  
20 sentence of the Court.

21 All right. This trial is adjourned.

22 MS. MAYES: Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded at 1:48 p.m.)

24 --- END OF TRANSCRIPT OF RECORD ---  
25

**CERTIFICATE**

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 4th and 5th days of June, 2015.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



---

Maryann S. Nevers, CVR-M-CM  
Official Court Reporter

Columbia, South Carolina  
December 13, 2015

State of South Carolina  
County of Lexington

Court of General Sessions

State )  
 )  
 )  
 v. )  
 )  
 Tracy Roach )  
 )  
 )  
 Defendant. )

Transcript of Record  
2014-GS-32-1346

April 14, 2015  
Lexington, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Jr., Judge.

A P P E A R A N C E S:

Suzanne Mayes, Assist. Solicitor  
Robert E. McNair, III, Assist. Solicitor  
Attorneys for the State

Robert Madsen, Assist. Public Defender  
Attorney for the Defendant

Bethanie K. Creppon  
Circuit Court Reporter

1	<u>WITNESS</u>	I N D E X	<u>PAGE</u>
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Court's 1	Mental Health Eval.	62	
Court's 2	Mental Health Eval.	62	

1 (The following proceedings were held April 14,  
2 2015.)

3 THE CLERK: Tracy Roach.

4 MR. MADSEN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 THE CLERK: 2014-GS-32-1346, State vs. Tracy  
7 Roach, indicted for homicide by child abuse. She's  
8 pleading as charged. The indictment has been  
9 true-billed. She's represented by Mr. Madsen.

10 TRACY ROACH

11 being first duly sworn, testified as follows:

12 THE DEFENDANT: Yes, I do.

13 THE CLERK: Thank you.

14 THE COURT: All right. Ms. Roach, I need to  
15 ask you some questions before we go through the rest  
16 of the plea. And if at any point during the course  
17 of my questioning you need to stop me and ask me a  
18 question or stop me and talk to your lawyer, feel  
19 free to do that.

20 THE DEFENDANT: Okay.

21 THE COURT: Now, there's no issues of  
22 competency here?

23 MS. MAYES: Your Honor, may it please the  
24 Court, we do have competency evaluations which were  
25 conducted by the State Department of Mental Health.

1 That was on December 22nd, 2014 by Dr. Matthew E.  
2 Gaskins. That was competency to stand trial, which  
3 she was found competent and also criminally  
4 responsible with the capacity to conform.

5 THE COURT: Okay. So that's not an issue?

6 MR. MADSEN: It's not. We stipulate to that.  
7 Additionally, we retained Dr. Jeff McKee who  
8 additionally -- you'll hear more about that later --

9 THE COURT: Okay.

10 MR. MADSEN: -- and he also concurs with those  
11 results.

12 THE COURT: All right. Well, just from reading  
13 the indictment, obviously I don't know anything  
14 about it, I just wondered if that was an issue.

15 All right. Ms. Roach, how old are you?

16 THE DEFENDANT: I'm 43.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: 12th grade.

19 THE COURT: Where did you last work?

20 THE DEFENDANT: It was a mobile home park. I  
21 was the manager.

22 THE COURT: Okay. Have you had any drugs or  
23 alcohol within the last 24 hours?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you taking any kind of

1 prescription medication that might prevent you from  
2 knowing what's going on here today?

3 THE DEFENDANT: I take prescription medication,  
4 but it won't prevent me from knowing.

5 THE COURT: What are you taking.

6 THE DEFENDANT: Psychotic medication.

7 THE COURT: But what are they?

8 THE DEFENDANT: Celexa, Zyprexa, and -- I can't  
9 remember what else -- Depakote.

10 THE COURT: Okay. And those are all  
11 prescribed?

12 THE DEFENDANT: Yeah.

13 THE COURT: All right. And you're fully aware  
14 that you're here today to plead guilty to homicide  
15 by child abuse?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand that the  
18 sentence is 20 years minimum to life, and that  
19 apparently there's no recommendation.

20 Is that right?

21 MS. MAYES: That's correct, Your Honor. It's a  
22 straight-up plea.

23 THE COURT: So that means I got to come up with  
24 a sentence of 20 years to life; do you understand  
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. And how long have you been  
3 taking those medications?

4 THE DEFENDANT: Since I've been incarcerated,  
5 so 14 --

6 THE COURT: Okay.

7 THE DEFENDANT: -- or 17 months now. Sorry.

8 THE COURT: Okay. You weren't taking them  
9 before you were incarcerated.

10 THE DEFENDANT: I was taking antipsychotics,  
11 but not the same ones.

12 THE COURT: Okay. And when were you diagnosed  
13 originally with those issues?

14 THE DEFENDANT: 2010, around that time.

15 THE COURT: Okay. All right. Has anybody  
16 promised you anything or threatened you in any  
17 manner to get you to plead guilty here today?

18 THE DEFENDANT: No, sir.

19 THE COURT: You understand, again, that there's  
20 no recommendation and that the minimum sentence I  
21 could give you is 20 years, the maximum would be  
22 life in this case?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Now, I understand -- do you  
25 have another child?

1 THE DEFENDANT: I do.

2 THE COURT: And a boy or girl?

3 THE DEFENDANT: It's a boy.

4 THE COURT: Where is he?

5 THE DEFENDANT: He's in foster care right now.

6 THE COURT: Okay. Do you understand if you  
7 want to plead guilty in South Carolina, you have to  
8 waive your constitutional rights?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. And in particular,  
11 there are a couple of rights that you have to waive  
12 on the record. Are you waiving your right to a jury  
13 trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you waiving your right to  
16 remain silent?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you waiving your right to put  
19 up a defense to these charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you need to ask him about it?

22 THE DEFENDANT: No, sir.

23 THE COURT: You also have the right under the  
24 Constitution, the right of confrontation, which  
25 means you could force the State to bring in

1 witnesses to testify against you in a trial and you  
2 could confront them. That's your right of  
3 confrontation. If you want to plead guilty, you  
4 have to waive that right. Are you waiving that  
5 right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And no one has threatened  
8 you in any way to get you to plead guilty here  
9 today?

10 THE DEFENDANT: No, sir.

11 THE COURT: Or promised you anything?

12 THE DEFENDANT: No.

13 THE COURT: Have you had plenty of time to  
14 speak with your lawyer?

15 THE DEFENDANT: I have.

16 THE COURT: And are you satisfied with his  
17 services?

18 THE DEFENDANT: I am.

19 THE COURT: Has he done everything you want him  
20 to do?

21 THE DEFENDANT: He has.

22 THE COURT: Has he failed to do anything that  
23 you wanted him to do.

24 THE DEFENDANT: No.

25 THE COURT: Have you had plenty of time to

1 speak with your client?

2 MR. MADSEN: I have, Your Honor.

3 THE COURT: And do you think she understands  
4 the elements of these charges?

5 MR. MADSEN: She does.

6 THE COURT: And do you think she understands  
7 her waiver of her constitutional rights?

8 MR. MADSEN: She does, Your Honor.

9 THE COURT: And by agreement -- I haven't read  
10 this yet, but obviously I will -- there's no issue  
11 of competency?

12 MR. MADSEN: There is not. We stipulate to the  
13 findings.

14 THE COURT: All right.

15 Ms. Roach, do you want to plead guilty to this  
16 charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And are you guilty of this charge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I need you to listen to what the  
21 Solicitor says, because in a few minutes I'm going  
22 to ask you if you agree with that. Okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Yes, ma'am.

25 MS. MAYES: Yes, sir, Your Honor.

1           We're here today due to a most tragic case  
2 involving the homicide of Madison Garcia who was 13  
3 months of age. Madison was born July [REDACTED], 2012, to  
4 Tracy Roach, the defendant, and to Filberto Garcia,  
5 the co-defendant. Both defendants are charged with  
6 homicide by child abuse; the co-defendant, Your  
7 Honor, has requested a trial, which is scheduled for  
8 May 18th.

9           On September 2nd, 2013, at approximately  
10 9:30 PM, Madison was found unresponsive in her crib  
11 by the family which consisted of Tracy Roach, the  
12 co-defendant, Filberto Garcia, and her  
13 seven-year-old brother, Cameron G.           Upon  
14 arrival of EMS to the residence, Madison was  
15 transported to Lexington Medical Center and  
16 pronounced dead on arrival, with a body temperature  
17 of approximately 86 degrees.

18           THE COURT: And how old --

19           MS. MAYES: She was 13 months of age, Your  
20 Honor.

21           She was described by EMS paramedics as cool to  
22 the touch upon their arrival. At Lexington Medical  
23 Center, Your Honor, emergency room doctors noted  
24 that she had a rash to her groin area and open sores  
25 on her buttocks. An autopsy was performed the

1 following day on September 3rd by Dr. Jeff Welsh of  
2 Lexington Medical Center. Your Honor, the cause of  
3 death in this case was determined to be lethal  
4 neglect by chronic starvation. The manner of death  
5 was determined to be homicide.

6 When questioned by law enforcement at the  
7 hospital, Tracy Roach, the defendant, stated that  
8 Madison's last appointment with a doctor had been,  
9 quote, approximately three months ago, end of quote,  
10 when in fact, Your Honor, the investigation revealed  
11 that it had been approximately ten months since she  
12 had last been seen by a physician or a medical  
13 professional.

14 She was born with Down Syndrome and had full  
15 Medicaid insurance coverage, as well as receiving a  
16 check of approximately \$700 a month from Social  
17 Security benefits due to her disability. We know  
18 this money was not being used towards Madison's well  
19 being. In addition, the family had many resources  
20 attempting to offer intervention and assistance such  
21 as the Easter Seals program and the Department of  
22 Disabilities and Special Needs.

23 The defendant, Tracy Roach, had personally  
24 canceled numerous appointments offered by Easter  
25 Seals and had not taken Madison for well-checks

1           since she was three months of age. In addition,  
2           Your Honor, the family received WIC or food and  
3           nutrition assistance, but had failed to follow  
4           through with any WIC assistance programs which are  
5           set up to secure the health and wellbeing of the  
6           children in the WIC program.

7                     Financially, Your Honor, the family was earning  
8           a regular income from Filberto Garcia, the father of  
9           both the older sibling, Cameron G.           and the  
10          infant, Madison Garcia. He was employed for  
11          approximately 40 hours a week by a local company  
12          here in Lexington County. In addition, they were  
13          receiving the WIC assistance, Social Security  
14          benefits, and Medicaid coverage for Madison.

15                    Your Honor, the law enforcement investigation  
16          was conducted by Investigator Michael Gooding of the  
17          Lexington County Sheriff's Department. During  
18          Detective Gooding's contact with the family,  
19          seven-year-old Cameron G.           stated to the  
20          detective that he had not heard Madison whine or cry  
21          all day on the day she died. Specifically in that  
22          regard, he had received a forensic interview where  
23          he stated that Madison had been quiet for six days.  
24          He stated that his father said he knew Madison was  
25          going to die and that he heard him say that.

1 Further, Cameron stated that the father told Tracy  
2 Roach when Madison died, I told you, Tracy.

3 Your Honor, Madison's physical appearance would  
4 have made it absolutely clear to any reasonable  
5 caretaker that she was chronically malnourished and  
6 in desperate need of medical attention. At the time  
7 of her death, Your Honor, she weighed nine pounds  
8 and two ounces. At this time, Your Honor, I'm going  
9 to pass up to the Court a packet which contains  
10 multiple items related to this investigation. It  
11 includes the autopsy report of Dr. Jeff Welsh,  
12 photographs of Madison taken at autopsy, a report  
13 from Dr. Susan Luberoff, she's a forensic  
14 pediatrician affiliated with Palmetto Children's  
15 Hospital -- Palmetto Richland Children's Hospital  
16 here in the Columbia area, as well as the assessment  
17 and resource center.

18 Also, Your Honor, I'm going to pass up a SLED  
19 toxicology report, which we'll address later. But  
20 it's clear from the report that in addition to the  
21 starvation, Madison was also being poisoned. She  
22 had numerous drugs in her system, which are the same  
23 medications that were previously prescribed to Tracy  
24 Roach, and in addition Your Honor, the NCIC criminal  
25 history of Tracy Roach.

1 THE COURT: All right.

2 Any objection to this being passed up for my  
3 review?

4 MR. MADSEN: I've seen all of them.

5 THE COURT: Are you going to make this part of  
6 the record or is this just for my edification?

7 MS. MAYES: This is for your review, Your  
8 Honor.

9 THE COURT: Ma'am, have you seen these  
10 pictures?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay.

13 All right. Thank you. Anything else?

14 MS. MAYES: Yes, sir, Your Honor.

15 In discussing the case with the pathologist,  
16 Dr. Jeff Welsh, Your Honor, he expressed to me  
17 that -- he said it's a haunting picture in his mind;  
18 that in 20 years of pathology, he will never forget  
19 this case, it's so bad and was so preventable, with  
20 extreme severe medical neglect. He said there was  
21 long-term chronic malnutrition which resulted  
22 full-body wasting of the soft tissue.

23 In addition, he noted that the fat in the  
24 liver, which is documented in the autopsy report, is  
25 a result of the body trying to survive and adapt to

1 the starvation that she was experiencing.

2 Your Honor, in addition, the autopsy results  
3 and the child's medical history was reviewed by  
4 Dr. Susan Luberoff. As I stated previously, she's a  
5 forensic pediatrician. She's here and present, Your  
6 Honor, and I do believe she may wish to briefly  
7 address the Court regarding her findings.

8 THE COURT: Okay.

9 Yes, ma'am. If you would, please give us your  
10 full name for the Court and spell your last name for  
11 the court reporter.

12 DR. LUBEROFF: Susan Breeland Luberoff,  
13 L-U-B-E-R-O-F-F.

14 THE COURT: Yes, ma'am.

15 DR. LUBEROFF: I'm a pediatrician with the USC  
16 School of Medicine Department of Pediatrics, and my  
17 primary practice is in the child abuse pediatrics.  
18 And I did become involved in this case as a  
19 consultant to the detective who was investigating  
20 it.

21 I was able to review the autopsy report and the  
22 autopsy photos, as well as the medical records that  
23 were available at the time and was able to speak  
24 with the pathologist and Investigator Gooding. I  
25 just wanted to make sure the Court understands that

1           this child had been starved to death over months of  
2           time with numerous resources available and refused  
3           or ignored by her caregivers. She had very bad  
4           pressure sores on her buttocks, and for a child her  
5           age to have pressure sores, she would have had to  
6           stop moving, she lost the energy to move.

7                     She was seen by her primary care provider in  
8           November when she was about three months old. And,  
9           in fact, her mother had kept appointments for the  
10          first couple of months of her life. At that visit  
11          in November, the nurse practitioner who saw the  
12          child was concerned about her weight. She was  
13          already starting to fail to grow. And the nurse  
14          practitioner did an excellent job of documenting  
15          that when provided with a bottle in the office, the  
16          child greedily sucked down the formula quickly, and  
17          had no problems whatsoever in taking it. So it was  
18          clear that there was no physical problem with the  
19          child taking formula when it was provided.

20                    The child was born, as mentioned, with Down  
21          Syndrome. At the time she died, she was so severely  
22          emaciated that you couldn't even make out the  
23          features of Down Syndrome on her face anymore.

24                    THE COURT: That's what I wondered looking at  
25          them.

1 DR. LUBEROFF: Yes, sir.

2 THE COURT: So that was caused by the  
3 malnutrition?

4 DR. LUBEROFF: By the starvation, Your Honor.

5 THE COURT: I know. But -- and I don't mean  
6 to -- I'm not mincing words with you, but, I mean,  
7 that -- the physical characteristics of a Down  
8 Syndrome child, which I do know a lot about, are  
9 gone, and that's caused by the starvation.

10 DR. LUBEROFF: Yes, sir. Because all of the  
11 fat -- essentially, all of the fat under her skin  
12 had been used up to support the child's life. So  
13 she no longer had the fat in her skin to give her  
14 the kind of facial features that you and I have or  
15 that a Down Syndrome child has.

16 THE COURT: Okay.

17 DR. LUBEROFF: The only remaining feature that  
18 she had was a crease in her palm to identify her as  
19 having that syndrome.

20 Dr. Welsh noted on his autopsy that in addition  
21 to all of her skin fat being gone, the deeper fat  
22 scores in the body had been all been completely  
23 depleted by this child desperate to have calories  
24 and to survive.

25 Ordinarily, a normal a child will double its

1 birth weight by six months of age, and Madison was  
2 born with a birth weight of a little over six  
3 pounds; it will triple its birth weight by 12 months  
4 of age, so she should have weighed at least 20  
5 pounds at the time that she died. And, in fact, the  
6 weight at the time of her death would have been  
7 typical at about three months of life. So there's  
8 just substantial evidence that she was chronically  
9 and systematically starved over her entire life,  
10 essentially.

11 THE COURT: Okay. And, Doctor, would this have  
12 been apparent to anybody who visited? I mean, any  
13 family member or anybody who came by to see Madison,  
14 wouldn't that -- I mean, it seems to me, from  
15 looking at that, that anybody could look at that  
16 condition and think that there was a deadly serious  
17 problem.

18 DR. LUBEROFF: Certainly if anyone saw the  
19 child unclothed, yes. If people saw the child with  
20 clothing on, I'm not sure how struck they would have  
21 been by her face. It --

22 THE COURT: No, but the nine pounds would be  
23 striking, wouldn't it?

24 DR. LUBEROFF: The nine pounds would be  
25 striking.

1 THE COURT: Okay. I'm just wondering where  
2 everybody was in this case.

3 DR. LUBEROFF: Yes, sir.

4 THE COURT: Thank you.

5 MS. MAYES: And, Your Honor, briefly,  
6 concerning the toxicology findings, as has been  
7 noted by Dr. Luberoff, we know that the medications  
8 given to Madison were intentionally given to her,  
9 most likely orally, because she was so weak  
10 physically that she would have been incapable of  
11 walking or crawling in order to accidentally ingest  
12 any of those medications on her own. Your Honor, we  
13 believe that she was given those medications to make  
14 her lethargic and to make her stop crying.

15 Your Honor, as to the criminal history of Tracy  
16 Roach --

17 THE COURT: I looked through it. It looked  
18 like there were some embezzlements and things like  
19 that. Nothing violent though; right?

20 MS. MAYES: Correct, Your Honor. The  
21 embezzlement was actually a federal charge from  
22 2003. My understanding is that it involved  
23 approximately \$96,000 worth of federal money when  
24 she was employed by The Housing Authority. She  
25 received a sentence of 15 months, suspended to three

1 years, a supervised release by the U.S. Department  
2 of Probation.

3 Then in 1999 she had a breach of trust, and  
4 that was by the Union Police Department, so that was  
5 a local charge. That breach of trust was two years  
6 suspended upon a fine and restitution. In addition  
7 to that, she had a 2008 shoplifting charge prior to  
8 this case before you.

9 Your Honor, in terms of victim impact  
10 testimony, I'm going to turn over now to the  
11 co-prosecutor in this case. He is Robby McNair with  
12 the Solicitor's Office regarding victim impact  
13 testimony.

14 MR. MCNAIR: Thank you, Your Honor. We have  
15 Cliff and Christina Derienzo here. They're the  
16 current foster parents of Cameron G. They  
17 would like to address the Court in regards to the  
18 impact this has had on him. He was seven at the  
19 time of the incident; he's currently nine years old.  
20 He was pulled out of public school by the defendant  
21 in 2012 while he was in kindergarten. He's now nine  
22 and he's just in the first grade.

23 Judge, before they speak, in regards to the  
24 drugs that were found in Madison's system, in  
25 Cameron's forensic interview, he said he had to take

1           seven pills every night to go to sleep and that his  
2           mother and father would give him those pills,  
3           sometimes he'd get them himself. He said the pills  
4           were on the floor by the couch where his mother used  
5           to sleep, in her big bag. Of course, we don't know  
6           who administered those drugs. At this point we  
7           can't prove who administered them. But at this  
8           point, according to Cameron, both parents were  
9           responsible for giving him drugs to sleep at night.

10           THE COURT: Yes, ma'am. If you would, please  
11           give us your full name and spell your last for the  
12           record.

13           MRS. DERIENZO: Christina Derienzo,  
14           D-E-R-I-E-N-Z-O.

15           THE COURT: Yes, ma'am.

16           MRS. DERIENZO: I would ask that the Court  
17           please consider the following statement when  
18           rendering a sentence for Tracy Roach: Cameron  
19           entered our home as a broken child, hesitant to  
20           trust. He has spent many months adapting to a new  
21           life and continues to work on building trust.  
22           Cameron asks us frequently after ten months if he  
23           will be allowed to stay in our home and every night  
24           he asks, are you tucking me in, because even after  
25           all this time, he's unsure if we really mean it.

1           My husband and I attempt to assure him every  
2           day that he isn't going anywhere, our love will  
3           never change, not a night will go by that he will  
4           not be tucked or that his needs will not be met.  
5           His future relationships will forever be impacted by  
6           the occurrences in his biological home as they have  
7           crafted a foundation of fear to trust.

8           The reality is that no matter how much love we  
9           show Cameron or the fact that we've never once  
10          missed a night tucking him, he will never fully  
11          trust us considering the person or persons he  
12          trusted most in his life betrayed him by neglecting  
13          his needs and ending the life of his sister,  
14          Madison.

15          Cameron speaks frequency of specific instances  
16          that took place in his biological home at the hands  
17          of his parents. His negative memories can be  
18          triggered at any time from things such as food,  
19          words, holidays, events, and so forth. For  
20          instance, when Cameron eats chicken nuggets, he  
21          often speaks about the lack of food he was offered  
22          while in the care of Tracy Roach and how he would  
23          try to get food on his own when she would fall  
24          asleep. He remembers eating frozen chicken nuggets  
25          when he could access them.

1           Cameron recalls Tracy frequently sleeping on  
2           the couch after drinking what he refers to as a beer  
3           from a can with a bird on it, and not responding to  
4           his requests for food or assistance for himself or  
5           Madison. Cameron says he would get Madison from her  
6           crib when he could and take care of her. Cameron  
7           still asks us before he gets anything to eat in our  
8           home, can he have it, including a glass of water.  
9           He has yet to grasp the basic comforts you're given  
10          freely by people who love and care for him.

11          Cameron also speaks of begging to feed Madison,  
12          only to be turned away from them. He says he knew  
13          she needed to eat, but doesn't understand why she  
14          wasn't fed. Cameron talks about how dry Madison's  
15          mouth was and that it was so dry that it was hard  
16          for him to give her a bottle right before she died.

17          Cameron speaks about the night Madison died and  
18          that he found her in the crib with her eyes wide  
19          open. Cameron says he knows she was dead because  
20          her eyes wouldn't close and she would not cry.  
21          Cameron talks about how he went to get his dad after  
22          he found her in the crib. Cameron talks about all  
23          of the flashing lights and sirens when she died.  
24          Even now when we pass an ambulance or police car,  
25          he'll make a comment about, that's who came to get

1 Madison.

2 Cameron loved Madison throughout the course of  
3 his life, he will always be taken back to that  
4 painful memory of her death by various experiences.  
5 Even now Cameron references these memories if he  
6 sees a baby, if he hears Madison's name, if he sees  
7 something on television about a baby or if he hears  
8 sirens. These memories of her tragic life and death  
9 will always haunt Cameron throughout his days and  
10 potentially impact Cameron when he has his own  
11 family one day. It's hard to predict the future,  
12 but I question if he will ever be able to have a  
13 normal relationship based on these traumatic  
14 experiences.

15 Along with the impact the homicide of Madison  
16 Garcia has had on Cameron, I would ask that the  
17 Court please consider the impact of his educational  
18 neglect when rendering your sentence. Cameron,  
19 unfortunately, was not allowed to attend school.  
20 His educational neglect has caused him to be years  
21 behind his peers, and it's hard for him to  
22 understand why he is still learning kindergarten and  
23 first grade concepts at the age of nine.

24 As you can imagine, it's hard to make friends  
25 your age when you're in a classroom with children

1 several years younger than you are. Cameron came to  
2 our home with significant deficiencies with reading  
3 and math. He has a hard time -- he had a hard time  
4 recognizing letters or numbers and couldn't even  
5 sing the alphabet song. Cameron has worked very  
6 hard over the last several months, and even with  
7 hard work he's still way behind his peers.

8 Cameron will most likely always be behind  
9 academically in school and will struggle based on  
10 the fact that he was never given that opportunity to  
11 learn at an early age. He constantly gets  
12 frustrated with himself, he loses patience, and I am  
13 concerned that as these things get harder throughout  
14 his life, he may give up on himself.

15 It is unknown if the exposure to medications  
16 that were being put into his food plays a role in  
17 his educational deficiencies as well. The impact  
18 that all of this will have on his long-term is  
19 significant and overwhelming. Keep in mind how  
20 Cameron experiences the social impact of his  
21 educational neglect by being in a class with  
22 children several years younger than he is and will  
23 continue to be impacted socially as he advances to  
24 the upper grades.

25 He currently tells the story of how he wasn't

1 in school when children or parents ask, which,  
2 unfortunately, they often do, about why he is in the  
3 grade he is in. He feels frustration always needing  
4 to explain himself, and I would ask that you please  
5 consider the years ahead of Cameron as he will  
6 continue to explain why he is in the position he is  
7 in. Children can be very cruel and even more so as  
8 they age, and I can only imagine the ridicule  
9 Cameron will face as a high school student should he  
10 be able to continue on the current track and enter  
11 the 9th grade as an 18-year-old.

12 Cameron still continues to struggle with normal  
13 everyday life skills. He didn't know things that  
14 most parents work with their children on by the age  
15 of three, such as body parts, dressing themselves or  
16 brushing his teeth. After ten months, Cameron still  
17 struggles with bathing, putting on his shoes on the  
18 right foot or taking care of his needs, which -- or  
19 taking care of his teeth, which consequently has  
20 significant damage due to years of not being taken  
21 care of.

22 The educational and foundation guidance that  
23 Cameron was entitled to receive by a parent was  
24 never given to him, and throughout the course of his  
25 life, he will always endure the consequences of this

1 neglect. As you can see, no matter what home he is  
2 in, the school he attends, the positive experiences  
3 he will have moving forward, he will never be able  
4 to escape the past. Every time Cameron revisits a  
5 memory, he's victimized all over again.

6 I would ask the Court to consider imposing the  
7 maximum sentence allowed for how much Cameron has  
8 lost in his nine shorts of life, one that someone  
9 should never have to lose. He's lost his only  
10 biological sibling, his biological parents, the  
11 ability to trust, good memories of his childhood,  
12 holidays and other celebrations with his sister,  
13 Madison; the ability to tell Madison how much he  
14 loves her or even happy birthday; hugs from her or  
15 the ability to stand by her side as he or she  
16 experiences major milestones in their lives.

17 As Cameron ages, he will never fully forget the  
18 past and be able to move forward. Several days ago  
19 we were on a family vacation, and I asked Cameron,  
20 if you could say one thing to your mom, what would  
21 it be? And I would like to read you the statement  
22 that Cameron wrote: You ruined my life. I miss  
23 Madison. I am very mad at you. And why?

24 I plead with the Court to impose a maximum  
25 sentence of life in prison upon Tracy Roach so that

1 justice for Madison and Cameron will be served.

2 THE COURT: All right. Thank you very much.  
3 And thank you for what you're doing for this child.

4 MR. MCNAIR: Your Honor, we also have Beth  
5 Hempton here. She was a neighbor of Tracy Roach and  
6 Filberto Garcia. She's known Tracy for about 20  
7 years, but didn't really start talking to her until  
8 Tracy became pregnant with Madison and Tracy found  
9 out that the child was going to have Down Syndrome.

10 What's interesting about Ms. Hempton is that  
11 from day one, she offered to adopt the child if  
12 Tracy Roach didn't want to keep the child due to the  
13 Down Syndrome. She offered to help out in any way  
14 possible, take the child to any medical  
15 appointments, et cetera. All offers of help were  
16 refused. The last time she recalls seeing Madison  
17 was in June of 2013. She said that Cameron and  
18 Madison spent the night with her and that she fed  
19 Madison that night and Madison ate very well, had no  
20 problems with vomiting or reflux or anything of that  
21 nature.

22 After that, she planned -- or called Tracy  
23 Roach to try to help plan the child's first birthday  
24 party, and, of course, she never heard back from  
25 Tracy Roach. That was the last time that she ever

1 saw Madison. Ms. Hempton is here and would like to  
2 address the Court, Your Honor.

3 THE COURT: Okay.

4 MR. MCNAIR: Your Honor, this is our victims  
5 advocate, Ms. Wendy Frazier. She's going to read a  
6 statement from Ms. Hempton.

7 THE COURT: All right.

8 Yes, ma'am.

9 MS. FRAZIER: Your Honor, this is Beth  
10 Hempton's statement: I have known Tracy Roach for  
11 over 20 years. We didn't become close friends until  
12 2012 when she was pregnant with Madison. She was  
13 thinking of having an abortion because she found out  
14 that Madison had Down Syndrome. We told Tracy that  
15 we would adopt her and love her as our own. She  
16 told us that she decided to keep her because she  
17 felt that she was a gift from God.

18 We talked a lot on the phone after Madison was  
19 born. She brought Madison to meet all of us after  
20 she got out of the NICU. We fell in love with her  
21 and I always told Tracy that we would take her at  
22 any time. Every time we talked on the phone, I  
23 would say, ready for me to come get my baby? She  
24 would laugh and say no. I told Tracy that I know  
25 how hard it can be at times with the appointments,

1 and all she had to do was call me and I'd come get  
2 Madison for a day, a week, or forever. She would  
3 always laugh and say, no, she was fine.

4 I would ask Tracy about Madison's doctor  
5 appointments, and she said that the doctor said she  
6 was doing good and to keep doing what she was doing.  
7 Tracy told me one time that if it got to be too  
8 much, that she knew that I would take Madison and  
9 she would have to give me Madison's the check. I  
10 told her that I didn't want Madison's check, I  
11 wanted Madison. She laughed, as she always did.

12 I kept Madison and her brother overnight in  
13 June of 2013. She was doing great and wanted a  
14 bottle every three hours and took her bottle wit no  
15 problems. She was very happy and a lot of smiles.  
16 Signed, Beth Hempton.

17 THE COURT: Thank you.

18 MR. MCNAIR: Your Honor, one last thing person,  
19 we have Olivia Wood from Lexington County DSS.

20 MS. MAYES: Your Honor, I believe DSS is not  
21 going to be making a statement, but we do want the  
22 Court to be aware that we do have multiple  
23 caseworkers present who were involved in this  
24 investigation following Madison's death and then the  
25 Cameron G.

1           Finally, Your Honor, we have Investigator  
2 Michael Gooding with the Lexington County Sheriff's  
3 Department. There are certain matters of this  
4 investigation that I believe he can address that  
5 deal with the financial aspects concerning the  
6 family, as well as the many missed appointments  
7 concerning Madison.

8           THE COURT: All right.

9           Yes, sir.

10          SERGEANT GOODING: Your Honor, may it please  
11 the Court. My name is Sergeant Mike Gooding. I'm  
12 an investigator with the Lexington County Sheriff's  
13 Department. I've been in law enforcement for  
14 approximately 15 years now, and this is probably --  
15 excuse me.

16          THE COURT: That's all right. Take your time.  
17 I understand what you feel.

18          SERGEANT GOODING: -- one of the most brutal  
19 cases I've ever worked. I became involved in it on  
20 the night of Madison's death. I was the major  
21 crimes detective on call. And when Madison was sent  
22 to the hospital, I responded to the hospital to  
23 represent the sheriff's office and met with the  
24 Coroner's office and law enforcement on the scene.

25          During the course of the investigation, it

1           seemed that there were essentially two things that  
2           we were trying to address to determine what had  
3           happened to Madison, and the first was that we as  
4           law enforcement were told that Madison was a special  
5           needs child, had been diagnosed as failure to  
6           thrive, and had been born with a hole in her heart.  
7           So we had the issue of, was there a physical  
8           condition that could have contributed to the cause  
9           of the state that Madison was in at that time.

10                 We also had concerns, as we began to speak to  
11           the parents, in regards to Madison's care over the  
12           course of her life. In speaking with Tracy Roach,  
13           she would tell us that they did not have gas to take  
14           Madison to the doctor; the reason she hadn't been  
15           seen, the reason they had missed appointments was  
16           because of lack of finances. It's interesting to  
17           note that at that time there were three vehicles in  
18           the yard, two of which appeared to be driven all the  
19           time and one of which appeared to be parked over on  
20           the side.

21                 There also seemed -- it was identified that  
22           there seemed to be a pattern almost of attempting to  
23           avoid contact with either medical professionals that  
24           could have possibly diagnosed Madison's condition or  
25           with anybody else for that matter --

1           THE COURT: And that was my question earlier:  
2 Is there anybody else that could have done anything?

3           SERGEANT GOODING: Yes, sir.

4           THE COURT: Yes, sir.

5           SERGEANT GOODING: Based on our investigation,  
6 you know, even the neighbor said that she used to  
7 see Cameron outside playing and about at the time of  
8 the birth of Madison, when Tracy's attitude changed  
9 in regards to having a special needs child, she  
10 never saw Cameron anymore. He was pulled out of  
11 school. And, essentially, he described his days as  
12 Mom sleeping on the couch and him inside playing  
13 video games, and that was basically it.

14           Facebook pictures of Madison -- the few  
15 Facebook pictures of Madison that Tracy posted,  
16 witnesses seem to suggest and what it looked like  
17 was that she re-used the same pictures over and over  
18 again, slightly changing the picture each time so  
19 that it would appear that she would continue to post  
20 pictures of Madison when, in fact, she wasn't taking  
21 any pictures of Madison.

22           When we searched the house, one of the things  
23 that was essentially striking to me as a parent or  
24 as -- it would seem to be any parent, there were no  
25 pictures of Madison Garcia inside that home with the

1           exception of two pictures in Cameron's room. As  
2           proud parents, there was not a single picture of  
3           that child anywhere in that house, almost as if they  
4           wished to forget her.

5                     Madison's weight from discharge from the  
6           hospital was 6.3 pounds. As she began followup, she  
7           steadily began gaining weight; 6 and a half pounds,  
8           7 pounds. At her two month well visit Madison  
9           weighed 7.15 pounds, and there was a note that she  
10          was going to be admitted to the hospital if her  
11          weight did not go up. They came in and they brought  
12          her for that appointment and her weight had improved  
13          somewhat, but they left the appointment without ever  
14          being seen by the doctor. The last reported weight  
15          we have of Madison was 12/5 of 2012; she weighed 9  
16          pounds 1.5 ounces, which was almost the exact weight  
17          she had at the time of her death.

18                    In regards to whether or not they were able to  
19          take the child to the doctor, what we see is a  
20          pattern through medical records obtained under  
21          search warrant that when it came to Tracy Roach  
22          going to see a doctor, she didn't have any trouble.  
23          She made all of her appointments, for the most part,  
24          that she needed to maintain her prescriptions. She  
25          was seen in person August 27 of 2012; August 29th,

1           2012; November 16th, 2012; November 19th, 2012;  
2           12/17/2012; 2/19/2013; 5/14/2013, and as late as 7/9  
3           of 2013. She made her appointments at Lexington  
4           Mental Health so --

5           THE COURT: So that's two months before the  
6           child died?

7           SERGEANT GOODING: Yes, Your Honor.

8           Now in regard to appointments missed by the  
9           lack of care by the parents to even give a basic  
10          attempt of care for Madison, on February 11th, 2013,  
11          for a well child visit, they had no contact;  
12          February 7th, 2013, she was discharged for WIC for  
13          noncompliance; August 29th, 2013 she was discharged  
14          from WIC for noncompliance; November 5th, 2012, she  
15          rescheduled her appointment with WIC; November 6th,  
16          2012 she rescheduled an appointment with WIC;  
17          December 17th she was a no-show with WIC specialists  
18          who were there to help her care for her child;  
19          December 31st she was a no-show for her voucher  
20          appointment; January 22nd she cancelled her WIC  
21          appointment; December 17th, 2012 she was a no-show  
22          with the specialists; on December 31st, 2012 she was  
23          a no-show for her voucher; on January 22nd, 2013 she  
24          cancelled her appointment with the WIC specialists;  
25          on 7/11/2013 she cancelled or was a no-show for her

1        appointment with a WIC specialist; August 1st, 2013  
2        she was a no-show for an appointment with a WIC  
3        specialist.

4                September 5th, 2013 she cancelled the  
5        appointment for Cameron to be seen at the Dickerson  
6        Center; on 12/11/2012 she had outpatient visit at  
7        the children's hospital, she cancelled; on August  
8        23rd, 2013 at the 12-month child well visit for  
9        Madison Garcia, she was a no-show; on 9/20/2012,  
10       Brooklyn Pediatrics, she rescheduled; 9/18/2012,  
11       Brooklyn Pediatrics, she rescheduled; on September  
12       11th, 2012, Brooklyn Pediatrics, she rescheduled;  
13       August 30th, 2012, Brooklyn Pediatrics, she  
14       cancelled; November 20th, 2012, she was a no-show at  
15       Brooklyn Pediatrics; November 8th, 2012 for the  
16       two-month well visit, she rescheduled.

17               On 10/5/2012, the cardiologist appointment in  
18       regards to Madison, she was a no-show; 10/24/2012,  
19       she did not appear; November 26th, 2012, she did not  
20       appear; on January 4th, 2013 with a cardio  
21       appointment, she didn't show; Greenwood Genetics,  
22       November 20th, 2012, she did not appear; Greenwood  
23       Genetics on January 3rd, 2013, didn't appear.

24               On 12/28/2012, she cancelled the appointment  
25       with the Easter Seals; 12/19/2012, she cancelled the

1 appointment with the Easter Seals; on 12/14/2012,  
2 she was a no-show for the Easter Seals; 12/10/2012,  
3 she cancelled with Easter Seals; November 20th,  
4 2012, she cancelled with Easter Seals; on September  
5 26th, 2012, she was a no-show with Easter Seals; on  
6 November 24th, 2012, she cancelled with Easter  
7 Seals.

8 On April 12th, 2013, she cancelled with  
9 BabyNet. And what that shows, from an investigative  
10 standpoint, was they didn't even try to provide the  
11 most basic needs. In regards to when Tracy needed  
12 to go to the doctor to get her prescriptions, she  
13 didn't have any problem getting there. There were  
14 two vehicles in the yard. They wouldn't make any  
15 appointments, they wouldn't even comply with the  
16 people who came to their house.

17 Ms. Hempton had offered to provide rides, and  
18 they never availed themselves of it. The neighbor  
19 had offered to provide rides, and they never availed  
20 themselves of it. From a financial standpoint, when  
21 they talk about, well, we didn't have money for gas,  
22 it was interesting because what the investigation  
23 revealed was, besides the fact that Madison received  
24 almost \$700 a month in Social Security, Mr. Garcia  
25 was employed. We did find a copy of his 2012 tax

1 return. In 2012, his wages were \$38,193. So  
2 Mr. Garcia had made over \$38,000, and that would be  
3 in addition to the SSI that Madison received, as  
4 well as any other benefits, if they would have just  
5 basically complied with such -- the WIC and the  
6 Easter Seals.

7 THE COURT: And SSI would be about 9,000 a  
8 year, so it was --

9 SERGEANT GOODING: Almost \$700 a month, so yes,  
10 sir, what, \$8,600 a year.

11 Going back to look at her finances, where was  
12 the money going? What it appears when we  
13 search-warranted her Bank of America records is that  
14 she was spending money, but it wasn't for the care  
15 of Madison. She was getting things from  
16 Rent-A-Center, buying movies from Redbox, she was  
17 buying toys and games for Cameron on occasion, they  
18 were paying for cable TV, satellite TV, Dish  
19 Network, \$118 a month. They paid over \$118 a month  
20 for Dish Network, but apparently didn't have money  
21 for gas to take Madison to the hospital or to a  
22 doctor where she could be checked on. These  
23 financial habits are documented, Your Honor,  
24 throughout the time of Madison's short life before  
25 her painful death.

1           In regards to the drugs that were found in the  
2 home, toxicology reports found those drugs in  
3 Madison's brain as well as her liver. In speaking  
4 with the medical professionals, it was their opinion  
5 that that was to keep Madison quiet so that she  
6 wouldn't bother her or bother them before she  
7 starved to death.

8           THE COURT: And that was the Depakote and the  
9 other antipsychotic drugs?

10           SERGEANT GOODING: Yes, Your Honor. There was  
11 actually multiple drugs found. There was a pill  
12 crusher found in the bag. We actually executed two  
13 search warrants on the house, Your Honor; we  
14 executed a search warrant on the night of Madison's  
15 death and then when we came back to execute another  
16 search warrant, that's when we had developed  
17 additional information.

18           On the night of Madison's death, as we came  
19 into the house, other than the strong smell of urine  
20 which got stronger as we went in Madison's room, we  
21 couldn't explain the smell; there was no Diaper  
22 Genie or trash can there or anything. Very few  
23 items were actually taken at that point in time. In  
24 general standard practice, we took the bedding and  
25 the last bottle she knew to have. But other than

1           that, the house was kind of a mess, but it wasn't  
2           too bad.

3                       When we came back several days later to execute  
4           a second search warrant, that's when we found, for  
5           example, that the kitchen looked like it had been  
6           staged, her highchair had been cleaned off, food had  
7           been stacked on the kitchen table, both formula and  
8           baby food, and was made to look presentable as if  
9           Madison was being cared for there.

10                      One of the things that we also took that was  
11           interesting on that search warrant, Your Honor, was  
12           a computer out of the master bedroom. And in that  
13           computer we found searches as to how long drugs  
14           would stay in a baby's system. We found a sympathy  
15           card for Madison's death that hadn't been opened,  
16           just a number of items that continued to give us  
17           concern.

18                      THE COURT: Wait. Say that again.

19                      SERGEANT GOODING: We found a sympathy card  
20           that had been written to Tracy Roach for the death  
21           of her child, Madison, that had never been opened,  
22           it was just sitting on the coffee table.

23                      In regards to Cameron's education, we found  
24           what appeared to be home school books in piles  
25           underneath other things that looked like they had

1 never been touched.

2 THE COURT: I thought you said there was a  
3 sympathy card on the computer.

4 SERGEANT GOODING: No. There was --  
5 somebody -- there was' a sympathy card left on the  
6 table that they never even bothered to open.

7 THE COURT: I gotcha. Okay. This is bad  
8 enough. I just -- that would have been --

9 SERGEANT GOODING: And as I said, in the  
10 computer searches, we found that -- it would suggest  
11 it was premeditated that the drugs were given to  
12 Madison to keep her quiet while she died. There  
13 were internet searches on how long the drugs would  
14 stay in the body.

15 THE COURT: Well, Dr. Luberoff, that was one of  
16 my questions. It was in the brain and liver, so how  
17 long would those drugs stay in to metabolize? How  
18 long would it take them to metabolize completely out  
19 of her system?

20 DR. LUBEROFF: I'm sorry, sir, I don't know the  
21 answer to that.

22 THE COURT: Okay. But it would be -- it  
23 wouldn't be --

24 DR. LUBEROFF: It wouldn't be hours, probably  
25 wouldn't be days.

1           THE COURT: That's what I'm wondering. I mean,  
2           you know -- and the other question I was going to  
3           ask you is, if you started on day one not treating  
4           this child and doing nothing for this child, how  
5           long would it take her -- because, you know, there's  
6           discussion about people seeing the child in July --  
7           June and July. Would it take a month for her to  
8           reach this or six months or could you feed her and  
9           then stop feeding her? I guess what I'm asking is,  
10          how long of a period of time would you have to do  
11          this to this poor child before she passed away and  
12          looked like that?

13          DR. LUBEROFF: That's a great question. She  
14          clearly had, over her life, been being given  
15          something containing water, because lack of water is  
16          what kills you the fastest. So she was being given  
17          at least a minimal amount of water to keep her  
18          alive, but the state of starvation that she was in  
19          and looking at her earlier growth curves from the  
20          few visits that she made to the doctor when she was  
21          very young, this starvation had gone on and it would  
22          need to have gone on for many months for her to be  
23          in the condition that she was in. Not just from  
24          July until her death in September --

25          THE COURT: That's what I'm wondering.

1 DR. LUBEROFF: Yes, sir. She would have  
2 already been well on the path to this.

3 THE COURT: Because she had weighed nine pounds  
4 back in December; right?

5 DR. LUBEROFF: Yes, sir. Well, she weighed  
6 nine pounds in November.

7 THE COURT: November. And if you had stopped  
8 giving her water, it would have been three or four  
9 days?

10 DR. LUBEROFF: Yes, sir, it would have been a  
11 matter of days before she passed away. So she was  
12 being given minimal amounts of water and minimal  
13 amounts of some kind of calories, because she did  
14 have, you know, a little bit of continued linear  
15 growth during that time, but minimal.

16 THE COURT: Okay. Sorry to call you out like  
17 that. I know -- I didn't mean to surprise you, but  
18 those are questions that popped in my head.

19 DR. LUBEROFF: No, sir. I'm here to help.

20 THE COURT: All right.

21 Is that it from the State?

22 MS. MAYES: That's all from the State, Your  
23 Honor.

24 THE COURT: All right. Ms. Roach, you've heard  
25 all that. Do you admit those facts?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You do?

3 THE DEFENDANT: Yes, sir.

4 MR. MADSEN: There's a few things that she  
5 disagrees with. She certainly doesn't disagree --

6 THE COURT: What does she disagree with?

7 MR. MADSEN: That she had taken pictures on  
8 Facebook. She denies that she never gave Madison  
9 any drugs. And the other thing I wanted to point  
10 out is the investigator made reference to a computer  
11 search basically saying, hey, Your Honor, trying to  
12 insinuate that it was done at the same time. That  
13 search was actually over a year before Madison was  
14 born.

15 THE COURT: On how long it would take to starve  
16 a baby?

17 MR. MADSEN: It doesn't say anything along  
18 that.

19 THE COURT: What does it say?

20 MR. MADSEN: If I recall, it says something  
21 about Ambien, about giving a child Ambien. But as  
22 it was presented to Your Honor, it was presented  
23 that it was at the time Madison was alive; saying,  
24 hey, that's not the case.

25 THE COURT: Right. So that was a year before

1           this child was born?

2           MR. MADSEN: We don't have the exact date.

3           THE COURT: So the only child that was in this  
4 house would have been Cameron?

5           MR. MADSEN: Cameron. Which Cameron never  
6 tested positive for anything, there were no charges  
7 brought in relation to Cameron. And I'll talk about  
8 that because there was a forensic interview which he  
9 seemed like a happy -- he talked about playing video  
10 games, that they played with Madison. On the video  
11 that I was provided through the Dickerson Center or  
12 the --

13          THE COURT: I'm sorry to interrupt you.

14          Dr. Luberoff, I got to ask you again. I'm  
15 sorry. Ambien, the reason that's given to people is  
16 that the half-life is real short; right?

17          DR. LUBEROFF: Yes.

18          THE COURT: And so it's out of your system --  
19 as long as you actually go to sleep and don't go run  
20 around driving, it gets out of your system pretty  
21 quick; right?

22          DR. LUBEROFF: Yes, sir. Within a matter --  
23 Ambien is an adult drug and that's not my field.

24          THE COURT: Right.

25          DR. LUBEROFF: But as I understand, it's clear

1           enough from the system to no longer affect you  
2           within a night's sleep cycle and cleared out within  
3           that next day.

4           THE COURT: That's what I thought. I mean, you  
5           know, everybody at some point has had sleepless  
6           nights. And that's how Ambien was sold to you:  
7           It's not going to affect you the next day; in fact,  
8           it will be gone and you won't be sleepy.

9           DR. LUBEROFF: Yes, sir.

10          MR. MADSEN: And I just want to --

11          THE COURT: I know. I know. You're in a  
12          horrible position here. I get it.

13          MR. MADSEN: I just want -- she doesn't admit  
14          that she had done that search. Now, we can't say  
15          what Mr. Garcia did.

16          THE COURT: Yeah.

17          MR. MADSEN: But -- so I didn't want Your  
18          Honor --

19          THE COURT: Somebody was wondering how much  
20          Ambien you could give Cameron. That's the  
21          inference. Otherwise, you're just pretty sick to be  
22          looking at -- and again, I understand you're in a  
23          hard position. I respect you. You're a great  
24          lawyer. I'm listening to anything you have to say,  
25          but any incredulity you face from me is not

1           personal.

2           MR. MADSEN: Judge, if I might, can I just give  
3 you some background on Tracy to start with?

4           THE COURT: Sure.

5           MR. MADSEN: As you heard, she's 43 years of  
6 age. She grew up in Chester. Unfortunately, she  
7 was abandoned by her mother when she was born,  
8 never -- maybe saw her mother once when she was ten,  
9 never met her father. Her biological father was  
10 never around. She ended up going what they say is  
11 the maternal grandparents. It was actually her  
12 grandfather and his wife --

13          THE COURT: That was Ms. Roach?

14          MR. MADSEN: That was Betty Roach who basically  
15 ended up raising her because Grandfather had died  
16 when she was two years of age.

17          THE COURT: So it was --

18          MR. MADSEN: It was her maternal grandfather's  
19 wife.

20          THE COURT: -- step-grandmother.

21          MR. MADSEN: Right. She was raised by her.  
22 Unfortunately Mrs. Roach had challenges herself; she  
23 was an alcoholic, she was neglectful. That ended up  
24 with Tracy going, basically, to foster care for a  
25 period of time. She ended up going back to

1 Mrs. Roach and it kind of got worse; she ended up  
2 getting molested by Mrs. Roach's boyfriends back  
3 then when she was a child.

4 As I said, you know, she really never knew her  
5 biological parents. Despite all of that trauma she  
6 had as a youth, she went to the 12th grade at  
7 Chester High School, ended up getting a GED from  
8 there, and actually had a pretty good employment  
9 history. She worked as a receptionist, she worked  
10 doing title loans and, as you heard from her, right  
11 before Madison's birth, she had worked at Hacienda  
12 Mobile Home Park, had been there about four or five  
13 months doing property management.

14 She didn't find out that she was pregnant until  
15 about three months in. Madison was born a month  
16 early. She ended up quitting that job because she  
17 was right around 40, I think, at that point in time,  
18 so she was kind of high risk to begin with.

19 Judge, as you heard, she ended up seeking  
20 medical treatment in 2010 for mental problems that  
21 she had had. She went to Lexington County Mental  
22 Health. She was diagnosed there as bipolar, ADD,  
23 anxiety, depression, and also insomnia.  
24 Additionally, after Madison's birth, she was  
25 additionally diagnosed with postpartum depression.

1 She was prescribed a number of drugs through  
2 Lexington Mental Health; Klonopin, Zofran, Saffron,  
3 Desyrel, Ambien, Adderall, and then later, for the  
4 postpartum depression, she was also prescribed  
5 Zoloft.

6 Mrs. Roach ended up dying 2006, really doesn't  
7 have any other family. They raised Cameron there.  
8 As I told you, the forensic interview that we  
9 received from the State indicated -- talked about  
10 interaction with Madison, how he liked to play video  
11 games. So as far as any, you know, talking about  
12 starving Cameron, none of that was included Cameron  
13 didn't do that and those -- or Cameron didn't speak  
14 about that. Those are trained forensic interviewers  
15 trying to get information out. So, quite honestly,  
16 a lot of what the foster parents -- or foster mother  
17 had said is kind of a surprise, because that  
18 information was not given to us.

19 Now, additionally --

20 THE COURT: And I understand that. I mean,  
21 Cameron is not an issue here. I mean, the fact that  
22 he's had problems isn't an issue here.

23 MR. MADSEN: Well, I just wanted to let you  
24 know what was on that forensic interview that came  
25 from him because that's obviously a normal course of

1 an investigation that they would ask the child in  
2 the house, hey, what was going on?

3 I will tell you that in that interview and  
4 additionally in the autopsy, generally when you deal  
5 with cases of this nature, you see fractures,  
6 bruises, punches, blunt-force trauma. There's no  
7 indication of any of this, although it is still  
8 lethal medical neglect. And Tracy certainly does  
9 understand that, and that's why she's up in front of  
10 Your Honor pleading guilty.

11 I will tell you, with her mental state and the  
12 postpartum depression, at some point in time, she  
13 just kind of ended up going in a downward spiral and  
14 not doing anything. I think the State had told you,  
15 even Cameron had indicated, that she would pretty  
16 much lie on the couch and sleep for a period of  
17 time.

18 We've had Dr. McKee come and interview her, and  
19 I would like Your Honor, if appropriate, to hear  
20 from him --

21 THE COURT: Sure.

22 MR. MADSEN: -- because I think he can kind of  
23 explain, you know, you have a child that's in the  
24 home and then you have this with an infant, and I  
25 think he can kind of speak a little bit about that.

1           Before he speaks out, I will let you know,  
2 obviously Madison was diagnosed at birth with Down  
3 Syndrome and failure to thrive, which is a medical  
4 diagnosis. She was in the hospital about a month to  
5 six weeks before she ended up being released. But,  
6 Your Honor, I'd like you to hear from Dr. McKee.

7           THE COURT: I'll be happy to.

8           Dr. McKee, just come up and give us your full  
9 name and spell your last name.

10          DR. MCKEE: My name is Geoffrey R. McKee.  
11 First name is spelled G-E-O-F-F-R-E-Y; last name is  
12 McKee, M-C-K-E-E.

13          THE COURT: Yes, sir.

14          DR. MCKEE: Good morning, Your Honor.

15          At Mr. Madsen's request, I conducted a forensic  
16 psychological evaluation of Ms. Roach and saw her at  
17 the Lexington County Detention Center on March 4th,  
18 2015. In addition to reviewing a variety of records  
19 that have already been referred to here at this  
20 hearing, I also conducted a lengthy interview of her  
21 getting her personal history that Mr. Madsen has  
22 summarized, which was consistent with what she had  
23 told me.

24          I also administered a variety of psychological  
25 tests and also calculated some risk guides of

1           likelihood of future violence and likelihood of  
2           success on parole when and if she is granted parole.

3           The results of my evaluation are that the  
4           psychological tests did not indicate that she was  
5           malingering any psychiatric or emotional disorders,  
6           and she was not making any attempt to avoid any kind  
7           of responsibility for her current situation or the  
8           negligent death of her daughter.

9           On one of the instruments, women with similar  
10          results have longstanding depressive personality,  
11          and on the other instrument, women with those  
12          results have histories of alcohol abuse along with  
13          severe depressive disorders. These data were  
14          consistent with the diagnosis that was first  
15          rendered in 2010 by the Lexington County Mental  
16          Health Center, Bipolar II Disorder, which is a  
17          severe mental disorder; it's not a psychotic  
18          disorder, but it's a severe mood disorder  
19          characterized by prolonged depressive episodes.

20          She was also diagnosed with an adult attention  
21          deficit disorder. She was subsequently diagnosed  
22          with postpartum depression in 2012 and administered  
23          another antidepressant medication. This is, of  
24          course, following the birth of Madison. What  
25          Ms. Roach reported to me is that beginning in about

1 April, she had left her job to -- following the  
2 birth of her daughter. But in April and in the  
3 months continuing, in shorthand she pretty much just  
4 gave up. She was drinking every day, spending most  
5 of her time inside her house, and she reported that  
6 there were days that went by when she would not take  
7 care of her personal hygiene, she would not shower  
8 or do any of the usual things regarding her personal  
9 hygiene. And these are consistent with, again, a  
10 major depressive disorder.

11 That being said, her disorder was not  
12 sufficient to impair her ability to know right from  
13 wrong or to conform her conduct to the requirements  
14 of the law. But this pattern of a preconception of  
15 Madison where she was diagnosed with a severe mental  
16 illness and severe depression, compounded by the  
17 postpartum depression, there's quite a bit of  
18 research to indicate that that double depression is  
19 often more severe than the depression -- either one  
20 of those depressions in and of themselves. And  
21 that, along with, candidly, her daily consumption of  
22 alcohol, resulted in a severely neglectful mother.  
23 I asked her the last time that she was drunk, and  
24 she said that it was on the day that Madison died.

25 I also scored some risk guides regarding the

1           likelihood of future violence. One of these is  
2           called the HCR-20, which is a checklist of  
3           historical conditions, clinical conditions, and then  
4           risk factors. Her score on that was a 9 out of a 40  
5           as the maximum score. This put her in the low-risk  
6           category for future violence. And as Mr. Madsen  
7           noted, the autopsy report indicated no history of  
8           fractures so that this was a mother who engaged in  
9           neglectful, but not physically abusive behavior  
10          toward her daughter.

11                 On her scores of likelihood of success, on  
12          community supervision, if she's at some point  
13          granted that, she falls in a good likelihood of  
14          completion of that. One of the scales I use is a  
15          scale that was developed by the United States  
16          Probation Office and used for decades by that  
17          office. The other is actually a -- and both of  
18          these are quantitative scales.

19                 THE COURT: Right.

20                 DR. MCKEE: The other scale that I use is the  
21          Parole Risk Assessment Scale that was developed by  
22          the South Carolina Department of Probation, Pardon  
23          and Parole Services, and her scores on that one fell  
24          in the good likelihood. Approximately 77 percent of  
25          persons who subsequently go out on community

1 supervision successfully complete their parole with  
2 less than five percent re-offending with a violent  
3 offense.

4 THE COURT: Okay. Thank you.

5 MR. MADSEN: Judge, we would ask Your Honor to  
6 consider a 20-year sentence in this case. That  
7 would put Ms. Roach, when she came out, at almost 60  
8 years of age. As Your Honor noted, she doesn't have  
9 any convictions of violence; in fact, it was a  
10 breach of trust and embezzlement. And I think her  
11 last conviction was a Magistrate's level  
12 shoplifting.

13 We understand that this is a bad case. We do  
14 believe that 20 years would be appropriate. As  
15 Dr. McKee said, she has depression, then she gets  
16 the postpartum depression, and you kind of add those  
17 things together and she just didn't do anything.  
18 She basically was at the house and she drank.

19 THE COURT: And the husband has pled not guilty  
20 and is up for trial; right?

21 MR. MADSEN: That's my understanding. We  
22 haven't -- obviously, he's not our concern.

23 THE COURT: Okay.

24 MR. MADSEN: But that is my understanding is  
25 that he's set for trial sometime in May.

1           I will let Your Honor know that we had spoken  
2 with the Solicitor's Office. Obviously in a case of  
3 this magnitude, there is a lot of information. It  
4 takes them a while to get that to us. Before a  
5 trial date was set, we had approached the  
6 Solicitor's Office about a plea. We were simply  
7 trying to get all of our ducks in a row beforehand  
8 so that we could present a full picture to Your  
9 Honor so that you could make your sentencing  
10 decision.

11           THE COURT: Okay. I think I get what you're  
12 saying. Okay.

13           All right. Ms. Roach, anything you want to  
14 tell me? Now is your time. And I'm just going to  
15 be honest with you, I need to take a break before I  
16 do this. One of the hardest parts of this job is  
17 not doing it angry. And it's not easy sometimes.  
18 But I'll be happy to hear from you now before I take  
19 a five-minute break. But if there's anything you  
20 want to tell me, now is the time.

21           THE DEFENDANT: I just want to say that I'm  
22 sorry this happened. We loved Madison as we do  
23 Cameron. I don't know what really happened. But we  
24 loved her.

25           THE COURT: What do you mean you don't know

1           what happened?

2           THE DEFENDANT: I don't know.

3           THE COURT: Pardon?

4           THE DEFENDANT: I don't know. It just got bad  
5 and I was depressed.

6           THE COURT: You were mad and got depressed?

7           THE DEFENDANT: No. I said it got bad and I  
8 was depressed.

9           THE COURT: Okay.

10          THE DEFENDANT: But we do love her and Cameron  
11 too.

12          THE COURT: Well, I can't help but notice that  
13 you've been pretty stoic during this whole thing.  
14 Have you seen these pictures of your child?

15          THE DEFENDANT: Yes, sir, I've seen them. And  
16 I've been upset. But, you know, I'm on medication  
17 too and they say sometimes it keeps you from being  
18 upset or showing your true emotions. I'm on a lot  
19 of sedating type medications right now.

20          THE COURT: But there's no question you know  
21 what you're doing here today?

22          THE DEFENDANT: Yes, sir, I know what I'm doing  
23 here today.

24          THE COURT: Okay. Did you have family that  
25 lived in the area?

1           THE DEFENDANT: No. I didn't have anybody that  
2 lived in the area.

3           THE COURT: Did you have any friends that lived  
4 in the area around you?

5           THE DEFENDANT: No, sir. When we moved to  
6 Columbia, it was because I took the job here. And  
7 we didn't have any friends or anything down here.  
8 Ms. Hempton lived in Chester. Ms. Hempton, you  
9 know, she offered to help, but she lived over 55  
10 miles away.

11          THE COURT: Oh, the one that called -- what  
12 about the lady that called and --

13          MR. MADSEN: That's Ms. Hempton.

14          THE COURT: So she lived in Chester, not --

15          MR. MADSEN: They were in Chester, moved down  
16 here for job. Their plan was to go, eventually,  
17 back to Chester.

18          THE DEFENDANT: Right. That was our goal. We  
19 was trying to get back there. And that's when I got  
20 depressed because it didn't work out. I wanted to  
21 get back to where I had some support at least.

22          THE COURT: So the lady who's calling you and  
23 saying, when can I pick up my baby, was 55 miles  
24 away?

25          THE DEFENDANT: Right.

1           THE COURT: Well, quite frankly, that makes me  
2 feel a little bit better about her, because if she  
3 was next door, I was trying to figure out why you  
4 wouldn't go check. Okay.

5           All right. Anything else you want to tell me?

6           THE DEFENDANT: No, sir.

7           THE COURT: Okay. Like I said, it's hard for  
8 me. I'm okay, but I really want to take a deep  
9 breath. I mean, you know, I've done this 15 years  
10 and I've seen a lot of really bad cases. And  
11 somebody testified that it was a haunting --  
12 pictures and the kind of thing you don't ever  
13 forget. That's probably the best description I can  
14 come up with. So I'm going to take five minutes.

15           (Court in recess at 11:46 AM until 12:12 PM.)

16           THE COURT: All right. Just for the record and  
17 just to make sure that I've covered all of the  
18 bases, I am accepting Mrs. Roach's plea. A couple  
19 of her answers to my questions have raised a little  
20 bit of concern about competency, so I want to put on  
21 the record and make a Court's Exhibit the Department  
22 of Mental Health finding that she is competent and  
23 criminally responsible. And I'm told by all the  
24 parties that that has not changed.

25           My concern was that last question about how she

1           could stand here with no emotion, and her answer was  
2           that she's taken some medication that, well, dampens  
3           your emotions. I've done a little bit of just  
4           off-the-record -- that's normal. So that will be  
5           Court's Exhibits 1 and 2.

6           The other reason I took a break is that, as I  
7           said, this is pretty haunting. And I've done this  
8           15 years -- and nobody really cares what I think  
9           about these things. But up until today, one of the  
10          worst cases I had ever seen was a man who beat his  
11          six-year-old son to death with a broom handle and  
12          the autopsy showed that 20 of the blows or some  
13          number of the blows were post-mortem. And I took a  
14          break before I sentenced him, and the paper made a  
15          big deal about how emotional I was about it. It  
16          wasn't emotion, it was anger. And I believe in this  
17          job that, while I'm not a robot, I'm not supposed to  
18          be angry when I sentence people. And that's, you  
19          know, why I take the break.

20          This child never had a chance, never had a  
21          chance. And I understand postpartum depression -- I  
22          don't understand it; I understand the theory of it.  
23          But what I was thinking about was, as a history  
24          buff, probably one of the most evil things in the  
25          world was Buchenwald and Auschwitz and places like

1           that. And if you took this picture to 1945 in  
2           Germany, it wouldn't be surprising. And I'm not,  
3           obviously, comparing anybody, I'm just talking about  
4           the condition of this child. So to me, it had to be  
5           almost calculated.

6           The reason I asked the doctor about the water  
7           is if you were going to just -- if you just didn't  
8           want this child, well, obviously the first thing  
9           you'd do is find somebody, call DSS and, you know,  
10          they'll come take it. But my concern is you'd have  
11          to give this child water or she would have been gone  
12          in three to five days. And somehow that's even  
13          worse. I mean, three to five days of suffering  
14          would be terrible, but 13 months of that. And I  
15          will not make that a Court's Exhibit.

16          Those pictures are not in the record, are they?

17          (Court's Exhibit Nos. 1 and 2 marked for  
18          identification.)

19          MS. MAYES: No, sir, Your Honor.

20          THE COURT: I don't want them in the record.  
21          I'll keep them because, you know, I'm sure there are  
22          a lot of other people who will keep this child's  
23          memory alive, and I'll be one of them as long as I  
24          live.

25          This is just horrendous. I mean, this is just

1           literally one of the worst things I've seen.  And  
2           judges say that all the time because sometimes you  
3           just wonder where we're headed sometimes.  It's like  
4           a long train and every car seems worse.  But this is  
5           going to be hard for anybody to ever beat.  It's one  
6           of the worst cases that I've ever seen.

7           So as I've said, I've accepted your plea.  The  
8           sentence is life in prison.  I understand that you  
9           asked for 20, and I understand that I could give 60  
10          or 70 years.  Quite frankly, given her age, it would  
11          be the same.  But life in prison is saved for the  
12          things that are just the worst, and this is the  
13          worst.  This was a small child that had a life ahead  
14          of her, and it was literally starved away from her.

15                 All right.  Thank you.

16                 MS. MAYES:  Thank you, Your Honor.

17                         -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the captioned cause, relative to appeal in the General Sessions Court for Lexington County, South Carolina, on the 14th of April, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 31, 2015

/s/Bethanie K. Creppon  
Circuit Court Reporter

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

FILIBERTO CAMPOS,

APPELLANT

APPELLATE CASE NO. 2015-001293

---

FINAL BRIEF OF APPELLANT

---

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STATEMENT OF ISSUE ON APPEAL

Whether, pursuant to Rule 403, because the overwhelming prejudice drastically outweighed their probative value, the trial court erred in admitting photographs of an infant's corpse that caused one of the most seasoned trial judges in this state to declare he could not be impartial after viewing them and caused jurors to cry upon their publication by the State?

STATEMENT OF THE CASE

During its May 2014, term, the Lexington County grand jury indicted appellant for homicide by child abuse. R. 630. On June 1, 2015, appellant was tried before the Honorable Thomas A. Russo and a jury. R. 1. Suzanne Mayes and Robert McNair represented the State. R. 1. Aimee Zmroczek represented appellant. R. 1. The jury convicted appellant. R. 608, ll. 10 – 22. Judge Russo sentenced appellant to life imprisonment. R. 627, ll. 16 – 20. This appeal follows.

## ARGUMENT

Pursuant to Rule 403, because the overwhelming prejudice drastically outweighed their probative value, the trial court erred in admitting photographs of an infant's corpse that caused one of the most seasoned trial judges in this state to declare he could not be impartial after viewing them and caused jurors to cry upon their publication by the State.

### **Factual and Procedural Background**

The State indicted appellant and Tracey Roach ("Roach") for the death of their thirteen-month old daughter ("Infant"). R. 630; R. 468, l. 25 – 469, l. 6. Appellant is originally from Mexico and a translator was used in this trial. R. 1. R. 513, l. 24 – 514, l. 3. Appellant and Roach lived together since 2005 and had two children together. R. 518, ll. 7 – 23. They had a son in 2006 and Infant was born in July 2012. R. 518, ll. 15 – 23. R. 286, ll. 7 – 11.

During Roach's pregnancy with Infant, the couple learned that Infant had Down's Syndrome. R. 520, ll. 20 – 25. R. 294, l. 14 – 295, l. 5. Roach wanted to have an abortion. R. 521, ll. 3 – 10. Appellant wanted to keep Infant. R. 521, ll. 1 – 10. Infant was born with Down's Syndrome and heart problems. R. 294, l. 14 – 296, l. 25. Infant spent several days in the neonatal intensive care unit. R. 307, ll. 12 – 19.

Appellant worked and Roach took care of the children. R. 524, ll. 11 – 25. Appellant believed Roach was taking care of Infant and feeding her. R. 523, l. 13 – 524, l. 23. About two months before Infant's death, Roach "started to be kind of weird." R. 525, l. 21 – 526, l. 13. Appellant still believed that Roach could take care of the children. R. 526, ll. 14 – 16. On September 2, 2013, appellant found Infant dead in her crib. R. 529, ll. 6 – 9. Appellant ran to a store and called 911. R. 529, l. 23 – 530, l. 6.

The State's expert witnesses testified that Infant starved to death. R. 405, ll. 21 – 25. R. 372, l. 24 – 377, l. 3. SLED's toxicologist testified that Infant had antidepressants in her system. R. 346, ll. 5 – 25. The toxicologist characterized one of the antidepressants as "strong" and said it was used to treat bipolar disorder. R. 351, ll. 10 – 16. The antidepressants in Infant's system caused drowsiness and lethargy. R. 349, ll. 2 – 8. They were ingested within twelve hours of infant's death. R. 353, ll. 21 – 24. Roach's prescription medicines as well as a pill crusher were found next to the couch where Roach slept. R. 215, ll. 9 – 24. R. 221, l. 14 – 222, l. 13.

One of the drugs found in the pill crusher matched the drugs found in Infant's system. R. 354, ll. 10 – 16. The State's expert pediatrician described these drugs as having a "synergistic" quality that amplified their effect. R. 422, l. 22 – 423, l. 6. She also agreed that it was common for children who are drugged to experience rapid weight loss. R. 433, l. 24 – 434, l. 1.

Roach pled guilty and received a life sentence. R. 468, l. 25 – 469, l. 12. R. 471, ll. 9 – 18. R. 484, l. 21 – 486, l. 9. Roach exercised her Fifth Amendment privilege and refused to testify at appellant's trial. R. 468, l. 10 – 469, l. 12. Appellant testified that he did not know Roach was hurting Infant and that he thought, in retrospect, that Roach "was crazy." R. 553, l. 21 – 554, l. 3. R. 535, ll. 16 – 21.

Prior to trial, Judge Russo heard argument on appellant's motion in limine to prevent the State from introducing horrific photographs of Infant's corpse. R. 35, l. 17 – 46, l. 16. R. 58, l. 1 – 77, l. 11. State's Ex. 2, 9, 10, 11, 12, 13. R.628. Trial counsel argued that the probative value of the photographs was greatly outweighed by their prejudicial effect and cited State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014) . R. 72, l. 14 – 73, l. 2. R. 40, l. 17 – 41, l. 21. Many of the photographs were taken after Infant was "stored in a cooler." R. 40, l. 17 – 41, l. 21.

In support of her argument, trial counsel quoted the Honorable J. Cordell Maddox Jr.'s comments about the photographs when he sentenced Roach to life imprisonment. R. 38, ll. 9 – 18. Trial counsel quoted Judge Maddox as saying: “I have been a judge for 16 years. I know I’m supposed to be impartial. **I cannot be impartial after looking at these pictures.**” R. 38, ll. 9 – 18 (emphasis added). Referring to Nazi concentration camps, Judge Maddox also said, “If you took this picture in 1945 in Germany, it wouldn’t be surprising.” R. 38, ll. 9 – 18. Trial counsel argued that if an experienced trial judge could not be impartial after looking at these photographs, that it would be impossible for jurors to be impartial. R. 39, ll. 3 – 7. Trial counsel did not make the transcript of Roach’s sentencing a court’s exhibit, but the solicitor asked to see the transcript and never disputed trial counsel’s account of Judge Maddox’s comments. R. 39, ll. 22 – 25. R. 40, ll. 17 – 20. The trial judge did not believe that Judge Maddox’s reaction was relevant to how jurors would react to the photographs. R. 38, l. 19 – 40, l. 16.

The State argued that the photographs were relevant because the defense was challenging the cause of death. R. 42, l. 22 – 43, l. 3. The State also asserted the photographs were necessary to prove that appellant would have been “aware that the child needed medical attention.” R. 43, ll. 4 – 9. Finally, the State argued that the photographs were needed to “illustrate the findings of the physicians in this case.” R. 43, l. 11 – 44, l. 2. The State pared the photographs it sought to introduce, but appellant still objected to all of the photos and argued they were cumulative. R. 72, l. 5 – 74, l. 7.

The trial judge sustained appellant’s objection to one photograph (State’s Ex. 10), but admitted five photographs (State’s Ex. 2, 9, 11, 12, 13). R. 74, l. 8 – 75, l. 6. Judge Russo ruled “as far as the objection that the prejudicial effect is outweighed by any probative value I’m going to overrule as to those.” R. 74, l. 23 – 75, l. 6. Trial counsel made contemporaneous objections

when the State sought to admit the photographs during the trial. R. 112, ll. 3 – 10. R. 370, ll. 7 – 17.

### Discussion

The trial judge erred in allowing the jury to see these horrific photographs. The photographs have been transported for the Court's viewing. (State's Ex. 2, 9, 11, 12, 13). The photographs of Infant's purple, withered corpse exceed "the outer limits of what our law permits a jury to consider." State v. Torres, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010). While appellant readily concedes that the photographs did have some probative value, their grotesque nature tips the scales of Rule 403 so heavily toward unfair prejudice that the trial judge abused his discretion when he admitted them. Rule 403, SCRE. See also State v. Gray, 408 S.C. 601, 616-17, 759 S.E.2d 160, 168-69 (Ct. App. 2014) (discussing definition of unfair prejudice and noting that evidence that is "concededly relevant" must still be evaluated for its ability to "lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.") quoting Old Chief v. United States, 519 U.S. 172, 180 (1997). Trial counsel correctly argued that if an experienced trial judge could not be impartial after looking at these photographs, then the law could not ask jurors to decide a case based on the facts and the law instead of passion and prejudice.

In the fractured opinion of State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014), three justices of the Supreme Court found that admission of photographs of a child's corpse that had been eaten by dogs was error. Collins at 539-40, 763 S.E.2d at 30-31 (opinions of Kittredge, J. and Hearn, J., concurring and Pleicones, J., dissenting). Justice Kittredge wrote that the State's purpose of admitting the "horrific" photographs was "to inflame the passions of the jury." Id. In

dissent, then-Justice Pleicones wrote that the photographs far exceeded what the law allowed. Id.

“Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” Torres, at 623, 703 S.E.2d at 228. Photographs are unfairly prejudicial if they have a tendency to suggest a decision on an improper or emotional basis. Id. The impossibility of the jury maintaining objectivity is manifestly clear from the record. Jurors cried when they were shown photograph’s of Infant’s body. R. 270, l. 11 – 271, l. 6. R. 563, l. 18 – 564, l. 9. Many of the photographic exhibits were shown to the jury with an overhead projector. R. 615, ll. 6 – 11. By defense counsel’s count, the jury only deliberated for fourteen minutes before convicting appellant. R. 614, ll. 1 – 9.

In assessing the unfair prejudice of these photographs, the Court should keep in mind that these are not photographs of an adult, but of an infant. The photographs in Torres were autopsy photographs of adults. While still a child, the victim in Collins was ten years old. Here, the victim was a special needs baby. Her face is visible. Judge Maddox correctly compared the photographs to Nazi concentration camps.

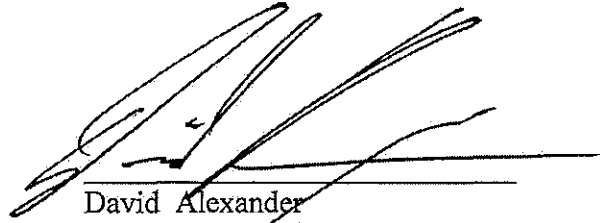
Appellant admits that the photographs do have some probative on the issue of whether appellant should have known that Roach was starving Infant to death. However, the State’s witnesses testified that Infant’s condition was readily apparent. R. 107, l. 19 – 108, l. 25 (EMT Hunter Reed). The pathologist and pediatrician experts described Infant’s condition and that her appearance related to starvation. R. 361, l. 21 – 378, l. 11 (pathologist Jeffery Welsh). R. 405, l. 21 – 420, l. 1. Even though the photographs do add some measure of probative value to the

experts' descriptions, it was simply beyond the pale to expect jurors to decide the case on anything but emotion after seeing this evidence.

Especially considering the fourteen-minute deliberation, it seems unlikely that the jurors gave serious consideration to appellant's defense or Roach's responsibility. The drugs in Infant's system belonged to Roach. Appellant testified that Roach was responsible for feeding Infant and that he believed Roach was feeding her. The State's expert admitted that the drugs given Infant by Roach could have caused rapid weight loss, so the State's argument that it would have taken months for Infant to die and therefore appellant had to have known her condition was far from conclusive. When photographs like these are admitted, a court asks too much of jurors to put aside their emotions and decide the case on the evidence and the law. The photographs overwhelmed the jurors' capacity to assess the evidence rationally. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand this case for a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander  
Appellate Defender

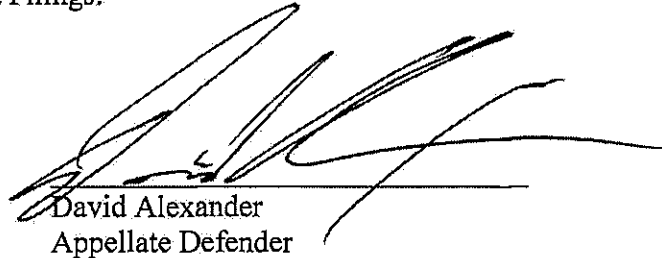
ATTORNEY FOR APPELLANT

This 16th day of February, 2017.

## CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 16, 2017



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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

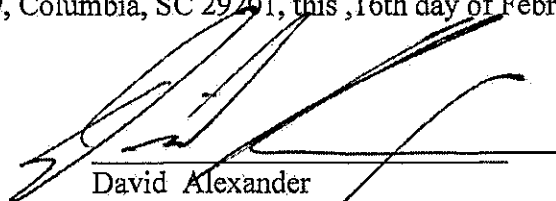
V.

FILIBERTO CAMPOS,

APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this ,16th day of February, 2017.

  
\_\_\_\_\_  
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 16th day of February, 2017.

Marie Muebeck (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Lexington County  
Honorable Thomas A. Russo, Circuit Court Judge  
Appellate Case No. 2015-001293

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THE STATE,

Respondent,

vs.

FILIBERTO GARCIA CAMPOS,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge did not abuse his broad discretion by admitting a limited number of photographs depicting the thirteen-month-old victim's profoundly emaciated condition at the time of her death because those photographs were highly probative towards establishing the victim was fatally deprived of food and health care by her parents, which had to be established in order to prove Appellant's guilt for the elements of homicide by child abuse, and their high probative value greatly outweighed any potential undue prejudice that could have resulted from their admission.

**STATEMENT OF THE CASE**

In September of 2013, Appellant Filiberto Garcia Campos was arrested following an investigation into the death of his thirteen-month-old daughter. In May of 2014, the Lexington County Grand Jury indicted Appellant for one count of homicide by child abuse. On June 1, 2015, a jury trial was commenced in the Lexington County Court of General Sessions with the Honorable Thomas A. Russo, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to life imprisonment without the possibility of parole. Appellant then timely filed a notice of appeal.

**STATEMENT OF FACTS**

Around 9:30 p.m. on September 2, 2013, Appellant Filiberto Garcia Campos called 911 from a telephone located at a store near his home in West Columbia, South Carolina, and reported his thirteen-month-old daughter (“Victim”) had died because she was “very sick.”<sup>1</sup> (R. pp. 104-105; p. 212; pp. 530-531). In response, Hunter Reed, a paramedic with Lexington County Emergency Medical Services, quickly responded to Appellant’s home along with other emergency personnel. (R. pp. 102-106; pp. 124-125). When he arrived a short time later, he encountered Appellant, who was holding Victim, along with Tracy Roach, Victim’s mother. (R. pp. 105-106; p. 121; pp. 31-132). Appellant then quickly handed Victim to Reed, and Reed immediately noticed Victim, who was not breathing and had no pulse, appeared to be very small, was underweight, and did not look or feel like a typical infant of the same age. (R. pp. 106-110). At that point, Reed moved Victim to his ambulance, began resuscitation efforts, took off her clothing for treatment purposes, and noticed she was “profoundly emaciated.”<sup>2</sup> (R. pp. 107-109). As he provided her with treatment, Reed further noticed Victim had a “complete lack” of fatty tissue on her body, appeared “skeletal,” had “very sunken in” eyes, was dirty, and was wearing a degraded diaper that was stained with urine and nearly falling apart. (R. pp. 109-110). Reed then rapidly transported Victim to Lexington Medical Center, but he and other medical personnel were never able to revive her. (R. p. 110; pp. 144-145).

As a result of Victim’s death, Detective Michael Gooding responded to the Lexington Medical Center to conduct an investigation into the matter, and he went to see Victim in the emergency room. (R. p. 142; pp. 144-145). Upon seeing her, Detective Gooding was shocked

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<sup>1</sup> During the call, Appellant also noted Victim was not breathing and was dry. (R. p. 531).

<sup>2</sup> While attempting to treat Victim, Reed obtained a medical history from Roach, who reported Victim was behaving normally earlier that afternoon and had been checked on multiple times by Appellant prior to her death. (R. p. 113).

by Victim's appearance and noticed she was extremely thin, her eyes appeared sunken in, her mouth was very dry, all of her ribs were "cleanly and clearly" visible, her shoulder blades were protruding, she had seeping open sores on her body, she was covered in what appeared to be crystalized urine, and she smelled of urine. (R. p. 147). Moreover, Detective Gooding was unable to detect any features commonly associated with Down Syndrome due to Victim's condition despite the fact Victim had been diagnosed with that genetic disorder. (R. p. 147; p. 412). After viewing Victim's condition, Detective Gooding spoke with Roach, who was still at the hospital, and then went to Appellant's residence to speak with him there. (R. p. 149; pp. 151-154). During his ensuing conversation with Appellant, Appellant stated he had been off from his job for a three-day holiday weekend at the time of Victim's death, woke up around 1:00 p.m. earlier that day, made something to eat in the kitchen, went back to sleep, woke up later, checked on Victim, and found her unresponsive in her crib. (R. pp. 155-158). Additionally, Appellant stated he did not check on Victim when he had woken up earlier because her room was on the other side of his residence, which was a single-wide trailer. (R. p. 156). Appellant further stated Victim had been sick all day but claimed nothing had been different in the last day or so of her life. (R. pp. 159-160). Furthermore, Appellant asserted Roach, whom he reported had been sick and was sleeping on a couch, usually fed Victim and had not told him anything about Victim on the day of her death. (R. pp. 153-156; pp. 159-160).

Subsequently, in the early morning hours of September 3, 2013, Detective Gooding executed a search warrant at Appellant's trailer. (R. p. 165). When he did so, Detective Gooding immediately detected the odor of urine and discovered the smell grew stronger as he walked to Victim's bedroom. (R. p. 166). During his ensuing search of the residence, Detective Gooding located a baby bottle containing crusty and curdled milk in the floor of the living room,

two or three more baby bottles containing crusty and curdled milk on the kitchen counter, a highchair that appeared to be used solely for storage in the corner of the kitchen, dusty and unopened bottles of baby food and formula buried underneath other items in the kitchen, a baby bathtub that appeared unused in the master bathroom, and multiple empty beer packages throughout the kitchen. (R. pp. 166-168; pp. 173-174; pp. 176-182; pp. 184-186). Notably, Detective Gooding did not locate any open containers of baby food or any fresh milk or formula anywhere inside the trailer, including in the refrigerator, which only contained food for adults, and he was unable to locate any implements used to clean baby bottles anywhere in the residence. (R. p. 168; p. 173; p. 176; pp. 185-186; p. 233).

Thereafter, at approximately 10:00 a.m. later that morning, Dr. Jeffrey Welch, a pathologist at Lexington Medical Center and an expert in clinical and anatomic pathology, conducted an autopsy of Victim. (R. p. 148; pp. 356-359). During the autopsy, Dr. Welch discovered Victim, who was thirteen months old, weighed just nine pounds and two ounces, which was a weight significantly below the weight expected of a child her age.<sup>3</sup> (R. p. 360). He further noticed she was extremely thin and her eyes and cheeks were sunken in, which was indicative of chronic malnutrition. (R. pp. 361-362; p. 364). As the autopsy continued, Dr. Welch noted Victim's ribs and spine were protruding, her scapulas were visible, her hip bones were protruding, her skin was wrinkled, she had pressure sores on her body, and the crown of her head was sunken in, which was a sign of malnutrition and dehydration. (R. pp. 364-366; p. 372; p. 374). Additionally, he discovered Victim's stomach was empty at the time of her death. (R. p. 381). Furthermore, he noted she had no fatty tissue on her body and her liver, thymus, and adrenal glands were exhibiting changes caused by chronic malnutrition and starvation. (R. 366-

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<sup>3</sup> According to the medical testimony presented during trial, Victim should have weighed between eighteen and twenty pounds at the time of her death. (R. p. 432).

369; pp. 373-374). Based on his discoveries during the autopsy, Dr. Welch concluded Victim's death resulted from lethal neglect. (R. p. 375).

Following the determination regarding the cause of Victim's death, Detective Gooding continued his investigation into the matter. (R. pp. 187-189). While doing so, he obtained medical records associated with Victim, and the last record he was able to locate was from November 12, 2012. (R. pp. 194-195). However, he ascertained thirty-seven different medical appointments for Victim were missed, cancelled, or otherwise not kept during her short lifetime. (R. p. 197). Additionally, he discovered Victim received in-home visits from medical personnel through the Easter Seals program but no in-home visits occurred after 2012.<sup>4</sup> (R. p. 195). He further discovered Victim received full medical insurance coverage through Medicaid, vouchers for formula and food through the Women, Infants, and Children Program, and \$698 per month in Social Security benefits while her family received an additional \$526 per month in food stamps. (R. pp. 196-197; pp. 217-219; p. 321). Furthermore, he spoke with Appellant, Roach, and their neighbors and determined everyone, including Appellant, was home the majority of the time in the days leading up to Victim's death. (R. pp. 192-193; p. 210).

Based on his discoveries, Detective Gooding arrested Appellant and Roach in connection to Victim's death on September 12, 2013, and executed a second search warrant at the residence.<sup>5</sup> (R. pp. 199-201). During the second search, Detective Gooding discovered the trailer had been cleaned, the highchair had been uncluttered, and the dusty baby food he had seen during his earlier search had been polished off and stacked neatly on the counter. (R. pp. 201-

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<sup>4</sup> Regarding those in-home visits, Melissa Juergens, an early intervention specialist with Easter Seals of South Carolina, testified during trial she visited Appellant's home six times between September and December of 2012 to provide developmental training to Victim's family and only stopped doing so when Roach terminated her services. (R. pp. 254-256). Juergens further testified she weighed Victim during a visit on December 5, 2012, and determined Victim weighed nine pounds and five ounces at that time. (R. pp. 257-258).

<sup>5</sup> At the time of his arrest, Appellant had \$484 in cash in his wallet and a reported income of \$38,193 per year. (R. p. 206; p. 280).

202). Additionally, he located a bag in the living room containing multiple medications prescribed to Roach along with a pill crusher. (R. pp. 215-216; p. 222). Furthermore, he located some unused vouchers for baby food and formula along with numerous receipts indicating fast food, beer, and other food items were purchased in the days and weeks leading up to Victim's death, but none of the receipts indicated any baby food or formula had been purchased during that time span. (R. pp. 211-212; p. 217; p. 219).

Subsequently, Appellant was indicted for homicide by child abuse, and he elected to proceed to trial. (R. pp. 9-11; pp. 629-630). At the outset of trial, the solicitor indicated she wished to introduce some of the photographs taken of Victim after her death during the course of the trial, and defense counsel responded she objected to some of the pictures the solicitor intended to introduce.<sup>6</sup> (R. pp. 12-13; pp. 35-38). In support of her objection, defense counsel indicated she wished to introduce a transcript of remarks made by Judge J. Cordell Maddox, Jr., the South Carolina circuit court judge who accepted Roach's guilty plea prior to Appellant's trial, because Judge Maddox purportedly stated during the guilty plea proceedings he could not remain impartial after viewing the photographs from the case. (R. pp. 38-39). In response, the trial judge inquired as to how Judge Maddox's purported views on the photographs would be relevant to Appellant's case in light of the fact he might have a differing view of the evidence presented to him, and, at that point, defense counsel withdrew her request to make Judge Maddox's remarks a part of the trial record.<sup>7</sup> (R. pp. 39-40). Defense counsel then contended

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<sup>6</sup> In arguing for the admission of some of the post-mortem photographs, the solicitor noted over one-hundred photographs had been taken in Appellant's case and the majority were not being offered into evidence. (R. pp. 35-36; p. 76).

<sup>7</sup> Before defense counsel abandoned her request to make Judge Maddox's purported remarks a part of the trial record, the solicitor indicated she had not seen the transcript of those remarks and asked to see them. (R. p. 39). Defense counsel then informed the solicitor she would find the remarks for her, but it is unclear if she ever did so because she promptly withdrew her request to admit the transcript of those remarks directly after calling them to the solicitor and the trial judge's attention. (R. pp. 39-40).

she objected to some of the photographs because Victim's stomach was "all sunk down" in the post-mortem photographs the solicitor wished to introduce while maintaining Victim's stomach appeared different in photographs taken closer in time to her death. (R. pp. 36-38; p. 41). In rebuttal, the solicitor asserted the photographs were highly probative because they were necessary for the medical testimony to be understood and because defense counsel intended to challenge the cause of Victim's death along with argue Appellant was not aware of Victim's condition. (R. pp. 42-44).

Upon considering the arguments of counsel and reviewing the evidence overnight, the trial judge ruled one of the photographs the solicitor wished to introduce would not be admissible due to the fact it was cumulative to another of the photographs but overruled defense counsel's objection as to five of the post-mortem photographs upon finding their probative value was not substantially outweighed by their potential for unfair prejudice. (R. p. 62; pp. 73-75). Furthermore, the trial judge determined Victim's condition appeared to be the same in both the earlier post-mortem photographs and the photographs taken several hours later at the time of the autopsy. (R. p. 44; p. 73).

Thereafter, as trial proceeded forward, Reed testified about his response to Victim's death and his observations of Victim's alarming condition when he arrived at Appellant's home while noting Victim's concerning features were readily apparent, and one of the photographs taken of Victim's body – State's Exhibit # 9 – was admitted into evidence over defense counsel's objection after Reed confirmed it accurately reflected Victim's condition at the time he placed her into his ambulance. (R. pp. 102-103). Likewise, Detective Gooding testified about the details of his investigation into Victim's death, and he recounted his observations of Victim's

shocking condition when he saw her in the emergency room at the Lexington Medical Center.<sup>8</sup> (R. pp. 142-238). Additionally, Becky Kelly, one of Appellant's neighbors, noted Appellant was home every day between June and September of 2013 after he got off work, and Brenda McLain, an accountant and bookkeeper at Appellant's place of employment, confirmed Appellant typically got off work around 2:30 p.m., did not ordinarily work on weekends, and last got off work at 2:31 p.m. on August 30, 2013, prior to Victim's death several days later. (R. p. 131; p. 135; pp. 239-250).

As the trial continued forward, defense counsel asserted a "juror with . . . shoulder length blond hair" was "crying" and "had visible tears" when State's Exhibit # 9 was published to the jury, and the trial judge noted defense counsel's assertion for the record. (R. pp. 270-271). Following that occurrence, Mary Kayse, a pediatric nurse practitioner who saw Victim for wellness checks after her birth, testified about her interactions with Victim and her family. (R. pp. 283-286). During her testimony, Kayse recounted she weighed Victim, who was born in July of 2012, several times between August and November of 2012 and Victim's weight gain was concerning at that time. (R. pp. 286-289). In response, Kayse indicated she spoke to Roach, personally fed Victim, who "greedily" drank two ounces of formula, and recommended Roach increase Victim's calorie intake. (R. pp. 289-293). After that, Kayse stated Appellant and Roach brought Victim back for one more appointment on November 12, 2012, she weighed Victim and discovered Victim had gained eight ounces in three days, and then Appellant and Roach left with Victim before the appointment could be conducted. (R. pp. 297-298).

In addition to that testimony, Dr. Welsh testified about Victim's cause of death along with his observations during Victim's autopsy, which he found to be "striking," and several more

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<sup>8</sup> During his testimony, Detective Gooding noted the only change in Victim's appearance between when he saw her in the emergency room and saw her at the time of the autopsy was the medical equipment used in the efforts made to save her life had been removed by the time of the autopsy. (R. p. 187).

photographs of Victim's condition after her death – State's Exhibits # 3, # 11, # 12, and # 13 – were admitted into evidence.<sup>9</sup> (R. pp. 356-383). Regarding Victim's cause of death, Dr. Welsh explained she died of lethal neglect while noting her death was not caused by drug interaction or a heart condition.<sup>10 11</sup> (R. p. 375; p. 377; pp. 381-382). He further stated Victim's life could have been saved if she had received medical attention when her symptoms were readily apparent. (R. p. 376). Likewise, Dr. Susan Luberoff, a child abuse pediatrician and expert in forensic pediatrics, testified about her evaluation of the medical records, autopsy findings, photographs, and data related to Victim's death. (R. pp. 396-402). During her testimony, Dr. Luberoff noted Victim was "profoundly emaciated" in a "striking" and "startling" fashion and referred to the various photographs taken after Victim's death to explain the significance of the features depicted in those photographs.<sup>12</sup> (R. pp. 409-414). In order for Victim to have reached the condition she was in, Dr. Luberoff stated she would have had to have been starved for a period of months.<sup>13</sup> (R. p. 414). Dr. Luberoff further noted the physical features of Victim's chronic starvation, which were depicted in the photographs admitted into evidence, would have been

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<sup>9</sup> When those photographs were offered into evidence, defense counsel did not object to the admission of State's Exhibit # 3 but objected to the admission of the other three photographs. (R. p. 370).

<sup>10</sup> Although drug interaction was ruled out as a cause of Victim's death, three different antidepressants were determined to have been present in Victim's body at the time of her death, and those drugs had been ingested within the last twelve hours of her life. (R. pp. 344-345; pp. 381-382).

<sup>11</sup> Earlier during her opening statement, defense counsel had called the jury's attention to the fact Victim had been diagnosed with a heart condition. (R. p. 101). However, Victim's heart condition had healed by the time of her death. (R. pp. 295-296; p. 377; pp. 401-403).

<sup>12</sup> During her testimony, Dr. Luberoff referred to State's Exhibit #2 without objection despite the fact that photograph does not appear to have been admitted into evidence during trial. (R. pp. 413-414).

<sup>13</sup> Specifically, Dr. Luberoff indicated Victim could have reached the degree of starvation she was experiencing in as little as two months. (R. p. 421).

readily apparent to any reasonable caregiver along with a loss of motor skills and strength, which Victim would have been exhibiting in the last days or weeks of her life.<sup>14</sup> (R. pp. 416-418).

Following the presentation of that testimony, the State rested, and Appellant elected to testify in his own defense.<sup>15</sup> (R. p. 513). During his testimony, Appellant stated Roach, whom he began living with in 2005, became pregnant with Victim during the course of their relationship, and he claimed Roach wanted to have an abortion when they discovered Victim had “problems.” (R. pp. 518-521). However, Appellant stated Victim was born anyway and was hospitalized for approximately one month afterwards, and he claimed he visited her in the hospital daily during that time period and was taught to feed her by her doctors. (R. pp. 521-522). Additionally, Appellant stated Victim was small after she was born and claimed he was concerned by her lack of weight gain during her lifetime. (R. p. 523). However, Appellant insisted it was Roach’s role to take care of Victim while claiming he held Victim every time he saw her up until her death, changed her diapers on some occasions, played with her, and was never not allowed to see her. (R. pp. 527-528). Appellant further and inconsistently claimed Roach, whom he stated was sick and sleeping on a couch at the time, would not let him see Victim on the weekend of Victim’s death while insisting he last saw Victim three days before her death at a time when she was clothed. (R. pp. 532-535; p. 537). When he saw her at that time,

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<sup>14</sup> During Dr. Luberoff’s testimony, the solicitor introduced a photograph – State’s Exhibit # 73 – depicting Victim at an earlier point in her life before she was chronically starved, and that photograph allowed the jury to observe the changes in Victim’s appearance that were depicted in the other photographs discussed by Dr. Luberoff after Victim had been chronically starved by her parents. (R. pp. 414-416; p. 433).

<sup>15</sup> In addition to Appellant’s testimony, defense counsel offered the testimony of several different witnesses in Appellant’s defense. (R. p. 456; p. 465; p. 470; p. 480; p. 488; p. 508). Through those witnesses, it was established Appellant was a “[v]ery good worker” at his job, Appellant understood English, a volunteer for a mentor program made several in-home visits between January and May of 2013 due to a report of neglect involving Appellant’s son, and Roach had previously claimed to be Victim’s primary caregiver while also falsely claiming she was so because Appellant lived outside of the area. (R. p. 457; p. 466; pp. 472-474; pp. 476-678; p. 485). Furthermore, through those witnesses, it was established a computer recovered from Appellant’s home contained nearly a thousand pictures on it, including pictures of Appellant and Victim. (R. pp. 500-501). However, it was further established the computer contained no pictures of Victim taken after April of 2013. (R. p. 501).

Appellant claimed Victim did not look sick. (R. p. 534). Furthermore, as his testimony continued, Appellant acknowledged he was capable of feeding Victim but insisted it was not his responsibility or job to feed Victim. (R. pp. 539-542). Instead, he explained that responsibility fell to Roach, whom he characterized as “crazy.” (R. p. 541; p. 553). Appellant further conceded he was off every weekend during August of 2013 at the time when Victim was starving to death. (R. pp. 539-542).

After Appellant concluded his testimony, the defense rested, and defense counsel renewed her objection to the admission of the photographs that had been admitted during trial while noting jurors allegedly reacted to them. (R. p. 557; pp. 563-564). Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 567-605). As part of his jury instructions, the trial judge explained to the jurors their verdict could not be based on “sympathy, compassion, prejudice, or emotion or some other consideration that’s not found in the evidence.” (R. p. 603). Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 608). Following the verdict, the trial judge sentenced Appellant to life imprisonment without the possibility of parole. (R. p. 627).

## ARGUMENT

**The trial judge did not abuse his broad discretion by admitting a limited number of photographs depicting the thirteen-month-old victim's profoundly emaciated condition at the time of her death because those photographs were highly probative towards establishing the victim was fatally deprived of food and health care by her parents, which had to be established in order to prove Appellant's guilt for the elements of homicide by child abuse, and their high probative value greatly outweighed any potential undue prejudice that could have resulted from their admission.**

Appellant contends that the trial judge abused his broad discretion over evidentiary matters by admitting a number of photographs depicting Victim's condition at the time of her death. In support of that contention, Appellant maintains the photographs' "overwhelming" potential for undue prejudice substantially outweighed their undisputed probative value in light of their graphic nature. To the contrary, the photographs depicting Victim's starved and emaciated condition were critical towards establishing her death resulted from chronic neglect, which the State was required to establish in order to prove Appellant was guilty of the charged offense of homicide by child abuse beyond a reasonable doubt. Moreover, although undeniably graphic and disturbing, those photographs were not so gruesome, gory, or extreme that their potential for undue prejudice substantially outweighed their exceedingly high probative value under the circumstances of Appellant's case. As a result, the trial judge did not abuse his broad discretion by admitting the photographic evidence during trial. Appellant's conviction should be affirmed.

## STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the

defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) (“The appellate court reviews a trial judge’s ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court.”); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) (“A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.”); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) (“[D]eference is due to the trial court’s admission of the evidence.”). Significantly, “[a]n abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

#### ANALYSIS

All relevant evidence is admissible, and only relevant evidence should be admitted at trial. State v. Douglas, 369 S.C. 424, 430, 632 S.E.2d 845, 848 (2006); see Rule 402, SCRE (“All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.”). “Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears.” State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (“ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. ’ ”).

However, even if relevant, evidence must be excluded from trial if its probative value is **substantially outweighed** by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, SCRE (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”). The determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the result generally hinges on the facts of each particular case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Probative value is the measure of the importance of a piece of evidence’s tendency to prove or disprove some fact or issue relevant to the outcome of a case. State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev’d on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014). Meanwhile, unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); see Old Chief v. United States, 519 U.S. 172, 181 (1997) (“The term ‘unfair prejudice,’ as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.”). However, unfair prejudice does **not** mean damage to a defendant’s case that results from the legitimate probative force of a piece of evidence. State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). That is true because all evidence introduced by the State in a criminal trial is meant to be prejudicial to the defendant, and it is only unfair prejudice that must be avoided. Id.

When ruling on the comparative probative value and potential prejudicial effect of evidence, trial judges have “particularly wide discretion[.]” Collins, 398 S.C. at 209, 727 S.E.2d at 757. As a result, a trial judge’s ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, “[a] trial judge’s balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence.” State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). “If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” Id. at 358, 543 S.E.2d at 594.

In the case sub judice, the trial judge did not abuse his broad discretion by admitting a limited number of photographs depicting Victim’s physical condition at the time of her death. That is true because, although unquestionably unpleasant and disturbing, the photographs of Victim’s body were exceptionally probative in Appellant’s case as they bluntly established Victim was fatally deprived of food and health care, which was a fact the State was required to establish beyond a reasonable doubt in order to prove Appellant was guilty of homicide by child abuse by not providing Victim, his thirteen-month-old biological daughter who resided in the his home, with the basic necessities she needed to survive in a manner evidencing an extreme indifference towards human life. See S.C. Code Ann. § 16-3-85(B)(2)(b) (explaining harm to a child’s health or welfare for purposes of the offense of homicide by child abuse occurs when a person “fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death”); see also State v.

Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 608 (Ct. App. 2008) (“The photographs were relevant to prove Child was abused, that the abuse was the cause of his death, and that the abuse manifested an extreme indifference to human life, all of which support the charge of homicide by child abuse.”); cf. State v. Dial, 405 S.C. 247, 261, 746 S.E.2d 495, 502 (Ct. App. 2013) (“We find the [autopsy] photographs were highly probative to the issues of whether Victim was abused and whether the abuse was the cause of his death, which are integral elements to the charge of homicide by child abuse.” (citation omitted)), cert. dismissed as improvidently granted, 412 S.C. 121, 770 S.E.2d 767 (2015). Additionally, the photographs of Victim’s condition served to corroborate the testimony of the different witnesses and experts who testified during Appellant’s trial in regard to Victim’s cause of death, and they visually conveyed the severity of the neglect inflicted upon Victim while allowing the experts to identify to the jury with support the various symptoms of chronic starvation that Victim was exhibiting at the time of her death.<sup>16</sup> See State v. Jarrell, 350 S.C. 90, 106-107, 564 S.E.2d 362, 371 (Ct. App. 2002) (finding the trial judge did not abuse his discretion by admitting autopsy photographs depicting the ten-month-old victim’s body because, even though the photographs were “graphic,” they corroborated testimony presented during trial by depicting the victim’s readily-apparent injuries and by showing the victim’s condition); see also State v. Holder, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) (“There photographs demonstrate that the damage to the child would have been difficult to ignore.”); State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) (“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. If the offered photograph serves to corroborate testimony, it is not an abuse of

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<sup>16</sup> Specifically, Dr. Luberoff went through each of the photographs that depicted Victim’s condition at the time of her death and explained the significance of the different physical characteristics shown in those photographs, which included Victim’s wrinkled skin, protruding ribs, loss of fatty tissue, protruding hip bones, protruding scapulas, protruding spine, and pressure sores, while noting those physical characteristics would have required months of starvation in order to be present. (R. pp. 412-414).

discretion to admit it.”); see generally State v. Allen, 839 P.2d 291, 302 (Utah 1992) (“Photographs of victims are always sobering and graphic, and indeed, they fit within the adage ‘a picture speaks a thousand words.’ ”). Moreover, the photographs – although disturbing based on the fact they depicted the body of a thirteen-month-old child who had been starved to death – simply accurately showed the Victim’s emaciated features prior to the beginning of the autopsy and were not so extreme, unusually gruesome, or gory that they would have been inflammatory in a sense that went beyond the natural inflammation attendant to post-mortem photographs of a young child who died as a result of parental neglect. See State v. Lopez, 174 Ariz. 131, 139, 847 P.2d 1078, 1086 (Ariz. 1992) (“We do not find the photographs to be inflammatory beyond whatever natural inflammation is attendant to autopsy photographs of a one-year-old child. One photograph shows Anthony’s body attached to resuscitation equipment. The others show the bruising on Anthony’s body. Such photographs cannot be deemed sufficiently gruesome to inflame the jurors because ‘the crime committed was so atrocious that photographs could add little to the repugnance felt by anyone who heard the testimony.’ ” (citation omitted)); see also Torres, 390 S.C. at 624, 703 S.E.2d at 229 (“While the admitted photographs graphically depict the injuries of the victim, this was a particularly horrific crime, and the admission of the photographs did not unduly prejudice the jury.”); Holder, 382 S.C. at 291, 676 S.E.2d at 697 (“Although the photographs were graphic, the facts in the case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis. We hold the trial court properly exercised its discretion in admitting the autopsy photographs in this case.”); cf. State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 164 (Ct. App. 2014) (“It was important for the jury to see the nature and location of these injuries in order to understand the witnesses’ testimony about the fights and the pathologists’ testimony about the

injuries. The eight photographs contain no blood or gory anatomical details, and thus pose little, if any, danger of unfair prejudice. . . . [I]t was clearly within the trial court’s discretion to admit them.”). Accordingly, even though the photographs were unpleasant and disturbing, their potential for undue prejudice did not substantially outweigh their probative value, and the trial judge committed no error by exercising his discretion and admitting into evidence a limited number of the over one-hundred photographs taken of the Victim’s body after her death. See State v. Todd, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986) (recognizing determinations in regard to the relevancy and materiality of photographic evidence are generally left to the sound discretion of a trial judge); see also Jarrell, 350 S.C. at 106, 564 S.E.2d at 106 (“We find the trial court’s exclusion of photographs demonstrates it exercised its discretion.”).

In arguing the trial judge erred in admitting the photographs, Appellant focuses on Judge Maddox’s purported remarks made during Roach’s guilty plea hearing while contending there was no way the jurors who decided his case could have remained fair and impartial after viewing the photographs if an experienced trial judge like Judge Maddox could not. Importantly though, no evidence of any kind was presented during Appellant’s trial to support a conclusion Judge Maddox made any such remarks in regard to the photographic evidence. See McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (“This Court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”); cf. Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 302, 551 S.E.2d 588, 590 (Ct. App. 2001) (“Although the League’s attorney argued that there was an injury in fact, **arguments of counsel are not evidence.**” (emphasis added)); Gilmore v. Ivey, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986) (instructing the circuit court judge properly rejected claims made by counsel that were not supported by evidence appearing in the record). Instead, after orally raising an

assertion about Judge Maddox's purported remarks during trial, defense counsel expressly abandoned her attempt to present evidence of those purported remarks when the trial judge questioned her about their relevancy, and, therefore, no actual evidence was ever introduced to the trial judge to establish what Judge Maddox did or did not say about the post-mortem photographs of Victim. As a result, Judge Maddox's purported remarks cannot properly be considered on appeal when evaluating the trial judge's discretionary ruling on the admissibility of the photographic evidence. See State v. Mitchell, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (instructing an appellant cannot complain on appeal about a particular ruling if the appellant acquiesces to that ruling during trial); Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (finding a party cannot acquiesce to a ruling on an issue during trial and then complain of an error with the issue on appeal). Moreover though, even assuming Judge Maddox actually stated he could not remain fair and impartial after viewing the photographs that were taken of Victim in Appellant's case, his remarks in that regard are entirely irrelevant to Appellant's appeal as it is unclear from the record which of the over one-hundred photographs taken of Victim following her death were viewed by Judge Maddox coupled with the fact the trial judge did not believe the photographs admitted during Appellant's trial were unduly prejudicial after personally conducting his own review of that evidence. Thus, Judge Maddox's remarks do not support a conclusion the trial judge abused his broad discretion in admitting a limited number of photographs that visually demonstrated to the jury Victim's death was the result of chronic starvation, which was a fact critical towards establishing Appellant's guilt for the indicted offense.

Beyond focusing on Judge Maddox's purported remarks, Appellant admits the photographs depicting Victim's condition were probative to the issues involved in his case but

appears to maintain their probative value was outweighed by their potential for undue prejudice in light of the fact the witnesses for the prosecution testified about Victim's readily apparent and starved condition. Importantly though, the photographs of Victim's body depicted the symptoms of chronic starvation and neglect, which was the cause of her death, in a way words simply could not while visually establishing Victim's horrific condition would have been readily apparent to any person who came into contact with her during the weeks and months in which she was wasting away and dying. See Commonwealth v. Pestinikas, 421 Pa. Super. 371, 385-386, 617 A.2d 1339, 1346-1347 (Pa. Super. Ct. 1992) ("The photograph in question showed what happened to the decedent and, therefore, served as an aid to the jury in understanding the crime committed. . . . Although medical testimony was presented at trial, the degree of starvation and the readily observable severity of emaciation could only be demonstrated to the jury by the use of the photograph in question. The availability of alternate evidence of a verbal nature does not obviate the admissibility of the photographs."). Likewise, the photographs were critical towards refuting Appellant's claim he was unaware of Victim's appalling condition at the time she died, which, significantly, the State would have been required to refute solely with its witnesses' testimony offered up against Appellant's testimony absent the photographic evidence. See State v. Stephens, 398 S.C. 314, 321, 728 S.E.2d 68, 72 (Ct. App. 2012) ("Throughout the trial, Stephens consistently attacked the reliability of Bates's identification of him in the lineup. By doing so, he made the photographic lineup far more important than it might otherwise have been, thereby increasing its probative value. Only by viewing the actual lineup could the jury determine for itself whether the allegedly poor picture quality or the six-photograph format likely influence Bates's identification."); cf. People v. Dickerson, 42 A.D.3d 228, 237, 837 N.Y.S.2d 101, 108 (N.Y. App. Div. 2007) ("In the instant case, the defendant claimed that he thought that

Nadine was thin and wiry, but in no danger of starvation. Thus, the autopsy photos were relevant to the disputed issue of Nadine's condition both at her death and prior thereto, as well as clearly probative of defendant's awareness of the grave risk her condition presented. The photos served to corroborate and illuminate the testimony of the medical examiner. The photo of Nadine's vagina and rectal area highlighted the absolute wasting of fatty tissue and muscles and illustrated the medical examiner's finding of the ravaging toll that terminal starvation had taken on her body."). Accordingly, the photographic evidence possessed enhanced probative value in light of the defense Appellant attempted to present during his trial, and its high probative value was not substantially outweighed by its potential for undue prejudice due simply to the fact the photographs would be considered disturbing and unpleasant to a normal person. See Martucci, 380 S.C. at 250, 669 S.E.2d at 607 ("A trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive."); see also Old Chief, 519 U.S. at 183, n. 7 ("On appellate review of a Rule 403 decision, a defendant must establish abuse of discretion, a standard that is not satisfied by a mere showing of some alternative means of proof that the prosecution in its broad discretion chose not to rely upon.").

Finally, Appellant appears to suggest the short length of the jury's deliberations coupled with the fact one of the jurors was reported to have cried after seeing a photograph depicting Victim's condition demonstrated the photographs overwhelmed the jury's ability to rationally decide his case. Importantly though, the fact the jury deliberated for a short period of time in Appellant's case in no way demonstrated the jury reached a decision on an improper basis in light of the fact there is no set amount of time in which a jury must deliberate, and no evidence exists to suggest the brief nature of the jury's deliberations resulted from anything more than the strength of the State's case against Appellant. See State v. Dewitt, 254 S.C. 527, 534, 176

S.E.2d 143, 147 (1970) (“There is no prescribed length of time for a jury to reach a verdict. Such must of necessity be left to the judgment of the jury. Something more must appear, therefore, to warrant interference with a jury’s verdict than the mere brevity of their deliberations. We find nothing in the record to indicate that the verdict in this case was the result of bias or prejudice.” (citation omitted)); see also State v. Chandler, 126 S.C. 149, 154, 119 S.E. 774, 776 (1923) (“We are emphatically of the opinion that the defendant had a fair and impartial trial before a humane, just, learned, and upright Judge, and a fair and impartial jury, and we see no reason why we should grant a new trial. Even if the jury did not take more than 19 minutes to arrive at a verdict, the record discloses a case of murder, unless the defendant was insane, and the jury by their verdict found that it was more a case of satanity, and it was not a case of insanity.”). Similarly, the fact a single juror was alleged to have become tearful in response to seeing a photograph of Victim’s condition in no way suggested that juror – or any of the other jurors – was incapable of fairly and rationally deciding Appellant’s case based on the evidence presented, and a tearful or emotional response to what occurred to the minor victim in Appellant’s case was in no way an inappropriate or unexpected reaction under the circumstances. See State v. Brown, 546 So. 2d 1265, 1270-1271 (La. Ct. App. 1989) (holding the trial judge’s properly denied Brown’s mistrial motion that was made after one of the jurors began to cry in response to the victim’s testimony about what had occurred and noting “[i]t is not uncommon for jurors to react to emotional testimony”); see also Bass v. State, 35 So. 3d 43, 44 (Fla. Dist. Ct. App. 2010) (“[J]urors are human beings and, therefore, subject to a range of emotions, especially in difficult cases.”); Commonwealth v. Kater, 432 Mass. 404, 423, 734 N.E.2d 1164, 1181 (Mass. 2000) (finding no error on the part of the trial judge, who refused to grant a mistrial when jurors began crying in response to the solicitor’s closing argument and explained “a certain level of emotion

on the part of the jurors could be expected from [a kidnapping and murder] trial [involving a juvenile victim]”); State v. Grice, 109 N.J. 379, 386, 537 A.2d 683, 687 (N.J. 1988) (finding no reversible error in “the failure of the trial court to examine or excuse a juror who was observed crying during the victim’s testimony”); cf. United States v. Gumbs, 562 F. App’x 110, 115-116 (3rd Cir. 2014) (recognizing emotional reactions provoked from jurors by graphic images do not necessarily render those jurors unfair or impartial and finding no error on the part of the district court judge in refusing to remove a juror who cried while viewing a video of Gumbs engaged in sexual activity with the eight-year-old victim). Moreover, prior to the jurors beginning their deliberations in Appellant’s case, the trial judge instructed them they were not permitted to reach a verdict based on sympathy, compassion, prejudice, or emotion, which helped ensure the jurors were not improperly impacted by the photographs of Victim following her untimely death. See Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267 (1999) (“The jury was instructed to determine petitioner’s guilt based only on the evidence presented in the trial. A jury is presumed to follow instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice.” (citations omitted)); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (“[J]urors are presumed to follow the law as instructed to them.”); cf. State v. Arther, 290 S.C. 291, 295, 350 S.E.2d 187, 189 (1986) (“The trial judge did charge the jury not to consider anything heard outside the courtroom. This charge was adequate under the circumstances to ensure the jury would render a verdict based upon the evidence presented.”). Therefore, the admission of the challenged photographs in Appellant’s case did not render the jury unfair or impartial in any way.

In conclusion, the photographs depicting Victim’s emaciated and starved body at the time of her death were highly probative of and critical towards establishing Appellant’s guilt for the

charged offense of homicide by child abuse, and any potential for undue prejudice they could have had based on their disturbing and unpleasant nature did not substantially outweigh their high probative value. See S.C. Code Ann. § 16-3-85(A)(1) (instructing a person is guilty of homicide by child abuse if that person “causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life”); see also Nichols v. State, 267 Ala. 217, 224, 100 So. 2d 750, 756 (Ala. 1958) (“ ‘Courts and juries cannot be too squeamish about looking at unpleasant things, objects or circumstances in proceedings to enforce the law and especially if truth is on trial. The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.’ ” (citation omitted)). Under those circumstances, the trial judge did not abuse his broad discretion by admitting a limited number of those photographs during Appellant’s trial, and no exceptional circumstances exist that would warrant a reversal of that discretionary decision on appeal.<sup>17</sup> See State v. Collins, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (“Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing

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<sup>17</sup> Significantly, even assuming the trial judge somehow erred by admitted the photographs depicting Victim’s condition at the time of her death, any error resulting from the admission of those photographs was nonetheless entirely harmless because, even without consideration of the photographic evidence, the other evidence of Appellant’s guilt presented during trial, which included Appellant’s own testimony indicating it was not his responsibility to feed his thirteen-month-old daughter, Appellant’s claim he saw Victim within three days of her death and did not believe she looked sick at that time, testimony from multiple witnesses who saw Victim shortly after her death indicating her starved condition was readily apparent, and testimony establishing it would have taken Victim at least two months to starve to death, conclusively established Appellant’s guilt such that no rational juror could have reached any other verdict aside from guilty. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (“[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result.”); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.”); see also Collins, 409 S.C. at 538-539, 763 S.E.2d at 29-30 (concluding any error in the admission of the photographic evidence in Collins’s case was entirely harmless in light of the fact the other evidence presented during trial was such that no jury could rationally conclude anything other than Collins was criminally negligent in his victim’s death); cf. State v. Jenkins, 412 S.C. 643, 652, 773 S.E.2d 906, 910 (2015) (“Notwithstanding the DNA evidence, there was abundant, independent evidence in the record from which the jury could have found [Jenkins] guilty.”).

essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder.”); see also State v. Williams, 405 S.C. 263, 281, 747 S.E.2d 194, 203 (Ct. App. 2013) (recognizing decisions regarding the comparative probative value and prejudicial effect of graphic photographs should only be reversed on appeal in “exceptional circumstances”); cf. Dial, 405 S.C. at 259-260, 746 S.E.2d at 501 (finding the trial judge did not abuse his discretion by admitting photographs from the five-month-old victim’s autopsy that depicted the victim’s exposed brain and scalp in a homicide by child abuse case despite the fact the photographs were “shocking and gross”). Appellant’s conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

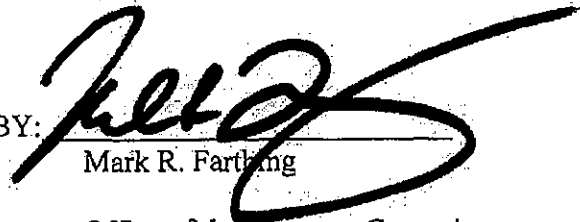
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

February 9, 2017

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County  
Honorable Thomas A. Russo, Circuit Court Judge  
Appellate Case No. 2015-001293

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THE STATE,

Respondent,

vs.

FILIBERTO GARCIA CAMPOS,

Appellant.

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CERTIFICATE OF COUNSEL

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The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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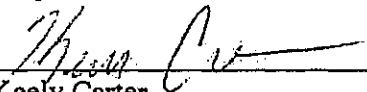
Appellant.

PROOF OF SERVICE

I, Keely Carter, certify I have served the within Final Brief of Respondent on Appellant by sending two copies of the same to:

David Alexander, Esq.  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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I further certify that all parties required by Rule to be served have been served.  
This 9th day of February, 2017.

  
\_\_\_\_\_  
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Filiberto Garcia Campos, Appellant.

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Appeal From Lexington County  
Thomas A. Russo, Circuit Court Judge

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Unpublished Opinion No. 2018-UP-100  
Submitted February 9, 2018 – Filed March 7, 2018

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**AFFIRMED**

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Appellate Defender David Alexander, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Mark Reynolds Farthing, both of  
Columbia, and Solicitor Samuel R. Hubbard, III, of  
Lexington, all for Respondent.

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**PER CURIAM:** Appellant Filiberto Garcia Campos appeals his conviction for homicide by child abuse, arguing the trial court erred by admitting certain autopsy photographs of the victim (Victim) in violation of Rule 403, SCRE. Appellant

claims the probative value of the photographs was substantially outweighed by the danger of unfair prejudice. We affirm.

We find the trial court did not abuse its discretion by admitting the photographs because the probative value was not substantially outweighed by the danger of unfair prejudice. See Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."); *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) ("The admission of evidence is within the [trial] court's discretion and will not be reversed on appeal absent an abuse of that discretion. A trial court has particularly wide discretion in ruling on Rule 403 objections." (citations omitted)); *State v. Lyles*, 379 S.C. 328, 339, 665 S.E.2d 201, 207 (Ct. App. 2008) ("A trial [court]'s balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise [due to] a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." (citing *United States v. Long*, 574 F.2d 761, 767 (3d Cir. 1978))); *Gray*, 408 S.C. at 608–09, 759 S.E.2d at 164 ("In exercising its discretion on a Rule 403 objection to the admissibility of autopsy photographs, the trial court 'must balance the [unfair prejudice] of graphic photos against their probative value.'" (quoting *State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013))); *Dial*, 405 S.C. at 260, 746 S.E.2d at 502 (explaining a trial court "is not required to exclude relevant evidence merely because it is unpleasant or offensive").

The probative value of the photographs in this case was high because they disputed Appellant's defenses, were important for the State to establish multiple elements of the charged crime, and corroborated the testimony of several witnesses. During trial, Appellant attempted to create reasonable doubt by suggesting Victim died from a drug overdose, perpetrated by Tracey Roach,<sup>1</sup> rather than starvation. Appellant also attempted to show Victim's weight loss was rapid and he did not realize Victim was malnourished and in danger. The photographs showed Victim's extremely emaciated condition and aided the jury in determining whether she died from chronic starvation, as the State contended, or from a drug overdose, as Appellant argued. Thus, they disputed Appellant's defense that Victim died from a drug overdose. The photographs were also probative to dispute Appellant's claim he was unaware of Victim's condition. They allowed the jury to view Victim's condition near the time of death and determine whether Appellant's claim

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<sup>1</sup> Roach was Victim's mother, and prior to Appellant's trial, she pled guilty to homicide by child abuse. The plea court sentenced her to life imprisonment.

regarding his ignorance of her condition was truthful. Therefore, the photographs were highly probative for disputing Appellant's defenses.

Also, as noted above, the photographs were highly probative for proving Victim's cause of death, which was a material fact and element the State needed to prove. *See* S.C. Code Ann. § 16-3-85(A)(1) (2015) (explaining the defendant's child abuse or neglect must be the cause of the child's death to convict the defendant under section 16-3-85). As a result, they helped the State meet its burden of proof on a critical issue.

Further, the photographs were important for determining whether Victim's death occurred under circumstances manifesting extreme indifference to human life, which was a material fact and element of the charged crime. *See id.* (requiring the State to show a victim's death occurred under circumstances manifesting an extreme indifference to human life to convict a defendant for homicide by child abuse). The photographs were strong evidence showing Victim's condition near the time of death. Taking the photographs together with the expert testimony that it would have taken weeks or months for Victim to get in such a condition, the State provided strong evidence showing Victim's death occurred under circumstances manifesting an extreme indifference to Victim's life. The photographs were an important part of the State establishing this element of homicide by child abuse. Thus, the photographs were highly probative on an issue or material fact the State needed to prove. *See Gray*, 408 S.C. at 610, 759 S.E.2d at 165 ("[A] court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.").

Finally, the photographs corroborated the testimony from several witnesses on significant issues. *See id.* at 613, 759 S.E.2d at 166–67 ("Photos that corroborate important testimony on issues significant to the case may have very high probative value . . ."). The experts testified Victim's cause of death was chronic starvation. Also, several witnesses testified to Victim's extremely emaciated condition at the time of death. These testimonies went to Victim's cause of death and whether her death occurred under circumstances manifesting an extreme indifference to human life, which were critical issues during trial as explained above. The photographs corroborated these testimonies. Further, as discussed above, Appellant disputed these critical issues, which increased the importance of corroboration via the photographs. As a result, the photographs were highly probative for corroborating testimony from several witnesses on issues of great importance. Accordingly, the photographs were highly probative because they disputed Appellant's defenses,

were important for the State to establish multiple elements of the charged crime, and corroborated the testimony of several witnesses.

Next, we find the danger of unfair prejudice from the photographs in this case was moderate because, although likely to arouse sympathy, they were not so gruesome or disturbing that they had an undue tendency to lead to a decision on an improper basis and the State introduced them in an objective manner through expert witnesses. *See Gray*, 408 S.C. at 616, 759 S.E.2d at 168 ("Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998))).

The photographs were not so gruesome, disturbing, or shocking as to have more than a moderate tendency to suggest a decision on an improper basis. *See id.* at 617, 759 S.E.2d at 169 (finding autopsy photographs showing the victim's scalp folded from the back of his head over his face, revealing the surface of his skull, and exposing the brain inside the skull posed a moderate danger of unfair prejudice). We acknowledge the photographs had the capability to produce sympathy for Victim and could pose a danger of unfair prejudice. However, as a mitigating factor, we believe the State admitted most of the photographs in an objective manner. The expert witnesses described the photographs from a medical viewpoint and gave technical explanations of how they showed chronic starvation. *See id.* (explaining "the objective manner in which [the expert] presented the photographs mitigated" the tendency to suggest a decision on an improper basis). Thus, the danger of unfair prejudice was moderate.

To the extent Appellant relies on the alleged comments by the plea court during Roach's guilty plea, the issue is not properly before this Court. Appellant failed to include the transcript of Roach's guilty plea during trial or on appeal. Thus, we have no evidence of exactly what the plea court said, what photographs the plea court viewed, or the context in which it viewed the photographs. *See Beaufort Realty Co. v. Beaufort Cty.*, 346 S.C. 298, 302, 551 S.E.2d 588, 590 (Ct. App. 2001) ("This [C]ourt has repeatedly held that statements of fact appearing only in argument of counsel will not be considered." (quoting *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933))). Additionally, during the motion in limine, Appellant withdrew his motion to add Roach's guilty plea transcript to the record. *See State v. Bryant*, 372 S.C. 305, 315–16, 642 S.E.2d 582, 588 (2007) (finding appellants cannot argue an issue on appeal that they

conceded during trial). As a result, any argument regarding the plea court's statements is not properly before this Court.

Based on our findings that the probative value of the photographs was high and the danger of unfair prejudice was moderate, we find the trial court was within its discretion when deciding the probative value was not substantially outweighed by the danger of unfair prejudice under Rule 403.

**AFFIRMED.**<sup>2</sup>

**SHORT, THOMAS, and HILL, JJ., concur.**

---

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
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COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

March 28, 2018

The Honorable Lisa M. Comer  
205 East Main Street  
Suite 128  
Lexington SC 29072

### REMITTITUR

Re: The State v. Filiberto G. Campos  
Lower Court Case No. 2014GS3201347  
Appellate Case No. 2015-001293

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibits were filed in this case:

State's exhibits #2-3 (Photos), State's Exhibits #9-43 (Photos), State's Exhibit #73 (Photo)

Part of these exhibits contain an oversized poster board that cannot be mailed. It will be necessary for the Attorney General's office or its designee to pick up these exhibits from the Clerk's office to return to the Lexington County Clerk of Court.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire  
David Alexander, Esquire  
Mark Reynolds Farthing, Esquire  
Samuel R. Hubbard, III, Esquire

**RECEIVED**

MAR 28 2018

APPELLATE DEFENSE

792  
SCANNED DEC-04-2018

FORM 5

ORIGINAL

JC

STATE OF SOUTH CAROLINA )  
 )  
 County of Lexington )  
 )  
FILBERTO GARCIA CAMBOS #364268 )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

2018 CP3204114

APPLICATION FOR  
POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution

---

2. Name and location of Court which imposed sentence Court of General Sessions,  
Lexington, South Carolina

---

3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_

---

4. The indictment number or numbers (if known) upon which and the offenses for which  
sentence was imposed:  
 (a) 2014-GS-32-1347  
 (b) \_\_\_\_\_

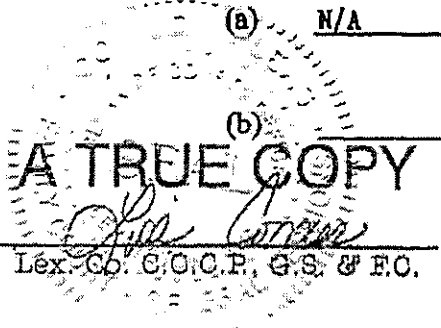
FILED  
DEC-3 PM 2:42  
CLERK OF COURT  
LEXINGTON, S.C.

A TRUE COPY

*[Signature]*  
Lex. Ct. C.C.P., G.S. & F.C.

SCANNED DEC-04-2018

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) June 5, 2015; Life without parole
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty N/A
  - (b) after a plea of not guilty Yes
  - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. South Carolina Court of Appeals
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/A
  - (b) \_\_\_\_\_



(c) \_\_\_\_\_  
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Applicant was denied the right to effective assistance of counsel  
—guaranteed by the Sixth and Fourteenth Amendments to the United  
States Constitution and by Article I, §§ 3 and 14 of the South  
Carolina Constitution— during his trial.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):  
(a) Supporting facts: Trial counsels performance during the trial was both unreasonable and prejudicial. See Strickland v.

Washington, 466 U.S. 668 (1984). Counsels acts or omissions included, but are not limited to, the following: ~~Counsel failed to request charges on involuntary manslaughter and accident. Counsels conduct was deficient because the Defendants testimony supported and involuntary manslaughter charge by providing evidence of his provided limited care by the victims Killer who "would not let him see" and by his finding and reporting of the victim "not breathing anymore".~~

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Notice of Appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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(c) the disposition thereof:

- i. N/A
- ii.
- iii.
- iv.

(d) the date of each such disposition:

- i. N/A
- ii.
- iii.
- iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii.
- iii.
- iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii.
- iii.

(b) the proceedings in which each ground was raised:

- i.
- ii.
- iii.

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Aimee J. Zmrolzek, PO Box 11961, Columbia, SC 29211
  - ii. David Alexander, PO Box 11589, Columbia, SC 29211
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Trial
  - ii. Appeal
  - iii. \_\_\_\_\_

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*[Signature]*  
Lex. Co. C.C.C.P., G.S. & F.C.



APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, FILBERTO GARCIA CAMPOS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Filberto Campos  
Applicant

SWORN or affirmed to and subscribed before me this

26 day of Nov, 2018.

[Signature]  
Notary Public

My Commission Expires: 3/3/2024

A TRUE COPY

[Signature]  
Lex. Co. C.C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 )  
 Filberto Garcia Campos, #364268, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-32-04114

**RETURN, PARTIAL MOTION TO  
 DISMISS, AND MOTION FOR  
 MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief filed by Applicant on December 3, 2018, would respectfully show this Court:

I. Procedural History

Filberto Garcia Campos (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. During its May 2014 term, the Lexington County Grand Jury indicted Applicant for the crime of homicide by child abuse (2014-GS-32-1347). On June 1-5, 2015, Applicant was tried before a jury with the Honorable Thomas A. Russo presiding. Aimee Jendrzejewski Zmroczek, Esquire, represented Applicant at trial. Assistant Solicitors Suzanne Mayes and Robert McNair, both of the Eleventh Circuit Solicitor’s Office, prosecuted the case. At the conclusion of trial, the jury convicted Applicant as indicted, and Judge Russo sentenced him to life imprisonment.

Applicant timely filed a notice of appeal. David Alexander, Esquire, perfected the appeal on behalf of Applicant. Assistant Attorney General Mark Reynolds Farthing represented the State in the appeal. In his appeal, Applicant argued that the circuit court erred by “admitting certain autopsy photographs of the victim . . . in violation of Rule 403, SCRE.” State v. Campos, No. 2018-UP-100, 2018 WL 1181646 (S.C. Ct. App. March 7, 2018). The Court of Appeals affirmed

in an unpublished opinion filed on March 7, 2018. *Id.* The Remittitur was issued on March 28, 2018.

## II. Factual History

Around 9:30 p.m. on September 2, 2013, Applicant called 911 from a telephone located at a store near his home in West Columbia, South Carolina, and reported his thirteen-month-old daughter (“Victim”) had died because she was “very sick.”<sup>1</sup> R. 105-05, 212, 530-31. In response, Hunter Reed, a paramedic with Lexington County Emergency Medical Services, quickly responded to Applicant’s home along with other emergency personnel. R. 102-06, 124-25. When he arrived a short time later, he encountered Applicant, who was holding Victim, along with Tracy Roach, Victim’s mother. R. 105-06, 121, 131-32. Applicant then quickly handed Victim to Reed, and Reed immediately noticed Victim, who was not breathing and had no pulse, appeared to be very small, was underweight, and did not look or feel like a typical infant of the same age. R. 106-10. At that point, Reed moved Victim to his ambulance, began resuscitation efforts, took off her clothing for treatment purposes, and noticed she was “profoundly emaciated.”<sup>2</sup> R. 107-09. As he provided her with treatment, Reed further noticed Victim had a “complete lack” of fatty tissue on her body, appeared “skeletal,” had “very sunken in” eyes, was dirty, and was wearing a degraded diaper that was stained with urine and nearly falling apart. R. 109-10. Reed then rapidly transported Victim to Lexington Medical Center, but he and other medical personnel were never able to revive her. R. 110, 144-45.

As a result of Victim’s death, Detective Michael Gooding responded to the Lexington

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<sup>1</sup> During the call, Applicant also noted Victim was not breathing and was dry. R. 531.

<sup>2</sup> While attempting to treat Victim, Reed obtained a medical history from Roach, who reported Victim was behaving normally earlier that afternoon and had been checked on multiple times by Appellant prior to her death. R. 113.

Medical Center to conduct an investigation into the matter, and he went to see Victim in the emergency room. R. 142, 144-45. Upon seeing her, Detective Gooding was shocked by Victim's appearance and noticed she was extremely thin, her eyes appeared sunken in, her mouth was very dry, all of her ribs were "cleanly and clearly" visible, her shoulder blades were protruding, she had seeping open sores on her body, she was covered in what appeared to be crystalized urine, and she smelled of urine. R. 147. Moreover, Detective Gooding was unable to detect any features commonly associated with Down Syndrome due to Victim's condition despite the fact Victim had been diagnosed with that genetic disorder. R. 147, 412. After viewing Victim's condition, Detective Gooding spoke with Roach, who was still at the hospital, and then went to Applicant's residence to speak with him there. R. 149, 151-54. During Detective Gooding's ensuing conversation with Applicant, Applicant stated he had been off from his job for a three-day holiday weekend at the time of Victim's death, woke up around 1:00 p.m. earlier that day, made something to eat in the kitchen, went back to sleep, woke up later, checked on Victim, and found her unresponsive in her crib. R. 155-58. Additionally, Applicant stated he did not check on Victim when he had woken up earlier because her room was on the other side of his residence, which was a single-wide trailer. R. 156. Applicant further stated Victim had been sick all day but claimed nothing had been different in the last day or so of her life. R. 159-60. Furthermore, Applicant asserted Roach, whom he reported had been sick and was sleeping on a couch, usually fed Victim and had not told him anything about Victim on the day of her death. R. 153-56, 159-60.

Subsequently, in the early morning hours of September 3, 2013, Detective Gooding executed a search warrant at Applicant's trailer. (R. p. 165). When he did so, Detective Gooding immediately detected the odor of urine and discovered the smell grew stronger as he walked to Victim's bedroom. R. 166. During his ensuing search of the residence, Detective Gooding located

a baby bottle containing crusty and curdled milk in the floor of the living room, two or three more baby bottles containing crusty and curdled milk on the kitchen counter, a highchair that appeared to be used solely for storage in the corner of the kitchen, dusty and unopened bottles of baby food and formula buried underneath other items in the kitchen, a baby bathtub that appeared unused in the master bathroom, and multiple empty beer packages throughout the kitchen. R. 166-68, 173-74, 176-82, 184-86. Notably, Detective Gooding did not locate any open containers of baby food or any fresh milk or formula anywhere inside the trailer, including in the refrigerator, which only contained food for adults, and he was unable to locate any implements used to clean baby bottles anywhere in the residence. R. 168, 173, 173, 185-86, 233.

Thereafter, at approximately 10:00 a.m. later that morning, Dr. Jeffrey Welch, a pathologist at Lexington Medical Center and an expert in clinical and anatomic pathology, conducted an autopsy of Victim. R. 148, 356-59. During the autopsy, Dr. Welch discovered Victim, who was thirteen months old, weighed just nine pounds and two ounces, which was a weight significantly below the weight expected of a child her age.<sup>3</sup> R. 360. He further noticed she was extremely thin and her eyes and cheeks were sunken in, which was indicative of chronic malnutrition. R. 361-62, 364. As the autopsy continued, Dr. Welch noted Victim's ribs and spine were protruding, her scapulae were visible, her hip bones were protruding, her skin was wrinkled, she had pressure sores on her body, and the crown of her head was sunken in, which was a sign of malnutrition and dehydration. R. 364-66, 372, 374. Additionally, he discovered Victim's stomach was empty at the time of her death. R. 381. Furthermore, he noted she had no fatty tissue on her body and her liver, thymus, and adrenal glands were exhibiting changes caused by chronic malnutrition and starvation.

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<sup>3</sup> According to the medical testimony presented during trial, Victim should have weighed between eighteen and twenty pounds at the time of her death. R. 432.

R. 366-69, 373-74. Based on his discoveries during the autopsy, Dr. Welch concluded Victim's death resulted from lethal neglect. R. 375.

Following the determination regarding the cause of Victim's death, Detective Gooding continued his investigation into the matter. R. 187-89. While doing so, he obtained medical records associated with Victim, and the last record he was able to locate was from November 12, 2012. R. 194-95. However, he ascertained thirty-seven different medical appointments for Victim were missed, cancelled, or otherwise not kept during her short lifetime. R. 197. Additionally, he discovered Victim received in-home visits from medical personnel through the Easter Seals program but no in-home visits occurred after 2012.<sup>4</sup> R. 195. He further discovered Victim received full medical insurance coverage through Medicaid, vouchers for formula and food through the Women, Infants, and Children Program, and \$698 per month in Social Security benefits while her family received an additional \$526 per month in food stamps. R. 196-97, 217-19, 321. Furthermore, he spoke with Applicant, Roach, and their neighbors and determined everyone, including Applicant, was home the majority of the time in the days leading up to Victim's death. R. 192-93, 210.

Based on his discoveries, Detective Gooding arrested Applicant and Roach in connection to Victim's death on September 12, 2013, and executed a second search warrant at the residence.<sup>5</sup> R. 199-201. During the second search, Detective Gooding discovered the trailer had been cleaned, the highchair had been uncluttered, and the dusty baby food he had seen during his earlier search

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<sup>4</sup> Regarding those in-home visits, Melissa Juergens, an early intervention specialist with Easter Seals of South Carolina, testified during trial she visited Applicant's home six times between September and December of 2012 to provide developmental training to Victim's family and only stopped doing so when Roach terminated her services. R. 254-56. Juergens further testified she weighed Victim during a visit on December 5, 2012, and determined Victim weighed nine pounds and five ounces at that time. R. 257-58.

<sup>5</sup> At the time of his arrest, Applicant had \$484 in cash in his wallet and a reported income of \$38,193 per year. R. 206, 280.

had been polished off and stacked neatly on the counter. R. 201-02. Additionally, he located a bag in the living room containing multiple medications prescribed to Roach along with a pill crusher. R. 215-16, 222. Furthermore, he located some unused vouchers for baby food and formula along with numerous receipts indicating fast food, beer, and other food items were purchased in the days and weeks leading up to Victim's death, but none of the receipts indicated any baby food or formula had been purchased during that time span. R. 211-12, 217, 219.

Subsequently, Applicant was indicted for homicide by child abuse, and he elected to proceed to trial. R. 9-11, 629-30.

### III. Current Application for Post-Conviction Relief

In his Application for Post-Conviction Relief, Applicant alleges that he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel
  - a. "Counsel failed to request charges on involuntary manslaughter and accident."
    - i. "Counsels conduct was deficient because the Defendants testimony support and involuntary manslaughter charge by providing evidence of his provided limited care by the victims killer who 'would not let him see' and by his finding and reporting of the victim 'not breathing anymore'."

Applicants prays for relief in the form of "[n]ew trial, or any relief the Court deems fit and proper."

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject conviction; the transcript from Applicant's trial, which was transcribed in two volumes; Applicant's appellate records; Applicant's records from the South Carolina Department of Corrections; and Applicant's Post-Conviction Relief Application. Respondent reserves the right to amend this Return upon its receipt of any relevant materials.

#### IV. Response to Applicant's Claims of Ineffective Assistance of Counsel

Applicant claims that his trial counsel was ineffective for failing to request jury charges on involuntary manslaughter and accident. Respondent interprets the following allegation from Applicant as a statement intended to serve as a factual support for his claim of ineffective assistance of counsel:

Counsel's conduct was deficient because the Defendant's testimony supports an involuntary manslaughter charge by providing evidence of his provided limited care by the victim's killer who "would not let him see" and by his finding and reporting of the victim "not breathing anymore".

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

As to Applicant’s claim of ineffective assistance of counsel for failing to request a jury charge for involuntary manslaughter, Respondent asserts that Applicant cannot satisfy either element of the Strickland test on this claim. Applicant was indicted and tried for the crime of homicide by child abuse. Involuntary manslaughter “is not a lesser included offense of homicide by child abuse.” McKnight v. State, 378 S.C. 33, 51, 661 S.E.2d 354, 363 (2008). As such, this claim should be dismissed.

As to Applicant’s claim of ineffective assistance of counsel for failing to request a jury charge for accident, Respondent asserts that Applicant cannot satisfy either element of the Strickland test on this claim. However, the claim probably raises questions of fact that the record may not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve these issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983). Respondent also moves for a more definite statement as to this claim later in this Return.

#### V. Motion for a More Definite Statement

In his Application, alleges that his counsel was ineffective, providing a non-exhaustive list of these supposed instances of ineffectiveness, writing that “[c]ounsel’s acts or omissions included, but are not limited to, the following . . .” This indicates that Applicant may have claims of ineffective assistance of counsel that he does not supply in his Application. In order that Respondent may respond to Applicant’s claims, Applicant needs to provide an exhaustive list of claims. Additionally, Applicant alleges that his counsel was ineffective by failing to request a jury charge on the law of accident, but does not provide any supporting facts as to this allegation.

Respondent moves for a more definite statement as to Applicant’s claims of ineffective

assistance of counsel. Applicant fails to set forth with specificity the facts and circumstances upon which the claims are based and possibly may be omitting claims altogether. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these claims. Additionally, the claims are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of these claims. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

#### VI. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

#### VII. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in his post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the post-conviction relief hearing.

#### VIII. Conclusion

WHEREFORE, Respondent requests that the Court dismiss Applicant's claim of ineffective assistance of counsel based on the failure to request a jury charge on involuntary manslaughter, hold an evidentiary hearing solely on the claim of ineffective assistance of counsel for failure to request a jury charge on the law of accident and require the Applicant to amend his Application in order to provide a more definite statement as to this claim, and require Applicant to amend his application in order to provide a more definite statement as to any claims of ineffective assistance of counsel that he may have but that were not included in his Application.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

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By:   
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March 29, 2019

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 FILBERTO CAMPOS, #364268 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 )

IN THE COURT OF COMMON PLEAS


2019-CP-32-04114

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, Partial Motion to Dismiss and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire  
 McMahan & Taylor, Attorneys, LLC  
 Post Office Box 5501  
 West Columbia, South Carolina 29169

DATED this the 29<sup>th</sup> day of March, 2019.

  
 Camille Henry, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 Filiberto Garcia Campos, #364268 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

COURT OF COMMON PLEAS  
 FOR THE 11<sup>th</sup> JUDICIAL CIRCUIT  
 Case No.: 2018-CP-32-04114

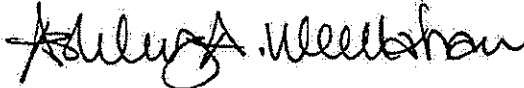
**AMENDED POST-CONVICTION  
 RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on or about November 26, 2018, to add the following:

- 1. Ineffective Assistance of Counsel as to Aimee Zmroczek, Esquire
  - a. Failure to request jury charges on lesser-included offense

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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 ATTORNEY FOR APPLICANT

August 20, 2021

**CERTIFICATE OF SERVICE**

I certify that I have served this document via email to:

**Lillian Meadows**  
**Assistant Attorney General**  
**lillymeadows@scag.gov**

This 20th Day of August, 2021.



---

**ASHLEY A. MCMAHAN, ESQUIRE**  
**Attorney for Applicant**



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2	<u>WITNESS/DESCRIPTION</u>	
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12	<u>E X H I B I T S</u>	
13	(None.)	
14		
15		
16		
17		
18		
19	COURT REPORTER LEGEND	
20	Dash (--)	Indicates an interruption in speech
21	Ellipses (...)	Indicates trailing off in speech
22	(ph)	Indicates phonetic word
23	[Verbatim]	Indicates the word is said as written
24	(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality
25		

## P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:44 a.m.):

(The interpreter was duly sworn.)

(Discussion was held off the record with interpreter and the Court.)

MS. MEADOWS: This is Filiberto Campos versus the State of South Carolina, Docket No. 2019-CP-32-4114. During its May 2014 term, the Lexington County Grand Jury indicted Mr. Campos for homicide by child abuse under Indictment No. 2014-GS-32-1347.

His co-defendant, Tracy Roach, was also indicted for homicide by child abuse, and prior to Mr. Campos's trial, she pleaded guilty, as indicted before Judge Maddox.

THE COURT: And that was the co-defendant?

MS. MEADOWS: Yes, sir.

And, on June -- I'm sorry -- January 4th, 2016, Mr. Campos proceeded to a jury trial before the Honorable Thomas A. Russo. Aimee Zmroczek, Esquire, represented him, and Deputy Solicitor Suzanne Mayes and Assistant Solicitor Robert McNair prosecuted the case. The jury ultimately convicted Mr. Campos as indicted, and Judge Russo sentenced him to life without parole, and his convictions were affirmed on appeal.

And, on December 3rd, 2018, Mr. Campos filed a timely application for post-conviction relief. He is present today

1 and represented by Ms. McMahan.

2 THE COURT: All right. Would you state your grounds,  
3 Ms. McMahan, for the record.

4 MS. McMAHAN: Certainly, Your Honor. First off, I just  
5 want to make a brief correction. It's a 2018 case and not a  
6 2019 case.

7 THE COURT: All right.

8 MS. MEADOWS: Sorry.

9 MS. McMAHAN: Our grounds are, in the amended application  
10 and also in the post-conviction relief application, the  
11 amended application, that's ineffective assistance of counsel  
12 for failure to request jury charges on a lesser included  
13 offense.

14 THE COURT: That's involuntary and accident?

15 MS. McMAHAN: Yes, sir.

16 And then, also, I believe his application kind of just  
17 follows that with general ineffective assistance of counsel  
18 claims and goes forward more in-depth on the actual lesser  
19 included issue. So that's the main issue.

20 THE COURT: Okay. Are you ready to proceed?

21 MS. McMAHAN: Yes, Your Honor.

22 THE COURT: Call your first witness.

23 MS. McMAHAN: Your Honor, the applicant calls Tracy  
24 Roach.

25 THE CLERK: Can you raise your right hand?

## TRACY ROACH - Direct by Ms. Meadows

5

1 TRACY ROACH,  
2 after having been duly sworn, was examined and testified  
3 to as follows:

4 DIRECT EXAMINATION

5 BY MS. MEADOWS:

6 Q Would you please state your name for the record.

7 A Tracy Roach.

8 Q And how are you connected to Mr. Campos?

9 A I'm his common law wife of 20 years.

10 Q Do y'all have any children together?

11 A We have two children.

12 Q And was one of the children the subject of y'all's  
13 incarceration?

14 A Yes, ma'am.

15 Q And how long are you sentenced for?

16 A Life.

17 Q And for these same charges Mr. Campos has?

18 A Yes.

19 Q And explain to the Court today how much Mr. Campos knew  
20 about your child's death and the cause of it.

21 A He didn't know nothing, actually. I just -- I had been  
22 suffering from post-partum depression, and I had a psychotic  
23 break. My psychiatrist had quit and she left abruptly, and I  
24 went two months without medication, and I just -- I wasn't  
25 even myself. Then I tried to start self-medicating, so I

1 started drinking.

2 He didn't know anything. I tried to hide it from him.

3 Q And did you plead guilty?

4 A Yeah.

5 Q So you went ahead and admitted that (indiscernible) --

6 A Yes.

7 Q -- to your daughter?

8 A Well, I didn't do anything to her, but...

9 Q Well, back up --

10 A Lack of care, I guess.

11 Q So, in our conversations together, you told me that  
12 Mr. Campos didn't really know or understand about what your  
13 daughter needed. Can you explain that to the Court?

14 A He worked every day, so he just assumed -- I mean, he  
15 seen I was going through something, I guess, but the  
16 medicine -- he was at work all day, and then I would take care  
17 of her. When he came home, she was just asleep each day, so  
18 he would go check on her. He just really believed that I was  
19 taking care of her.

20 Q And at what point during all of this did you start  
21 drinking heavily?

22 A Only about a month before. I have never been a drinker.  
23 I just wasn't getting the medicine. I didn't know what else  
24 to do, and I started drinking.

25 Q When you say you weren't getting the medicine, you

TRACY ROACH - Direct by Ms. Meadows

7

1 weren't getting your medication?

2 A Right.

3 Q Were you getting the medication that was needed for your  
4 daughter?

5 A Yeah, there was no medication needed for Meadow. She had  
6 Down's syndrome, but she wasn't on medication.

7 Q And when you say Mr. Campos worked a lot, describe to me,  
8 like, when he was leaving the home.

9 A He would leave before 6:00 in the morning, and he would  
10 come home sometimes at 5:00 in the afternoon, sometimes at  
11 3:00. And the baby would be asleep, down for the night. And  
12 we had a seven-year-old son, who, he was fine. Nothing was  
13 wrong with him. So, like I said, he would go in and check the  
14 baby and give her a kiss, and everything just seemed normal.  
15 This happened over a quick period of time.

16 Q So your impression of Mr. Campos's behavior towards your  
17 daughter, do you believe that he loved her?

18 A Very much so. Even my son had stated that Madison was  
19 his favorite, he used to say. But he loved her. We both  
20 loved her very much.

21 Q And you had Easter Seals come out to the house, too, at  
22 the beginning?

23 A Yes. They used to come there. And we were going to try  
24 to move back to my hometown, and so I stopped Easter Seals  
25 from coming and was going to re -- pick it up once I moved

1 back to Chester for their Lancaster division.

2 Q So, at one point, you told Easter Seals to stop coming?

3 A Yes.

4 THE COURT: Just one second.

5 THE INTERPRETER: May the interpreter address the Court?

6 May the interpreter address the Court?

7 THE COURT: Say that again.

8 THE INTERPRETER: May the interpreter address the Court?

9 THE COURT: Yes, ma'am.

10 THE INTERPRETER: Sir, it's very hard for me to  
11 understand.

12 THE COURT: Okay. Let's slow down.

13 THE INTERPRETER: If you wouldn't mind.

14 THE COURT: Do you need to repeat anything?

15 THE INTERPRETER: No, sir.

16 THE COURT: Okay. Thank you.

17 BY MS. McMAHAN:

18 Q So, at some point, you were (indiscernible) and told  
19 Easter Seals to come?

20 A Mm-hmm.

21 Q So when you first found out you were pregnant with your  
22 daughter who had Down's syndrome, what -- what was your  
23 initial decision?

24 A We initially were going to keep the baby. We had  
25 discussed all the options available. Abortion was one option.

TRACY ROACH - Direct by Ms. Meadows

9

1 Adoption was one option.

2 Q Were you on your way to essentially get an abortion at  
3 some point?

4 A At one point, we did go, but we changed our minds and I  
5 stopped. He didn't want to do that and...

6 Q So he didn't want to?

7 A No. I didn't want to either, but, basically, he did not  
8 want to do that.

9 Q Okay. And so did you ever have a conversation with  
10 Ms. Zmroczek prior to Mr. Campos's trial?

11 A Not that I remember.

12 Q And so it's your testimony today that most of the  
13 situation or all of the situation, rather, that Mr. Campos had  
14 no idea how far gone you had gotten (indiscernible) neglected  
15 your child?

16 A That's the truth, yes. He's a victim just as well.

17 MS. McMAHAN: I have no further questions.

18 THE COURT: Cross-examination?

19 MS. MEADOWS: I have no questions for this witness,  
20 Judge.

21 THE COURT: Thank you, ma'am.

22 MS. McMAHAN: Judge, I have no further questions. I just  
23 ask that Ms. Roach be excused so she can return back to her  
24 (indiscernible).

25 Judge, at this point, the Applicant calls Mr. Campos.

1 THE CLERK: Please raise your right hand.

2 FILIBERTO CAMPOS,

3 after having been duly sworn, was examined and testified  
4 to as follows:

5 THE COURT: Ask him to please drop his mask and speak  
6 louder, please.

7 DIRECT EXAMINATION

8 BY MS. McMAHAN:

9 Q Would you please state your name for the record.

10 A Filiberto Garcia Campos.

11 Q Would you mind spelling your first name (indiscernible)?

12 A F-i-l-i-b-e-r-t-o.

13 Q And did you file this PCR application?

14 A Yes, that's my signature.

15 Q And who was your attorney that represented you on these  
16 charges?

17 A In Lexington?

18 Q Yes.

19 A I believe her name was Ashley.

20 Q No, I represent you for the PCR.

21 A Oh, oh.

22 Q Who represented you for the conviction that put you in  
23 here? Was it Ms. Zmroczek? Aimee Zmroczek?

24 A Mm-hmm. Yes, yes.

25 Q How many times did you meet with her?

- 1    **A**    Twice in two years.
- 2    **Q**    Were you at the detention center the whole time?
- 3    **A**    Yes.
- 4    **Q**    Was your bond denied the whole time?
- 5    **A**    Yes.
- 6    **Q**    Did you go up for any bond hearings after it was  
7    initially denied?
- 8    **A**    No.
- 9    **Q**    Did you meet with any other members of Ms. Zmroczek's  
10   staff?
- 11   **A**    No.
- 12   **Q**    Did you meet with her assistant or her investigator?
- 13   **A**    No.
- 14   **Q**    And when you met with her the first time, do you remember  
15   what you guys talked about?
- 16   **A**    She told me that what happened in my case (indiscernible)  
17   charges, that I was going to be deported to Mexico.
- 18   **Q**    She told you that they were going to dismiss your charges  
19   so you could be deported?
- 20   **A**    Yes, that is what she told me.
- 21   **Q**    So, at what point in your meeting with her did you decide  
22   to have a trial?
- 23   **A**    She never told me about a trial.
- 24   **Q**    So you did not know you were going to trial when you  
25   (indiscernible)?

1 A No, because no offer either. She only told me that I was  
2 going to go to court and that's when I got a life sentence.

3 Q So when you met with her, she just said you were going to  
4 court but that you weren't going for a trial? What did you  
5 think you were going to court for?

6 A Honestly, I don't know.

7 Q Did you hear Ms. Roach's testimony?

8 A Right now?

9 Q Mm-hmm.

10 A Yes.

11 Q Was what she was saying the truth?

12 A Yes.

13 Q And so you said the first time you met with Aimee, she  
14 told you, you were going to be deported. Do you remember what  
15 you guys talked about the second time?

16 A Honestly, I don't remember. It's been a long time.

17 Q Did she go over the evidence that she had gotten against  
18 you?

19 A No.

20 Q Did she go over any photographs or anything that the  
21 State had given her?

22 A I think so.

23 Q And what were those photos of?

24 A The pictures were from when the girl was already dead.

25 Q And when you spoke to Ms. Zmroczek, did you speak in

1 English, Spanish, or both?

2 A English.

3 Q Did you have a hard time talking to her?

4 A I understand a little bit.

5 Q So in your two conversations with Ms. Zmrolzek, what was  
6 your understanding of (indiscernible)?

7 A When she would visit me, she would always tell me that I  
8 was going to be deported and sent to Mexico and that my case  
9 was going okay. That's all she would tell me.

10 Q Did you see -- the photos that were taken after  
11 (indiscernible), did you also see any photos that you guys had  
12 taken together with a camera or anything?

13 A Who?

14 Q Your daughter.

15 A Yes.

16 Q So you had no idea that you were coming over to go to  
17 (indiscernible) court?

18 A No, I didn't know that.

19 Q Okay. And so when all these charges came about, were you  
20 shocked at the state of your daughter and how she died?

21 A Yes.

22 Q Did you think Ms. Roach was taking care of her?

23 A Yes, because I would talk to her every day in the evening  
24 and I would also talk to my son and asked them (indiscernible)  
25 was okay and that if she had been fed the bottle.

1 Q What answer did you always get?

2 A She would always say yes, that she had fed her and  
3 (indiscernible).

4 Q How long have you and Ms. Roach been together?

5 A About 15 or 20 years.

6 Q And, at the time that your daughter was born, how long  
7 (indiscernible)?

8 MS. MEADOWS: Your Honor, I just object to relevance. I  
9 don't see how this is relevant to the claim of ineffective  
10 assistance of counsel based on failure to request the lesser  
11 included offenses.

12 THE COURT: What's the relevance?

13 MS. McMAHAN: It absolutely does, Your Honor, because if  
14 the request for (indiscernible). So that's what I'm trying to  
15 show (indiscernible) that all of this was really a lesser  
16 offense (indiscernible).

17 THE COURT: Just go ahead and move on.

18 MS. MEADOWS: Your Honor, I would just state for the  
19 record, I don't know how the heat of passion could be applied  
20 to --

21 THE COURT: I don't need you to state that for the  
22 record, but thank you.

23 MS. MEADOWS: Okay.

24 BY MS. McMAHAN:

25 Q So I'm asking these questions (indiscernible), did you

1 ever discuss with Ms. Zmroczek about the fact that you didn't  
2 realize that your child was (indiscernible)?

3 A The issues that my daughter had was she was never gaining  
4 weight. That's why (indiscernible).

5 Q Did you talk to Ms. Zmroczek about that?

6 A Yes.

7 Q What was the conversation that you and Ms. Zmroczek had  
8 about that? Do you remember what you guys talked about  
9 specifically or what she said to you about it?

10 A No.

11 Q No? Okay.

12 Did you guys talk about hiring any expert witnesses or  
13 anything?

14 A I don't know.

15 Q Did you have a conversation about consulting with medical  
16 people or doctors or anything about how your daughter died?

17 A Well, they said in court how she died.

18 Q But you never talked to Ms. Zmroczek about that?

19 A No.

20 Q What was your understanding of what you were charged  
21 with?

22 A The charge was not taking care of my daughter.

23 Q Did she explain to you that you could get life for that?

24 A No, because of what I know (indiscernible) was lifetime,  
25 that's a long time.

1 Q You thought the most you could get was 10 to 15?

2 A I think so.

3 Q But you're serving a life sentence right now; right?

4 A Mm-hmm.

5 Q Answer any questions Ms. Meadows has.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MS. MEADOWS:

9 Q Mr. Campos, so Ms. Roach speak Spanish or how did you  
10 speak (indiscernible)?

11 A Nope.

12 Q So you only spoke English?

13 A (No audible response.)

14 Q Okay. Is that a yes?

15 A Yes.

16 Q And is it your testimony today that Ms. Zmroczek never  
17 discussed your trial with you until the day it began?

18 A Yes, about a week.

19 Q So she did talk to you about a week before trial?

20 A Yes, she told me I will be brought to court. That's all  
21 she said.

22 Q She didn't say it would be for your trial?

23 A No. Honestly, it wasn't. She only told me that I was  
24 going to be in court.

25 Q And why do you think you would only get 10 to 20 years

## FILIBERTO CAMPOS - Redirect by Ms. McMahan

17

1 for this offense?

2 A Because I would only want to work and I only had my wife  
3 at home.

4 Q Okay. So no one told you that you would get 10 to 20  
5 years (indiscernible)?

6 A No.

7 Q That was just your opinion (indiscernible)?

8 A Yes. I thought I would get (indiscernible).

9 MS. MEADOWS: No further questions. Thank you.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MS. McMAHAN:

13 Q Is there anything else you want the Court to know about  
14 your PCR case?

15 A (Indiscernible).

16 Q Is there anything else you want the judge to know about  
17 Ms. Zmroczek's representation?

18 A Yes. She didn't help me at all. She didn't help me with  
19 anything. In two years, she only visited me twice.

20 MS. McMAHAN: I have nothing further.

21 THE COURT: Thank you. You can step down.

22 MS. McMAHAN: Your Honor, the Applicant rests.

23 THE COURT: The Applicant rests. Okay.

24 MS. MEADOWS: Your Honor, the State calls Aimee Zmroczek.

25 THE CLERK: Please raise your right hand.



1    **A**     Sure.  This was a homicide by child abuse case.  None of  
2    the homicide by child abuse cases that I have ever done have  
3    been great.  This one was particularly bad because the  
4    decedent was 18 months old and weighed less than ten pounds,  
5    which was extremely problematic, I think for the co-defendant  
6    who was, at that time, morbidly obese.  And she also had  
7    Down's syndrome.  She had a lot of -- she had a lot of outside  
8    care that the family also just kind of gave up on.  When I say  
9    "outside care," like she qualified for a lot of services.  And  
10   they were coming for a bit, and then those services, for  
11   whatever reason, stopped coming, so it was just the mother and  
12   my client.

13           My client did understand and speak English.  Obviously,  
14   his primary language is Spanish.  He was here undocumented,  
15   and so that was a problem with the bond hearings is that, even  
16   if a judge were to give him a bond, he would just go straight  
17   into -- into deportation arrest, which is what I was trying to  
18   explain to him about a bond.

19           And I did a massive investigation into this case.  I  
20   met with the client numerous times.  I got his work schedule  
21   because his defense was always that he was -- he spent the  
22   majority of the time working and that he was also a good  
23   father.

24           So, in addition, after speaking with him and getting  
25   his work records to verify that, I also went and pulled some

1 extra evidence and discovery requests regarding the phones,  
2 and there was a lot of pictures on there about him being a  
3 father. The problem is that would cut both ways because  
4 there's no way that you could pick up this child and hold this  
5 child and love this child and not know that this child weighed  
6 less than ten pounds.

7 Q Do you (indiscernible)?

8 A I was going to say, I was going to try to demonstrate  
9 that in closing, which the judge ended up not letting me do,  
10 but, yeah.

11 Q And do you recall how law enforcement got involved or how  
12 they found (indiscernible)?

13 A Oh, actually, yeah. He called 911. They didn't have any  
14 phones so he had to actually -- when he came home, at that  
15 time, she was already deceased. He ran down to the local  
16 service station to call 911.

17 Q And then do you recall about how many times you met  
18 (indiscernible)?

19 A It's been so long. Obviously, I know it's more than two.  
20 I don't go just once a year in a case like this, especially a  
21 case that I try. We also -- I had also hired investigators,  
22 so there were numerous. I just can't say how many.

23 Q Okay. And did you also (indiscernible)?

24 A Absolutely.

25 Q Okay. And did you discuss the charges he was facing

1 (indiscernible)?

2 A I did. I did. I'm not a fan of this statute. I think  
3 that it's incredibly -- incredibly vast in what it could -- in  
4 what it could encompass, which, I think, is what happened in  
5 this case. But, unfortunately, I did explain to him what he  
6 was facing and the case law that does not support a lot of  
7 lesser includeds in this offense.

8 Q Okay. And what did you tell him about whether he may be  
9 deported?

10 A Oh, I mean, I told him that -- that this certainly falls  
11 under the crimes that would have him deported, even if he had  
12 some sort of lawful permanent resident status, but the fact  
13 that he didn't have any status also would affect his  
14 availability to remain in the United States.

15 Q Okay. Did you ever tell him that he would be deported  
16 and not (indiscernible)?

17 A I did.

18 Q (Indiscernible)?

19 A I did not.

20 Q Okay. And did you need an interpreter to communicate  
21 with him or (indiscernible)?

22 A I spoke Spanish with him. In trial, though, we had an  
23 interpreter the entire time because I just can't -- I can't  
24 translate the trial for him and pay attention.

25 Q So did you discuss his option (indiscernible)?

1 A I did.

2 Q (Indiscernible)?

3 A He did not.

4 Q Okay. And I know you discussed this briefly, but what  
5 (indiscernible)?

6 A Like I said, I did a thorough investigation. The --  
7 obviously, the defense was is that he was working. He was the  
8 main breadwinner. He relied upon his wife, which is also a  
9 cultural thing, that -- that was the only thing I considered  
10 about bringing in an expert was to talk about that cultural  
11 difference; however, I don't know that that would have made a  
12 difference in the overall trying of the case.

13 Yeah, I met with the pathologist, the doctors. Like I  
14 said, I went out to the location. I actually spent a long  
15 time getting the DSS records. So I did a lot of things in  
16 that case.

17 Q Okay. Was there anything that he asked you to  
18 investigate that you did not?

19 A No.

20 Q And then did you ever speak with Ms. Roach?

21 A So, she was represented at the time, I remember clearly,  
22 by Rob Madson at the public defender's office, which is how it  
23 got -- the co-defendant got sent to my office. Mr. Madson  
24 would not allow me to talk to her while he was representing  
25 her. And then she pled straight up. And I did attend the

1 plea because I actually used -- Judge Cordell Maddox was the  
2 judge of her plea, and he said that he seen pictures of dead  
3 children, and he's -- these were worse -- the worst that he's  
4 ever seen, like worse than Nazi, Germany. So I thought I  
5 could use that to maybe try to keep some of those out in the  
6 defendant's case, but, unfortunately, that didn't work either.

7 Q Okay. So the judge ended up (indiscernible)?

8 A Yeah.

9 Q Okay. And then could you briefly describe  
10 (indiscernible)?

11 A I mean, sure. There were pictures which is, in this  
12 case -- generally, these kind of cases, all you need to get a  
13 conviction because they were horrific pictures of this little  
14 girl. But it also -- there were pictures of the house, which  
15 was problematic because it showed bottles and food. And so I  
16 tried to -- I tried to flip that to say that that's why  
17 Mr. Campos thought that his child was being fed because it was  
18 not a very well-kept house, but, obviously, that didn't --  
19 that backfired. It didn't work on it.

20 And the evidence also showed that there were a lot of  
21 medications that the mother had. So it was just a  
22 problematic...

23 Q And did she testify at the trial?

24 A I believe she did.

25 Q Okay. And did you review the discovery with him and

1 (indiscernible)?

2 A I did.

3 Q And were there ever any plea offers?

4 A No. They were very clear that they weren't making any  
5 plea offers.

6 Q And Ms. Roach pled straight-up; right?

7 A She did, yeah.

8 Q And so I have kind of discussed this, but what was your  
9 overall theory (indiscernible)?

10 A My theory was to say that she was the -- sorry, did you  
11 need me? She's waving.

12 That she was the primary caretaker and that -- and the  
13 problem is, is that it's a very fine line to walk because he  
14 was the father and he did love them very much, but -- so my  
15 theory was that she should have noticed this, and he wouldn't  
16 have noticed it.

17 Q But, I mean, even though (indiscernible); right?

18 A He did.

19 Q Okay. And then what did you do to help prepare for his  
20 trial?

21 A When it started to get closer to trial, I knew he wasn't  
22 going to be able to testify. He just wasn't comfortable  
23 testifying. I don't think that he understood how expansive  
24 the statute was. And so just saying that, you know, "I relied  
25 on her to take care of the child" wasn't going to get him past

1 the statute. So, at that point, it was just -- obviously, the  
2 interpreter was there, so she and I talked with him every day  
3 during trial. He had an interpreter for the entire case, so  
4 he was aware.

5 Q In his original application, (indiscernible)? First of  
6 all, (indiscernible) did ask the State to provide  
7 (indiscernible); correct?

8 A I did.

9 Q And that states that homicide by child abuse is extremely  
10 different (indiscernible)?

11 A Yes.

12 Q Okay.

13 A Which is also why I have a problem with the statute, but  
14 yes.

15 Q And why did you ask the judge to charge (indiscernible)?

16 A So that issue was actually decided in 2005, State v.  
17 Mitchell. And they did an elements test, and they -- the  
18 Court -- the Supreme Court decided that it was a -- it did not  
19 meet the elements test, and so it was not a proper lesser  
20 included.

21 Q Okay. And then (indiscernible) the State v. Miller --  
22 I'm sorry, statements about -- did you believe -- why did you  
23 believe that (indiscernible)?

24 A I just -- I was trying to have the jury find him a little  
25 less culpable in hopes that they would either take some mercy

1 on his case, but unfortunately, like I said, the statute is  
2 pretty vague, so I think that they were able to fit everything  
3 underneath.

4 Q And then, in his amended application, (indiscernible)  
5 lesser included? Are there any lesser includeds?

6 A At this time, no, there are not.

7 Q Okay. So (indiscernible)?

8 A No.

9 Q Okay. And why didn't you request a jury charge on  
10 (indiscernible)?

11 A Again, looking at the elements test, his defense was  
12 always that she was in charge. So an accident would -- none  
13 of his -- none of his behavior would have fallen under the  
14 definition of accident. To say he accidentally forgot to feed  
15 her just wouldn't go with the facts, so...

16 Q Okay. And about how many cases did you try over  
17 (indiscernible)?

18 A I have tried probably 15 federal felony cases and over a  
19 hundred state cases.

20 MS. MEADOWS: All right. Nothing further.

21 THE COURT: Any cross-examination? CROSS-EXAMINATION

22 BY MS. McMAHAN:

23 Q What did you guys talk about (indiscernible)?

24 A We talked about -- so, obviously, when I first get a  
25 client and I first meet them, I try to find out a little about

1 who they are and, like, their family. And then, depending on  
2 the facts of the case -- for example, in this case -- you  
3 know, how we ended up in this situation.

4 Q Okay. Did he ever give you an explanation  
5 (indiscernible)?

6 A No, I mean, his -- he told me that he worked all the time  
7 and that, if he wasn't working, he was outside with his  
8 six-year-old. And -- like, they would work on cars. And  
9 really, that -- it was the -- it was Tracy's job to take care  
10 of the small children. She also did not work during the day,  
11 so she was always with them. And so we really just kind of  
12 got some background information about his family.

13 Q That kind of, I guess, segues into the cultural thing?

14 A Yeah, so the cultural -- one of the cultural  
15 differences -- I mean, I would say cultural; it's different  
16 than how I grew up -- is that, typically, both parents can be  
17 very involved in the upbringing of their children, but in  
18 Hispanic cultural, especially with female children, a lot of  
19 those duties do relate back to the mother.

20 Q Especially taking care of the female children?

21 A Right.

22 Q Not just the male children?

23 A Right.

24 Q So the job of making sure that the child got fed and  
25 everything (indiscernible) and all that kind of stuff

1 (indiscernible)?

2 A In his -- in his mind, yes.

3 Q Okay. Did he explain that?

4 A Not -- not as clearly as I have explained it but just --  
5 but it was more like I just understood it. You know? He  
6 worked, he brought in the money, and she did that part. That  
7 was her job.

8 Q Did he ever say anything to you -- let me back up. What  
9 was your conversation like about how his child got  
10 (indiscernible)?

11 A So that was -- that was the issue that I struggled with  
12 because he, candidly, you know, would speak very highly of his  
13 children and say that he was the one who always tucked them in  
14 at night, which then would turn around to be a problem because  
15 he's tucking her in at night. Then the jury, I think, would  
16 say, "Well, then he saw how she was every night."

17 So that's why I was trying to explain that he maybe  
18 didn't understand that ten pounds or nine pounds for an  
19 18-month-old wasn't appropriate.

20 Q So how did you -- you alluded earlier that you were  
21 trying to show that at closing. How were you going to try to  
22 do that?

23 A I remember I had a water jug that I had filled up with  
24 nine pounds of water just so that you could see how heavy it  
25 actually felt, but apparently, it was too demonstrative, and I

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29

1 was not allowed to show that.

2 Q Okay. So she weighed as much as a ten-pound  
3 (indiscernible)?

4 A Right.

5 Q In your understanding and in your investigation  
6 (indiscernible)?

7 A Like at least double that.

8 Q And you heard his testimony. Did you understand, like,  
9 how did the conversation go about (indiscernible)?

10 A I have no idea where that came from. There may have  
11 been -- I mean, he may just have been remembering discussions.  
12 I know that I had asked for a lot of lesser includeds and I  
13 know that there were some discussions of what those carried,  
14 so there may have just been -- that's just what he may  
15 remember. I'm not sure.

16 Q You sat down and had a conversation with (indiscernible)?

17 A Right.

18 Q Did you explain to him that he was probably looking at  
19 life?

20 A I did.

21 Q Earlier, you talked about the deportation issue. Was  
22 that you were explaining to him that, if he got a bond, he got  
23 out on bond, he actually wouldn't be getting out because he'd  
24 be going into ICE custody?

25 A Correct, yes.

1 Q And did he ever indicate to you that he would prefer that  
2 or --

3 A He did not.

4 Q Okay. And, in your conversations with him, did he ever  
5 indicate to you that he didn't understand anything you guys  
6 talked about or anything like that?

7 A I mean, I think there was -- I think -- yes, but that's  
8 why I would spend more time explaining to him these -- these  
9 legal issues are hard enough for people who have English as a  
10 first language, so explaining convoluted legal issues to  
11 someone who does not have English as their primary language is  
12 always more difficult, but -- but I made sure that it was  
13 explained.

14 Q Okay. And so you said you spoke to him mostly in  
15 Spanish?

16 A It was a combination. So one thing that I have learned  
17 with Mr. Campos -- and with several other clients, but with  
18 Mr. Campos in particular is that he understands what you say  
19 in English but sometimes can't think of the words to say back.  
20 So, sometimes he -- a lot of it would be kind of a mixed  
21 English and Spanish, yeah.

22 Q Kind of how like (indiscernible). (Indiscernible) in  
23 Spanish class (indiscernible)?

24 A Right.

25 Q Okay. What did the defendant ever -- I'm sorry, the

1 Applicant say to you about (indiscernible)? Did he ever have  
2 comments about why he was -- he was (indiscernible) everywhere  
3 or --

4 A No. Again, that was her job. He relied on her to do  
5 kind of her job. And it wasn't necessarily the worst I have  
6 seen, but it just -- what was problematic is the bottles in  
7 the fridge -- excuse me, in the sink, because I could use that  
8 to say that that's how he thought she was getting fed, but, at  
9 the same problem, it just -- at the same time, it just went to  
10 show that they had the capabilities to feed her and to make  
11 sure that she was fed and that she wasn't.

12 Q That's what you were referencing earlier when you said it  
13 backfired?

14 A Right.

15 Q Did you feel (indiscernible)?

16 A Oh, yeah. They weren't good, I can tell you that.

17 Q And in the pictures of his daughter (indiscernible), not  
18 necessarily the scene photos but you said earlier you took  
19 photos of them while (indiscernible)?

20 A I did. He actually really -- on his phone, there were  
21 tons of pictures of him holding her for her first birthday, on  
22 his lap, which, again, is great because it shows that he was  
23 involved, but, at the same time, like, I don't know how much  
24 she weighed in those pictures, but it was either the same or  
25 it was less, and we're talking six months down the road. So

1 that also would come back to bite us to say, "Oh, well, then  
2 he either knew she was -- should have known she was too light  
3 or should have known she was losing weight."

4 Q Did you attempt to call Ms. Roach as a witness?

5 A Yes.

6 Q Okay. Is that because of (indiscernible)?

7 A I would. Rob was no longer representing her at that  
8 point because she had pled, so I figured that that's how I  
9 could get her in, but, at that point, appellate defense was  
10 still on her case, and they advised her to not.

11 Q So she had already pled guilty.

12 A Yeah.

13 Q And you said earlier -- I think I misunderstood. I think  
14 when you said "pled," I heard it as "fled."

15 A Oh, no, no, no. Pled, pled, pled.

16 Q So she did not run away.

17 A No. Yes.

18 Q Okay. And so when you said you were going to try and  
19 maybe find an expert to testify (indiscernible), did you have  
20 any luck with that?

21 A I did not, anywhere.

22 Q And you explained to him how, all of a sudden, it was  
23 beneficial for him and also, at the same time,  
24 (indiscernible). Did you sit and discuss all that with him?

25 A I remember talking about it. He was always like, "I'm

1 not going to" -- especially after his -- after Tracy pled and  
2 got life, then there was really just no point to him pleading  
3 and having nothing to be able to attack.

4 Q Had Tracy already been sentenced at the time?

5 A I think so. I can't remember, though. Yeah, I'm almost  
6 sure she had.

7 Q Would there have been any benefit to him trying to go  
8 ahead and plead guilty? Did he ever indicate (indiscernible)?

9 A No.

10 Q So he was adamant the whole time he was not guilty?

11 A Yes.

12 Q Okay. And did you try to explain to him, under the  
13 statute, like, hey, (indiscernible)?

14 A I did. And, you know, that was the really only issue  
15 that I felt like I had was the vagueness of the statute.

16 MS. McMAHAN: Court's indulgence.

17 Nothing further, Your Honor.

18 THE COURT: Did you need the interpreter to help you  
19 communicate with him?

20 THE WITNESS: No, Your Honor. That was -- we were able  
21 to communicate.

22 THE COURT: All right. Redirect?

23 MS. MEADOWS: Nothing further, Judge. I do have copies  
24 of the cases that we talked about earlier, if I can hand those  
25 up.

1 THE COURT: You can pass them forward.

2 Are you here --

3 THE WITNESS: I'm here all day, Judge.

4 THE COURT: All right.

5 THE WITNESS: You're stuck with me.

6 THE COURT: Well, you're welcome to go walk around if  
7 need to.

8 THE WITNESS: Okay. Thanks.

9 MS. MEADOWS: Thank you.

10 And, Your Honor, the State rests.

11 THE COURT: Any reply?

12 MS. McMAHAN: No, Your Honor, but we just ask that you  
13 review the record as a whole, since it is a trial, before  
14 making a decision.

15 THE COURT: I'll be glad to. And if you would, would you  
16 point to me evidence in the record that would point to the  
17 defense of accident? And do you agree with the State that  
18 voluntary is not a lesser included of the --

19 MS. McMAHAN: I do, Your Honor.

20 THE COURT: Then that ground is denied.

21 MS. McMAHAN: If you would just maybe let me get back to  
22 you in the next day or two --

23 THE COURT: Yes, ma'am.

24 MS. McMAHAN: -- so I can go through it again and just  
25 double-check?

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35

1 THE COURT: If you'll email that to me and my law clerk.

2 MS. McMAHAN: Mm-hmm. Okay.

3 THE COURT: All right. Thank you.

4 Now, please explain to him, I'm going to review the  
5 records, his attorneys will give me some further information,  
6 and then I'll rule on his application.

7 All right. Very good. The hearing's ended. You can  
8 take him.

9 MS. McMAHAN: Just one more thing, Judge. If you  
10 wouldn't mind, if you allow me to say Monday or Tuesday, only  
11 because I'm in court literally every day this week.

12 THE COURT: That's fine.

13 MS. McMAHAN: Thanks.

14 (The above matter concluded at 10:43 a.m.)  
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3 2018-CP-32-04114

4 DATE OF HEARING: 12/13/2021

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Filiberto Garcia Campos, SCDC #364268,

Case No. 2018 CP-32-4114

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED  
2022 MAY -9 PM 1:48  
LISAM. COMER  
CLERK OF COURT  
LEXINGTON SC

**I. INTRODUCTION**

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Filiberto Garcia Campos (Applicant) on December 3, 2018, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. A hearing into the matter convened before the undersigned on December 13, 2021, at the Lexington County Judicial Center. Applicant was present at the hearing and represented by Ashley A. McMahan. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his trial counsel, Aimee J. Zmroczek, and his co-defendant, Tracy Roach. In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; the transcript of his co-defendant's plea; and the records of the current PCR action.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

constitutional violations or deprivations entitling him to post-conviction relief. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

## **II. FACTS & PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on September 12, 2013, following an investigation into the death of his thirteen-month-old daughter. During its May 2014 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2014-GS-32-1347). On June 1, 2015, Applicant proceeded to a jury trial before the Honorable Thomas A. Russo. Aimee J. Zmroczek represented Applicant. Deputy Solicitor Suzanne Mayes and Assistant Solicitor Robert E. McNair, III, of the Eleventh Circuit Solicitor's Office prosecuted the case.

### **A. Summary of Evidence Adduced at Trial**

Around 9:30 p.m. on September 2, 2013, Applicant called 911 from a telephone located at a store near his home in West Columbia, South Carolina, and reported his thirteen-month-old daughter ("Victim") had died because she was "very sick."<sup>1</sup> (R. 104-05; 212; 530-31). In response, Hunter Reed, a paramedic with Lexington County Emergency Medical Services, quickly responded to Applicant's home along with other emergency personnel. (R. 102-06; 124-25). When he arrived a short time later, he encountered Applicant, who was holding Victim, along with Tracy Roach, Victim's mother. (R. 105-06; 121; 131-32). Applicant then quickly handed Victim to Reed, and Reed immediately noticed Victim, who was not breathing and had no pulse, appeared to be very small, was underweight, and did not look or feel like a typical infant of the same age. (R. pp. 106-110). At that point, Reed moved Victim to his ambulance, began resuscitation efforts,

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<sup>1</sup> During the call, Applicant also noted Victim was not breathing and was dry. (R. 531).

took off her clothing for treatment purposes, and noticed she was “profoundly emaciated.”<sup>2</sup> (R. 107–09). As he provided her with treatment, Reed further noticed Victim had a “complete lack” of fatty tissue on her body, appeared “skeletal,” had “very sunken in” eyes, was dirty, and was wearing a degraded diaper that was stained with urine and nearly falling apart. (R. pp. 109-110). Reed then rapidly transported Victim to Lexington Medical Center, but he and other medical personnel were never able to revive her. (R. 110; 144–45).

As a result of Victim’s death, Detective Michael Gooding responded to the Lexington Medical Center to conduct an investigation into the matter, and he went to see Victim in the emergency room. (R. 142; 144–45). Upon seeing her, Detective Gooding was shocked by Victim’s appearance and noticed she was extremely thin, her eyes appeared sunken in, her mouth was very dry, all of her ribs were “cleanly and clearly” visible, her shoulder blades were protruding, she had seeping open sores on her body, she was covered in what appeared to be crystalized urine, and she smelled of urine. (R. 147). ~~Moreover, Detective Gooding was unable to detect any features commonly associated with Down Syndrome due to Victim’s condition despite the fact Victim had been diagnosed with that genetic disorder.~~ (R. 147; 412). After viewing Victim’s condition, Detective Gooding spoke with Roach, who was still at the hospital, and then went to Applicant’s residence to speak with him there. (R. 149; 151–54). During his ensuing conversation with Applicant, Applicant stated he had been off from his job for a three-day holiday weekend at the time of Victim’s death, woke up around 1:00 p.m. earlier that day, made something to eat in the kitchen, went back to sleep, woke up later, checked on Victim, and found her unresponsive in her crib. (R. 155–58). Additionally, Applicant stated he did not check on Victim when he had woken

<sup>2</sup> While attempting to treat Victim, Reed obtained a medical history from Roach, who reported Victim was behaving normally earlier that afternoon and had been checked on multiple times by Applicant prior to her death. (R. 113).

up earlier because her room was on the other side of his residence, which was a single-wide trailer. (R. 156). Applicant further stated Victim had been sick all day but claimed nothing had been different in the last day or so of her life. (R. 159–60). Furthermore, Applicant asserted Roach, whom he reported had been sick and was sleeping on a couch, usually fed Victim and had not told him anything about Victim on the day of her death. (R. 153–56; 159–60).

Subsequently, in the early morning hours of September 3, 2013, Detective Gooding executed a search warrant at Applicant's trailer. (R. 165). When he did so, Detective Gooding immediately detected the odor of urine and discovered the smell grew stronger as he walked to Victim's bedroom. (R. 166). During his ensuing search of the residence, Detective Gooding located a baby bottle containing crusty and curdled milk in the floor of the living room, two or three more baby bottles containing crusty and curdled milk on the kitchen counter, a highchair that appeared to be used solely for storage in the corner of the kitchen, dusty and unopened bottles of baby food and formula buried underneath other items in the kitchen, a baby bathtub that appeared unused in the master bathroom, and multiple empty beer packages throughout the kitchen. (R. 166–68; 173–74; 176–82; 184–86). Notably, Detective Gooding did not locate any open containers of baby food or any fresh milk or formula anywhere inside the trailer, including in the refrigerator, which only contained food for adults, and he was unable to locate any implements used to clean baby bottles anywhere in the residence. (R. 168; 173; 176; 185–86; 233).

Thereafter, at approximately 10:00 a.m. later that morning, Dr. Jeffrey Welch, a pathologist at Lexington Medical Center and an expert in clinical and anatomic pathology, conducted an autopsy of Victim. (R. 148; 356–59). During the autopsy, Dr. Welch discovered Victim, who was thirteen months old, weighed just nine pounds and two ounces, which was a weight significantly

below the weight expected of a child her age.<sup>3</sup> (R. 360). He further noticed she was extremely thin and her eyes and cheeks were sunken in, which was indicative of chronic malnutrition. (R. 361–62; 364). As the autopsy continued, Dr. Welch noted Victim’s ribs and spine were protruding; her scapulas were visible; her hip bones were protruding; her skin was wrinkled; she had pressure sores on her body; and the crown of her head was sunken in, which was a sign of malnutrition and dehydration. (R. 364–66; 372; 374). Additionally, he discovered Victim’s stomach was empty at the time of her death. (R. 381). Furthermore, he noted she had no fatty tissue on her body and her liver, thymus, and adrenal glands were exhibiting changes caused by chronic malnutrition and starvation. (R. 366–69; 373–74). Based on his discoveries during the autopsy, Dr. Welch concluded Victim’s death resulted from lethal neglect. (R. 375).

Following the determination regarding the cause of Victim’s death, Detective Gooding continued his investigation into the matter. (R. 187–89). While doing so, he obtained medical records associated with Victim, and the last record he was able to locate was from November 12, 2012. (R. 194–95). However, he ascertained thirty-seven different medical appointments for Victim were missed, cancelled, or otherwise not kept during her short lifetime. (R. 197). Additionally, he discovered Victim received in-home visits from medical personnel through the Easter Seals program but no in-home visits occurred after 2012.<sup>4</sup> (R. 195). He further discovered Victim received full medical insurance coverage through Medicaid, vouchers for formula and food

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<sup>3</sup> According to the medical testimony presented during trial, Victim should have weighed between eighteen and twenty pounds at the time of her death. (R. 432).

<sup>4</sup> Regarding those in-home visits, Melissa Juergens, an early intervention specialist with Easter Seals of South Carolina, testified during trial she visited Applicant’s home six times between September and December of 2012 to provide developmental training to Victim’s family and only stopped doing so when Roach terminated her services. (R. pp. 254–56). Juergens further testified she weighed Victim during a visit on December 5, 2012, and determined Victim weighed nine pounds and five ounces at that time. (R. 257–58).

through the Women, Infants, and Children Program, and \$698 per month in Social Security benefits while her family received an additional \$526 per month in food stamps. (R. 196-97; 217-19; 321). Furthermore, he spoke with Applicant, Roach, and their neighbors and determined everyone, including Applicant, was home the majority of the time in the days leading up to Victim's death. (R. 192-93; 210).

Based on his discoveries, Detective Gooding arrested Applicant and Roach in connection to Victim's death on September 12, 2013, and executed a second search warrant at the residence.<sup>5</sup> (R. 199-201). During the second search, Detective Gooding discovered the trailer had been cleaned, the highchair had been uncluttered, and the dusty baby food he had seen during his earlier search had been polished off and stacked neatly on the counter. (R. 201-02). Additionally, he located a bag in the living room containing multiple medications prescribed to Roach along with a pill crusher. (R. 215-16; 222). Furthermore, he located some unused vouchers for baby food and formula along with numerous receipts indicating fast food, beer, and other food items were purchased in the days and weeks leading up to Victim's death, but none of the receipts indicated any baby food or formula had been purchased during that time span. (R. 211-12; 217; 219).

Subsequently, Applicant was indicted for homicide by child abuse, and he elected to proceed to trial. (R. 9-11; 629-30). At the outset of trial, the solicitor indicated she wished to introduce some of the photographs taken of Victim after her death during the course of the trial, and Counsel Zmroczek responded she objected to some of the pictures the solicitor intended to introduce.<sup>6</sup> (R. 12-13; 35-38). In support of her objection, Counsel Zmroczek indicated she wished

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<sup>5</sup> At the time of his arrest, Applicant had \$484 in cash in his wallet and a reported income of \$38,193 per year. (R. 206; 280).

<sup>6</sup> In arguing for the admission of some of the post-mortem photographs, the solicitor noted over one-hundred photographs had been taken in Applicant's case and the majority were not being offered into evidence. (R. 35-36; 76).

to introduce a transcript of remarks made by Judge J. Cordell Maddox, Jr., the South Carolina circuit court judge who accepted Roach's guilty plea prior to Applicant's trial, because Judge Maddox purportedly stated during the guilty plea proceedings he could not remain impartial after viewing the photographs from the case. (R. 38–39). In response, the trial judge inquired as to how Judge Maddox's purported views on the photographs would be relevant to Applicant's case in light of the fact he might have a differing view of the evidence presented to him, and, at that point, Counsel Zmroczek withdrew her request to make Judge Maddox's remarks a part of the trial record. (R. 39–40). Counsel Zmroczek then objected to some of the photographs because Victim's stomach was "all sunk down" in the post-mortem photographs the solicitor wished to introduce while maintaining Victim's stomach appeared different in photographs taken closer in time to her death. (R. 36–38; p. 41). In rebuttal, the solicitor asserted the photographs were highly probative because they were necessary for the medical testimony to be understood and because Counsel Zmroczek intended to challenge the cause of Victim's death along with argue Applicant was not aware of Victim's condition. (R. 42–44).

Upon considering the arguments of counsel and reviewing the evidence overnight, the trial judge ruled one of the photographs the solicitor wished to introduce would not be admissible due to the fact it was cumulative to another of the photographs but overruled Counsel Zmroczek's objection as to five of the post-mortem photographs upon finding their probative value was not substantially outweighed by their potential for unfair prejudice. (R. 62; 73–75). Furthermore, the trial judge determined Victim's condition appeared to be the same in both the earlier post-mortem photographs and the photographs taken several hours later at the time of the autopsy. (R. 44; 73).

Thereafter, as trial proceeded forward, Reed testified about his response to Victim's death and his observations of Victim's alarming condition when he arrived at Applicant's home while

noting Victim's concerning features were readily apparent, and one of the photographs taken of Victim's body – State's Exhibit # 9 – was admitted into evidence over Counsel Zmroczek's objection after Reed confirmed it accurately reflected Victim's condition at the time he placed her into his ambulance. (R. 102–03). Likewise, Detective Gooding testified about the details of his investigation into Victim's death, and he recounted his observations of Victim's shocking condition when he saw her in the emergency room at the Lexington Medical Center.<sup>7</sup> (R. 142–238). Additionally, Becky Kelly, one of Applicant's neighbors, noted Applicant was home every day between June and September of 2013 after he got off work, and Brenda McLain, an accountant and bookkeeper at Applicant's place of employment, confirmed Applicant typically got off work around 2:30 p.m., did not ordinarily work on weekends, and last got off work at 2:31 p.m. on August 30, 2013, prior to Victim's death several days later. (R. 131; 135; 239–50).

As the trial continued forward, Counsel Zmroczek asserted a “juror with . . . shoulder length blond hair” was “crying” and “had visible tears” when State's Exhibit # 9 was published to the jury, and the trial judge noted Counsel Zmroczek's assertion for the record. (R. 270–71). Following that occurrence, Mary Kayse, a pediatric nurse practitioner who saw Victim for wellness checks after her birth, testified about her interactions with Victim and her family. (R. 283–86). During her testimony, Kayse recounted she weighed Victim, who was born in July of 2012, several times between August and November of 2012 and Victim's weight gain was concerning at that time. (R. 286–89). In response, Kayse indicated she spoke to Roach, personally fed Victim, who “greedily” drank two ounces of formula, and recommended Roach increase Victim's calorie intake. (R. 289–

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<sup>7</sup> During his testimony, Detective Gooding noted the only change in Victim's appearance between when he saw her in the emergency room and saw her at the time of the autopsy was the medical equipment used in the efforts made to save her life had been removed by the time of the autopsy. (R. 187).

93). After that, Kayse stated Applicant and Roach brought Victim back for one more appointment on November 12, 2012, she weighed Victim and discovered Victim had gained eight ounces in three days, and then Applicant and Roach left with Victim before the appointment could be conducted. (R. 297–98).

In addition to that testimony, Dr. Welsh testified about Victim's cause of death along with his observations during Victim's autopsy, which he found to be "striking," and several more photographs of Victim's condition after her death – State's Exhibits # 3, # 11, # 12, and # 13 – were admitted into evidence. (R. 356–83). Regarding Victim's cause of death, Dr. Welsh explained she died of lethal neglect while noting her death was not caused by drug interaction or a heart condition.<sup>8 9</sup> (R. 375; 377; 381–82). He further stated Victim's life could have been saved if she had received medical attention when her symptoms were readily apparent. (R. 376). Likewise, Dr. Susan Luberoff, a child abuse pediatrician and expert in forensic pediatrics, testified about her evaluation of the medical records, autopsy findings, photographs, and data related to Victim's death. (R. 396–402). During her testimony, Dr. Luberoff noted Victim was "profoundly emaciated" in a "striking" and "startling" fashion and referred to the various photographs taken after Victim's death to explain the significance of the features depicted in those photographs. (R. 409–14). In order for Victim to have reached the condition she was in, Dr. Luberoff stated she would have had to have been starved for a period of months.<sup>10</sup> (R. 414). Dr. Luberoff further noted the physical

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<sup>8</sup> Although drug interaction was ruled out as a cause of Victim's death, three different antidepressants were determined to have been present in Victim's body at the time of her death, and those drugs had been ingested within the last twelve hours of her life. (R. 344–45; 381–82).

<sup>9</sup> Earlier during her opening statement, Counsel Zmroczek had called the jury's attention to the fact Victim had been diagnosed with a heart condition. (R. 101). However, Victim's heart condition had healed by the time of her death. (R. 295–96; 377; 401–03).

<sup>10</sup> Specifically, Dr. Luberoff indicated Victim could have reached the degree of starvation she was experiencing in as little as two months. (R. 421).

features of Victim's chronic starvation, which were depicted in the photographs admitted into evidence, would have been readily apparent to any reasonable caregiver along with a loss of motor skills and strength, which Victim would have been exhibiting in the last days or weeks of her life.<sup>11</sup> (R. 416–18). Following the presentation of that testimony, the State rested.

Counsel Zmroczek offered the testimony of several different witnesses in Applicant's defense. (R. 456; 465; 470; 480; 488; 508). Through those witnesses, it was established Applicant was a "[v]ery good worker" at his job, Applicant understood English, a volunteer for a mentor program made several in-home visits between January and May of 2013 due to a report of neglect involving Applicant's son, and Roach had previously claimed to be Victim's primary caregiver while also falsely claiming she was so because Applicant lived outside of the area. (R. 457; 466; 472–74; 476–78; 485). Furthermore, through those witnesses, it was established a computer recovered from Applicant's home contained nearly a thousand pictures on it, including pictures of Applicant and Victim. (R. 500–01). However, it was further established the computer contained no pictures of Victim taken after April of 2013. (R. 501).

### **B. Applicant's Testimony**

Applicant elected to testify in his own defense. (R. 513). During his testimony, Applicant stated Roach, whom he began living with in 2005, became pregnant with Victim during the course of their relationship, and he claimed Roach wanted to have an abortion when they discovered Victim had "problems." (R. 518–21). However, Applicant stated Victim was born anyway and was hospitalized for approximately one month afterwards, and he claimed he visited her in the hospital

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<sup>11</sup> During Dr. Luberoff's testimony, the solicitor introduced a photograph – State's Exhibit # 73 – depicting Victim at an earlier point in her life before she was chronically starved, and that photograph allowed the jury to observe the changes in Victim's appearance that were depicted in the other photographs discussed by Dr. Luberoff after Victim had been chronically starved by her parents. (R. 414–16; 433).

daily during that time period and was taught to feed her by her doctors. (R. 521–22). Additionally, Applicant stated Victim was small after she was born and claimed he was concerned by her lack of weight gain during her lifetime. (R. 523). However, Applicant insisted it was Roach’s role to take care of Victim while claiming he held Victim every time he saw her up until her death, changed her diapers on some occasions, played with her, and was never not allowed to see her. (R. 527–28).

Applicant further and inconsistently claimed Roach, whom he stated was sick and sleeping on a couch at the time, would not let him see Victim on the weekend of Victim’s death while insisting he last saw Victim three days before her death at a time when she was clothed. (R. 532–35; 537). When he saw her at that time, Applicant claimed Victim did not look sick. (R. 534). Furthermore, as his testimony continued, Applicant acknowledged he was capable of feeding Victim but insisted it was not his responsibility or job to feed Victim. (R. 539–42). Instead, he explained that responsibility fell to Roach, whom he characterized as “crazy.” (R. 541; 553). Applicant further conceded he was off every weekend during August of 2013 at the time when Victim was starving to death. (R. 539–42).

### **C. Verdict & Subsequent Proceedings**

Following the multi-day trial, the jury convicted Applicant as indicted on June 5, 2015. Judge Russo sentenced Applicant to life without the possibility of parole.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected his appeal by filing a brief with the Court of Appeals on the following issue:

Whether, pursuant to Rule 403, because the overwhelming prejudice drastically outweighed their probative value, the trial court erred in admitting photographs of an infant’s corpse that caused one of the most seasoned trial judges in this state to declare he could not be impartial after viewing them and caused jurors to cry upon their publication by the State?

On March 7, 2018, the Court issued an unpublished per curiam opinion affirming Applicant's conviction. *State v. Campos*, Op. No. 2018-UP-100 (S.C. Ct. App. filed March 7, 2018). The case was remitted back to the circuit court on March 28, 2018.

### III. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleged he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance of trial counsel
  - a. "Counsel failed to request charges on involuntary manslaughter and accident. Counsel['s] conduct was deficient because the Defendant['s] testimony supported and[sic] involuntary manslaughter charge by providing evidence of his provided limited care by the victim['s] killer who 'would not let him see' and by his finding and reporting of the victim 'not breathing anymore.' "

The State requested an evidentiary hearing through its return, partial motion to dismiss, and motion for a definite statement on March 29, 2019. On August 20, 2021, PCR counsel filed an amended application pursuant to Rule 71.1, SCRPC, to conform to the evidence presented at the PCR hearing in the event that any new issues arise during the court of the hearing.<sup>12</sup> PCR counsel further amended the application to include the following allegation:

1. Ineffective Assistance of Counsel as to Aimee Zmroczek, Esquire
  - a. Failure to request jury charges on lesser-included offense

### IV. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

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<sup>12</sup> See *Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); Rule 15(b), SCRPC (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings)

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal defendants the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the

proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668). The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard, and failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” *Dunn v. Reeves*, 594 U.S. \_\_\_, \_\_\_ 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’

a court still may not grant relief if “[t]he record does not reveal” that counsel took an approach that *no competent lawyer would have chosen.*” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation

is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn*, 594 U.S. \_\_\_, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* at 689; see *Mazzell v. Evatt*, 88 F.3d 263, 269 (4th Cir. 1996) (declining “to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial”). The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an

applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In evaluating prejudice, the PCR court must consider the "specific impact counsel's error had on the outcome of the trial" in addition to "the strength of the State's case in light of all the evidence presented to the jury." *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843; *Strickland*, 466 U.S. at 695–96. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Strickland*, 466 U.S. at 687 (emphasis added). In general, "the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice." *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843 (citing *Strickland*, 466 U.S. at 696) (stating "a verdict . . . only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support"). Thus, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691.

Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Significantly, "the ultimate focus of inquiry must be

on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, 466 U.S. at 696.

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

#### V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the sole claim of ineffective assistance of counsel articulated at the start of the hearing and finds it to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

### 1. Failure to Request a Jury Charge on Involuntary Manslaughter

This Court finds Applicant claim of ineffective assistance of counsel based on Counsel Zmroczek's failure to request a jury charge on involuntary manslaughter is wholly meritless and fails as a matter of law. *See Basham v. United States*, 109 F. Supp. 3d 753, 776 (D.S.C. 2013) (noting that "[i]t is axiomatic that if the claim or claims that counsel failed to raise are devoid of legal merit, a defendant suffers no prejudice and cannot establish a claim of ineffective assistance of counsel" (citing *Strickland*, 466 U.S. at 687)), *aff'd*, 789 F.3d 358 (4th Cir. 2015), and *aff'd*, 789 F.3d 358 (4th Cir. 2015).

As to jury instructions, Counsel Zmroczek testified at the PCR hearing that she requested the "extreme indifference" definition from *State v. Jarrell*, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002), which defines extreme indifference as "akin to intent." She explained that she believed the jury could find Applicant less culpable under this definition. However, she testified that she could not request a jury charge on involuntary manslaughter because involuntary manslaughter does not qualify as a lesser-included offense of homicide by child abuse. This Court agrees with Counsel Zmroczek's assessment.

The trial judge is to charge the jury on a lesser-included offense "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996); *State v. Tyndall*, 336 S.C. 8, 21, 518 S.E.2d 278, 285 (Ct. App. 1999) (clarifying that "[a] lesser included offense instruction is required only when the evidence warrants such an instruction, and it is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty only of the lesser offense"). The test for determining when an offense is a lesser-included offense of another offense is "whether the greater of the two offenses includes all the elements of the lesser

offense.” *McKnight v. State*, 378 S.C. 33, 51, 661 S.E.2d 354, 363 (2008) (citing *State v. Northcutt*, 372 S.C. 207, 215, 641 S.E.2d 873, 877 (2007)). “If the lesser offense contains an element which is not included in the greater offense, it is not a lesser-included offense of the greater offense.” *Id.* (citing *Northcutt*, 372 S.C. at 215, 641 S.E.2d at 877); see also *Knox v. State*, 340 S.C. 81, 85, 530 S.E.2d 887, 889 (2000) (“A lesser offense is included in the greater only if each of its elements is always a necessary element of the greater offense.”), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Homicide by child abuse “requires proof of the death of a child under age eleven during the commission of child abuse or neglect and the death occurs under circumstances showing extreme indifference to human life.”<sup>1</sup> *Northcutt*, 372 S.C. at 215, 641 S.E.2d at 877 (citing S.C. Code Ann. § 16-3-85 (2003)). In her dissenting opinion in *State v. Fletcher*, Chief Justice Toal examined the legislative intent reflected in the homicide by child abuse statute and unique nature of the offense. 379 S.C. 17, 27–31, 664 S.E.2d 480, 484–87 (2008). Specifically, she noted:

Child abuse differs from other types of crimes in several respects. Specifically, the crime of child abuse often occurs in secret, typically in the privacy of one’s home. The abusive conduct is not usually confined to a single instance, but rather is a systematic pattern of violence progressively escalating and worsening over time. Child victims are often completely dependent upon the abuser, unable to defend themselves, and often too young to alert anyone to their horrendous plight or ask for help. It is also not uncommon for child abuse victims to be so young that they are incapable of offering testimony against the abuser.

*Id.* at 27, 664 S.E.2d at 484–85 (Toal, C.J., dissenting). “In light of the insidious nature of this crime,” she explained, the legislature created a separate statute that “incorporates more than just the act that causes the death” by criminalizing “the specific infliction of abuse as well as the failure to protect a child from abuse which results in the death of that child while exhibiting an extreme indifference to human life.” *Id.*; cf. *Jarrell*, 350 S.C. at 99, 564 S.E.2d at 367 (“A parent has a

specific and nondelegable duty to serve the best interest of [his or] her child and should make every effort not to knowingly place [his or] her child in harm's way.”).

Thus, the homicide by child abuse statute “recognizes and criminalizes both the acts and the omissions that typify the situation in which a helpless child perishes as a result of an adult’s actions or criminal ambivalence.” *Fletcher*, 379 S.C. at 31, 664 S.E.2d at 487 (Toal, C.J., dissenting); see S.C. Code Ann. § 16-3-85(B)(1) (defining “child abuse or neglect” as “an *act or omission* by any person which causes harm to the child’s physical health or welfare” (emphasis added)). Specifically, S.C. Code Ann. § 16-3-85(A) provides that “[a] person is guilty of homicide by child abuse if the person: (1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life; or (2) knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of eleven.” See also S.C. Code Ann. § 16-3-85(B)(1) (defining “child abuse or neglect” as “an act or omission by any person which causes harm to the child’s physical health or welfare”).

The meaning of extreme indifference to human life in the context of a homicide by child abuse case is consistent with recklessness and indifference in reckless homicide cases. *McKnight*, 378 S.C. at 48, 661 S.E.2d at 361. Thus, extreme indifference to human life can similarly be equated to “a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.” *Id.* (quoting *State v. Tucker*, 273 S.C. 736, 739, 259 S.E.2d 414, 415 (1979)); see S.C. Code Ann. § 16-3-85(B)(2) (“‘[H]arm’ to a child’s health or welfare occurs when a person (a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment; (b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so

causes a physical injury or condition resulting in death; or (c) abandons the child resulting in the child's death.”).

In *State v. Greene*, our Supreme Court agreed with Chief Justice Toal's opinion in *Fletcher* to the extent that the “homicide by child abuse statute reflects the legislature's intent to define and target a specific societal problem—child abuse resulting in death.” 423 S.C. 263, 281, 814 S.E.2d 496, 506 (2018). In that case, the Court examined the distinction between the detailed elements found in the homicide by child abuse statute and the “broad terms” that comprise the offense of involuntary manslaughter. *Id.* Notably, involuntary manslaughter can exist based on a larger number of factual predicates, and the now codified common law offense covers “unintentional killings from both unlawful conduct that does not naturally tend to place another in danger of death or serious bodily harm and lawful conduct that recklessly places another in danger of harm.” *Id.*; *see generally McKnight*, 378 S.C. at 51, 661 S.E.2d at 363 (“Involuntary manslaughter is defined as (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others.”).

In *State v. McKnight*, a post-conviction relief appeal, our Supreme Court held that counsel was not ineffective for failing to request a jury charge on involuntary manslaughter as a lesser-included offense of homicide by child abuse based on the elements test. 378 S.C. at 51–52, 661 S.E.2d at 363. Specifically, the Court explained that “only the ‘unlawful activity’ definition of involuntary manslaughter could potentially apply in the arena of child abuse because child abuse is an unlawful act.” *Id.* (citing *State v. Mitchell*, 362 S.C. 289, 608 S.E.2d 140 (Ct. App. 2005)). Because “child abuse could never be defined as an unlawful activity ‘not tending to cause death or

great bodily harm,” the Court explained, “the elements of involuntary manslaughter *will never* be included in the greater offense of homicide by child abuse.” *Id.* at 52, 661 S.E.2d at 363 (emphasis added).

Because our Supreme Court has expressly held that involuntary manslaughter is not a lesser-included offense of homicide by child abuse, Applicant’s claim pertaining to Counsel Zmroczek’s failure to request a jury charge on involuntary manslaughter fails as a matter of law. Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

## **2. Failure to Request a Jury Charge on Accident**

This Court similarly finds Applicant failed to establish Counsel Zmroczek provided constitutionally ineffective assistance by failing to request a jury charge on the defense of accident. *See Arnette v. State*, 306 S.C. 556, 557–58, 413 S.E.2d 803, 804 (1992) (reversing the PCR court’s grant of relief based on counsel’s failure to consider the defense of accident where there was no probative evidence in the record that the defendant was acting lawfully at the time of the homicide); *see also Palacio v. State*, 333 S.C. 506, 514–15, 511 S.E.2d 62, 67 (1999) (finding counsel was not deficient for failing to make futile argument).

The law to be charged to the jury is determined by the evidence presented at trial. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). A “trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *Id.* However, “no instruction should be given by the trial judge . . . which tenders an issue which is not presented or supported by the evidence.” *State v. Weaver*, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). Further, our Supreme Court has cautioned trial judges “to charge only the law which is applicable to the case,” as “the purpose of the jury instructions is to enlighten the jury.” *State v. Fair*, 209 S.C. 439, 445, 40 S.E.2d 634, 637 (1946); *see id.* (noting that “[t]his purpose is accomplished by a statement

of the law which fits the concrete case; it is defeated by a discourse filled with abstract legal propositions having the effect of confusing the minds of the jury.”). Providing instructions to the jury which do not fit the facts of the case may tend to confuse the jury. *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989); *Fair*, 209 S.C. at 445, 40 S.E.2d at 637.

The defense of accident protects a defendant who, while acting lawfully and with due care, unintentionally causes harm to another. *State v. Commander*, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011); *cf. State v. Brown*, 205 S.C. 514, 32 S.E.2d 825, 828 (1945) (“Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident.”). However, a “homicide is not excusable on the ground of accident unless it appears that the defendant was acting *lawfully*.” *Arnette*, 306 S.C. at 557, 413 S.E.2d at 804; *see State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 107 (1999) (noting that the defense of accident fails “if the State proves beyond a reasonable doubt “that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide”).

At the PCR hearing, Counsel Zmroczek testified that she could not have requested a jury charge on accident because there was simply no evidence the child’s death occurred by accident. Specifically, she explained that none of Applicant’s behavior would fall under an accident theory because “you can’t say you forgot to feed your child by accident.” Applicant failed to provide any basis upon which Counsel Zmroczek could have requested a jury charge on accident, and further failed to point to any evidence in the record that would have warranted a jury charge on accident. *See, e.g., State v. Chatman*, 336 S.C. 149, 153, 519 S.E.2d 100, 102 (1999) (affirming the trial

court's refusal to instruct the jury on the defense of accident where the evidence established that the defendant engaged in assault and battery and the defendant presented no evidence that he was acting in self-defense).

Because Applicant failed to meet his burden of proving Counsel Zmroczek's failure to request a jury instruction on accident constituted ineffective assistance of counsel, Applicant's request for relief by way of this allegation is **DENIED**.

#### **VI. ALL OTHER ALLEGATIONS**

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

#### **VII. CONCLUSION**

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

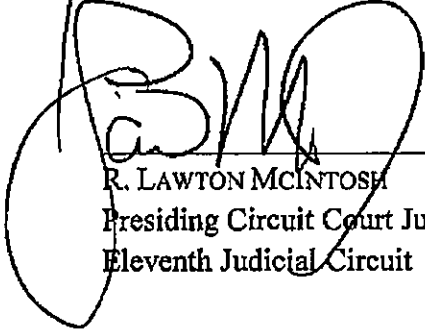
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR

counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 4 day of May, 2022.



R. LAWTON MCINTOSH  
Presiding Circuit Court Judge  
Eleventh Judicial Circuit

Anderson, South Carolina

**WITNESSES**

Lexington County Sheriffs Department

Michael Gooding

Law Enforcement Case #: 13015778

LSM

**ARREST WARRANT NUMBER**

2013A3210201817

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury

Date: 3/15/14

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS3201347

**The State of South Carolina**

**County of Lexington**

**COURT OF GENERAL SESSIONS**

**MAY TERM 2014**

**THE STATE**

**vs.**

**Filiberto Garcia**

**CDR #: 2356**

**Indictment for**

Homicide by child abuse

§ 16-03-0085(A)(1) and (B)

**DONALD V. MYERS, SOLICITOR**

STATE OF SOUTH CAROLINA     )  
   )  
 COUNTY OF LEXINGTON         )  
   )

INDICTMENT FOR  
 Homicide by child abuse  
 § 16-03-0085(A)(1) and (B)

At a Court of General Sessions, convened on May 2014, the Grand Jurors of Lexington County present upon their oath:

That **Filiberto Garcia** did in Lexington County, South Carolina, on or about July 31, 2012 through September 2, 2013, cause the death of a child under the age of eleven while committing child abuse or neglect and the death occurred under circumstances manifesting an extreme indifference to human life; to wit: Madison Garcia, date of birth being July ■, 2012, under circumstances manifesting an extreme indifference to human life and while committing child abuse or neglect as defined in S.C. Code Section 16-3-85(B), being an act or omission which caused harm to the child's physical health or welfare, such act or omission including malnutrition and/or dehydration and/or medical neglect and/or failure to supply the child with adequate food or health care and the failure to do so caused a physical injury or condition resulting in the death of Madison Garcia, in violation of Section 16-3-85(A)(1) and (B), South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington  
STATE VS.

INDICTMENT/CASE#: 2014GS3201347 (A)

Filiberto Garcia Campos

A/W#: 2013A3210201817

AKA:

Date of Offense: 12/7/1931 - 9/2/2013

Race: Hispanic Origin Sex: M Age: 35

S.C. Code §: 16-03-0085(A)(1)

DOB: SS#:

CDR Code #: 2356

Address:

City, State, Zip: West Columbia, SC 29169

DL#: SID#:

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was  
TO: Homicide by child abuse (20 Y to Life)

in violation of § 16-03-0085(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2356  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
ATTEST:

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of Life in Prison without Parole days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of  
probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on;  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_

Set by SCDPPPS  
Recipient: \_\_\_\_\_  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Del/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$1.50	\$
§ 50-21-14(B)(1) (Breath Test Fee)	\$50	\$
§ 56-5-2942(B) (Vehicle Assessment)	\$40/ea	\$
Proviso 11.5 (SCIA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$130

Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge \_\_\_\_\_  
Judge Code: 2191  
Sentence Date: June 5, 2015

A. J. H. [Signature]  
Lex Clerk of Court/Deputy Clerk  
Court Reporter: [Signature]  
SCCA217 (03/2011)