

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from York County

JUL 17 2014

G. Edward Welmaker, Circuit Court Judge **S.C. Supreme Court**

CURTIS RANDALL SWEATT, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002629

APPENDIX

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State of South Carolina)	In the General Sessions
)	Court of York
)	
County of York)	Case No.: 2011-GS-46-01523
	2011-GS-46-01524

State of South Carolina.,)	
)	
Plaintiff.,)	
)	
-vs-)	Transcript of Record
)	
Curtis Randall Sweatt.,)	
)	
Defendant.)	

May 20, 2011
York, South Carolina

B E F O R E:

Honorable Paul Burch, Judge.

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E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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NO EXHIBITS WERE ENTERED.

Certificate of Reporter P.57

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1 (COURT IN SESSION FRIDAY, MAY 20, 2011 AT 09:50 A.M..)

2 THE COURT: You may be seated. Thank you very much.

3 MR. THOMPSON: Curtis Sweatt.

4 (DEFENDANT, WHITE MALE, ENTERING COURTROOM.)

5 MADAME CLERK: Please raise your right hand, place
6 your left hand on the Bible.

7 (WHEREUPON: CURTIS RANDALL
8 SWEATT, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
9 FOLLOWS:)

10 MR. THOMPSON: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 MR. THOMPSON: This is the State of South Carolina
13 versus Curtis Randall Sweatt, Junior, Indictments 2011-GS-
14 46-0-1-5-2-3 wherein he's indicted for involuntary
15 manslaughter and pleading guilty as charged. He's waived
16 his right to present to the Grand Jury on this charge.

17 Also Indictment 2011-GS-46-0-1-5-2-4 State of South
18 Carolina versus Curtis Randall Sweatt, Junior wherein the
19 indictment charges him with infliction of great bodily
20 injury on a child. He's pleading guilty as charged to this
21 indictment and he's waiving presentment to the Grand Jury.

22 The only negotiations in the case, Your Honor, is that
23 the sentences on these two charges run concurrent. As well
24 his initial indictment where he was initially indicted for
25 Homicide by Child Abuse in 2010-GS-46-0-1-6-8-5. That

1 indictment would be dismissed as part of the plea
2 agreement, Your Honor.

3 The victim's family is present and would wish to
4 address the Court at the appropriate time.

5 THE COURT: All right, let me talk to Mr. Sweatt.
6 You're twenty-eight?

7 MR. SWEATT: Yes, sir. Yes, Your Honor.

8 THE COURT: From Rock Hill?

9 MR. SWEATT: Yes, Your Honor.

10 THE COURT: What is your education?

11 MR. SWEATT: Two years of college.

12 THE COURT: And where was that?

13 MR. SWEATT: At York County Technical College.

14 THE COURT: And your occupation?

15 MR. SWEATT: Floor tech, floor technician.

16 THE COURT: Have you discussed these charges and your
17 jury trial rights with Counsel?

18 MR. SWEATT: Yes, Your Honor.

19 THE COURT: Counsel, in your opinion does he
20 understand the advice you've given him?

21 MR. GREELY: Yes he does, Your Honor.

22 THE COURT: Mr. Sweatt, I notice this on this
23 sentencing sheet that you have waived presentment to the
24 Grand Jury on both of these indictments, you fully
25 understand what you've done?

1 MR. SWEATT: Yes, Your Honor.

2 THE COURT: You do understand that the Grand Jury is a
3 body of jurors that meets here probably on Monday basically
4 at least in York County, and usually they have eighteen.
5 There can be a minimum of twelve of them and they review
6 the State's evidence in these cases to see if there is
7 enough evidence there for a Petit Jury to try it later on.
8 You didn't want them to review this? They could have
9 easily No Billed it if they didn't find enough evidence?

10 MR. SWEATT: No, Your Honor.

11 THE COURT: You want to waive that right?

12 MR. SWEATT: Yes, Your Honor.

13 THE COURT: And that is to both indictments?

14 MR. SWEATT: Yes, Your Honor.

15 THE COURT: All right I'm gonna take 'em as I come to
16 them here. 2011-1524, its under statute 16-395A, it's a
17 great bodily injury upon a child, or infliction of great
18 bodily injury upon a child. It alleges that in York County
19 on or about January the 7th 2010 its alleged that you
20 inflicted great bodily injury to your three-month-old
21 daughter Minor . The defendant's
22 actions constituted reckless disregard for the safety of
23 your daughter and caused great bodily harm or injury
24 leading to her death. This crime occurred
25 Drive in York County.

If I misquote anything here about the charges or the possible punishment you all please correct me. I know there is a lot of changes going on that have gone on. Its my understanding that can carry up to a maximum of twenty years. Everybody in agreement on it?

MR. THOMPSON: Yes, Your Honor.

GREELY: Yes, Your Honor.

THE COURT: All right. You heard those allegations and the possible punishment. How do you plead to that offense?

MR. SWEATT: Guilty, Your Honor.

THE COURT: 1523 is for Involuntary Manslaughter.
That you in York County on or about January the 7th, 2010
committed the crime of involuntary Manslaughter against
your three-month-old daughter Minor
You acted in reckless disregard for the safety of Katherine
- Minor causing her death and this
occurred in York County, South
Carolina.

The maximum possible penalty on that is up to five years. Is everybody on agreement on that?

MR. GREELEY: Yes, Your Honor.

MR. THOMPSON: Yes, Your Honor.

THE COURT: How do you plead?

MR. SWEATT: Guilty, Your Honor.

1 THE COURT: Do you understand by entering these pleas
2 that you are waiving your constitutional right to a jury
3 trial?

4 MR. SWEATT: Yes, Your Honor.

5 THE COURT: If you had a jury trial the State would
6 have to prove your guilt beyond a reasonable doubt, and
7 would have to convince twelve jurors unanimously of your
8 guilt. That's on each indictment. Do you understand that?

9 MR. SWEATT: Yes, Your Honor.

10 THE COURT: Through your attorney you would be able to
11 cross examine the State's witness's, put up your own
12 defense and witnesses, you could testify at your own
13 defense. But you would also have the constitutional right
14 to remain silent. In other words if you elected not to
15 testify it couldn't be held against you and I would tell
16 the jury that.

17 MR. SWEATT: Yes, Your Honor.

18 THE COURT: Do you understand that you are presumed
19 innocent and that presumption stays with you throughout any
20 trial and would only end if a jury convicted you?

21 MR. SWEATT: Yes, Your Honor.

22 THE COURT: If a jury did convict you, you would have
23 the right to appeal just as you can appeal a guilty plea
24 sentence or a guilty plea, as long as you filed a notice of
25 appeal within ten days of sentencing. That's your basic

1 rights. You told me you discussed them now with Counsel.
2 You got any questions?

3 MR. SWEATT: No, Your Honor.

4 THE COURT: Do you understand them?

5 MR. SWEATT: Yes, sir. Yes, Your Honor.

6 THE COURT: You do not want a trial?

7 MR. SWEATT: No, Your Honor.

8 THE COURT: Has anybody promised you anything, held
9 out any hope of reward, or threatened you in any way in
10 order to get you to enter these pleas?

11 MR. SWEATT: No, Your Honor.

12 THE COURT: Are you under the influence of any drugs,
13 alcohol or medication that could be affecting your
14 understanding?

15 MR. SWEATT: No, Your Honor.

16 THE COURT: Do you suffer from any condition, mental
17 or physical, that could be affecting your understanding at
18 this time?

19 MR. SWEATT: No, Your Honor.

20 THE COURT: Are you satisfied with your attorney's
21 advice?

22 MR. SWEATT: Yes, Your Honor.

23 THE COURT: Has he answered all of your questions?

24 MR. SWEATT: Yes, Your Honor.

25 THE COURT: Contacted everybody you ask him to contact

1 if any?

2 MR. SWEATT: Yes, Your Honor.

3 THE COURT: Done everything that you've requested him
4 to?

5 MR. SWEATT: Yes, Your Honor.

6 THE COURT: If there is any problem with his
7 representation I need to hear it at this time.

8 MR. SWEATT: No, Your Honor.

9 THE COURT: You are satisfied with his -

10 MR. SWEATT: Yes, sir. Yes, Your Honor.

11 THE COURT: You fully understand what you're doing?

12 I think I ask you, you don't suffer from any ---

13 MR. SWEATT: Yes, Your Honor.

14 THE COURT: --- condition that could be affecting your
15 understanding?

16 MR. SWEATT: Yes, Your Honor, nothing.

17 THE COURT: You're entering this plea of your own free
18 will and accord?

19 MR. SWEATT: Yes, Your Honor.

20 THE COURT: Nobody's making you do this?

21 MR. SWEATT: No, Your Honor.

22 THE COURT: I find your plea is freely voluntarily and
23 intelligently entered into and you've had the services of a
24 competent attorney with whom you say you are satisfied, the
25 pleas is therefore accepted.

1 MR. THOMPSON: May it please the Court, Your Honor.

2 This occurred on January 7th of 2010 here in York

3 County on Road as mentioned in the

4 indictments. The Defendant is the father of Minor

5 Minor was three months old soon to turn four

6 months old at that time and at the time of autopsy about

7 eleven, just a little over eleven pounds.

8 The Defendant lived there with Minor, his toddler

9 son C. and Daniel Tucker the mother of the children.

10 They had a work schedule from which Danielle would go to

11 work early in the morning, come back around Five o'clock.

12 The Defendant would go to work until later in the

13 afternoon, or just after lunch time and the neighbor would

14 then care for the baby and for C. during those periods

15 of time that did intersect when the parents were not home.

16 On this particular morning around 10:40 in the morning

17 the Defendant called 911 and that's the first knowledge

18 that anyone has of the injury at that point in time. When

19 he calls 911 he immediately tells them he doesn't know

20 what's going on with her, that he was taking her out of the

21 bathtub and he was going to dress her, went to lay her down

22 her neck snapped back and little bit. At that point the

23 conversation goes on for some time and she tries to assist

24 him in calming him down as the ambulance is on the way.

25 When the ambulance finally does arrive, they take Minor

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1 and immediately drive her to the Piedmont Medical Center.
2 The doctor's there noticed immediately that there was
3 severe head injuries internally and they flew her to
4 Carolinas Medical Center. When arriving at Carolinas
5 Medical Center the doctors there were able also to
6 determine rather quickly that her condition was severe,
7 that it was unlikely that she would live and that these
8 were unlikely nonaccidental injuries so they called law
9 enforcement and law enforcement became alerted at that
10 point in time and began coming out to interview folks.

11 When they spoke to the defendant he told them that
12 that morning Danielle had left; that around 6:30 or so - I
13 think Danielle would say it was more probably around 7:00
14 or 7:15 when she left that morning for work as she normally
15 would, he had stayed in bed sleeping. That he woke up
16 around a little bit before 9:00 when he heard C. in the
17 kitchen trying to get something to eat so he went in there
18 and assisted C. with breakfast. He said after that he
19 went into where Minor was and that she had a messy
20 diaper so he woke her up and he bathed her and then bring
21 her back. As he explained to the officers his explanation
22 was that he went to dry her off and literally showed
23 Detective Neely and Strait that as he had her in his arms
24 with her head in his hand and the towel underneath that he
25 went to pull out the towel and that her neck snapped back

1 and after that happened her eyes began to roll back and she
2 then began having problems breathing and became problems
3 with consciousness at that point in time.

4 So having heard that unfortunately Minor of course
5 met a quick surmise, died the next morning around 11:17 on
6 the 8th of January. During autopsy Doctor Thomas was able
7 to determine these head injuries were extremely severe;
8 that they were caused by a sudden acceleration and de
9 deceleration much like you would experience in a car wreck;
10 that the explanation that the defendant had given would
11 have in no way explain the injuries that occurred to her,
12 they were much more severe than that. And that it would
13 have had to have been a violent intervening act that caused
14 these injuries in her death.

15 We were able to determine that these would have likely
16 occurred within hours of the time that he called 911.

17 So those are the basic facts of the case, Your Honor,
18 just to show the defendant is responsible for his daughter
19 at that point in time it occurred. The defendant does have
20 no prior record.

21 THE COURT: I'll come back to the family.

22 MR. THOMPSON: All right, sir.

23 THE COURT: Counsel.

24 MR. GREELY: Would you care for the defense
25 presentation at this time?

1 THE COURT: Yes, sir.

2 MR. GREELY: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. GREELY: Your Honor, I admit it is important for
5 us today to go back to a time prior to this incident to
6 acquaint the Court with this case and with this couple.

7 Curtis and Danielle were a young couple who had begun
8 a life together around the end of 2006. At that time both
9 were working and looking forward to a promising future as
10 many young couples.

11 In January of 2008 the couple welcomed their first
12 born, C. With the arrival of C. the couple had
13 now become a family. Both working and caring for their son
14 involved in the local church of Latter Day Saints and the
15 community. As with the Mormon tradition family was close,
16 they were close and they were close with extended family
17 and had been active in their lives. Many of that family in
18 that congregation and friends are here today in support of
19 Curtis. And there will be a few who will speak to you in a
20 few minutes.

21 IN the fall of 2009 Curtis and Nicole welcomed the
22 arrival of Minor , a daughter, the second child who had
23 an older brother C. At the time of Minor s birth
24 the family was living in a neighborhood here in York
25 County. It was the kind of neighborhood we often pass by

1 with many smaller homes filed with young families. And it
2 was hard work for Curtis and Danielle but that was okay
3 because they had a home, a family and a promising future.
4 Danielle took maternity leave from work following the birth
5 of Minor . Curtis as he has told you was employed with a
6 nursing rehabilitation facility in Rock Hill. Life was
7 still between work and caring for their children.

8 After maternity leave Danielle had to return to work
9 as most mothers are required to do this day and time. She
10 was working during regular working hours at Muszik near the
11 North Carolina border. Curtis of course too was working
12 but was scheduled during the second shift at the facility.
13 This caused an over lap in thier work schedules requiring
14 them to have care for their two year old son, an infant
15 daughter, for about two hours a day. Fortunately they were
16 able to make arrangements with a neighbor couple in this
17 neighborhood of young families to care for C. and
18 Minor during the period of over lap when Curtis would
19 have to leave for work and before Danielle was able to
20 return home.

21 The couple began to discuss marrying in June of 2010.
22 And so this was this young couple's schedules in working to
23 support their children and care for them. On the evening
24 before this incident Curtis arrived home from work around
25 10:00 p.m. or so. As he would often do and because

1 Danielle had to arise early for work, he fed Minor
2 shortly after arriving home and put his daughter to bed.
3 Danielle would go to bed and Curtis would still be up for a
4 short while, while winding down from work.

5 Normally in the mornings Danielle would arise and get
6 ready for work and leave. Curtis would arise when the
7 children were ready to be up. On that morning Curtis awoke
8 to hearing C. a very active two year old rummaging in
9 the kitchen. Curtis got up and went to the kitchen and
10 found C. ready for his breakfast. At close to the same
11 time he heard Minor awake. She was crying. When he
12 walked in the room he knew what had caused her to wake in
13 this fashion. She had one of those bowel movements that
14 infants sometimes have and it was very messy and she was
15 very upset.

16 Before he could direct his attention to her, he knew
17 C. was needing his breakfast. So he went to C.
18 fixed his breakfast and placed it where he was to eat;
19 turned on the TV to help occupy him and after getting him
20 settled he was able to return to Minor. Changing the
21 diaper would not be sufficient for this time for it was the
22 type that Curtis knew required a bath of Minor.

23 He then went and prepared to give her the bath and
24 went back in removed Minor's clothes and bad diaper and
25 took her to the bathroom and gave her a bath cleaning her.

1 He removed her from the bath and returned her to her
2 nursery with her to dress her. In the nursery there is a
3 changing table which is made of hard wood. There is a pad
4 as well. Curtis took Minor to the changing table.
5 Perhaps through horridness frustration, Curtis without
6 making sure her head was steady and secure as it needed to
7 be at all times at three months old. At that time Minor
8 slipped from his hands. When this occurred her head hit
9 hard, very hard on the changing table. When her head hit
10 Minor screamed.

11 Curtis panicked from the obvious hurt his daughter had
12 just suffered at his hands. In his panic and anxiety he
13 grabbed her up quickly, pressed her to his chest tightly
14 and began moving quickly back and forth, up and down, in
15 any way that he could, even bouncing her on his knee in his
16 panic trying to calm her because he was so anxious and
17 panicked because his precious daughter that he loved so
18 dearly was in dire misery.

19 As he continued to try and calm her in his panic, he
20 says he heard a sound coming from her, saw her eyes roll
21 back and she began to go into a seizure. Even though
22 shocked, panicked in the mist of this nightmare that's
23 happening, Curtis thought as a father he had to get help
24 for Minor, he had to make sure C. would be okay, he
25 called 911 immediately.

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1 He also called his neighbors to seek help with C.
2 which was done before the ambulance arrived. And as it
3 arrived he met them in the front yard with his daughter in
4 his arms. He rode with the ambulance in the front seat to
5 the hospital. While in transit he attempted to make calls
6 to notify Danielle and his family. He remained at the
7 local hospital and then when she was transferred to CMC in
8 Charlotte he went there. He never left the hospital
9 grounds during the two days that she was there. After
10 Minor passed Curtis participated in the necessary
11 arrangements that follow such things until he was soon
12 placed under arrest at the home of his parents. It was a
13 day that changed life and lives.

14 Your Honor, I submit to you Curtis was and is a good
15 man and father as you will hear very shortly from several.
16 Even Danielle stated in the bond hearing that until that
17 day Curtis had been the love of her life. Curtis has
18 remained in jail since that day. Over the last seventeen
19 almost eighteen months he has tried to be strong, and at
20 the same time he has had to come to grips with his actions.
21 Minor is in his mind each and every day and shall always
22 be.

23 I have no reason to believe that he has not been a
24 good inmate while he has been there. He is very active in
25 the religious programs that have been offered and he has

1 been able to cope and live peacefully among the co-
2 residents. Away from the jail during the eighteen months
3 there has been good progress and healing. C. and
4 Danielle together have regular visits now with Curtis as
5 family. They spent Easter and Mother's Day together, those
6 families. ON behalf of my client I wish to thank the State
7 for it's lack of television in such a tragic case. I
8 indicated to them that I would not be able to enter a plea
9 to a charge that required intentional harm because my
10 client never intended to harm the daughter he loved.

11 The State understood my position and the State
12 proposed this plea to charges for neither of the charges
13 requires intent to harm. I submit to this court that the
14 plea to involuntary manslaughter is accurate and most
15 appropriate in this case, and I submit it should be
16 considered the defining charge of this case. Further, I
17 respectfully request this court today to keep C. , the
18 three year old son, in consideration. C. is without
19 understanding at this time, he is still quite young. But
20 C. will begin to need his father more and more. I ask
21 this court to consider strongly the need C. will have
22 for his father and the need his father will have for
23 C. .

24 I am sure that any linger concerns which may exist can
25 be addressed if the Court imposes with it's sentence a

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1 possible probationary period at some point that directs the
2 reunification contact with C. and his father. Also I
3 feel it important for the court to know that the Department
4 of Social Services action is still pending and will be
5 resolved in the not so distance future following this
6 procedure. That opportunity will also provide possible
7 over sight. Such a human tragedy this is but I submit to
8 the court that in this case good is and can continue to
9 slowly move back into the lives of these families. I ask
10 the court to consider the words of the next speakers.

11 At this time, Your Honor, I would call Ann Sweatt.

12 Ms. Sweatt is Curtis's step-grandmother and is a
13 retired detective and officer from the York County
14 Sheriff's Office.

15 MS. SWEATT: Thank you.

16 THE COURT: Good morning.

17 MS. SWEATT: Good morning.

18 Your Honor, Judge, I am Curtis's step mother but to me
19 he's my grandson. I was a part of the family long before
20 he was born. When Curtis was a baby and a little boy he
21 spent a lot of time with his grandfather and me. Curtis
22 was such a beautiful and loving person. His grandfather
23 and I were very proud of him and we love him very much. We
24 had a swimming pool and Curtis loved to come and spend time
25 with the family, mainly cooking and eating together but it

1 was family time. When Curtis got older we got a place at
2 the flee market and he loved to go and help us. Those
3 were wonderful times we spent with Curtis when he was
4 growing up. I pray for more times like that with my
5 grandson Curtis and my great grandson C. and the rest
6 of the family. Unfortunately Curtis's grandfather -- My
7 husband passed away last summer. I know this won't
8 probably be mentioned by others but I wanted to say, when
9 Curtis was in school he would get up every morning and go
10 to Bible study and I know this was very hard and
11 challenging for him but he did it because he felt he needed
12 to. He also spent time on the road with his uncle would
13 mention work for the Lord. I pray that Curtis will have
14 more times like these. Curtis, Danielle and C. would
15 come and visit with us and I would visit with them.

16 His grandfather was at the table at that time. Bill,
17 my husband was amazed, he and I were both amazed what a
18 good father Curtis was. We often talked about how good he
19 worked with the children and how attentive he was. Bill
20 and I liked to sit back and watch Curtis with the babies.
21 He was so loving and so gentle. If either of the babies
22 whimpered, Curtis would be the first to check on them. He
23 was the first to change their diapers and to be there with
24 them. He was the one that held and loved them when they
25 cried and gave them a bottle or pacifier. He just seemed

-21-

1 to always be the first one there.

2 He was such a good father. He often talked about the
3 children and all the things that they did new each day.
4 Curtis would never hurt one of those children, he loved
5 them both dearly. I pray, Your Honor, Judge, will see that
6 Curtis is suffering and has suffered every day, every day,
7 every night. He will suffer every day and every night as
8 long as he lives whether he's in jail or at home for
9 something that happened to our precious little angel
10 Minor who's in heaven. I pray that Curtis will be
11 coming home soon. C. needs his father and we need our
12 Curtis. I would like to read a letter that Curtis wrote
13 his grandfather. His grandfather died in June of last
14 year. I apologize.

15 THE COURT: Take your time.

16 MR. GREELY: Would you like for me to read it?

17 MS. ANN SWEATT: I wish you would.

18 I would like to say this is the hardest thing I've
19 ever done. Thank you.

20 THE COURT: Thank you for being here.

21 MR. GREELY: He had received this letter from Curtis
22 from the York County Jail.

23 "Dear Pawpaw Sweatt, I wish I could tell you Happy
24 Father's Day in person, I am there with you in spirit and
25 have a Happy Father's Day. I want you to know that I have

1 a lot of good memories of you, me and my dad together
2 swimming in your pool and working at the flee market with
3 you and Ann. I also remember going to the Hall of Fame
4 induction ceremony. I always tell about your days when you
5 played baseball. I want to thank you for the toughness
6 that you passed on to my dad and me. That toughness has
7 helped me get through many things in my life and still does
8 everyday. I have learned so much the last six months about
9 myself. The good Lord has blessed me more lately than any
10 other time in my life because I have had to rely on him
11 every waking moment for strength and comfort. The Holy
12 Spirit has taught me so many hidden truths that are in the
13 scriptures. I know God lives and Jesus is the Christ and
14 we can all live together for ever in the heavenly father's
15 kingdom. I love you and miss you and I hope I can come see
16 you and Ann real soon. Love, your grandson, Curtis."

17 And then his grandfather written on the letter
18 presence is more than just being there..

19 I would ask for Camille Sweatt to come forward.

20 Your Honor, Camille is Curtis's younger sister. They
21 are the only two children of the family. She graduated
22 from Clemson University where she was a cheerleader and she
23 will soon be sitting for the LS Certificate.

24 THE COURT: Yes.

25 (PAUSE.)

-23-

1 CAMILLE SWEATT: Curtis is my only brother and I'm so
2 thankful that God placed me in a family where he was my
3 brother. Curtis is one of the most honest and respectful
4 men in my life and he's been a person for me to watch as I
5 grew up and he set a wonderful example for me. When I was
6 little I watched him get up every morning and go to church
7 seminary before he went to high school. This example
8 wanted me to do the same. He did it with honesty and
9 integrity and hard work and he won many awards for it.
10 With his and my parents example I also excelled. He got a
11 job in high school so then I did too. Curtis was always
12 there for me growing up whether it was a ride to the movies
13 with me and my friends, picking me up after school or just
14 to talk.

15 After he graduated high school he went out west on
16 many missions with my uncle. I looked forward to him
17 coming home. He came home talking about all the people
18 that he had shared the word of God with. And I think to
19 myself what a special and select man of God I have for a
20 brother. His strength then and now will always serve as an
21 example to me. To be honest, to be good to people, work
22 hard and never forget families are the most precious unit
23 here on earth. I'll never forget the many examples that my
24 brother has set for me since he became a father. Curtis
25 isn't just a father, he's an amazing dad. The whole summer

1 I babysat C. when he was one I would go to their house
2 in the morning, Curtis would give me a hug, give C. a
3 hug and kiss and go off to work. He would call and check
4 up on C. when he had a break. And of course when
5 Curtis got home Aunt Camille's leg was traded in for
6 daddy's leg from the second he heard the truck pull up.
7 C. adored and still adores his dad. And I know that
8 the way that Curtis spoke to C. before all of this
9 happened was the reason and cause for C. s sweet nature
10 then. C. was writing cursively and Curtis was so proud
11 of him. Curtis was teaching C. right from wrong, how
12 to fold his arms when they prayed at church, how to be a
13 great big brother like he was to me and how to be
14 respectful to his mother.

15 Not only do I need my big brother around to set an
16 active example in my life but more than anything C.
17 needs his dad. You can't get these years back. During the
18 Christmas when we Minor here I remember Curtis taking
19 off and calling me over to join him in some fun for the
20 day. We both took C. and Minor to the doctor.
21 Curtis told me that C. had a cold and he didn't want
22 Minor to catch it too. After waiting in the hectic
23 doctor's office, and the stethoscope making Minor cry,
24 Curtis some how remained so calm and loving. His calm
25 relaxed nature rubbed off on C. and C. quieted down

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1 and started playing with a toy. He wasn't so rambunctious.
2 I took a mental note to myself behalf like Curtis even when
3 I'm scared or worried or one day when I have a child of my
4 own to take to the doctor. That's who Curtis is. He's a
5 gentle loving father and he is a sweet caring brother and a
6 son I know filled my parents with pride. Curtis deserves
7 all the joys that life on this earth brings. The
8 opportunity to work and support his son to be the amazing
9 man that he is and serves in church and in his life and
10 C. deserves the opportunity to have his dad in his life
11 to teach him all of the things that he has taught me as a
12 brother and many more as a father. Thank you.

13 THE COURT: Thank you for coming.

14 Let me defer just a minute to Mr. Bailiff.

15 We got a note from the jury that's out.

16 (JURY NOTE RECEIVED UP BY THE COURT AT 10:20 A.M..)

17 THE COURT: It won't take me but just a minute or two,
18 I have a request from the jury.

19 Is Mr. Springs in here?

20 I need Mr. Springs and Mr. Atwater back please.

21 If I can just have you all have a seat on the first
22 row.

23 (COURT IN RECESS IN THE MATTER OF STATE V. CURTIS
24 RANDALL SWEATT.)

25 (COURT BACK IN SESSION AT 10:30 A.M..)

1 MR. GREELY: Your Honor, I call Brenda Parris.

2 Ms. Parris is the maternal grandmother of Curtis.

3 THE COURT: Good morning. Thank you for being here.

4 MR. GREELY: You need to speak loudly so that she can
5 hear every word you say.

6 MS. PARRIS: Curtis is the oldest of nine, nine
7 grandchildren. He comes from a large family of relatives
8 who are very close and lived within just yards of each
9 other on nearly a hundred acre family farm in a rural
10 community. As a little boy he made sure that all his
11 cousins took turns on his go cart as he held his arm around
12 each one to keep them safe. From an early age he showed
13 compassion even to little animals. On one icy snowy
14 morning he walked up to our house and found our cat injured
15 and half frozen on the door step. He took an afghan off
16 the front porch and wrapped it around the animal and ran
17 home to his parents who took the cat to the vet. And he
18 lovingly fed and loved the cat who lived a number of years
19 after that.

20 When I say close family, I mean it's Sunday dinners
21 after church, birthday dinners, holiday celebrations, and
22 support for each one's ups and downs. Curtis played
23 football from grammar school through high school. He was a
24 good sport and a good looser as well. He was on the track
25 team and won recognition and many honors. As has been said

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1 already in his high school days he rose early and attended
2 Bible study class at 6:00 a.m. in the morning before he
3 went to school each day. This gave him great strength. He
4 was never in any trouble in school that I knew of. He
5 never even had a traffic violation. And he's assisted in
6 many church and community events.

7 Now as he entered his adult season of his life he
8 quickly found himself with a family whom he loves so very
9 much. He always participated in family events and
10 gatherings bringing his family to share in the fun and the
11 socialization. He and his mother -- and the mother of his
12 children are really good parents. They both worked out of
13 the home yet they worked at opposite shifts mainly so that
14 the children could be cared for by loving parents and not
15 put in a day nursery. Curtis worked in the long term care
16 facility mostly of elderly patients. He worked in the
17 environmental services department. He was sought after by
18 the residents, for anything they wanted they ask for him.
19 He would help them where he could. The residents would ask
20 him about his children and he would proudly pull out his
21 billfold of pictures and share it with them even though it
22 had only been a few hours since they had ask him to do it
23 the last time. So yes it's not often that you see a young
24 person take the time of day to share a few minutes with a
25 lonely and the elderly and to show that kind of concern and

1 understanding for them. Curtis learned a lot from his
2 granddaddy about minor car repairs like changing brake
3 shoes, changing his own oil, oil filters to save money for
4 his family. He's a quick learner and he seeks out
5 opportunities to help others as well. I employ you and the
6 Court to consider the need of this family, for Curtis in
7 our presence, for Curtis with his son. He's a very
8 important member of our large family who we have missed.
9 He's an important member of the church and of our
10 neighborhood. I thank you very much.

11 THE COURT: Thank you.

12 MR. GREELY: Mr. Norman Sifford will go forward.

13 Mr. Coombs.

14 Your Honor, this is Shawn Coombs, C-o-o-m-b-s. He is
15 the former spiritual leader for Curtis and the former
16 branch president and bishop of the local Church of the
17 Latter Day Saints.

18 THE COURT: Bishop.

19 MR. COOMBS: Your Honor, I appreciate the opportunity
20 to be here.

21 THE COURT: Yes, sir.

22 MR. COOMBS: I had the pleasure of being Curtis'
23 spiritual leader and the branch president and bishop of the
24 elders church for six and a half years and during this time
25 I had an opportunity to interact with Curtis and found him

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1 to be very tender hearted and sincere. Curtis has
2 expressed love for his family often and demonstrated
3 excellent fathering skills. He was excellent. He was
4 excited to be a new father and his love for Danielle,
5 Minor and C. was very apparent. Since Curtis'
6 incarceration I have become increasingly impressed with
7 him. I was able to meet with Curtis once early on in the
8 incarceration process and found him to be more concerned
9 for his family's well being than for his own. As time has
10 passed he has maintained a positive attitude with his
11 family and truly has been the strength behind a very
12 difficult situation for his family. His selfless concern
13 for others has been very impressive to me. Through this
14 all have grown a deep love and respect for Curtis and hope
15 that mercy and kindness will be shown on his behalf today.
16 This is also as a member of the church. We are not a paid
17 clergy, we serve for short period of time and so I have
18 been relieved from that position and no longer his clergy.
19 And we just hope there is healing more occurs here. This
20 is a difficult situation and thank you, Your Honor.

21 THE COURT: Thank you for being here.

22 BISHOP COOMBS: Yes, sir.

23 MR. GREELY: Your Honor, I will have two statements
24 that I shall read. One from Curtis' mother, Lynn Harris
25 Sweatt who is seated on the front row and from his father

1 Randy Sweatt. They don't believe that they would be able
2 to get through the statements.

3 This is the statement of Lynn Harris Sweatt, mother of
4 Curtis Sweatt.

5 "Curtis was brought into this world as the first
6 grandson to two loving sets of grandparents. He was a
7 quite tenderhearted joyful child. He followed instructions
8 very well and loved learning. He excelled in his high
9 school or his school work, enjoyed going to church, played
10 well with others, sharing and working hard with others on
11 the Small Fry, Pee Wee and Gray Y football teams. He was
12 selected as an all area team member for Gray Y in the fifth
13 grade. He enjoyed karate from the age of five being the
14 first eight year old to earn his black belt at Master Packs
15 Karate School. In karate he excelled in the forms but
16 didn't like the ones to one fighting and decided to quit
17 the sport. He loved family gatherings, family vacations
18 and never met a stranger. He was kind to others and seemed
19 to gravitate to those less fortunate once giving his best
20 coat to a childhood friend so he would have a warm coat to
21 wear while waiting on the school bus. He liked taking his
22 outgrown clothes and gently used toys to agencies that
23 would give them to those in need. He enjoyed the family
24 adopting a needy family for Christmas's and giving toys,
25 clothes and gathering food items to them. He was my joy

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1 from the day he was born. He was a mother's boy always
2 there helping and caring for me after many a long days
3 work. He loved to listen to my stories of babies being
4 born as I worked as a labor and delivery nurse for fourteen
5 years. He loved his father being his best friend and would
6 always beamed when he saw his family arrive for his
7 sporting events. In high school he played center for his
8 football team and had many friends. The family car was
9 always full with friends of his with little parent support
10 for rides to and from events. He excelled on the track
11 team and disc's and shot putt earning him the hardest
12 worker award his senior year. Ninth grade through his
13 senior year he would attend seminary with his Christian
14 friends very early each morning before school which he
15 described as the spiritual strength that kept him grounded
16 and always doing the right things and making good choices.
17 During the summer break during his high school years he was
18 excited to work in any mission for approximately eight
19 weeks in Billings, Montana teaching others about his
20 Christian beliefs and serving the people of that area.
21 After high school he was a hard worker, had jobs at Food
22 Lion and later working in a partnership business with his
23 father's pressure washer business. He loved people and
24 always went the extra mile according to his father to
25 please all the contractors and home owners that they

1 completed work for. He at one point spent seven months in
2 Provo, Utah living with his uncle and aunt attending
3 seminary classes at Utah Valley State College and then came
4 home because he was home sick.

5 Curtis attended York Tech taking general education
6 classes. He then became a father to his son C. He
7 loved his family and was a proud father. He was attentive
8 to Danielle's needs and they learned together being great
9 parents. He worked hard at his job to provide for them.
10 He was a home body usually enjoying being a father and
11 provider. They made friends with their neighbors and
12 church friends. They loved going with us on family
13 vacations to the beach and he was a protector of his mate
14 and son. Twenty months after C. was born Minor
15 arrived to bless their home and all of us with her
16 presence. May 11th, 2009 the day that Curtis texted me
17 from the doctor's ultra sound "it's a girl" I knew already
18 that he was over joyed. They both were so excited and
19 made choices to work different shift hours so as to protect
20 them from day care and exposures to childhood illnesses.
21 Curtis began working at a one hundred and thirty two bed
22 nursing home in the maintenance department mostly as a
23 floor technician. He loved the elderly and many of them
24 loved him. He took the time to speak and assist in ways
25 that he could sharing pictures of his two beautiful

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1 children and Danielle. As a growing young couple they both
2 worked together to create a loving home, a very clean home,
3 manicured lawn, both taking turns with the children both
4 washing clothes, preparing meals and caring for one
5 another. They were planning to marry in June of 2010.
6 Myself and Camille going on a hunt for the perfect wedding
7 dress which I lovingly purchased for Danielle. Then
8 January 10th this precious family and our whole lives
9 changed. The wedding dress hangs in an empty upstairs room
10 in our home. C. has missed a year and a half of
11 growing up with his father. Danielle initially had C.
12 taken from her by DSS. Curtis has suffered incarceration
13 with no contact being granted for him to see or talk to his
14 son or his mate. This young couple has not had time to
15 grieve together, embrace each other, or as Curtis' mother I
16 have grieved and had so many sleepless nights helpless. I
17 have prayed for all of them to help resolve and time to
18 heal together. I work as a grief counselor for seven years
19 working with the young couples that have experienced loss.
20 I know they can heal. Curtis, Danielle and C. have
21 very supportive families. They are all loved very much.
22 As a large family we are praying that Curtis will come
23 home, live with us as parents and slowly rebuild his
24 relationship with Danielle and C. with counseling and
25 time to adjust outside of jail. Curtis is a loving and

1 sensitive mature young man and father. He loves his father
2 and wants to be a continuing active part of C. and
3 Danielle's future. He wants to be a good father to C.
4 teaching him right and wrong, how to play sports and
5 attending as many future events just like his dad with him
6 always being there for whatever guidance and support he
7 needs. He wants to continue the legacy of both families of
8 attending church and learning the examples of Jesus Christ
9 our Heavenly Father and being a good man supporting his
10 young family, serving others in the community where his
11 heart leads him with the desire to continue his education
12 and always do good."

13 And finally, Your Honor, I would like to the read
14 statement of his father. It's very brief but it's from the
15 heart.

16 "Curtis has always been a kind and caring young man,
17 very respectful and considerate of other people and their
18 feelings. We work side by side for years and everyone
19 always said how nice and well mannered he was and very
20 helpful. He's the kind of man that would go out of his way
21 to help others. He was always honest with his dealings --
22 He was always honest with his dealing with his fellow man.
23 He loves his family very much. Out of all the people we
24 met and completed work for, no one has ever said anything
25 bad about him."

1 Finally, Your Honor, Curtis Sweatt would like to
2 speak.

3 THE COURT: Yes, sir.

4 CURTIS SWEATT: First of all I'd like to thank you for
5 the chance to speak today. I want to thank all the support
6 from everyone that has been given to Danielle and me and
7 our families. The support has been over whelming from the
8 beginning. The opportunity to come here today was a long
9 awaited one and God has been with us through this - through
10 this entire process and our faith has manifested in the
11 arrival of today's proceedings.

12 I have just decided on today's planned proceedings the
13 reason. One: So the question can be answered for everyone
14 to how and why we lost Minor so young and so hurt. Two:
15 So that I can admit to all responsibility so my negligence
16 which played in her injury and death so that everyone can
17 forget and heal.

18 And Three: I do this with the hope that I may once
19 again be a part of my son's life. I regret to say I did
20 not use the utmost care of Minor on the morning in
21 question. I was caring for my daughter when the accident
22 occurred. I was giving Minor a bath, I was in the
23 process of beginning to dress her when she slipped out of
24 my hands and her head struck the pad, the changing pad,
25 that laid on the hardwood table. She screamed and began to

1 cry severely. I panicked, in my panic I grabbed her and
2 held her close to my chest. Held her close to my chest and
3 began to rock up and down and side to side. And to
4 clarify, at that moment no sooner than I started doing that
5 is when I heard -- no sooner than I heard that I heard a
6 popping sound in her head. And at that moment her eyes
7 went into the back of her head and she began to twitch like
8 little seizures. At that moment I dialed 911 and followed
9 the operator's instructions while waiting for the ambulance
10 to arrive. The shock of it all did not seem real. I do
11 miss and love my daughter Minor . I feel her presence
12 often especially the days that I have been alone in my cell
13 with no one to talk to. So I talk to God and feel her
14 presence with me. They are the only ones who know how I
15 truly feel and know what I did that day. I do agonize over
16 the hurt my negligence has caused to so many. For that I
17 am very sorry. First of all to Danielle. And she knows I
18 will never hurt my children intentionally. And that she
19 knows I am very sorry and I want her to know that and all
20 the family to know. And also I'm also sorry to all of the
21 family and also to my son C. that is so young and no
22 understanding of these things. I have accepted my lot in
23 what occurred that day. I trust in God and his plan and
24 get all the blessings and staying faithful to him. My
25 family has endured retried and retested but through it all

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1 God has blessed us with a greater love. Jesus taught that
2 man should come as a child submissive, humble and patient,
3 full of love. We should submit to all things as the Lord
4 seeth fit and today the Lord seeth fit and I submit myself
5 as I should to God and to the Court. Thank you.

6 THE COURT: Thank you.

7 MR. GREELY: That's all we have.

8 THE COURT: Get the bailiff.

9 (NOTE FROM THE JURY RECEIVED UP BY THE COURT.)

10 THE COURT: They've reached a verdict.

11 Step back again please.

12 I need the trial crew back.

13 (COURT IN RECESS IN THE MATTER OF STATE V. CURTIS

14 RANDALL SWEATT AT 10:50 A.M..)

15 THE COURT: Solicitor.

16 MR. THOMPSON: May it please the Court, Your Honor.

17 Ms. Tucker the mother to come forward.

18 Please say your name for the court reporter.

19 A. Wanda Tucker. Danielle Tucker's my daughter.

20 Minor is my granddaughter.

21 THE COURT: Ms. Tucker.

22 MS. TUCKER: I wanted you to be able to see this
23 precious little thing. It's her picture. She didn't make
24 it to four months.

25 (PHOTO PUBLISHED TO THE COURT.)

1 MS. TUCKER: I here today to speak for Minor
2 because she can't. I want to remind everyone that even
3 though my family and Curtis's family are victims to what
4 happened to her, that she is the one that died.

5 I want everyone to know who the real victim is
6 Minor . On January the 7th of 2010
7 Minor was taken from us by the hands of her father. On
8 that Thursday I got a call from my daughter Danielle that
9 something was wrong with Minor . I left work to go pick
10 her up because she was on the way to the hospital. And
11 when we arrived and into the emergency room I stood in
12 shock watching the doctors and the nurses working on
13 Minor She never moved, she never cried. Babies cry.
14 She never once cried. I didn't understand what was wrong
15 and what was happening.

16 When they got her in shape where she could be moved.
17 they took her by helicopter to Levine Children's Hospital
18 in Charlotte.

19 I'll never forget the words you said, Curtis, sitting
20 in the back seat of my car. "If I hurt her I didn't mean
21 to." And that told me that something had happened to her
22 and it wasn't good. By the time that we got to the
23 hospital in Charlotte the doctor's had already examined her
24 and called us into a room to explain. When the doctor told
25 us what was wrong with her I didn't understand what he was

1 saying and I had ask him what he meant and because I
2 couldn't understand what could cause so much damage to a
3 little child. At that time he told us that she had been
4 shaken that it caused all the brain damage.

5 From that time to now I cannot get over the way
6 Minor looked. Just laying in that bed and we could do
7 nothing to help her and the doctors couldn't do anything.
8 I couldn't even stay with her that day, that night, because
9 I had to go get C. my grandson. I had to wait on calls
10 about her if there were any changes. And then I got the
11 call that she had no changes and that they called the time
12 of death on January the 8th but would leave her on life
13 support until I got there so I could hold her again. She
14 was so tiny and it hurts. I just wanted to wake up from
15 this nightmare and not believe that he had done what he
16 did. I juts couldn't believe that an innocent child this
17 little could be hurt this badly.

18 Because of you, Curtis, she didn't make it four
19 months. I hope you will never, never forget her crying
20 because I am sure that's what she was doing because
21 couldn't even beg for her life, for her daddy to stop, to
22 look into her eyes as she was trying to breathe and turning
23 blue.

24 I'll always remember her cooing and she had just
25 started laughing out loud. None of us had enough time with

1 her and even in her death you took what precious time from
2 us by having your lawyer at the time requesting a second
3 autopsy. He promised Danielle that her body would be back
4 in time for us to spend time with her. I helped your
5 family pay for half of the autopsy so she would be back in
6 time but Minor didn't make it back. She didn't make it
7 back and we only got to see her a couple of hours before
8 the funeral. We were also told that second autopsy that he
9 didn't care what he did to her and so that she would never
10 have to go through a second --

11 I hope that every time you go to sleep at night that
12 her little face is still reminding you what you did to her.

13 During the year of 2009 between my brothers and my
14 sister we had five babies. We had five grandchildren. And
15 every time our family meets now I see the little ones and I
16 only see four now not five. I look at them and wonder what
17 she would be like. She would be walking now and talking
18 and what her voice would sound like. What she would like,
19 what she would dislike. Danielle, C. , Barry and I
20 spent her first birthday at the cemetery and the first year
21 of her death. It has been one year and almost five months
22 since you took her away from us.

23 I cannot forgive you yet. I'm sure it's gonna take me
24 a long time to be accept what you did to Minor because
25 you had other choices. There is so many other choices that

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1 you could have made because the story that you're telling
2 that happened to her is no way that she would have had all
3 that brain damage. I know that God is now taking care of
4 her and she will never be hurt again. We will always love
5 Minor and we miss her every day. I know this was the
6 first time in trouble but you still deserve the maximum
7 time because you took your own baby daughter's life.

8 Please give justice for Minor

9 Thank you.

10 THE COURT: Thank you for coming.

11 A. My name is Danielle Tucker, I'm Minor's mother.

12 First of all I want to let everybody know that I
13 understand the hurt that this family is coming from and
14 that they'll do anything for Curtis because I'd do anything
15 for my son. However they need to remember my position in
16 this because I had the person I was gonna spend the rest of
17 my life with take my little girl away from me which made us
18 have our family ripped apart. It would have almost been a
19 year in June this year, we would have been spending our
20 first year together.

21 Curtis you were my best friend, the love of my life
22 and my future spouse. You are the father of my children
23 and I thought we were going to spend the rest of our lives
24 together. You told me before we ever got pregnant with

25 C. that there were two things that you wanted to be

1 more than anything in life and that was to be a good
2 husband and a good father. But in one moment you took all
3 that away from our family. You took a father and a sister
4 away from C. ; you took our daughter and my best friend
5 away from me. There's no words to explain how much it
6 hurts to have our family ripped apart and your family away
7 from you. C. and Minor are my world and my heart.
8 And now that this happened my heart has a hole in it that
9 will never be filled because of the loss of my daughter
10 Minor

11 Our families have been put through a lot this past
12 year and a half and the only way that I have been able to
13 make it through is by turning to God and having C. in
14 my life. I that about what Jesus would do in this
15 situation if he was standing here instead of me. And I
16 know that God is a very loving and forgiving God and he
17 tells us that we need to forgive one another and to love
18 one another to be able to come closer to him.

19 Curtis, I have forgiven you for killing our daughter
20 Minor and taking her away from our family. I am no
21 longer mad at you, however I am still hurt and disappointed
22 in you by what you have done to our families. God would
23 want me to tell you to think about what you did, learn from
24 what you did, ask him for forgiveness by repenting and ask
25 to have your soul saved. I hope you turn to him and ask

1 for his forgiveness so that we can spend eternity with him
2 before its too late.

3 Our three year old son C. is the light of my life.
4 I know that he misses his daddy and his sister everyday.
5 He talks about them every so often but I can only imagine
6 what he's really thinking and feeling since he is only
7 three years old and can't express what he's really feeling
8 and thinking. And I know that he hurts not having a father
9 in his life or having a little sister to grow up with, to
10 fight with, to love on, or to look after when they got
11 older.

12 Even though C. is doing fine right now, he has
13 been though a lot this past year and a half. He can't and
14 will not go through anything else that is so traumatic. I
15 know that it will be hard for him growing up without a
16 father in his life, however C. should not have been put
17 through this in the first place. I am C.'s mother and
18 I'm going to protect him from anything or anyone who is
19 cause him any pain. And C. is what keeps me going
20 every day and his laugh and his smile and his saying I miss
21 you mommy when I pick him up from school and that he loves
22 me just always makes my day. I do not believe that Curtis
23 should be a part of C.'s life till C. is old enough
24 to make the decision and able to understand what really
25 happened.

1 Curtis made a decision on January the 7th which took
2 Minor away from us forever. A mother should never have
3 to go through losing their child and have to bury them.
4 Your children are supposed to bury you. I believe that
5 Curtis needs to think long and hard about what he did and
6 he needs to pay the price for what he did and giving him
7 less than twenty years for killing my daughter Minor
8 would be an injustice to her, C. , and me. However, no
9 matter how long Curtis has to serve is not going to bring
10 Minor back who was so innocent, sweet, and a beautiful
11 little girl. She was almost four months old and a little
12 girl who loved to laugh and coo and smile at you. She was
13 full of life. For someone to hurt a child who is so
14 innocent and beautiful is unimaginable to me.

15 THE COURT: Thank you for being here. And I realize
16 that the loss of a child is the very worst possible thing
17 that can happen to a parent. I know that was very
18 difficult.

19 MR. THOMPSON: There are a few other things I would
20 like to say before I do just as a matter of law.

21 I believe when I recited the facts earlier, we didn't
22 necessarily confirm with the defendant that he agreed with
23 those facts and find on the record that the charges --

24 MR. GREELY: So he did and we agree with those.

25 THE COURT: Is that correct, sir?

1 MR. SWEATT: Yes, sir. Yes, sir, Your Honor.

2 MR. THOMPSON: Your Honor, obviously the family is
3 devastated. You see both sides of the courtroom full, half
4 for Mr. Sweatt and half for Minor and Danielle. A few
5 things I would point out to the court is one of the family
6 initially spoke with law enforcement and people were asking
7 what happened, he specifically denied that the baby had
8 been shaken and that he had shaken the baby, or that he had
9 dropped the baby in any way. And specifically went to the
10 story of basically to placing the baby down on the bed or
11 pulling the towel out and the neck snapped. There is no
12 forensic evidence of course that backs that up. There is
13 no neck injury to the child. There is no external bruising
14 that would show the head being banged against something or
15 anything of that nature.

16 I point out too that the 911 call occurred at 9:40 in
17 the morning and as the defendant said he got up shortly
18 before -- I'm sorry, it occurred at 10:40 in the morning.
19 He got up certainly before 9:00 in the morning. Obviously
20 being your young son a toddler and as he said that the day
21 this occurred right away after he had gone in with C.
22 he heard Minor . The bath and I know as a father myself
23 it doesn't take that long to give your young son something
24 to eat and give your other child a quick bath, to clean up
25 the diaper and the mess. So if you have that time frame of

1 just before Nine o'clock and then 10:40 before 911 is
2 called, there is likely to be a large period of time in
3 there that the defendant isn't doing anything to benefit
4 his daughter at that point after an injury has occurred
5 because at this it would be at least an hour obviously at
6 best or at worst which ever -- however you want to put it,
7 it would be at least an hour that this child had been
8 injured before he does something and calls 911 because it
9 doesn't take an hour and forth minutes or an hour and
10 forty-five minutes or two hours to do the events that he
11 describes. This apparently happened fairly quickly
12 according to him. And the injury once it occurred was
13 readily noticeable to him.

14 I will go a little further and talk a little bit more
15 about some of the injuries the child received because they
16 are rather extensive. The doctors up in Charlotte and
17 Doctor Thomas, if you will look through their reports the
18 words they used to describe the various injuries you see a
19 number of words come up a number of times. Words like
20 severe, massive, and devastating. And truly these injuries
21 were just that. According to Doctor Mancuso in Charlotte
22 his opinion that this was that this child was violently
23 shaken and that's what he told law enforcement when they
24 interviewed with him during this period of time.

25 Doctor Thomas as you look at the autopsy notes a

-47-

1 number of things. As he looks at the eyes he noticed that
2 there was some hemorrhaging in the right retina tissue on
3 Minor . He noted an excessive accumulation of fluids
4 throughout the brain with extensive brain necrosis which is
5 basically the death of tissue cells in the brain and
6 herniation so actually parts of the brain that would
7 literally start extruding out from where the brain should
8 be or attempting to. This causes massive pressure within
9 the brain when these sorts of things happen. He also noted
10 extensive generalized edema which is swelling. And tissue,
11 once again tissue narcosis which is the death of tissues
12 and as he said generalized he describe that to me. That's
13 throughout the brain, that's not just in one area but that
14 is throughout the brain.

15 There is acute subdural and subacronoid hemorrhaging
16 as well in the brain specifically more noticeably on the
17 right side and the right hemisphere of the brain. But it
18 was also noticed in lesser degree on the left side.

19 I have State's Exhibit's One and Two that I'll present
20 to the Court at autopsy, because I can describe the
21 injuries, but unless the Court sees them; you can see that
22 one photograph, the inside, the top of the skull, and you
23 can see the entire right hemisphere is a hemorrhage. That
24 hemorrhage goes across the entire top of the right
25 hemisphere, goes back behind the brain, and then it goes

1 back underneath the brain so that entire side of the head
2 and the brain around it is a giant bruised area which once
3 again would cause severe swelling and pain.

4 The doctor even noted from the swelling the brain stem
5 had herniation and of course the brain stem is basically
6 the part of the conduit that runs through to tell the body
7 to breathe, to tell you to react to things, to tell you of
8 pain and anything else which is ultimately one of the
9 reasons that she exhibited severe symptoms in addition to
10 the other parts of her brain that were injured. The
11 conduit to the rest of her body was injured so that's why
12 she was then suffering and unable to breath and things of
13 that nature.

14 As Doctor Thomas explained to me what the brain was
15 like when he took it out, the right side of the brain
16 especially, describes as being like mush which would be
17 sort of a best description of pudding consistency. And
18 that's from the death of the tissue in the brain and the
19 violent act that would have occurred to it.

20 And as I had stated in the facts of the case, Doctor
21 Thomas' opinion that this was by severe increase and
22 decrease in acceleration comparable to the sudden impart of
23 a car wreck. This was a violent act that he would have
24 testified as just being a violent act that occurred to
25 cause the injuries to Minor . Ultimately in his

1 cause of death he list brain herniation secondary to
2 massive bilateral cerebral edema and right side subdural
3 hematoma. He list several things but those are basically
4 the main parts of this child's brain was for all practical
5 purposes destroyed. And the doctors in Charlotte when they
6 were able to examine her initially were able to pretty much
7 tell as the family said they received unfortunate news
8 almost immediately going up there that this was unlikely to
9 be survived by Minor.

10 Danielle also suffered. I believe as the course of
11 the investigation started DSS became involved immediately
12 and took their other child C. away for a period of time
13 so that she could not keep him or have consistent contact
14 with him initially as they looked to see if there was any
15 other problems within the family that would have caused
16 this so she suffered again in addition to having a lost her
17 child to them being unable to be with her other child.

18 I point these things out because these injuries are
19 severe. They would have been apparent rather readily and
20 they come from more than simply aggressive bouncing or
21 aggressive rocking the child. As I said there was no
22 really outward signs of battery so it doesn't appear the
23 child was banged against things and there was no indication
24 of that that we can see. But what has ultimately happened
25 to the family just as the doctor described these injuries

1 as severe, massive and devastating, that's exactly the
2 effect that they've had on the family as well. It's been
3 severe, massive and devastating and you can see from
4 everyone that's been here everyone's torn apart by that.
5 The State would ask, Your Honor, and agree with Danielle,
6 with Wanda, the others that are here on behalf of Minor
7 that the defendant does deserve a stiff sentence for this.
8 We considered a lot in plea negotiations. Certainly we've
9 looked at the fact that this is something that does not
10 have a prior record and in doing so coming to this plea at
11 this point in time. But in doing so as well we tell the
12 Court that we feel that we have given him as much
13 consideration as we can give and we ask that he get the
14 full sentence of the twenty years at this point in time.
15 It is now a time of reckoning that unfortunately there has
16 to be punishment and that's what needs to come now. We
17 appreciate the Court's time and thank you, Your Honor.

18 THE COURT: So, what I understand there's two people
19 who know more about this case than anyone else. Number
20 One: Mr. Sweatt knows it and I find usually the lead
21 prosecutor knows probably more sometimes than the defense
22 attorney. From what I gather from what you have reviewed
23 this evidence is this was a massive injury but it occurred
24 over one incident. In other words we're not talking about
25 multiple off and on days of shaken child syndrome. In

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1 other words does the evidence point that all this happened
2 that morning?

3 MR. THOMPSON: There were no other brain injuries that
4 would indicate prior injuries to the child.

5 THE COURT: There was not?

6 MR. THOMPSON: No.

7 MR. GREELY: Correct.

8 THE COURT: And nothing was picked up outside the
9 medical evidence that there was any indication that there
10 was multiple problems that went on with discipline. Not
11 necessarily discipline but -- Well I guess you could say
12 that even though probably a young tender child would be
13 disciplined and that is just out of the question with a
14 three or four month old. As far as anything -- I guess the
15 basic question is, any other evidence outside the medical
16 that would indicate there was a pattern; I guess is what
17 I'm trying to ask?

18 MR. THOMPSON: If we could approach regarding that
19 just briefly, Your Honor.

20 (BENCH CONFERENCE OFF THE RECORD AT 11:25 A.M..)

21 THE COURT: Let me clarify my question because this
22 child obviously three to four even the word discipline is
23 totally and applicable here. What I'm trying to get to I
24 guess would apply more to the older child. Any allegations
25 or any physical evidence as far as the older child?

1 MR. THOMPSON: No. As far as C. goes, Your Honor,
2 there was not evidence. We even looked back through the
3 course of the pediatric records. There was no evidence of
4 abuse towards C. . Although I would point out that in
5 C. s upbringing as Danielle has told me that time was
6 different in that Danielle was the primary person alone
7 with him. At that time that Mr. Sweatt wasn't necessarily
8 ever really alone with C. during the care giving times
9 for any length of time.

10 THE COURT: Well let me talk to all of you out there
11 and both sides of this situation specifically the two
12 families. There is enough harm already been done. The
13 worst possible thing that could happen to a family both
14 paternal and maternal sides to lose a child or a
15 grandchild. I thank goodness I have not had anything that
16 tragic to happen to my immediate family. We all know that
17 whether it be by accident or whether it be by other means
18 it can hit any of us at any time. It appears to me that I
19 can only assume that all of you are good, law abiding
20 Christian people and what's happened here can't be
21 corrected. We all wish we could bring the child back, we
22 all know that's impossible. But if you hold any type of
23 hatred or retribution in your heart over a situation like
24 this you all know from your Christian upbringing it's just
25 gonna eat at you like a cancer and it will eventually

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1 consume you as an individual, so, let's don't do any
2 further harm. Think before you react in case something is
3 said to you or whatever.

4 Now, approaching twenty years doing this job I have
5 had many similar cases. All of them are the worst
6 tragedies that the Court would have to deal with.
7 Sometimes it's an isolated incident that happens over a
8 short time. Other times its incidences where it has been
9 repetitious over a period of time. I don't know. Its
10 almost like sometimes everything's on a clear path, every
11 things going fine and something snaps in somebody's mind or
12 they over react, they got too much pressure on them and
13 disaster happens.

14 I know some of you would like to see him released as
15 soon as possible to get out there and go back to work and
16 try to help make amends. And I know some of you want
17 justice to the maximum degree. But, even though my primary
18 occupation is to dispense justice. You all got to remember
19 it's got to be tempered with some mercy in a appropriate
20 case. We could have had a trial here it would have taken
21 some time and made matters a lot worse. Or we could have a
22 situation like this where the defendant faces the Court and
23 says yes I was wrong, I'm guilty and I put my faith in the
24 justice system.

25 And that puts me in a unique position that a lot of

1 times I do things that makes everybody mad. But I can
2 assure you that I try my best to dispense justice from a
3 neutral point of view from what I hear from the evidence
4 and from what I hear in mitigation to make sure that
5 justice is tempered with mercy.

6 Mr. Sweatt.

7 MR. SWEATT: Yes, Your Honor.

8 THE COURT: You know having been in the business as
9 long as I have the photographs of the autopsy tell me many
10 things. And that is not good for you. I hope you
11 understand that I cannot and will not allow you to be back
12 out on the streets any time soon because right now in the
13 back of my mind the most important person on the face of
14 the earth is not you. It's your son. And I am not going
15 to put you in the position nor am I going to put myself in
16 the position to where anything tragic could happen to your
17 son by you. So, it can be said that part of this is the
18 insurance policy to protect, as I said, the most important
19 person in all of this.

20 If anybody out here disagrees with this statement I'll
21 never understand why anybody would see differently because
22 that child is the one that's probably gonna suffer the most
23 from this even though you gonna bear the brunt of the
24 justice system.

25 I don't have much choice in here except to come down

-55-

1 hard on you. I'm not going to max you like some folks want
2 me to do. But on the other hand I'm not going to slap you
3 on the back because I want you to suffer the penalty part
4 of the justice system. Not necessarily suffer but you
5 gonna have to serve the penalty part of the justice system
6 but right back to that child, a lot of you out there that
7 are my age and you realize what it is as far as the cost of
8 raising a child now and getting them through the education
9 system and especially the higher education. Tuition si
10 going out the ceiling. Even though I want justice served,
11 I want you back out there as soon as reasonable possible to
12 where you can help support this child after he is beyond
13 his tender years. I'm not gonna sit up here and preach
14 about it, I'm just not gonna do it. So this is what I'm
15 gonna do.

16 Even though many would argue that the involuntary
17 manslaughter should be the lead indictment since that
18 covers the actual death of the child as far as the elements
19 of it, because it is a child and the circumstances and the
20 evidence I have here to me the infliction of great bodily
21 injury to a child that carries greater weight. What I'm
22 gonna do I am going to sentence you to an initial term that
23 is the maximum sentence but I am going to suspend that so
24 hopefully you can get out there and play a part in
25 supporting the child that you have that's gonna need it.

1 So it's twenty years, it is suspended to sixteen years
2 with four years probation. And the reason I'm putting
3 probation on there is for what I've just stated. And also
4 to make sure that when you are released that I have an
5 insurance policy in place that you cannot and you will not
6 be alone with any child or have the care, custody or
7 control of any child under the age of ten during your
8 probation and parole period. That sticks heavily in my
9 mind. On the involuntary manslaughter which is a minimal
10 charge to me its' five years and I'll go along with the
11 recommendation on that that be concurrent.

12 From here on out its between you and your God and your
13 Savior, sir. Thank you.

14 MR. THOMPSON: Thank you.

15 MR. GREELY: Thank you, Your Honor.

16 -- END OF TRANSCRIPT OF RECORD --
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/plea of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 20th day of May, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR-M

Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 6-25 / 2012

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Curtis Randall Sweatt, 346121,
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

CERTIFIED TRUE COPY

2012 MAR 20 PM 2:58

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

APPLICATION FOR
POST-CONVICTION RELIEF

FILED - RECEIVED
2012 MAR 16 PM 2:23
DAVID HAMILTON
C.C. P. & S.
YORK COUNTY, SC

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, 990 Wisacky Hwy., Bishopville, SC 29010
2. Name and location of Court which imposed sentence York County Court of General Sessions, Moss Justice Center, 1675 York Hwy., York, SC 29745
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) 2011-GS-46-1523: involuntary manslaughter
 - (b) 2011-GS-46-1524: inflicting severe bodily injury to a child
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) May 20, 2011: 5 years concurrent
 - (b) May 20, 2011: 20 years, suspended to 16 years with 4 years probation
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. _____
 - 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. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Appeal was not filed on the Applicant's behalf.
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Ineffective Assistance of Counsel.
- (b) Involuntary Guilty Plea.
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failure to fully evaluate the State's evidence and conduct an investigation prior to the entry of the plea.
- (b) Failure to advise client regarding placement on child abuse registry and properly advise regarding the likely sentence of the court.
- (c) Misrepresentation of Applicant's statements provided to plea counsel to plea court.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (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. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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) PCR is the proper forum.

(b) _____

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- 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?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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) PCR is the proper forum.

(b) _____

STATE OF SOUTH CAROLINA

County of Lee

)
)
)

VERIFICATION

I, Curtis Randall Sweatt, 346121, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Curtis Sweatt

SWORN to and subscribed before me this 14
day of March, 2012

Debra Sines (L.S.)
Notary Public

My Commission Expires:

11-4-2015-

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Curtis Randall Sweatt, 346121, 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.

Curtis Sweatt
Applicant

SWORN or affirmed to and subscribed before me this

14 day of March, 2012

Debra Sines
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA

COUNTY OF YORK

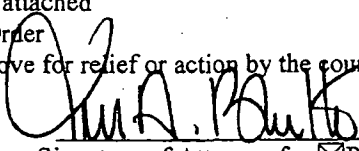
Curtis R. Sweatt, #346121,
☒ Plaintiff

v.

State Of South Carolina
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-46-0975MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 12725 Columbia, SC 29211 phone: 803-988-0008 fax: 803-0988-8070 e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Amendment to PCR Application Estimated Time Needed: 4 hours Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant January 16, 2013 Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions ☒ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP) Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Curtis R. Sweat, #346121,)
Applicant,)
v.)

2012-CP-46-0975

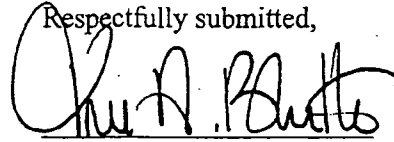
State of South Carolina,)
Respondent.)

**AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF**

Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire,
would amend his Application for Post Conviction Relief filed on August 16, 2012, by
adding the following specific allegations to his original allegation of ineffective
assistance of counsel and involuntary guilty plea:

1. Ineffective assistance of counsel for failure to investigate and/or address
Applicant's mental health history. Failure to contact and/or utilize
Applicant's family doctor (Eric G. Johnson, M.D.)
2. Ineffective assistance of counsel for failure to call an expert (clinical child
family therapist specializing in trauma and abuse) in mitigation at the plea or
at trial (if a trial was pursued).
3. Ineffective assistance of counsel for failure to provide the Court with a
reasonable defense and/or explanation of the events in question.
4. Ineffective assistance of counsel for failure to refute the State's summation of
the medical findings and failure to oppose the Court's review of the highly
prejudicial autopsy photographs.
5. Ineffective assistance of counsel for failure to file a Motion for
Reconsideration of Applicant's sentence.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211

January 16, 2013
Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

Curtis R. Sweat, #346121,)
 Applicant,)
 v.)

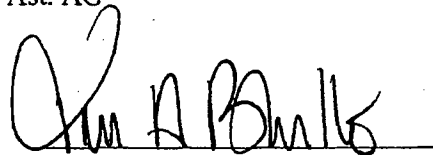
2012-CP-46-0975

State of South Carolina,)
Respondent.)

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that I placed in the mail this 17th day of January 2013, a copy of an Amendment to Application for Post Conviction Relief, to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
 ATT: J. Rutledge Johnson, Ast. AG
 PO Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 Attorney for Applicant
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008

January 17, 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) FILED - RECEIVED SIXTEENTH JUDICIAL CIRCUIT
)

2012 JUL -9) AM 11:51

Curtis R. Sweatt, #346121,

2012-CP-46-0975

Applicant,

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on March 16, 2012, the Respondent would show this Court:

I.

The Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was charged with Involuntary Manslaughter (2011-GS-46-01523) and Infliction of great bodily injury to a child (2011-GS-46-01524). The Applicant was represented by the Leland Greeley, Esquire. On May 20, 2011, the Applicant waived presentment to the Grand Jury and pled guilty as indicted. The Honorable Paul M. Burch sentenced the Applicant to confinement for twenty (20) years suspended upon the service of sixteen (16) years, the balance is suspended for four (4) years' probation and five (5) years, concurrent, for Involuntary manslaughter. The Applicant did not appeal his conviction or sentence.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to advise client regarding placement on child abuse registry and properly advise regarding the likely sentence of the court."
 - b. "Misrepresentation of Applicants statements provided to plea counsel to plea to court"
2. Involuntary guilty plea
 - a. "Failure to fully evaluate the State's evidence and conduct an investigation prior to the entry of the plea."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that 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, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d

624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges his guilty plea was involuntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty

plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

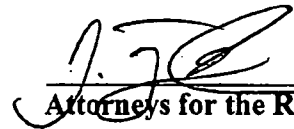
JOHN W. McINTOSH
Chief Deputy Attorney General

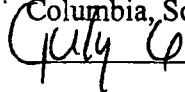
SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina
, 2012

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED - RECEIVED

2012 JUL -9 IN THE COURT OF COMMON PLEAS

DAVID HAMILTON
C/C.P. & GS 2012-CP-46-0975
YORK COUNTY, SC

CURTIS R. SWEATT, 346121

Applicant,

vs

STATE OF SOUTH CAROLINA,

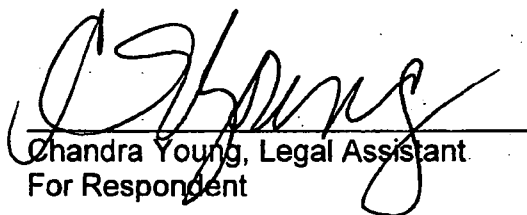
Respondent.

AFFIDAVIT 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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Charles Castner, Esquire
2447 Deerfield Dr. FM-1XA
Fort Mill, South Carolina 29715

DATED this 6th day of July, 2012.


Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	2012-CP-46-0975
	)	
Curtis R. Sweatt,	)	
	)	
Applicant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

August 15, 2013
York, South Carolina

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE.

APPEARANCES:

TRICIA A. BLANCHETTE, ESQ.
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

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EXHIBITS

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P R O C E E D I N G S

1
2 MR. JOHNSON: May it please the Court, Your Honor.
3 This is the case of Curtis Sweatt versus the State of
4 South Carolina. It's case number 2012-CP-46-0975.
5 Mr. Sweatt was charged with involuntary manslaughter and
6 infliction of great bodily injury upon a child. On
7 May 20, 2011, he pled guilty before the Honorable Paul M.
8 Burch. He was sentenced concurrently to 20 years,
9 suspended upon the service of 16 years, for the great
10 bodily injury upon a child, the balance of which was
11 suspended for four years' probation and five years for
12 involuntary manslaughter. There was no appeal filed;
13 however, there was a timely PCR application filed
14 March 16, 2012. The State filed its return on July 6,
15 2012, and he's represented here today by Ms. Tricia
16 Blanchette.

17 THE COURT: Yes, ma'am.

18 MS. BLANCHETTE: Thank you, Your Honor. Tricia
19 Blanchette here on behalf of Curtis Sweatt. I just wanted
20 to verify that Your Honor has a copy of the detailed
21 amendment that was submitted on January 16, 2013?

22 THE COURT: I do not see that. Amendment for -- to
23 the application?

24 MS. BLANCHETTE: Your Honor, if you'd like, I made an
25 extra copy that I could provide.

1 THE COURT: Okay.

2 MS. BLANCHETTE: Thank you, Your Honor.

3 Your Honor, I typically hand up case law and in the
4 legal arguments at the end of the case, but this case is
5 slightly unique in that we're asking for the specific
6 relief of either a resentencing opportunity or belated
7 motion to reconsider. I have prepared a memorandum of law
8 on that request for specific relief in this case, and I
9 provided a copy to the State. At this time, I'd like to
10 mark the original as Applicant's Number 1, and then I have
11 a copy of the memorandum and the supporting case law for
12 Your Honor.

13 (Applicant's Exhibit Number 1 was marked.)

14 MS. BLANCHETTE: And, Your Honor, I'm prepared to
15 call my first witness to the stand if you'd like me to
16 proceed.

17 THE COURT: You may do so.

18 MS. BLANCHETTE: Your Honor, I would call Gaye
19 Allan-Cooke to the stand.

20 DIRECT EXAMINATION

21 GAYE ALLAN-COOKE, after having first being duly
22 sworn, testified under oath as follows:

23 BY MS. BLANCHETTE:

24 Q. Could you please state your name for the record.

25 A. Gaye Allan-Cooke.

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Q. And, Ms. Cooke, how are you currently employed? What
2 type of license or title do you carry in the state?

3 A. Currently I'm at a private practice in Florence
4 entitled Therapy Works, Incorporated, where I practice as
5 a sole practitioner. I have an LPC, which is a licensed
6 practicing counselor for the State of South Carolina, and
7 am currently employed as a clinical child and family
8 psychotherapist specializing in trauma and abuse.

9 Q. And if I could take you back, could you just explain
10 some of your education that you received before you began
11 practicing?

12 A. Sure. I have a bachelor's degree from Francis Marion
13 University in early childhood education. I have a
14 master's in clinical counseling from Southeastern Baptist
15 College. I have postgraduate studies from Gardner-Webb
16 University in the field of trauma and abuse. I'm
17 currently pursuing my Ph.D. I have about a year left to
18 finish that. And prior to that, I was practicing in the
19 state of North Carolina, which I was also licensed.
20 Currently I act as a supervisor for the State of South
21 Carolina in the accepted model for trauma and abuse, which
22 is entitled trauma focus, cognitive behavioral therapy.
23 I'm also listed on the University of South Carolina's
24 school of law's expert witness list in the field of trauma
25 and abuse.

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Q. Okay. And a little bit more about your work
2 experience. Have you had any clinical experience?

3 A. I have. My career started in the mental health
4 system in Charlotte, North Carolina. From there I went on
5 to a private practice in Charlotte, North Carolina, and
6 then left there and relocated back home to Florence, South
7 Carolina, where I practiced in a child abuse center for
8 three years prior to starting my own practice in 2007,
9 which I'm currently continuing to be in in Florence.

10 Q. Have you had the opportunity to testify in the State
11 courts in South Carolina?

12 A. I have.

13 Q. Approximately how many times?

14 A. Are you including all the types of court?

15 Q. In family and in circuit court.

16 A. In family and circuit, I would say in my 13-year
17 career, probably close to a thousand times.

18 Q. And approximately how many times have you testified
19 in circuit court?

20 A. In circuit court, maybe a hundred, 150. Just --
21 that's just an estimate.

22 Q. Okay. In what capacity do you usually testify? Are
23 you always qualified as an expert, or do you testify in
24 any other capacity?

25 A. I've always been qualified as an expert.

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Q. So of all those times, you have been qualified as an
2 expert by the court --

3 A. Yes.

4 Q. -- is that correct?

5 A. Yes.

6 Q. Okay. And most recently, since January of 2013 of
7 this year, have you been qualified twice to testify in
8 postconviction relief matters?

9 A. I have.

10 MS. BLANCHETTE: Your Honor, at this time, I would
11 offer Ms. Gaye Allan-Cooke as an expert specializing in
12 trauma and abuse, and her actual title would be a clinical
13 child and family therapist.

14 THE COURT: Any voir dire? Any objection?

15 MR. JOHNSON: None, Your Honor.

16 THE COURT: All right. So qualified.

17 MS. BLANCHETTE: Thank you, Your Honor.

18 Q. Now, you had the opportunity to assist myself and
19 Mr. Sweatt in the preparation of his PCR case for today;
20 is that correct?

21 A. I have.

22 Q. And what did you do when you came onboard with this
23 case? What was the first thing that you did?

24 A. I reviewed the documents that you had provided for
25 me, which I recall consisting of a transcript and an

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 incident report stating what had occurred. And then after
2 that, I went into the prison on two different occasions
3 and visited with Mr. Sweatt, and I've had numerous
4 conversations with you as his attorney.

5 Q. Okay. Did you also have the opportunity to review
6 his medical records?

7 A. I did.

8 Q. Okay. Now, if you could just explain what your role
9 typically is in a case. What role do you play in these
10 cases that you come and testify in court? Do you always
11 play the same role, or does your role vary?

12 A. It really just depends. If I'm the treating
13 clinician, of course my role would be centered around the
14 treatment of that individual. If I'm acting in a
15 consultation role, that role may be as somebody who's
16 reviewed documents, who's looked at any forensic
17 interviews, anything like that, then make opinion on that.
18 There are cases where I'm involved in where I actually go
19 and meet the person who has allegedly done the crime. I
20 may go and meet the victims, may interview those. It
21 really just varies. I'm called upon by the State, called
22 upon by prosecution, by defense attorneys, civil, family,
23 even federal in criminal court.

24 Q. And based upon your review of the case documents and
25 your meetings with Mr. Sweatt, were you able to make any

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 findings that you were able to provide in this case?

2 A. I was.

3 Q. And could you please share those findings with us?

4 A. In the two meetings that I had with Mr. Sweatt, the
5 first thing that I noticed right off the cuff is that he,
6 in my opinion, suffers from anxiety. Which would, also in
7 my opinion, kind of I guess cause him issues when he's
8 dealing in social situations. What I found with him when
9 I was trying to talk with him, question him, he gets very
10 nervous. He has great difficulty waiting his turn to
11 respond to something and seems a little overzealous, I
12 guess, for lack of a better word. As he told me the
13 events that unfolded around the death of his child, his
14 memories, in my opinion, were a bit sketchy. He didn't
15 have a lot of memory about details of the events.

16 I would tell you that typically someone who goes
17 through what he has gone through, if I were their
18 diagnosing clinician, I would diagnose them as
19 post-traumatic stress disorder, which we also call PTSD.
20 That term was coined back when the first wars began and
21 people came back and we didn't know why they were
22 different than they were before. And so post-traumatic
23 stress disorder encompasses mental things, emotional
24 things, social things. And typically when someone goes
25 through a traumatic experience, they can suffer from that

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 diagnosis.

2 Q. Now, in your capacity as an expert in these cases, do
3 you typically have to try to make a finding as to whether
4 or not someone may have maliciously abused or injured
5 their child?

6 A. Well, of course I'm not a human polygraph machine, so
7 I can't decide if someone is telling the truth or telling
8 a lie, obviously. But, you know, in dealing -- in the 13
9 years of practice that I've had and in dealing in various
10 capacities, I can tell you that when I meet with people,
11 there are times when people have met with me and I have
12 made the clinical decision that they were malicious in
13 what they did to typically a child. I would not tell you
14 that that was my finding in this case in my two encounters
15 with Mr. Sweatt.

16 Q. And what was your finding? If you said that was not
17 your finding, what was your finding?

18 A. As he explained the events around the death of his
19 child, he was extremely saddened. He was extremely
20 remorseful. He was extremely emotional. You know, he
21 shared the events as best as he could recall, shared the
22 way that he responded to those events. And it just did
23 not appear to me that there was any malicious intent --

24 MR. JOHNSON: Objection, Your Honor. First of all,
25 that's irrelevant. Mr. Sweatt pled to involuntary

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 manslaughter and great bodily injury upon a child.

2 Neither one of those have a malice element. Furthermore,
3 that would be bolstering Mr. Sweatt's potential testimony.
4 So we would ask that you strike that from the record.

5 THE COURT: All right. I'll -- is that relevant?

6 MS. BLANCHETTE: Your Honor, I was -- where I'm going
7 with this is that she could have provided this information
8 to defense counsel in his preparation. So I would submit
9 that it is relevant.

10 THE COURT: That he had no malice?

11 MS. BLANCHETTE: What her findings were, I believe
12 those could have been submitted to defense counsel in his
13 preparation.

14 THE COURT: I'll overrule your objection at this
15 stage and let her testify.

16 You may proceed.

17 Q. And this finding that you just explained, is that
18 information that you would typically provide either to the
19 prosecutor or to the attorney that you're working with in
20 a case?

21 A. Yes.

22 Q. And in this case, if Mr. Greeley had called upon you
23 to evaluate Mr. Sweatt and review the case documents,
24 would you have been willing to do that?

25 A. Yes.

GAYE ALLAN-COOKE - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Q. And based upon your review of the case documents and
2 your meetings with Mr. Sweatt, would you have been willing
3 to testify in mitigation on his behalf during his plea
4 hearing?

5 A. Yes.

6 Q. And provide information to the court based upon your
7 review of those records and your meetings with him?

8 A. Yes.

9 Q. Okay. Also, if he would have chosen to go to a
10 trial, would you have been willing to testify at that
11 trial?

12 A. Yes.

13 MS. BLANCHETTE: Your Honor, if I could just beg the
14 Court's indulgence one moment.

15 THE COURT: Yes, ma'am.

16 MS. BLANCHETTE: Your Honor, I have no further
17 questions of this witness.

18 MR. JOHNSON: No cross-examination, Your Honor.

19 THE COURT: Thank you. Ms. Cooke, you may step down.

20 THE WITNESS: Thank you.

21 THE COURT: Any objection to this witness being
22 excused if she likes?

23 MS. BLANCHETTE: None, Your Honor.

24 THE COURT: Without objection. You may be excused.

25 MS. BLANCHETTE: Your Honor, I would call Danielle

DANIELLE TUCKER - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Tucker to the stand.

2 DANIELLE TUCKER, after having first being duly sworn,
3 testified under oath as follows:

4 DIRECT EXAMINATION

5 BY MS. BLANCHETTE:

6 Q. Could you please state your name for the record. And
7 just please take a moment if you need one. We're going to
8 get you some Kleenexes.

9 A. My name is Danielle Nicole Tucker.

10 Q. Danielle, I appreciate you being here today. Could
11 you explain how it is that you're involved in this case?

12 A. Curtis's fiance and the mother of our two children,
13 Samantha and C.

14 Q. Now, if I could take you back to 2010, when this
15 incident occurred, and then 2011, when the plea took
16 place. Do you remember speaking at Curtis's plea?

17 A. Yes.

18 Q. Okay. And obviously that's recorded in the
19 transcript, what you said; but when you made your comments
20 at the plea, on what basis did you make those comments?

21 A. Based on everything that I was going through within
22 that last year and a half, because within 72 hours, my
23 whole family was ripped apart from me. My daughter was in
24 the hospital. My son was taken from me by DSS that night
25 when she was at Levine Children's Hospital. The next day

DANIELLE TUCKER - DIRECT EXAMINATION BY MS. BLANCHETTE

1 she was pronounced, and then the next day after we made
2 the funeral arrangements, my fiance was arrested, accused
3 of that. And DSS told me that I was going to get my son
4 back within 30, 45 days of doing their investigation.
5 That did not happen. And to my knowledge, they didn't do
6 an investigation because Curtis's family was not
7 questioned, the babysitters were not questioned, my family
8 was not questioned, and they only asked me a question that
9 I recall is if Curtis got on bond, if he would come home.
10 And of course I would say no because I wanted to get my
11 son back, even though I wanted him home. And I didn't get
12 my son back for 126 days, and they told me that they would
13 be in my life until Curtis admitted that he did something
14 or he was sentenced. And so I had to do what I had to do
15 to take care of my son and keep my son.

16 Q. Okay.

17 A. So I felt like people were giving me an ultimatum
18 saying that Curtis and C. were drowning, you can only
19 choose one.

20 Q. Danielle, as part of that investigation, did you
21 obtain a letter from your daughter's doctor, her
22 pediatrician?

23 A. Uh-huh.

24 MS. BLANCHETTE: Your Honor, may I approach the
25 witness?

DANIELLE TUCKER - DIRECT EXAMINATION BY MS. BLANCHETTE

1 THE COURT: You may.

2 Q. Could you identify what that appears to be for the
3 record, please?

4 A. Dr. Bui, who was the children's pediatrician, stated
5 in a letter that she had checked Minor several times
6 from the time that she was born up until her last date,
7 which was December the 21st of 2009, of all her well
8 checkups and her weight and things like that because it
9 took her a while to get back up to her birth weight, and
10 said that she did not see anything of any concern; that
11 she would be at any risk for anything; and that me and
12 Curtis were both caring parents and that we wouldn't have
13 done anything like that.

14 MS. BLANCHETTE: Your Honor, at this time, I move
15 this letter in as Applicant's Number 2.

16 MR. JOHNSON: No objection.

17 THE COURT: Without objection, Exhibit 2 is admitted.

18 MS. BLANCHETTE: Your Honor, would you like a copy?

19 THE COURT: Please.

20 (Applicant's Exhibit Number 2 was marked and
21 admitted.)

22 Q. Now, Danielle, you mentioned that your daughter had
23 gotten back up to her birth weight. Did you have a
24 traumatic delivery in this case or an emergency delivery
25 with your daughter?

DANIELLE TUCKER - DIRECT EXAMINATION BY MS. BLANCHETTE

1 A. It was. It was kind of more of a high-risk pregnancy
2 that it was with C. I developed placenta previa, and
3 I had two bleeding episodes. And on the second one, I had
4 to be put on bedrest about mid-August, and she wasn't
5 supposed to have been born until the first week of
6 October, but they said if I had another bleeding episode,
7 they would have to take her through a C-section, which
8 happened on September the 13th of 2009. And Curtis had to
9 rush me to the hospital from his parents' house.

10 Q. Now, this letter that we're referencing where the
11 doctor talks about all the well visits and that there were
12 no problematic signs, if Curtis or his attorney would have
13 asked for you to give them that letter prior to his plea,
14 would you have been willing to do that?

15 A. Yes.

16 Q. Did Curtis's attorney, Leland Greeley, ever get in
17 touch with you to talk with you about the case?

18 A. Never.

19 Q. If he would have gotten in touch with you, would you
20 have been willing to speak with him?

21 A. Yes.

22 Q. Now, at the plea, there was a lot of discussion about
23 and the judge ultimately decided that he wanted to give --
24 fashion the sentence in a way that Curtis would remain out
25 of your son's life until he was essentially an adult or

DANIELLE TUCKER - DIRECT EXAMINATION BY MS. BLANCHETTE

1 could make a choice for himself. And if I'm misphrasing,
2 I'm sure the transcript will speak for itself. Was that
3 your intent? Did you want to make sure that Curtis
4 remained out of your son's life?

5 A. No. If I remember correctly, and I can't remember
6 things word from word because I also have -- I was
7 diagnosed with PTSD, but I do remember getting a call from
8 the prosecutor's office telling me that Curtis has agreed
9 to take a plea, what type of sentence would I hope to get
10 I guess is the -- for lack of better terms. I told him no
11 matter of sentence is going to bring my daughter back, and
12 I told them five to ten years. And when I told my parents
13 that, they said you shouldn't have done that; you should
14 go for the maximum. And my mother is the one that spoke
15 at the plea hearing asking for the maximum.

16 Q. And are you here today in support of Curtis?

17 A. Yes.

18 Q. Why are you here today in support of Curtis?

19 A. I'm here today because I'm at the point where I can
20 help him now, because before I couldn't because I had to
21 take care of my son. And it just made me feel like they
22 were making me choose between him and my son.

23 Q. And did you ever have the opportunity to meet with
24 Curtis before the plea?

25 A. They wouldn't allow me to, even though I told them --

DANIELLE TUCKER - DIRECT EXAMINATION BY MS. BLANCHETTE

1 the victim's advocate, the prosecution, and I had to get
2 an attorney because we didn't know if I was going to be
3 brought up with charges. Then we found out I wasn't going
4 to be brought up with charges, so I had to have an
5 attorney for the DSS, and they told me that I was not
6 allowed to speak or talk to him. And we never went more
7 than 24 hours without seeing or speaking to each other,
8 and we had to go a year and a half.

9 Q. If Curtis were granted a new trial, would you be
10 willing to be a witness on his behalf?

11 A. Yes.

12 Q. If Curtis were granted an opportunity to have his
13 sentence reconsidered by a sentencing judge, would you be
14 willing to speak on his behalf?

15 A. Yes.

16 MS. BLANCHETTE: If I could beg the Court's
17 indulgence one moment.

18 Your Honor, I have no further questions of this
19 witness.

20 THE COURT: Any from the State?

21 MR. JOHNSON: Yes, sir, just briefly.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q. Ms. Tucker, I know it's tough for you to be here, but
25 at the guilty plea -- and, Your Honor, I'm looking at

DANIELLE TUCKER - CROSS-EXAMINATION BY MR. JOHNSON

1 page 43 -- you were -- you gave testimony on behalf of the
2 State because I know you were upset with Mr. Sweatt; is
3 that correct?

4 A. Yes, because anybody at that age -- I was 25, almost
5 26 when this happened, and this is something that doesn't
6 happen in real life, so you have all kinds of emotions.

7 Q. Okay. Have you had a chance to look at the
8 transcripts?

9 A. I have never seen anything. The only thing that I
10 have been given was my daughter's death certificate. The
11 prosecution never showed me anything. The defense never
12 showed me anything. I was even told I was privileged
13 since I'm her mother to the autopsy of my daughter, and
14 not one person gave me that.

15 MR. JOHNSON: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 MR. JOHNSON: Let the record reflect I'm showing
18 Ms. Tucker a copy of Mr. Sweatt's guilty plea from May 20,
19 2011. And this is actually on page 43, Your Honor.

20 Q. If you'll read that highlighted portion for me.

21 A. It says, "I do not believe that Curtis should be a
22 part of C. s life until C. is old enough to make
23 the decision and able to understand what really happened."

24 Q. Thank you.

25 Ms. Tucker, I know this is tough to take you back to

DANIELLE TUCKER - CROSS-EXAMINATION BY MR. JOHNSON

1 the morning of the incident, but you left for work 6:45,
2 7:00-ish; isn't that correct?

3 A. Yeah, that's usually about the time I left.

4 Q. And you weren't there at the time that Minor was
5 hurt?

6 A. No. I was at work.

7 Q. So you didn't do this incident?

8 A. (The witness shakes her head.)

9 MR. JOHNSON: That's all the questions I have, Your
10 Honor?

11 THE COURT: Any redirect?

12 MS. BLANCHETTE: Your Honor, I would just ask that
13 there be a verbal response to that last question. I
14 believe she just shook her head.

15 THE COURT: I think your answer was no; is that
16 correct?

17 THE WITNESS: To the --

18 THE COURT: That you had nothing to do --

19 MR. JOHNSON: That you did not kill Minor

20 THE WITNESS: Yeah, I didn't. But one thing that I
21 do want to say, if I'm allowed to, is that until you're in
22 my shoes and been through what I've been through, you
23 can't know what you will and what you won't do. But I --
24 that I read, there's a reason why an actual -- there's a
25 reason why it states in the Bible that men and women are

DANIELLE TUCKER - REDIRECT EXAMINATION BY MS. BLANCHETTE

1 the ones that have children. Because you have to have
2 their father and their mother both in their life. And my
3 son was granted by the State back in December to go see
4 his daddy until DSS got called -- back involved in January
5 and took that away from him. And he was angry because he
6 couldn't understand why his daddy wasn't there and why his
7 sister wasn't there. And I've done my best to explain
8 that to him. And once he was able to see his daddy, he
9 was not angry anymore.

10 And so his daddy is one of the most important people
11 in his life besides me. And no matter what anybody's
12 done, I'm going to fail my son. Parents do that. Because
13 you have to learn when you're growing. And you're
14 teaching your children. But nobody can change who your
15 parents are, and you can't change that love. And so
16 Curtis needs to be a part of his son's life because I
17 can't fill his shoes. There's things that mothers can't
18 do that fathers can.

19 MS. BLANCHETTE: Your Honor, if I may just briefly on
20 redirect follow up to that.

21 THE COURT: Yes, ma'am.

22 REDIRECT EXAMINATION

23 BY MS. BLANCHETTE:

24 Q. Do you have any concerns with Curtis now having
25 access to your child?

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 MR. JOHNSON: Objection as to relevance. This is a
2 PCR matter, Your Honor. Here on ineffective assistance of
3 counsel, not Mr. Sweatt's parenting skills.

4 THE COURT: Is that relevant?

5 MS. BLANCHETTE: Your Honor, I was just trying to
6 follow up on that line he had her read in the transcript.

7 THE COURT: I'm assuming he's seeing his son now?

8 THE WITNESS: No. Somebody called York County not
9 too long after my son's birthday and said that I was
10 violating a court order by allowing him to go see his
11 daddy in prison. They took it away, even though there was
12 nothing that I was told or seen stating that.

13 THE COURT: So he did see him for a while?

14 THE WITNESS: From September to February.

15 MS. BLANCHETTE: Your Honor, I'll withdraw my
16 question. I think that addresses it.

17 THE COURT: Thank you. You may step down.

18 MS. BLANCHETTE: Your Honor, I would call Lynn Sweatt
19 to the stand.

20 LYNN SWEAT, after having first being duly sworn,
21 testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MS. BLANCHETTE:

24 Q. Could you please state your name for the record.

25 A. Yeah. My name is Lynn Sweatt.

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Q. And, Ms. Sweatt, how is it that you know Curtis
2 Sweatt?

3 A. I'm Curtis's mother.

4 Q. Okay. And you understand that even though you're a
5 mother and you have mother's love, you're here today to
6 tell the truth and only the truth to this court?

7 A. Yes, ma'am.

8 Q. Now, you provided a letter that was read at the plea;
9 is that correct?

10 A. Yes, ma'am.

11 Q. And in that letter, you touched a little bit on the
12 fact that you have a medical background. Could you
13 explain what that is, please?

14 A. Yes, ma'am. I'm a registered nurse. I've been
15 registered nurse for 28 years. During that time, 16 of
16 those years I worked as a labor and delivery nurse. And
17 for 13 years I worked with the frail and the elderly.

18 Q. Okay. During that time did you have any
19 experience -- and I think you touched in this in your
20 letter at the plea -- working with families who had
21 suffered the loss of a young child?

22 A. Yes, I worked seven years as a grief counselor for a
23 support group called Empty Arms, and it was a support
24 group for young couples who had suffered the loss of a
25 child at birth or sometime during infancy.

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Q. Now, if I could take you back to the beginning of
2 2010, when this incident that we're here about today took
3 place. How did you first get notice that there was
4 something wrong with your granddaughter?

5 A. When I arrived at the hospital.

6 Q. You got -- did you get a call to go to the hospital?

7 A. Yes, I did. I was a couple of hours away in north
8 Augusta in a facility, and my daughter was in Clemson, and
9 she called me hysterically. I couldn't quite understand
10 what she was saying, but she said that something had
11 happened to Minor and that Curtis had called her first
12 because her name starts with a "C" and that was the first
13 one in his phone. And he had called her and said that
14 Minor had had a seizure. And they were on the way to
15 the hospital. Please call mom and dad.

16 Q. When you arrived at the hospital, what was your son's
17 demeanor?

18 A. He was very shaken. In shock, I would say. Just
19 worried about his daughter and...

20 Q. I'm not going to take you through the specifics of
21 those 48 hours, but at some point your son was arrested.
22 And did you retain an attorney for him?

23 A. Yes, we did.

24 Q. If you could just walk me through that process of
25 what you all did.

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 A. Actually, the day that we were called to the
2 hospital, it was very uncomfortable. Some detectives from
3 the York County Sheriff's Department came to Charlotte to
4 the hospital and asked us some questions as a family, my
5 husband and myself and Curtis. And at that point, we felt
6 that we needed to call an attorney. So we called Michael
7 Smith, who is also a family friend and a church friend,
8 and asked him to please come to the hospital. That we
9 were -- we felt like we might need some legal advice.

10 Q. And did you work with Mr. Smith for a little while on
11 this case?

12 A. We did.

13 Q. Okay. And did that representation come to an end?

14 A. Yes, it did. We did not realize when we hired
15 Michael that we were hiring the whole firm and it wasn't
16 just going to be Michael. And it was an enormous amount
17 of money. And it didn't seem like things were -- we
18 weren't getting answers. We also hired a private
19 detective, and that's Pete Skidmore. And after some time,
20 we just couldn't meet the financial obligation. So we
21 were informed that we needed to talk to a public defender
22 to take his case. We didn't really feel like that was the
23 best answer, so we asked Leland Greeley -- he was a
24 schoolmate of mine -- to consider the case. And he was
25 willing to take the case. And so we at that point hired

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 Mr. Greeley.

2 Q. And did you have meetings with Mr. Greeley where you
3 discussed your son's case?

4 A. Yes, ma'am, we did.

5 Q. Okay.

6 A. More occasions that I can count.

7 Q. So you had active communication with him about your
8 son's case?

9 A. Sure did. Yes, ma'am.

10 Q. Okay. During those meetings, were you ever talking
11 about preparing for a trial or was Mr. Greeley always kind
12 of pushing you more toward a plea track or an option of a
13 plea in this case?

14 A. No. We were going for a trial.

15 Q. When did the discussions of a plea come up? Do you
16 remember?

17 A. Approximately seven to ten days before we actually
18 went to a plea hearing.

19 Q. Now, seven to ten days before the plea was entered,
20 what was your understanding as to the nature of this plea
21 that Mr. Greeley was working on with your son?

22 MR. JOHNSON: Your Honor, I have to object to
23 relevance. It's not -- Mr. Greeley represented
24 Mr. Sweatt, not his mother, and her understanding of the
25 plea negotiations is completely irrelevant to this case.

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 THE COURT: I'll overrule your objection. I'll allow
2 her to testify.

3 Q. You can go ahead with your answer.

4 A. It was my understanding when we spoke with Leland, my
5 husband and my daughter and myself, that the prosecutor
6 and the solicitor's office had placed a deal on the table.
7 And that was -- that deal was to take a plea. We were
8 told and it was my understanding that he would take an
9 involuntary manslaughter plea and that that would give him
10 a sentence of up to five years but that also, you know,
11 there had been mentioned a second charge of injury to a
12 child. But he did not feel that that charge would be
13 pursued; that that is pretty much the deal that the
14 Solicitor's Office had placed on the table was that
15 instead of going to trial, it was a better option to take
16 the plea deal and serve less time.

17 Q. And as a result of your meetings with Mr. Greeley and
18 your son's meetings with Mr. Greeley and your
19 communication as a family, your son chose to take that
20 guilty plea; is that correct?

21 A. Yes, ma'am.

22 Q. Now, I've already mentioned that Mr. Greeley read a
23 letter that you prepared that was read at the plea
24 hearing. Did he sit down and talk with y'all about what
25 you needed to include in those comments and what would be

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 helpful for the judge to know when he was sentencing your
2 son?

3 A. No.

4 Q. And we talked about the comments that you made at the
5 plea, and I've gone over some things today that you would
6 have additionally said, but is there anything else that
7 you believe that if you had been properly prepared, you
8 would have known that you needed to tell the court that
9 day? And I can say that much simpler: Is there anything
10 else you would have added to your comments you made to the
11 court that day?

12 A. I think during -- I've been waiting a long time to
13 make some additional comments, yes. I think it was -- it
14 was a very vicious proceeding when it comes to the
15 prosecutor that handled this case. They did not consider
16 that we all lost Minor , we all loved Minor . And we
17 knew that Curtis would not have allowed anything to happen
18 to Minor . He was a good father. And he and Danielle
19 and C. and Minor were a happy little family. And I
20 think that this tragic medical event was something
21 accidental or the result of something accidental and
22 something that could have happened days before in the care
23 of the babysitter, with two three-year-old twins that were
24 quite rambunctious, his two-year-old -- her two-year-old
25 little brother -- or big brother. It could have

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 happened -- something could have happened when she was in
2 our care seven days before this incident. We were told
3 that Minor had a slow bleed. As a nurse, I understand
4 what that means.

5 MR. JOHNSON: Your Honor, she's trying to get into
6 medical testimony. I would object she's not been
7 qualified as a medical expert. This is nonresponsive.

8 THE COURT: I'll overrule your objection.

9 Q. Is there anything else you wanted to add?

10 A. I think that you can bring in a lot of -- you could
11 bring in a dozen medical experts, and they would all have
12 differing opinions as to what her diagnosis was. But we
13 saw Minor that day. She was a beautiful little baby
14 that did not have a mark or a scar or a bruise. There was
15 no evidence on the outside that she had been abused, and
16 that's what our son has been accused of.

17 Q. Due to your medical background and your experience,
18 has your son received any education about shaken baby
19 syndrome?

20 A. Absolutely.

21 Q. And can you explain how that would have happen?

22 A. In the late '90s, there was a campaign across the
23 country to educate new mothers and young parents about
24 shaken baby syndrome. And it's now a law that each time
25 an infant is born, and I do this now on a daily basis when

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 I'm taking care of new mothers, we make sure that parents
2 are educated about baby shaken (sic) syndrome and the
3 result that can happen and also to give them alternatives
4 to cope if they are frustrated or if a baby is crying.
5 And Curtis and Danielle went to the childbirth classes
6 with C. , and so there was no doubt in my mind that
7 this was not a case of baby shaken syndrome.

8 MR. JOHNSON: Objection, Your Honor, that's --

9 THE COURT: I sustain the objection.

10 MR. JOHNSON: -- medical conclusion.

11 Thank you.

12 A. That was not abuse.

13 MR. JOHNSON: Objection. Strike that --

14 A. It was not abuse.

15 MR. JOHNSON: -- as well.

16 THE COURT: I'll not consider that answer.

17 Q. Let me move on to another question, okay. After the
18 plea and after your son received his sentence, what was
19 your reaction?

20 A. Complete shock. Horror. Just a nightmare.

21 Q. And did you have an opportunity immediately after the
22 plea to express that to Mr. Greeley?

23 A. It took a little while, but even Mr. Greeley was
24 crying. We all were crying. It's not what we expected.
25 It's not what we were promised. It's not what we were

LYNN SWEAT - DIRECT EXAMINATION BY MS. BLANCHETTE

1 told.

2 Q. Did you ask him if there was anything he could do?

3 A. I think -- I don't really remember if I asked him
4 other than we just -- we didn't know where to go from
5 there.

6 Q. If he would have filed a motion for the judge to
7 reconsider your son's sentence, would you have been
8 willing to speak at that motion and provide additional
9 information as you've gone into today for the judge?

10 A. Yes, ma'am. And we did talk to Mr. Greeley. Curtis
11 was sentenced on a Friday. Mr. Greeley came to see Curtis
12 on a Sunday, two days afterwards, and he called us to tell
13 us that he had visited our son and that there really
14 wasn't anything else that we could do.

15 Q. Okay. If your son would have chosen to go to trial,
16 would you have been willing to testify in his behalf?

17 A. Absolutely.

18 MS. BLANCHETTE: Your Honor, if I could beg the
19 Court's indulgence just one moment.

20 THE COURT: Yes, ma'am.

21 MS. BLANCHETTE: Your Honor, I have no further
22 questions of this witness.

23 MR. JOHNSON: Just briefly, Your Honor.

24 CROSS-EXAMINATION

25

LYNN SWEATT - CROSS-EXAMINATION BY MR. JOHNSON

1 BY MR. JOHNSON:

2 Q. Ms. Sweatt, is it or is it not correct that
3 Mr. Greeley and your family hired another pathologist
4 after Minor s autopsy to do another autopsy on
5 Minor ? Did y'all hire another medical doctor to do
6 another autopsy on Minor ?

7 A. I would ask that you get that information from
8 Michael Smith, who was our attorney at that time.

9 Q. Is that yes or no?

10 MR. JOHNSON: That's nonresponsive, Your Honor.

11 A. Yes, we did.

12 Q. And do you know the findings of that autopsy?

13 A. No. We were not told.

14 MR. JOHNSON: No further questions, Your Honor.

15 THE COURT: Thank you, ma'am. You may step down.

16 THE WITNESS: Thank you, sir.

17 MS. BLANCHETTE: Your Honor, I would call Randy
18 Sweatt to the stand.

19 CURTIS RANDALL SWEATT, SR., after having first being
20 duly sworn, testified under oath as follows:

21 DIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q. Could you please state your name for the record.

24 A. Curtis Randall Sweatt, Sr.

25 Q. And, Mr. Sweatt, are you related to Curtis Sweatt,

CURTIS RANDALL SWEATT, SR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 Jr.?

2 A. I'm his father.

3 Q. And being his father, you're here today to tell the
4 truth and only the truth; is that correct?

5 A. Yes, ma'am.

6 Q. Now, if I could take you back to January 2010. Do
7 you remember getting a call that you needed to head to the
8 emergency room?

9 A. Yes, I do.

10 Q. And what happened when you got that call?

11 A. I went straight to Piedmont.

12 Q. Okay. And did you encounter your son?

13 A. Yes, I did. He's the first person I saw when I
14 walked down the hall.

15 Q. Okay. And how did he appear to you?

16 A. He was very visually upset.

17 Q. Okay. And I'm not going to take you through the
18 specifics of those 48-plus hours, but once your son was
19 arrested, you all -- I'm sorry -- while at the hospital,
20 y'all contacted Michael Smith; is that correct?

21 A. Yes.

22 Q. And at some point, his representation ended?

23 A. Yes.

24 Q. Okay. And then you all hired Leland Greeley; is that
25 correct?

CURTIS RANDALL SWEATT, SR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 A. That's right.

2 Q. Did you have the opportunity to meet with Mr. Greeley
3 on a number of occasions?

4 A. Yes, ma'am.

5 Q. Did you thoroughly talk about your son's case?

6 A. Yes, we did.

7 Q. Okay. Were you all preparing for a trial, or was it
8 always the plan to take a plea?

9 A. Originally we were planning on going to a trial.

10 Q. When do you first remember hearing about a plea?

11 A. A week or so, you know -- it's after we -- on many
12 occasions we had visited him. Then he decided -- you
13 know, they put it on the table, and he mentioned it, and
14 he told me that the right judge was going to be in town
15 that he knew and it would be favorable.

16 Q. Okay.

17 A. And he mentioned the manslaughter, and he mentioned
18 the other charge. They leaning more toward the
19 manslaughter and told me my son would be out of jail
20 before my grandson was playing little league baseball,
21 which will be three more years.

22 Q. So you took that to mean three more years?

23 A. I know when you start playing little league baseball,
24 you're eight. And C. 's five and a half.

25 Q. And how old was C. at that time?

CURTIS RANDALL SWEATT, SR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 A. Three.

2 Q. So that would have been about five to six years?

3 A. Yes, ma'am. Two and a half really.

4 Q. Now, you prepared a written statement that
5 Mr. Greeley read at the plea hearing; is that correct?

6 A. Repeat that, please.

7 Q. You wrote up a statement that --

8 A. Yes.

9 Q. -- Mr. Greeley read for you?

10 A. Yes.

11 Q. Okay. Did he go over that with you and tell you what
12 information needed to be included?

13 A. No, no.

14 Q. Okay. Now, during the course of the plea, the judge
15 was handling two matters at the same time. He also had a
16 jury out. Do you remember some interruptions?

17 A. We started our case, and when we didn't know there
18 was something, and about halfway through what we were
19 doing, they stopped and they bring in a -- the jury and
20 then bring in another lady and totally interrupted, from
21 which I don't know if that's what they do. But it sort of
22 disrupted everything that was going on.

23 Q. Okay. Now, once your son was sentenced, what was
24 your reaction?

25 A. What any father's reaction would be. It's a long

CURTIS RANDALL SWEATT, SR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 time. He grew up with me for years, and I've never seen
2 him harm anything, dog, person. He'd always be the person
3 taking up for someone or standing up for someone. I've
4 seen him stand up for many people that couldn't stand up
5 for themselves. I know what kind of person he is.

6 Q. After your son was sentenced, did you all have the
7 opportunity to speak with Mr. Greeley that day?

8 A. We spoke with him outside, but -- we had heard words,
9 something about some appeal or something, but he said
10 there's nothing we could do.

11 Q. Okay. If Mr. Greeley had filed a motion for the
12 judge to reconsider your son's sentence, would you have
13 liked the opportunity to --

14 A. Lord, yes.

15 Q. -- further address the court?

16 A. Yes.

17 Q. Is there anything specifically that you haven't said
18 today that you would have said to the court?

19 A. You know, you can -- when you raise children and you
20 work with them every day, you know what they're all about
21 and what they're capable of doing and what they're capable
22 of not doing. And I would have definitely let him know
23 that there's no way in the world I ever thought he could
24 be capable of doing anything like that because he's
25 just -- he was just too gentle with her. Never gets

CURTIS RANDALL SWEATT, SR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 frustrated with her. I saw him -- he handled her just
2 like a loaf of bread. I saw it many times. I just --
3 I'll never believe it. Hell can freeze over and I won't
4 believe it.

5 Q. And you're not just here complaining that your son
6 got too much time. You're here today to support the
7 allegation that Mr. Greeley didn't properly represent your
8 son; is that correct?

9 A. Exactly.

10 MS. BLANCHETTE: Your Honor, if I could beg the
11 Court's indulgence one moment.

12 Q. If the case would have proceeded to trial, would you
13 have been willing to be a witness on your son's behalf?

14 A. Yes, ma'am.

15 MS. BLANCHETTE: I have no further questions, Your
16 Honor.

17 MR. JOHNSON: Just one question, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q. Mr. Sweatt, you had a chance to address the court at
21 the guilty plea, didn't you?

22 A. Yes.

23 Q. And you chose not to; isn't that correct?

24 A. Yes, because what I had been told by Greeley.

25 MR. JOHNSON: No further questions.

CURTIS RANDALL SWEATT, JR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 THE WITNESS: I'm a very emotional person. I put my
2 feelings and my thoughts down on what was read. But I
3 feel like today I need to really stand up for my son.

4 MS. BLANCHETTE: Thank you, Your Honor. I have no
5 further questions of this witness.

6 THE COURT: Thank you. You may step down,
7 Mr. Sweatt.

8 MS. BLANCHETTE: Your Honor, I would call Curtis
9 Sweatt to the stand.

10 CURTIS RANDALL SWEATT, JR., after having first being
11 duly sworn, testified under oath as follows:

12 DIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q. Could you please state your name for the record.

15 A. Curtis Randall Sweatt, Jr.

16 Q. And, Mr. Sweatt, are you the applicant that filed the
17 PCR which has been docketed at 2012-CP-46-0975?

18 A. Yes, I am.

19 Q. And by way of that application and your detailed
20 amendment, what is your primary allegation that you're
21 submitting to the court today?

22 A. One main primary is that things were not done the way
23 they should have during the plea hearing.

24 Q. And are you alleging that your attorney was
25 ineffective on your behalf?

CURTIS RANDALL SWEATT, JR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 A. Exactly.

2 Q. As a result of that, what is the relief that you're
3 asking this court to give you?

4 A. At the bare minimum, a resentencing hearing for the
5 sentencing judge to be able to see all the facts that have
6 been presented here today and those things that were not
7 stated in the sentencing hearing before.

8 Q. Okay. And the other relief, though, you're willing
9 to accept a new trial; is that correct?

10 A. Exactly.

11 Q. With that word "new trial," there's something I need
12 to explain to you on the record. That means that you'd be
13 put back in the position you were once you were indicted,
14 and you were indicted in homicide by child abuse in this
15 case. We have talked, and you understand that carries
16 more time than you're currently sentenced to. Knowing
17 that, you still want to go forward today?

18 A. I do.

19 Q. Okay. Now, this tragic incident with your daughter
20 took place on January 7, 2010; is that correct?

21 A. Right.

22 Q. And you entered a plea on May 20, 2011?

23 A. That sounds correct.

24 Q. Okay. Now, once you were arrested in this case or
25 even before you were arrested, did you consult with an

CURTIS RANDALL SWEATT, JR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 attorney?

2 A. I did.

3 Q. Okay. And who was the first attorney that you
4 consulted with?

5 A. Michael Smith.

6 Q. And what did Michael Smith do on your behalf?

7 A. He helped make sure things were written correctly in
8 some DSS forms the first day in the hospital. He also
9 authorized autopsy and things that I was not involved in
10 the decision making, to start with, because I was in jail,
11 so I couldn't do those things for myself. He filed for a
12 motion for discovery. We waited a long time for that.
13 Finally got it. We went over some of that. Of course
14 they didn't want to share all that with me for the
15 sensitive nature of some of the things in it. But we went
16 over some defense strategies.

17 Q. Okay. At some point, did his representation end?

18 A. Yes.

19 Q. And then who did you hire to assist you in your case?

20 A. Leland Greeley.

21 Q. Did you have the opportunity to meet with Mr. Greeley
22 and go over your case?

23 A. I did.

24 Q. Were you all preparing for trial, or was your case
25 always focused on a plea agreement?

CURTIS RANDALL SWEATT, JR. - DIRECT EXAMINATION BY
MS. BLANCHETTE

1 A. We were always focusing on trial, but it was kind of
2 sit and wait kind of was the whole overwhelming feeling.
3 Sit and wait. Just be patient because the other cases
4 that were going on here, courts get backed up and you're
5 kind of put on the back burner.

6 Q. Did you have the opportunity to go over the discovery
7 materials with Mr. Greeley?

8 A. No. The only time I heard -- he referenced some
9 things, a few things, and really only one or two defense
10 strategies. Actually, the only documents that he talked
11 to me about was a possible defense regarding the autopsy.

12 Q. And what was that possible defense that you
13 discussed?

14 A. That Minor had milk in her stomach during the
15 autopsy, that she would have had to have been fed prior
16 to -- that morning, and basically that would try to shift
17 the blame to someone else, if someone else had done
18 something.

19 Q. Did you all talk about whether or not there was any
20 bruising on your daughter and whether or not -- as it
21 related to your story of what happened?

22 A. Actually, Michael Smith and I and some of his people
23 at his firm mentioned -- he mentioned that Minor had a
24 bruise on the top back of her head. And I don't know if
25 he -- if I misinterpreted what he said or if he was just

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1 telling me that to try to get information out of me,
2 because I later found out that there was actually no
3 bruising on the outside; the only bruising would have been
4 on the inside of her body.

5 Q. Okay. And kind of in that same vein -- I mean, I'm
6 jumping a little bit ahead, but when Mr. Greeley started
7 talking to you about a plea and the fact that you're going
8 to present to the court that this was an accident, did he
9 give you an explanation as to how this could have been an
10 accident?

11 A. Yes. He basically -- he knew that I felt remorseful
12 for any type of actions that I might have had, and he
13 basically said, you know, these things happen to, you
14 know, the least likely people in business community and
15 this and that, best people, and, you know, alluding that I
16 was a good person and this and that. And he said that a
17 baby's head is like an egg, and it can break easily and --
18 the surface inside the brain and basically insinuating
19 that this could have easily happened.

20 Q. Was that part of your -- that explanation by him, was
21 that part of your decision to take a plea in this case?

22 A. Definitely, in the sense that I would feel that if
23 that would be the case, a judge being explained whatever
24 it is in that argument, that this is totally an accident.
25 There was no intent or in a sense of -- like the

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1 prosecution tried to make it out like it was more than
2 intent. During the hearing, they tried to make it out
3 that -- this was not an accident, even though I was
4 pleading to something that was not intentful, prosecution
5 made it sound like it was.

6 Q. And in this case, the judge had an open range that he
7 could sentence you to. So what was said during that plea
8 hearing was very important; is that correct?

9 A. Exactly.

10 Q. Now we're going to go back a little bit to when
11 you're talking about preparing for trial. Had you hired a
12 private investigator to assist you?

13 A. He was hired from the beginning from ^Morton
14 & Gaddis, Michael Smith's firm.

15 Q. And was that Pete Skidmore?

16 A. It is.

17 Q. Did you inform Mr. Greeley that you had hired
18 Mr. Skidmore?

19 A. I really don't remember. I probably did, but I
20 honestly can't say if I did or not. I don't remember.

21 Q. Do you know if he actively worked with Mr. Skidmore
22 on your case?

23 A. As far as I know, he did not.

24 Q. Okay. Now, Curtis, just for some scheduling reasons,
25 we're going to do things a little bit out of order today.

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1 But did you have a doctor that you were regularly seeing?

2 A. I did.

3 Q. And who was that?

4 A. Dr. Eric Johnson.

5 Q. And we will later call him as a witness, but I want
6 to talk to you a little bit about him right now.

7 Dr. Johnson was your primary care doctor; is that correct?

8 A. Yes.

9 Q. Were you seeing him for issues related to your mental
10 health?

11 A. Yes.

12 MS. BLANCHETTE: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 Q. Mr. Sweatt, I'm going to hand you this document. If
16 you could just flip through it and identify it for the
17 record, please.

18 A. These are assessments that Dr. Johnson would make in
19 his computer logs, what it appears, and the medications I
20 was prescribed before I was arrested when I was under Eric
21 Johnson's care.

22 MS. BLANCHETTE: Your Honor, at this time, I would
23 move these medical records in as Applicant's Number 3.

24 MR. JOHNSON: No objection.

25 THE COURT: Without objection, Exhibit 3 is admitted.

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1 (Applicant's Exhibit Number 3 was marked and
2 admitted.)

3 Q. Mr. Sweatt, if you could just look through these
4 medical records. The first one here is dated on 4/23 of
5 '08, and it shows in the assessments that you were given
6 Lexapro.

7 A. Uh-huh.

8 Q. Could you explain what you told the doctor that day
9 and why you were given that medication?

10 A. Actually, to start with, when I first started taking
11 Lexapro, it was during my first marriage and --

12 Q. And, Mr. Sweatt, I hate to cut you off. I copied
13 these. They go in reverse chronological order, so if you
14 flip to the back, there are some older records there if
15 you'd like to refer to those.

16 A. He first initially gave it to me for anxiety.
17 General anxiety disorder is what they would call it. Just
18 being ready to go. I was so busy when I first started
19 taking Lexapro. I was married. I was involved in church.
20 I was working. I was going to school. I had a busy
21 schedule. And I was basically ready to go at all times.
22 Antsy with a nervous tick, I guess you could call it. And
23 that just helped me to not be so jumpy, I guess you would
24 say.

25 Q. Okay. And as it reports in these records here that

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1 date from 11/2 of '05 through 4/23 of '08, did you
2 struggle with anxiety issues?

3 A. Yes.

4 Q. Is there anything else from this set of records that
5 you'd like to point out to the Court? And I'll give you
6 an opportunity to review those.

7 A. For instance, on the top page, the 24th or the
8 23rd, it says I stated that I had chest pain -- or,
9 actually, it doesn't say that -- I'm sorry. The only
10 other symptoms that go along with the anxiety that I've
11 had and I had for a long time is just, like, anxiety
12 attacks, tightness of the chest during times of stress.
13 And that was to help that.

14 Q. Okay.

15 MS. BLANCHETTE: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 Q. Mr. Sweatt, could you identify what these documents
19 appear to be for the record?

20 A. This is Eric Johnson's records on me as well.

21 Q. Okay. So this is a second set of medical records?

22 A. Uh-huh.

23 MS. BLANCHETTE: Your Honor, at this time, I'd
24 introduce these records as Applicant's Number 4.

25 MR. JOHNSON: Without objection.

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1 (Applicant's Exhibit Number 4 was marked and
2 admitted.)

3 Q. Now, Mr. Sweatt, this set of records will take us
4 through an office visit on January 4, 2009, through
5 November 4, 2009, which was just a couple months before
6 the loss of your daughter. In these records, it reports
7 that you had some major depressive episodes. Can you
8 explain to us what was going on through these series of
9 doctor visits?

10 A. I had told him basically that I was very busy
11 working, taking care of the kids. Depression had gotten
12 worse, dealing with financial obligations and just
13 everyday stress of -- we weren't married, but we were at
14 home like we were married. Just everyday stresses that
15 life brings, trying to make bills with a kid on the way,
16 second child on the way actually. But...

17 The depression -- and I basically -- I think towards
18 the end there, one of the last visits I actually had with
19 him, I told him that I didn't feel like medication was
20 working. It didn't seem to be helping. And I had
21 actually at that point in time -- the last visit I had
22 with him, he had already changed me -- at some point, I
23 lost insurance and I changed to another medication that
24 basically did the same thing. Tegretol, Tegretol and
25 Vistaril were the only two medications I was taking when I

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1 was arrested and prior to that for quite some time because
2 it was more affordable.

3 But the last visit I had with him, he actually
4 lowered the dosage on the Tegretol. And I felt like I
5 needed more of it, to be honest, but -- so I basically was
6 losing faith in the whole medical -- medication, to be
7 honest with you. I didn't feel like it was helping me
8 any.

9 Q. Did you make a choice then regarding your medication?

10 A. I did.

11 Q. And what was that?

12 A. I just -- I basically tried to stop taking it for a
13 little while to see if I felt better.

14 Q. Did it make you feel any better?

15 A. Somewhat.

16 Q. At the time that you were preparing, once you all
17 decided that you were going to do this plea, did
18 Mr. Greeley ever talk with you about getting Dr. Johnson's
19 records and presenting this issue of your mental health
20 history to the plea court?

21 A. No, he did not.

22 Q. Are you alleging today that's something he should
23 have done on your behalf?

24 A. Sure.

25 Q. And why is that, Curtis?

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1 A. Over the last two years, I've learned a lot about law
2 work that I didn't know then. Very ignorant to the things
3 of the law. And for one thing, mitigating and aggravating
4 factors, had no idea what that was at the time. And now I
5 see that there's factors in my case that were mitigating
6 factors that were never used that could have definitely
7 decreased the amount of time that I was sentenced to.

8 Q. Now, you heard Gaye Allan-Cooke earlier testify that
9 she met with you, and it was her clinical assessment that
10 you suffered from post-traumatic stress disorder. Was
11 that ever discussed with Mr. Greeley?

12 A. No. And I can definitely remember being in the
13 courtroom and Danielle mentioning PTSD, and I'm like,
14 sounds like what I'm going through too.

15 Q. So that was never explained to the plea court?

16 A. No, it was not.

17 Q. Now, you mentioned Danielle. Did Mr. Greeley ever
18 make any attempts to speak with her on your behalf prior
19 to your plea?

20 A. Not that I know of. He had a very different strategy
21 and style than the first attorneys in the sense that the
22 first attorneys didn't want to go to a plea hearing -- I
23 mean a bond hearing. As soon as he got ahold of the case,
24 he said, "I'm a different style. We're going to a bond
25 hearing." And in all actuality, I think he tried to

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1 display what was going to be in the future, a sense of how
2 the State was going to be trying to play my own family
3 against me and try to divide people. And I think that was
4 probably the biggest thing that Leland might have shown me
5 through the bond hearing process.. And kind of gave me a
6 reality check to what the State and the DSS was going to
7 be trying to do.

8 Q. Now, after that bond hearing, you all prepared for a
9 trial, though; is that correct?

10 A. Right.

11 Q. When was the word of a plea being on the table? When
12 did you first hear about that?

13 A. About the same time frame as my parents testified to,
14 within a week or so, probably week and a half, prior to
15 when we actually -- he told them shortly thereafter I
16 agreed to it. Actually, I think it was on April the 6th.
17 Might have been April the 6th when he came and saw me, if
18 I remember correctly. Actually, I think it was the day
19 that Leland actually came and told me about the plea.

20 Q. And based upon those discussions, what was your
21 understanding of the plea that was on the table?

22 A. He told me the beauty of this plea is there's no
23 intent in these two charges. And he said involuntary
24 manslaughter, you know, it shows no intent -- and the
25 other charge, the bodily harm, no intent. And he

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1 described it as bodily injury to a child, not severe
2 bodily injury to a child.

3 Q. Would that have mattered if you had --

4 A. It just sounds worse. I don't know. Almost like he
5 was trying to sugar coat it. He sold me on it, I would
6 say, in a sense that when he explained it to me, he said,
7 "We got a visiting judge coming, I've worked with this
8 judge before, he'll be able to see through all the
9 nonsense and be able to see the real deal," basically.
10 And he described it -- he set up the scenario, a prior
11 case that led me to believe some certain things, and he
12 just mentioned a case that this same judge that sentenced
13 me had before where a man had shot his father and killed
14 him, and the man was sentenced -- or given a plea for
15 involuntary manslaughter, and he was given five years'
16 probation. So in my mind-set, this is a man with a gun
17 that shot somebody, whether it was self-defense or
18 whatever.

19 To me, in my mindsight, I showed no intent. In my
20 mindsight, in my eyes, he's like, "You would be a good
21 qualifier for probation," is what he told me. And no
22 record. "You would be more likely to have a lenient
23 sentence" is what he told me. He never promised anything,
24 but he led me to believe that with my record and with this
25 judge, this charge. And I asked him, I said, "This zero

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1 to 20 charge" -- I asked him, I was concerned about the
2 time and he said that -- I asked him, I said, "So what is
3 that, a political charge they're just going to throw on me
4 for the Solicitor's Office?" And he basically said,
5 "Yeah," he said, "You know, that way the judge can just --
6 that way they can say, well, the judge could have gave him
7 20, you know, to appease the politics, in my opinion, to
8 make it look like we're being hard on crime, which is --
9 nothing wrong with that."

10 MR. JOHNSON: Your Honor, I need to make an ongoing
11 objection. Anything the Solicitor's Office may or may not
12 have done is speculation on his part.

13 THE COURT: All right. Unless he knows about it.

14 Q. Did all this information that you've been testifying
15 about factor into your decision to enter a plea?

16 A. Sure. Sure.

17 Q. And you made that plea based upon the advice of your
18 counsel; is that correct?

19 A. Sure. Yes, ma'am.

20 Q. And he was the one that you were relying upon to
21 explain the law, to explain the facts, to explain the
22 likelihood of your success at trial; is that correct?

23 A. Right.

24 Q. At that point, did you feel or was it your
25 understanding that he was prepared to proceed to a trial?

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1 A. I don't know if he was doing a whole lot or not. He
2 communicated, checked in with me on a regular basis, but
3 he never -- like I said, there was only -- the obvious
4 defense in his eyesight, he seemed to be more leaning on
5 kind of a shift-the-blame kind of idea. My prior
6 attorneys had several defense strategies. But he never
7 touched on all those defense strategies the same way.

8 Q. If you had to proceed to trial at that point, was it
9 your understanding based upon your meetings and
10 preparation with him that he was prepared to go to trial
11 on your behalf?

12 A. We had never really done any real preparation and
13 deep conversation in which direction we were going to go,
14 and even asking me which way we're going to go and what
15 way do I want to go. So there was not a whole lot of
16 option that he gave me in the defense area.

17 Q. Now, as a result of your plea in this case, you were
18 required to be on a registry; is that correct?

19 A. Correct.

20 Q. And do you know the proper title of that registry?

21 A. I think it's like a national child abuse registry of
22 some kind.

23 Q. Did Mr. Greeley explain that to you when he was
24 advising you about this plea?

25 A. No.

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1 Q. If he would have, would that have factored into your
2 decision to take this --

3 A. Sure. I love kids. I've always worked around kids.
4 All my cousins are younger than me. I've always worked
5 around small children, so that would definitely play a
6 factor.

7 Q. Now, before I move on to the day of the plea, is
8 there anything else about your preparation that you'd like
9 to explain to the judge today?

10 A. Definitely. Just a few short things.

11 Q. Okay. Go ahead.

12 A. Not too extensive.

13 Q. And I'm not talking about the plea itself. About
14 your preparation before that.

15 A. Yes. When I -- Leland had everybody prepare their
16 statements that they read, including me. And he told me
17 to write up how you thought -- how it happened and
18 anything else you want to say, and I prepared it. Handed
19 it to him in written copy, and he edited it. Edited,
20 basically cleaning it up a little bit the way it wanted to
21 be presented, that he wanted it to be presented. We never
22 went over it after the fact, after he redid it, until we
23 were sitting in the room, outside the courtroom, hurriedly
24 going over the transcripts for the plea. And we never
25 went through what I was going to say, over the stuff that

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1 he had prepared for me to say, we never went back over it,
2 never got into detail of the events that happened. That I
3 speculate that caused any kind of -- my responsibility,
4 anything that I could see that could have caused any harm.

5 Q. Now let me take you to that morning of your plea.

6 Did you have an opportunity to sit down and talk with
7 Mr. Greeley, go over what was going to happen in the
8 courtroom and what you needed to be prepared for?

9 A. It was a hurried five minutes. Basically he told me
10 go in the courtroom, judge is going to ask you a whole
11 bunch of questions, and you basically tell him yes, yes,
12 yes, or no, no, no. And he basically told me everybody
13 had their stuff ready, who is going to speak, and recently
14 he had told me that we would have the last word. And, of
15 course, that wasn't so. The prosecution had the last
16 word.

17 Q. Let me take you to pages 8 and 9 of your guilty plea.
18 Do you have a copy there in front of you?

19 A. Uh-huh. If I can get to it with these handcuffs on.

20 Q. If you could look at page 8, line 16.

21 A. Uh-huh.

22 Q. There the Court asks you, "Do you suffer from any
23 condition, mental or physical, that could be affecting
24 your understanding at this time," and you say, "No, Your
25 Honor."

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1 A. Right.

2 Q. Today you've explained some mental health issues that
3 you thought Mr. Greeley should have told the Court. But
4 here you say "No, Your Honor." Could you please explain
5 your response there?

6 A. I was competent to what I knew at the time. And I'm
7 still competent, but, I mean -- basically he asked me, you
8 know, do you understand what's been told, do you
9 understand the influence of any drugs, alcohol, or
10 medication. No, Your Honor. Do you suffer from any
11 condition, mental or physical, that would -- affecting
12 your understanding at this time. It doesn't affect my
13 understanding. The medication doesn't affect -- or my
14 mental condition doesn't affect my understanding.

15 Q. So you took the question to be do you understand
16 what's going on in the courtroom?

17 A. Right, of course.

18 Q. Then if you continue to look at -- through the bottom
19 of page 8 and the top of page 9, you're asked a series of
20 questions about whether or not you're satisfied with
21 Mr. Greeley and if he's done everything that you've asked
22 him to do. You responded that he has and that you are
23 satisfied. Now, there's a case that I'll be submitting to
24 the Court, Cole versus State, that says that this can be
25 conditional satisfaction; it can be based on what you knew

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1 at the time. But why did you say that you were satisfied
2 with Mr. Greeley and now today you're wanting the Court to
3 believe something different?

4 A. I thought he was prepared for court, and he wasn't.
5 Period.

6 MR. JOHNSON: Objection. Your Honor, that's a legal
7 conclusion for the Court to decide, whether or not
8 Mr. Greeley was prepared.

9 THE COURT: I'll allow him to testify as to his
10 opinion.

11 Q. Were you lying to the Court on pages 8 and 9?

12 A. No, I was not.

13 Q. Now if I could have you turn to page 16 of the
14 transcript, please. There Mr. Greeley is going through --
15 he's going through what you had prepared for the Court.
16 And is there something you'd like to explain to the judge
17 about what Mr. Greeley stated here?

18 A. Definitely. I didn't catch it until he started
19 saying these things in his presentation of the things that
20 happened on the day of Minor s injury. As he's reading
21 it, he misinterpreted, misrepresented me in my words and
22 in his visual illustration to the courtroom in line 15 --
23 let's actually start with line 13. As you're reading, go
24 down the line 15, it says, "Even bouncing her on his knee
25 in his panic, trying to calm her." And he did a visual

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1 illustration where he was doing like this (indicating).

2 And that would be incorrect to what actually happened.

3 And after he made that statement, we had an
4 interruption in the courtroom. We were moved back. I
5 asked him, I said, "I didn't say that." And he just
6 whispered to me, he said, "Just go with it. Just roll
7 with it." And in my mind, I was like, no, I'm not rolling
8 with it, I'm not going with it.

9 Q. Then did you try to fix it during your comments on
10 page 36?

11 A. I did.

12 Q. Could you explain that to the Court? 36, I believe
13 beginning there on about line 2.

14 A. Because I explained I panicked. In my panic, I
15 grabbed her and held her close to my chest, held her close
16 to my chest and began to rock up and down, side to side.
17 And then I add in here -- I'm basically changing what he
18 wrote and putting it in the actual truth words of what
19 actually happened. And I say, "And to clarify, at that
20 moment, no sooner than I started doing that, when I
21 heard -- so -- no sooner than I heard a popping sound in
22 her head."

23 And I did a visual illustration as well as I was
24 explaining it, that I was standing holding her close to my
25 chest, rocking up and down and side to side. She was

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1 fastened to my chest. There was no any of that, any of
2 this (indicating). It was fastened to my chest. And the
3 only movement that was being caused was by my legs and me
4 standing up.

5 Q. And at that point, you're trying to come back and
6 clarify --

7 A. -- what he said.

8 Q. Let me just ask you one full question here. At that
9 point, you're trying to clarify what your defense attorney
10 had presented on your behalf; is that correct?

11 A. Correct. Correct.

12 Q. You're not trying to correct what the State says;
13 it's your own attorney that you're trying to correct?

14 A. Correct.

15 Q. Now, you alluded to some interruptions. Were there
16 some interruptions during your case?

17 A. It was two interruptions.

18 Q. How did you perceive those interruptions to play into
19 the presentation of your plea?

20 A. Depending upon the time, it definitely could get the
21 judge's mind off what was going on and being presented. I
22 mean, you could lose focus. Because he had to stop for
23 one of them and explain a bunch of laws to the jurors
24 about a gun charge or something and how they had to
25 define -- find him guilty, this or that. Very elaborate

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1 explanation. Then they left, there was more of our
2 service going on, and that after the proceedings went a
3 little bit longer, then they came in again and they
4 brought the defendant in of another case and the jury and
5 they had a verdict in that case.

6 Q. So on page 25, right in the middle of your
7 presentation, there was an interruption --

8 A. Right.

9 Q. -- and then on page 37, right after you spoke, there
10 was an interruption; is that correct?

11 A. Correct.

12 Q. Now let us --

13 MR. JOHNSON: Your Honor, I would have to object to
14 that. That seems to go to what the judge did. That would
15 be a direct appeal issue. Just for the record, that is
16 not proper for this court. It's not a claim of
17 ineffective assistance. That's a claim of judicial abuse
18 discretion.

19 THE COURT: I'll take that under advisement,
20 Mr. Johnson. Thank you.

21 MR. JOHNSON: Thank you.

22 Q. Now turning to the State's presentation at your plea.
23 On page 37 they call Wanda Tucker, and that's Danielle
24 Tucker's mother.

25 A. Right.

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1 Q. If you could turn to page 38. And looking at
2 lines 19 through 21. She states there that you were in
3 the back of her car and said, "If I hurt her, I didn't
4 mean to." Did you make that statement to Mrs. Tucker?

5 A. I very well could have.

6 Q. Did you have an opportunity to explain -- this kind
7 of ties back into you said you thought you were going to
8 have the last word. Did you have an opportunity to
9 explain that statement to the judge?

10 A. No.

11 Q. What explanation would you have wanted to provide?

12 A. That any of my actions were an accident. Basically..

13 Q. Okay. So you would have wanted to put that statement
14 into some context for the judge?

15 A. Sure. Sure.

16 Q. Now, if you could turn to page 45. And there I'm
17 just summarizing what Mr. Thompson said, that the record
18 will speak for itself. Essentially he said that the
19 forensics didn't match your story. And then he goes
20 through a four-page explanation of what he understood the
21 forensics to be. No medical experts or doctors were
22 called. It was his summation. Did you think that
23 Mr. Greeley was going to have the opportunity to respond
24 to that medical summation given by the solicitor?

25 A. Definitely, and object to some of the things that

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1 were said, for that matter.

2 Q. Would you like to be specific, please?

3 A. Yes.

4 Q. And take your time if you need to look through it.

5 A. There's several things. Just as the medical
6 findings, there was actually one statement prosecutor made
7 that, you know, the injuries looked like the impact of a
8 car accident to her brain. And to me, along with what I
9 thought was a bruise on the back of her head, corroborated
10 my story. So that's one thing. There was no neck injury,
11 so I don't know if that has any relevance to that.

12 Q. Page 45 through 46, the bottom of 45 to 46, he goes
13 through the timeline. Did you agree with the timeline
14 that he gave --

15 A. Absolutely not.

16 Q. Did you think Mr. Greeley was going to clarify that?

17 A. He should have, in my opinion.

18 Q. How should that have been clarified?

19 A. There was no -- there was no scientific, medical, or
20 anything otherwise evidence to say what he said. The
21 assumption of the 9:00 in the morning on page 45, line 19,
22 he's basically assuming that I got up before 9:00 in the
23 morning. He pulled that number out of a hat, I think.

24 Q. What specific information regarding the timing of
25 what happened that morning had you given to Mr. Greeley?

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MS. BLANCHETTE

1 Had you told him about what happened that morning as far
2 as the timing went?

3 A. Yes.

4 Q. Can you take us through that?

5 A. I talked about it to the detectives; I talked about
6 it to everyone. I don't know exactly what time I got up.
7 But I know in the relation of after I got up, I got up
8 with my son first. I heard him, so I get up. I go in the
9 kitchen. He's already trying to fix himself breakfast.
10 He's up on the cabinets -- on the counter. So I get him
11 down. He's already got food coming out of the cabinet.
12 So I get him settled. And I fix me some breakfast. We're
13 sitting watching TV, the two of us. And time passed
14 before I went and actually started working with Minor
15 that morning. I made sure I had something on where it
16 would entertain C. while I was doing that. So I had
17 him settled, and that's when I went to pursue with
18 Minor

19 Q. And specifically on page 46, lines 7 and 8, he
20 surmises that it would be at least an hour from when your
21 daughter was injured until you called 911.

22 A. Right.

23 Q. Did you wait an hour to call 911?

24 A. Less than a minute.

25 Q. That was information that your attorney had at that

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MS. BLANCHETTE

1 time; is that correct?

2 A. Yes. Everyone, I believe, had that information.

3 Q. On page 50, the solicitor requested that you be given
4 a 20-year sentence. Were you prepared for that to be the
5 solicitor's request?

6 A. No.

7 Q. Now, on pages 51 through 52, the judge asks some
8 questions about discipline issues with your son.

9 A. Uh-huh.

10 Q. And essentially on page 52, after being asked if you
11 were ever alone with your son, it's stated by the
12 solicitor on lines 7 through 9 that you weren't
13 necessarily ever really alone with your son C. during
14 the caregiving time for any length of time. Is that
15 correct?

16 A. I was with C. on a regular basis by myself.

17 Q. And how so? Could you explain that?

18 A. And Minor . Danielle was the primary care for
19 C. when he was little, and then we used to -- took him
20 to a daycare on a regular basis. But with C. and
21 Minor together, I watched them every morning. First
22 half of the day until I dropped them off at the neighbor's
23 house, and Danielle would pick them up in the afternoon or
24 evening. So I was their primary care in the morning. And
25 my son. It was many times before my daughter was born

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1 that I would pick my son up or me and my father would pick
2 my son up, and I would be at home with him by myself for
3 hours on end.

4 Q. And did your attorney, Mr. Greeley, know that?

5 A. I don't know.

6 Q. Was that information that you would have talked
7 about, what your daily routine was with your son?

8 A. At least at that point in time, but maybe he didn't
9 catch that in the sense that we didn't talk about just my
10 son care, you know, singly my son before my daughter was
11 born. Maybe we didn't talk about that as much.

12 Q. Okay. Did he at any time correct what the solicitor
13 said there?

14 A. Not that I see or not that I remember.

15 Q. Now, in sentencing you, the judge made some comments
16 about the pictures of the autopsy. Were you aware that he
17 was going to be able to review those pictures?

18 A. No, I was not.

19 Q. Once you were sentenced, did you have the opportunity
20 to meet with Mr. Greeley?

21 A. I did.

22 Q. What was your discussions with him?

23 A. First we had a short discussion right after the
24 hearing, which he looked very nervous and profusely
25 sweating. And I was in shock, and he just basically told

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1 me to -- he told me that -- I told him, first of all, I
2 said, "I didn't expect five years at the worst." I was
3 trying to prepare myself at the worst five years, because
4 I felt like even as the judge said in the transcript that
5 most -- many people would argue that that was the
6 overwhelming charge that covered the death. And I told
7 him at the worst, I was preparing for five. And he told
8 me, "Well, I was at the worst preparing for ten" is what
9 he told me.

10 Q. Did you ask him if there was anything that could be
11 done, if a motion could be filed, an appeal could be
12 filed?

13 A. I did, and which we later discussed more thoroughly
14 when he came back to see me that weekend. He came back to
15 the jail and saw me. I talked to him. I asked him about
16 it, about the appeal, and he said that basically I would
17 have to -- he said I would have to admit to doing
18 something wrong, which, in his opinion, he didn't do
19 anything wrong and he had served me well. He basically
20 said -- or if something else legally had transpired. And
21 he said there was nothing to appeal basically.

22 Q. Did you know how to file a motion to reconsider or an
23 appeal on your own at that point?

24 A. I did not, but I did make an attempt to.

25 Q. Okay. And as a result of that attempt, did you ever

CURTIS RANDALL SWEATT, JR. - DIRECT EXAMINATION BY
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1 have a motion hearing or an appeal in this case?

2 A. No, I did not.

3 MS. BLANCHETTE: Your Honor, if I could just beg the
4 Court's indulgence one moment.

5 THE COURT: Yes, ma'am.

6 Q. If Mr. Greeley would have told you that he had talked
7 with Gaye Allan-Cooke and she could come and evaluate you
8 and speak at your plea, would you have been willing to do
9 that?

10 A. Definitely.

11 Q. And if Mr. Greeley would have told you that he needed
12 to speak with your medical doctor about your mental health
13 medications and issues, would you have helped him get
14 those records and speak with Dr. Eric Johnson?

15 A. Yes.

16 Q. Mr. Sweatt, you have worked very hard on your own and
17 with me to prepare for today. I know you know your case
18 better than anyone, and you know the allegations that we
19 submitted to the court today. Is there anything else in
20 support of your allegations that you would like to testify
21 to?

22 A. At least one quick thing. In my opinion, there was a
23 time when my lawyer should have objected in a sense as the
24 prosecution was reading some of the findings. The autopsy
25 findings, he made a statement that Minor was in pain

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1 and that she suffered. I don't think that's true.
2 Because I know that when I dropped her, she cried; she was
3 in pain. When I picked her up, I was trying to comfort
4 her. That when her eyes -- when I heard a sound, which I
5 assume is some type of blood rupturing, when I heard that,
6 she was unconscious from there on out and she never came
7 back to us. So I know she wasn't in any pain. And to me,
8 to be able to say that, that she was in pain, try to stir
9 the emotions that somehow she was in this pain, we don't
10 know. Unless your expert claim to that. And that was
11 said at least twice, and I feel like my attorney should
12 have said something about that.

13 Q. And you actually worked with the 911 operator to try
14 to bring your daughter -- help her regain consciousness;
15 is that correct?

16 A. Yes.

17 Q. Mr. Sweatt, is there anything else in further support
18 of your allegations that you would like to inform the
19 Court of today?

20 A. I'm looking at it right here. One thing, I believe
21 that if the judge would have heard these things, he might
22 have given me a lighter sentence. Even in his own words,
23 he said, "Many would argue that the involuntary
24 manslaughter should be the lead indictment since that
25 covers the actual death of a child as far as the elements

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1 of it," and then he says, "because it is a child and
2 circumstances and the evidence that I have here. He later
3 says the infliction of bodily harm is what he says carries
4 a greater weight. So he decided to give me that greater
5 time that was covered in that charge. And I feel like the
6 things that were missed out in my hearing could have
7 greatly weighed in that decision that he had to use the
8 larger time-bearing charge than the smaller involuntary
9 manslaughter charge.

10 MS. BLANCHETTE: Your Honor, I have no further
11 questions of this witness.

12 THE COURT: You may cross-examine the witness.

13 MR. JOHNSON: May we take a short break, Your Honor?

14 THE COURT: We'll take a short break. If you would
15 step down. Don't discuss your testimony.

16 THE COURT: Mr. Johnson, you may cross-examine the
17 witness.

18 MR. JOHNSON: Thank you, Your Honor. May it please
19 the Court.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Mr. Sweatt, you say you hired this Michael Smith
23 attorney and then you hired Mr. Greeley, and you said that
24 Michael Smith went over certain defenses that Mr. Greeley
25 did not; isn't that correct?

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 A. Correct.

2 Q. And one of that is, you say, placement of blame.

3 Isn't that what you're doing here today is placing the

4 blame on somebody else? You're saying it's your

5 attorney's fault that you got sentenced to 20 years and to

6 16 years' service. Isn't that what you're doing?

7 A. Ideally, I'm claiming that he was ineffective

8 assistance of counsel.

9 Q. But you're not taking responsibility for your
10 actions, are you?

11 A. I took responsibility for my actions when I pled to
12 the charges.

13 Q. Okay. And you fully admit that Minor s death was
14 at your hands, correct?

15 A. If that be, an accidental. An accident at that case.

16 Q. But your actions led to her death?

17 A. As far as I can fathom, if no one else did anything,
18 as far as I can see.

19 Q. That's what you pled to, isn't it?

20 A. That is what I pled to.

21 Q. At this plea, the judge covered all your
22 constitutional rights concerning a trial; isn't that
23 correct?

24 A. Correct.

25 Q. And that's right to present defenses, right to call

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 witnesses on your behalf, and right to cross-examine any
2 witnesses against you, correct?

3 A. Correct.

4 Q. And you waived those rights?

5 A. Correct.

6 Q. Correct.

7 And you didn't want a trial?

8 A. At the time, I didn't.

9 Q. But now you want another trial?

10 A. If so be it, if that's the only option.

11 Q. Yes or no?

12 A. Yes.

13 Q. Okay. Nobody promised you anything to get you to
14 plead guilty, and nobody threatened you; isn't that
15 correct?

16 A. No threats in a sense of threatening, but there was
17 an ultimatum that the clock was closing and the State was
18 ready to go to trial, and I didn't have any foreseen
19 defense at the time with my lawyer at the time. I didn't
20 see a put-together defense. We hadn't put it together.
21 We hadn't really worked on it. We were just sitting in
22 idle waiting on the State. Did a lot of that waiting on
23 motions of discovery and things of that nature. We never
24 did get a full autopsy report.

25 As far as I remember, we didn't ever get a full

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 autopsy report, even in the hearing. We just got cause of
2 death, if I remember correctly, what the specific cause of
3 death by the coroner. We never got a full -- it's kind of
4 hard to do a full look at it when you don't have all of
5 it.

6 Q. And that cause of death was massive trauma to the
7 head; isn't that correct?

8 A. That's an over-encompassing term, yes.

9 Q. Yes or no? That's all I'm asking for is a yes or
10 no --

11 A. Sure, yes.

12 Q. Mr. Sweatt, you've had your opportunity to explain
13 yourself. All I need is a yes-or-no question.

14 MS. BLANCHETTE: Your Honor, I object. I believe
15 this is argumentative.

16 THE COURT: All right. Answer his question yes or
17 no.

18 THE WITNESS: Yes, sir.

19 THE COURT: If you need to explain it, you explain
20 your yes answer or your no answer.

21 THE WITNESS: Thank you.

22 Q. You've also stated that you said you were satisfied
23 with Mr. Greeley services at the plea; isn't that correct?

24 A. I did.

25 Q. And he answered all of your questions? That's what

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 you testified to at the plea?

2 A. He did, my ignorant questions. Or lack thereof.

3 Q. And contacted everyone you asked him to?

4 A. Yes.

5 Q. And he did everything you asked and contacted
6 everybody you asked, correct?

7 A. Yes. Yes.

8 Q. And you were satisfied with his advice?

9 A. At that time.

10 Q. But now you're not, right?

11 A. Correct. At the end of the hearing, I was not
12 satisfied. In the middle of the hearing, I was not
13 satisfied. At the beginning I was. But as the hearing
14 went on, I did not.

15 Q. And when you had your chance to talk, you didn't stop
16 the judge and say, hey, Judge, I'm not satisfied with his
17 representation. Did you?

18 A. No. I should have.

19 Q. Hindsight is always 20/20.

20 A. Exactly.

21 Q. And you pled freely and voluntarily; isn't that
22 correct?

23 A. Yes.

24 Q. And nobody made you do this?

25 A. No.

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON *

1 Q. Okay. Because you admit your fault in Minor s
2 death; isn't that correct?

3 A. You could say that, yes.

4 Q. Matter of fact, on page 35 of your plea, you state to
5 the Court one of the reasons you decided to plea is,
6 quote, so I can admit to all of my responsibility, my
7 negligence which played in her injury and death so that
8 everyone can forget and heal; isn't that correct?

9 A. Sounds correct. What line is that?

10 Q. Lines 15 through 17.

11 A. Uh-huh. Actually, I said "forgive." They typed
12 "forget," but it was "forgive," what I said.

13 Q. Later you say, "I regret to say that I did not use
14 utmost care of Minor that morning in question."

15 A. Correct.

16 Q. And then you say, "I was in the process of beginning
17 to dress her when she slipped out my hands and her head
18 struck the pad, the changing pad, that laid on the
19 hardwood table"; isn't that correct?

20 A. Correct.

21 Q. But when you called 911, you gave a different version
22 of what happened, didn't you?

23 A. I would beg to differ.

24 Q. Have you reviewed the 911 tapes?

25 A. Yes, I have.

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 MR. JOHNSON: Your Honor, may I approach?

2 THE COURT: You may.

3 (Audio recording was played in open court.)

4 Q. Can you hear that?

5 A. Yeah, that's the second call.

6 (Audio recording was played in open court.)

7 Q. Is that an accurate copy of that conversation you had
8 with the dispatch?

9 A. Yes, sir.

10 MR. JOHNSON: Your Honor, at this time, I move that
11 into evidence. I will present the copy of the CD to the
12 Court.

13 THE COURT: Any objection?

14 MS. BLANCHETTE: I have no objection, Your Honor.

15 THE COURT: Without objection. State's Exhibit
16 Number 1 will be admitted.

17 (Respondent's Exhibit Number 1 was marked and
18 admitted.)

19 THE COURT: That's just the first call; is that
20 right?

21 MR. JOHNSON: That's just the first call, Your Honor.

22 Q. So in that call to 911, your story is that you give
23 her a bath and that her head snaps back a little bit,
24 correct? But don't you give a different story at the
25 guilty plea, that her head hit the changing table?

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 A. Yes, more detail to the same story, in my opinion.

2 Q. But you said three times in that that her head
3 snapped back and you heard a pop in her neck.

4 A. Yes.

5 Q. Those were your own words?

6 A. That's what I said, yes, sir. And I was just
7 frantically trying to explain what happened.

8 Q. But you never heard a pop in her neck, did you?

9 A. I didn't. I did not.

10 Q. So you lied?

11 A. You could say I lied.

12 Q. You were making up a story --

13 A. No.

14 Q. -- to cover your tracks?

15 A. No.

16 Q. Correct?

17 A. No, sir.

18 Q. Well, you said one thing in the heat of the moment --

19 A. Right.

20 Q. -- and then you said something else after you had
21 time to think about it?

22 A. Right.

23 Q. So you lied in the guilty plea or you lied at the 911
24 call?

25 A. I would say I lied neither time.

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 Q. Two inconsistent stories and you're telling the truth
2 both times?

3 A. You did hear from the testimony earlier from
4 Dr. Cooke.

5 Q. Yes or no?

6 A. I did not tell a lie.

7 Q. You talked about the autopsy on your direct
8 examination, so apparently you've seen a copy of the
9 autopsy.

10 A. Yes, yes, sir -- no, autopsy, no. I've heard -- only
11 thing I read is what was stated in court.

12 Q. Are you aware --

13 A. And what people told me, lawyers told me.

14 Q. Are you aware that Minor had no injury to her
15 neck?

16 A. Correct.

17 Q. And the cause of death was hemorrhaging and edema in
18 the brain?

19 A. Correct.

20 Q. Correct?

21 Have you seen photos?

22 A. No. I'd rather not.

23 Q. Are you also aware that during the autopsy, it was
24 brought to attention that Minor had a broken left
25 forearm and both lower legs were broken or fractured?

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 A. I was actually told that prior to that.

2 Q. Okay. So you were aware of that?

3 A. I was told at the hospital. X-rays were conducted.

4 Q. So this isn't the first time you abused Minor , is
5 it?

6 A. I didn't abuse Minor .

7 Q. So she just breaks her legs and her arm on her own
8 when she's four months old?

9 A. I do not know how they were broken.

10 Q. But you take responsibility for her death, don't you?

11 A. My actions of that day that were an accident, I do
12 take responsibility for those. I feel great guilt for
13 that. That's why I pled to the charges that I did plead
14 to, because I felt like I wanted to take responsibility
15 for that, my part.

16 Q. And that's what involuntary manslaughter and the
17 infliction of great bodily harm upon a child.

18 A. Correct.

19 Q. Neither one of those have an intent --

20 A. Correct.

21 Q. -- element.

22 So you are guilty of these crimes?

23 A. I am.

24 Q. No further questions.

25 THE COURT: Any redirect?

CURTIS RANDALL SWEATT, JR. - CROSS-EXAMINATION BY
MR. JOHNSON

1 MS. BLANCHETTE: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q. Mr. Sweatt, I just want to give you a fair
5 opportunity to maybe compare the 911 call to your
6 statements at the plea. The 911 call, were you thinking
7 through what you were saying, or were you just trying to
8 get help for your daughter?

9 A. The latter, help for my daughter, because she was
10 asking me, so I wanted to give her any assistance possible
11 to maybe help me help her.

12 Q. And in contrast, your statement at the plea was after
13 going through everything with your attorney and preparing
14 what you needed to submit to the court; is that correct?

15 A. Correct.

16 Q. And at any time were you trying to mislead the court
17 as to what had happened in your home that morning?

18 A. No. I was trying to find answers to the same
19 questions everybody else wanted to know in my own mind.

20 Q. And this evidence regarding these breaks in your
21 daughter's bones, that actually was not submitted to the
22 plea court; is that correct?

23 A. It was not.

24 Q. And that was not a factual basis on which the State
25 submitted that you were guilty of these charges?

CURTIS RANDALL SWEATT, JR. - REDIRECT EXAMINATION BY
MS. BLANCHETTE

1 A. Correct.

2 MS. BLANCHETTE: Your Honor, I have no further
3 questions.

4 THE COURT: Thank you, sir. You may step down.

5 MS. BLANCHETTE: Your Honor, I would call Dr. Eric
6 Johnson to the stand.

7 MR. JOHNSON: Your Honor, before he testifies, if I
8 can give the court reporter the copy of the CD. And only
9 Call Number 1 was introduced into evidence.

10 (Respondent's Exhibits 2-4 were marked.)

11 ERIC JOHNSON, M.D., after having first being duly
12 sworn, testified under oath as follows:

13 DIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q. Could you please state your name for the record.

16 A. Yes, I'm Dr. Eric Johnson.

17 Q. And, Dr. Johnson, what is your occupation?

18 A. I'm a family practice physician in Rock Hill, South
19 Carolina.

20 Q. And have you had the opportunity to be the physician
21 or be the treating physician for Curtis Sweatt that's here
22 in the courtroom today?

23 A. Yes, indeed.

24 Q. And for your reference, I'm going to hand you what's
25 already been admitted as Applicant's Number 3 and 4. And

ERIC JOHNSON, M.D. - DIRECT EXAMINATION BY MS. BLANCHETTE

1 those are medical records that were generated from your
2 office.

3 If I could take you back to where those medical
4 records start, I believe in 2005. Do you recall beginning
5 to treat Mr. Sweatt for some mental health issues or for
6 some symptoms that he told you about?

7 A. Yeah, in the first record, which was at a location
8 that we'll call Metrolina Medical, either myself or one of
9 my associates saw him on a couple of occasions for a
10 number of emotional issues.

11 Q. And over time, did those emotional issues lead to a
12 diagnosis on your part?

13 A. Well, in the Metrolina era, there was just a
14 scattering of anxiety, depression, focus problems. And so
15 it wasn't really defined until we moved to the next
16 location.

17 Q. Okay. And by 2009, did you have a diagnosis that you
18 had given to Mr. Sweatt?

19 A. Yeah, by 2009, after we reviewed the -- his
20 circumstances and some other factors, family history and
21 whatnot, we had to say, "Listen, we feel that there's --
22 that this is more than simple anxiety or depression.
23 There's actually a mood disorder." And so we told him
24 that he had a form of bi-polar illness.

25 Q. And as a result of that diagnosis, did you treat him

ERIC JOHNSON, M.D. - DIRECT EXAMINATION BY MS. BLANCHETTE

1 with medication?

2 A. Yes, indeed.

3 Q. Could you explain what medications he was on and kind
4 of how that progressed?

5 A. Okay. Well, at the point where he and I agreed that
6 we wanted to use a mood stabilization strategy, initially
7 we used a common anticonvulsant, Tegretol. And then
8 because of the early symptoms, he was also put on a more
9 intense mood stabilizer named Abilify. And with those
10 two, that was the first order of business was to create
11 stabilization of his mood.

12 Q. And did he run into an issue with that as far as
13 financial means and you had to change his medication at
14 some point?

15 A. Right. The Abilify is a very expensive medicine,
16 maybe three or \$400 a month, and even with a copay, he was
17 having difficulty, at least as I remember and as we
18 recorded that. And so there were times when he would be
19 off of that and just on the less expensive mood
20 stabilizer.

21 Q. And shortly before this incident took place, I
22 believe in November of 2009, were you actually working on
23 changing the amount of medication that he was taking?

24 A. Well, he was doing so well, you know, in his job
25 where he was -- and, again, he could tell you more about

ERIC JOHNSON, M.D. - DIRECT EXAMINATION BY MS. BLANCHETTE

1 those circumstances -- but seemed like he was doing well
2 and if the medicine was three times a day, he wanted to
3 maybe drop it down to twice a day or something like that.
4 And so I -- so under the circumstances, that seemed like a
5 reasonable thing to do as -- say in November.

6 Q. Okay. Would you ever have advised Mr. Sweatt to quit
7 taking his medication?

8 A. No, no.

9 Q. What could be the result of him stopping his
10 medications without your advice?

11 A. Well, in general, at first maybe nothing, but you
12 never know after a period of time where the mood
13 instability could come back. So things could go any
14 different way. There could be agitation. There could be
15 depression. So typically the strategy is to try to
16 maintain a mood stabilizer to stabilize mood.

17 Q. Do you recall his defense attorney, Leland Greeley,
18 ever contacting you or requesting records from your
19 office?

20 A. No.

21 Q. If Mr. Greeley would have contacted you and told you
22 he needed to speak with you about your treatment of Curtis
23 Sweatt, would you have been willing to do that?

24 A. Yes, sure.

25 Q. Would you have been willing to provide him records

ERIC JOHNSON, M.D. - DIRECT EXAMINATION BY MS. BLANCHETTE

1 from your office?

2 A. Yes.

3 Q. If Mr. Greeley asked you to come to his plea
4 proceeding to explain to the judge about your treatment of
5 Mr. Sweatt, would you have been willing to do that?

6 A. Yeah, I would be glad to.

7 Q. And have you had the opportunity to have to testify
8 in court or appear in court here in York County?

9 A. Yes.

10 Q. What's your experience? How are you involved with
11 the court system here?

12 A. Well, boy. I've been here say 30 years, and so in a
13 way I've been over to this place a couple times, but I
14 can't really recall what the cases were, to be honest with
15 you.

16 Q. Do you have experience with drug court? Am I
17 correct?

18 A. No, I did -- I was a medical director of York
19 County's Keystone drug rehab for 30 years, and during that
20 time, we had a lot of cases, but typically I didn't have
21 to come to court for that. Although there were maybe a
22 couple times I did, yeah.

23 MS. BLANCHETTE: Your Honor, if I could beg the
24 Court's indulgence one moment.

25 I have no further questions of this witness.

ERIC JOHNSON, M.D. - DIRECT EXAMINATION BY MS. BLANCHETTE

1 THE COURT: Any cross-examination?

2 MR. JOHNSON: Just one question.

3 CROSS-EXAMINATION

4 BY MR. JOHNSON:

5 Q. Dr. Johnson, these medications that you described,
6 would they affect one's ability to control their own
7 actions?

8 A. Yes. At the point where a person was on a mood
9 stabilizer, typically, they would have less impulsivity or
10 less unpredictable behavior.

11 Q. But if they voluntary take themselves off that
12 medication without your advice, and you also said that
13 that may cause agitation and some depression, would you
14 typically see a patient -- a quicker reaction to a
15 stress-related environment?

16 A. Well, at that -- at the point -- at this point, you
17 know, I don't want to -- I'm -- I would be acting as an
18 expert in the area, and I have some experience in this,
19 but it's hard to say. I'd rather just speak to what
20 happened to him. But...

21 Q. You never told Mr. Sweatt to stop taking his
22 medications, did you?

23 A. No.

24 MR. JOHNSON: Thank you, Your Honor. No further
25 questions.

ERIC JOHNSON, M.D. - CROSS-EXAMINATION BY MR. JOHNSON

1 THE COURT: Thank you. You may step down. Any
2 objection to this witness being excused?

3 MS. BLANCHETTE: None, Your Honor.

4 THE COURT: Thank you, sir. You may be excused.

5 MS. BLANCHETTE: Your Honor, if I could beg the
6 Court's indulgence one moment.

7 THE COURT: Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, at this time, we have no
9 further witnesses. I may have a witness in reply,
10 depending on the State's case.

11 THE COURT: Does the State have any witnesses?

12 MR. JOHNSON: Yes, Your Honor. At this time, we call
13 Leland Greeley to the stand. Mr. Greeley.

14 LELAND GREELEY, after having first being duly sworn,
15 testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MR. JOHNSON:

18 Q. Good afternoon, Mr. Greeley.

19 A. Good afternoon.

20 Q. First, do you remember becoming involved in
21 Mr. Sweatt's case?

22 A. I do.

23 Q. And how did you become involved?

24 A. Talked with his family. They had talked with me a
25 few times before they engaged me, and then they came to me

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 in May of the year following this incident -- I think it
2 was May -- and hired me to represent him.

3 Q. And how soon after that did you go and meet with
4 Mr. Sweatt?

5 A. I'm sure it was short -- right shortly thereafter.

6 Q. About how many times did you meet with Mr. Sweatt?

7 A. I can't give you a particular time, but throughout
8 the year or so that I represented him, a number of times.

9 Q. And in your representation, did you file a Rule 5
10 motion or Brady motion for discovery?

11 A. Of course.

12 Q. And did you receive that from the State?

13 A. I received the discovery from the State.

14 Q. And did you share that with Mr. Sweatt?

15 A. Yes, we discussed it.

16 Q. How thoroughly did you discuss it?

17 A. We sat down and went through it. We have what's
18 known as contact visits when they're incarcerated prior to
19 trial, and we would sit -- we sat down and had contact
20 visit in regards to the discovery.

21 Q. And what all was included in that discovery, if you
22 remember?

23 A. Well, everything that was included in that discovery
24 was, of course, the incident reports. You would have the
25 autopsy reports, which eventually we got. They had not

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 been turned over for some time, but we eventually got the
2 autopsy reports. And it would also be the 911 tapes; it
3 would be witness statements from the different people,
4 including the EMTs who were involved in the matter;
5 statements from Curtis.

6 Q. In that autopsy report -- did you share that with
7 Mr. Sweatt?

8 A. I did. We discussed it.

9 Q. Does that include the photos of the autopsy?

10 A. I don't know that I shared the photos with him.

11 Q. But you viewed those photos?

12 A. Yes.

13 Q. And did you ever hire a private investigator in this
14 case?

15 A. I was told by the family that an investigator was
16 working on the case. I did not make contact with that
17 investigator, nor did he make contact with me.

18 Q. Why would you have not made contact with the
19 investigator?

20 A. The first thing that I wanted to do was I wanted to
21 learn the case and get a handle on the case, because you
22 have to see what there is going to be done for an
23 investigator to do.

24 Q. And did you inform Mr. Sweatt that you didn't find
25 that hiring another investigator was appropriate?

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 A. During my work on this case, I did not -- I ended
2 up -- once I had gone through the case and saw where we
3 were going, that it would not be, in my opinion, a good
4 use of the family's funds to be out looking for something.

5 Q. And what all did Mr. Sweatt tell you about this case?
6 Did he ever admit responsibility? Did he give conflicting
7 stories?

8 A. Given that counsel is asking things that might come
9 under attorney-client privilege, I would ask for the Court
10 to make an order for me to answer such questions like
11 that.

12 MR. JOHNSON: Your Honor, as you would know, under
13 PCR, attorney-client privilege is waived by filing the
14 PCR.

15 THE COURT: You can answer the question, Mr. Greeley.

16 THE WITNESS: Okay.

17 THE COURT: The waiver takes place when he files a
18 PCR.

19 A. Yes. Of course we talked about this incident.

20 Q. And what specifically did he tell you about this
21 incident?

22 A. Okay. The -- what Curtis and I talked about -- the
23 case had reached a point to where we were going to have to
24 decide whether we were going to do a plea or whether we
25 were going to go to trial. Going to trial in this case

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 would have been very difficult. And one of the things
2 that would have to occur if we had gone to trial is that
3 Curtis would have had to take the stand in this case. And
4 so we had a -- one of our contact visits, it was time for
5 us to see which way we were going to be going. And that's
6 not my decision. That's my client's decision. But it's
7 my job to try and give him as much information as I can so
8 that he can make an informed decision.

9 One of the things that I told Curtis was I told him
10 that if we went to trial, there was a good possibility
11 given the facts of this case and the facts that most
12 probably would be presented in court, even over our
13 objection, that a good possibility is that the jury would
14 convict him of what he was charged with.

15 Q. And that would be homicide by child abuse?

16 A. Yes. And based on my understanding of previous cases
17 in the state, when a person is found guilty of homicide by
18 child abuse, especially when the child is of very young
19 years, the court will impose a sentence of life in prison.
20 And so if we went to trial, that was one of the
21 possibilities that he would be facing. And it could
22 happen. Because of things that were in the case. Or I
23 could work with the State to see if there was some middle
24 ground that we could come to.

25 Now, I had known Curtis before I represented him on

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 this. I have known his family. I myself found it hard to
2 believe that Curtis would maliciously do anything like
3 this to his child intentionally. Yet at the same time,
4 from everything that I could see, it appeared that
5 something occurred, something that we may not have fully
6 discussed. Nor had he discussed or said to anybody else.
7 Knowing that he would have to take the stand, I decided
8 that I would talk with him that day in that meeting. And
9 I would do it in a way -- and I didn't tell him this, but
10 I would do it in a way of similar like a
11 cross-examination. Okay?

12 He came in and he sat down. And I said, "Curtis, we
13 need" -- or I said something like this. I can't remember
14 the exact words. But we were talking that day about
15 what -- which direction we were going to head. And I told
16 him, I said, "I've got something I need to talk to you
17 about, I need to ask you about in this case." I said,
18 "According to all the discovery and everything that I've
19 read, you woke up. Your son was already up. You'd worked
20 the night before. And you went in to check on the baby.
21 You got the baby, you gave the baby a bath, you came back
22 in, and you were changing -- putting on the baby's
23 clothes." And he said, "Yeah." And I said, "Curtis, I
24 got to ask you something." And he said, "What's that?"

25 And I said, "In my experience, when a dad wakes a

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 baby up or encounters a baby first thing in the morning, a
2 dad, it's not usually the routine for that dad to then
3 immediately go and give the baby a bath first thing in the
4 morning." I said, "What happened?" I said, "That baby
5 was a mess, wasn't it?" And that's when he started to
6 cry. And we talked from there.

7 Q. And based on his version of the facts and the
8 evidence that would have been presented at trial, did you
9 engage the State in plea negotiations?

10 A. I did.

11 Q. And what were the negotiations originally?

12 A. I don't know if there was original negotiations. I
13 know that we got together. We sat down. I wanted --
14 well, I know that I wanted to see if they would accept a
15 plea to involuntary manslaughter. Because I believed that
16 that would be an appropriate plea. Of course involuntary
17 manslaughter only carries up to five years. It was at
18 that point in time -- I believe, if I recall -- the State
19 came back and was the one that said they would not go for
20 involuntary manslaughter, but they would allow him to
21 plead and we would plead straight up to involuntary
22 manslaughter and harm to the child, which could carry up
23 to 20.

24 Q. And you relayed that to Mr. Sweatt?

25 A. Yeah, we talked about it.

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 Q. And did he seem on board with that negotiation?

2 A. Yes.

3 Q. And ultimately he accepted that?

4 A. And one of the conversations I had with the State was
5 and my emphasis was is that I was not going to be able to
6 plead him guilty to anything that required an intent
7 because I don't believe it was there. And that was one
8 discussion that Mr. Thompson and I had, and I went and
9 looked at the law of harm the child. And when I saw that
10 it did not involve an element of an intentional act, that
11 it could be negligence, as we would say, not an
12 intentional act, was when I went and talked to Curtis
13 about that. And the fact that neither offense was
14 involving an intentional act on his part, then we went
15 with the plea, knowing that it was a very wide range of
16 sentencing possibilities, but also knowing that if we went
17 to trial, there was a good possibility that he would end
18 up with a life sentence.

19 Q. Now, the plea itself, basically what Mr. Sweatt did
20 was self-explanatory in giving up his rights, agreeing to
21 the facts of the case, and so forth. Let's turn now to
22 mitigation because you weren't in the courtroom, but those
23 are the main allegations that Mr. Sweatt is bringing is
24 that you were ineffective for not properly mitigating it,
25 talking to some various witnesses and doctors. You did

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 present mitigation at this hearing?

2 A. Yes, we did.

3 Q. And who all did you talk to before the plea and who
4 all was able to testify at the hearing itself?

5 A. Well, I think the record -- and I would refer to the
6 record. I don't -- I don't know that I brought my -- I
7 had some plea presentation notes, and, in fact, I even
8 printed out one of those and gave to some of the family
9 members, I believe, as to what we were going to be doing
10 in the plea and the mitigation and who was going to be
11 speaking and who was going to be talking. And there were
12 a number of people who spoke on his behalf. I spoke for a
13 good while to the court, telling the court about Curtis
14 and about he and Danielle and they being a young couple
15 and all of the things about his life during that period of
16 time. And we talked about this incident, and I talked
17 about how he would never intentionally harm this child.
18 And that's why we're entering the pleas, because it was a
19 negligent result.

20 And then we had a number of family members who came
21 in and spoke well of Curtis. Okay. I did not have any
22 medical presentation that we presented, and I did not talk
23 in regards to the sentencing with any medical person on
24 his behalf.

25 Q. Why is that?

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 A. I did not at that time -- I did not -- do not recall
2 it being presented as an issue that would be going towards
3 mitigation.

4 Q. Did Mr. Sweatt ever tell you that he had been taking
5 his medications for anxiety and depression?

6 A. Yes. I knew that, okay. But I would submit to you,
7 I did not think of that or consider that to be something
8 that needed to be relevant in the sentencing or mitigation
9 phase, especially given the type of case this was.

10 Q. And I must ask why or why not?

11 A. Well, one of the reasons is because anxiety and
12 depression is one of two commonly found conditions with
13 folks who are accused of what is known as shaken baby
14 syndrome. So combining anxiety and depression with we're
15 presenting a negligence explanation. He wasn't negligent
16 because he was anxious. He wasn't negligent because he
17 was depressed. I don't know, perhaps you could argue
18 anxiety. I wouldn't argue depression, but perhaps you
19 could argue anxiety, but it's something that the State
20 could fully well argue on the other side on their
21 position.

22 Q. Mr. Sweatt has also presented a witness in Ms. Gaye
23 Allan-Cooke, who was presented as an expert in child
24 trauma and abuse. Did you ever consider hiring somebody
25 like that to mitigate this case or to advise on the case?

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 A. As far as Curtis being the victim of child trauma and
2 abuse?

3 Q. No. As far as bringing one in for mitigation that --
4 you know, the allegation is that you should have consulted
5 with Ms. Cooke and that she would come and testify in
6 mitigation at the plea hearing or trial, if necessary.

7 A. And what would she testify to in mitigation as
8 opposed to a trial on the merits of the facts?

9 Q. She stated Mr. Sweatt may have PTSD and that he
10 suffered -- he's nervous, has trouble waiting turn in
11 response, and his memory of Minor s death was a bit
12 sketchy, but that he was believable and that there was no
13 intent, there was no malicious intent in this incident.
14 Would you have thought to hire somebody like that?

15 A. Okay. So -- well, no, I'll be candid with you, I did
16 not. I did not think of hiring a doctor to come in to
17 corroborate our position at that time. Because that was
18 our position.

19 Q. So the plea would just be restating your position?

20 A. Well, I wouldn't say that, because I'm not sure what
21 she would testify to. Okay. But I did not -- I did not
22 think that there would be a doctor who would be able to
23 come in and say that he didn't mean any harm. I didn't
24 know that there would be a doctor that I could get to do
25 that.

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 Q. And you have tried many criminal cases before,
2 haven't you?

3 A. Yes.

4 Q. And an opinion like that, is that usually let into
5 evidence, their opinion on whether or not --

6 A. I have found a lot of times, when it comes to
7 sentencing and mitigation, the judges will hear about
8 anything. So because -- especially with the State, and I
9 don't mean this as a barb towards the State, and I
10 apologize to Mr. Thompson -- but a lot of times in their
11 presentations, the rules of evidence don't exist.

12 Q. Another allegation on that point is that you were
13 ineffective for allowing the State to present their
14 version of the facts without correcting them there at the
15 end. The State was allowed to speak last, and you did not
16 correct them.

17 A. In what way I did not correct them?

18 Q. That -- may I have the transcript. Towards the end,
19 Mr. Thompson --

20 MR. JOHNSON: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 Q. He talks about C. not being a victim of abuse.
23 He also -- there were certain things that Mr. Sweatt
24 testified that in his opinion, you should have objected to
25 allowing the court to consider Mr. Thompson's version of

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 the facts.

2 A. Oh, in regards to Mr. Thompson talking about what
3 Danielle had allegedly said?

4 Q. That too. There was a myriad of allegations.

5 MS. BLANCHETTE: Your Honor, I would object. It's
6 clear he doesn't know what he's referring to. I ask that
7 he be more specific with the exact allegations, or this
8 just requires speculation as the question is being
9 proposed at this point.

10 THE COURT: All right. If you could specify where in
11 the transcript you're referring to, Mr. Johnson.

12 MR. JOHNSON: I'll withdraw that question because --
13 you know, Mr. Greeley was not in the courtroom when he was
14 testifying.

15 Q. Is it your general practice to object to the
16 solicitor's presentation at a plea hearing?

17 A. If I believe that I -- well, depends on what it is.
18 Okay. If it's something that is facts of the case and
19 that would be presented in a trial of the case, then I
20 believe that the State is allowed to present that to the
21 court.

22 Q. So you would not object in that scenario?

23 A. Not in that scenario. We approached the bench one
24 time in this plea. The reason that we approached the
25 bench was because I did -- I don't guess it was a formal

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 objection. I cut Mr. Thompson off. And I understand his
2 position at that point in time, because the judge asked a
3 particular question. And the particular question could
4 have referenced an agreement or something about potential
5 evidence that I had an agreement with the State that the
6 State would not talk about. And we went up to the bench,
7 but what that was was not disclosed to the judge, and so
8 we came back.

9 And what that particular thing was was that if we had
10 gone to trial, we would have objected, vehemently objected
11 because it would have -- the prejudicial effect would have
12 outweighed the relevancy that the State could establish.
13 But I had gotten the State to agree that they would not in
14 the plea presentation to the court discuss or mention some
15 allegations that there had been previous breaks of bones
16 that were healing.

17 Q. I'm going to start going specifically through the
18 allegations, if you don't mind, of what the witnesses have
19 said. Did you ever promise Mr. Sweatt a sentence in this
20 case?

21 A. No. We talked about it. I told him that I thought
22 the sentence range would be -- it could be anywhere from 5
23 years up to 20. I didn't think the judge would go below
24 five for sure.

25 Q. There's a specific allegation by Mr. Sweatt's father

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 that you promised that Curtis Sweatt would be out before
2 C. , his son, started little league baseball.

3 MS. BLANCHETTE: Your Honor, I object to the use of
4 the word "promise." I believe there's testimony in the
5 record that that was his understanding based upon a
6 conversation. I don't believe that the word "promise" has
7 been used as the State is now using it in its questioning.

8 THE COURT: You can't answer the question whether
9 there's promise made or a statement made about --

10 THE WITNESS: I can answer that question. No promise
11 was made, no.

12 MR. JOHNSON: Court's indulgence, Your Honor.

13 Q. There's been an allegation that had you gone to
14 trial, you weren't prepared for trial. Would you have
15 been prepared for trial?

16 A. Yes.

17 Q. Mr. Sweatt testified that you had a meeting right
18 before the plea to discuss the plea, that was five
19 minutes, and that he said that you told him, "All you need
20 to do is go in there and tell the judge yes, yes, yes or
21 no, no, no." Did you ever tell Mr. Sweatt that?

22 A. No, I don't remember a meeting being of that. We had
23 a few meetings before the plea. One of the meetings, he
24 had written out what he was going to do to address to the
25 court. And I needed him to do that so that I could then

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 go through it and look at it and to see what was probably
2 going to be very good for him to say to the court and what
3 might not be good for him to say to the court. And then
4 we would edit that out, and he would then have his final
5 presentation to the court. So that took more than a
6 five-minute meeting to do that.

7 Q. Did you take more than five minutes to explain the
8 plea process to Mr. Sweatt?

9 A. Yes. It takes me more than five minutes on any of my
10 clients if I'm just explaining the plea process.

11 Q. Did you ever tell him what answers to give the judge?

12 A. No, I didn't. I told him what the questions would
13 be, and I told him that he would answer "Yes, Your Honor"
14 or "No, Your Honor."

15 Q. One last thing, Mr. Greeley. In the discovery packet
16 you received, you received a copy of the autopsy?

17 A. Yeah.

18 Q. Did you or anybody else ever get a second opinion on
19 the autopsy?

20 A. There was a second opinion that was done immediately
21 after the death of the child down in Columbia. The
22 forensic pathologist was hired to review and to also do
23 his own examination, which was done. And previous counsel
24 before me had arranged for that and had received that.
25 And I went through that report with them after I had been

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 hired in May.

2 Q. You went through it with the family?

3 A. No. I went through it with the previous counsel.

4 Q. Okay. Did you go over that with Mr. Sweatt?

5 A. We discussed it.

6 Q. Were the findings in that second autopsy similar to
7 the ones in the first?

8 A. They were not going to be of great benefit, if any
9 benefit, to the defense position.

10 MR. JOHNSON: May I approach the witness, Your Honor?

11 THE COURT: You may.

12 Q. Mr. Greeley, can you identify that for me?

13 A. This appears to be, just at first glance, this
14 appears to be the autopsy report.

15 Q. Would that be a true and accurate copy of what you
16 would have received?

17 A. Can I ask the source, where you got this from?

18 Q. From the solicitor's file.

19 A. Then it would be because I would have received it
20 from them.

21 MR. JOHNSON: Your Honor, I move this document as
22 Respondent's 2 into evidence.

23 THE COURT: Any objection?

24 MS. BLANCHETTE: Yes, Your Honor, I would just ask
25 that it be introduced for the limited purpose of the fact

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 that it was in Mr. Greeley's file, not for the truth of
2 the matter asserted since the author of this autopsy is
3 not here to testify to it.

4 THE COURT: I'll admit it for that purpose only.

5 Q. Did you receive autopsy photos from the solicitor in
6 this case?

7 A. I did.

8 MR. JOHNSON: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 Q. Do you recognize these? Once again, they're also
11 from the solicitor's file.

12 A. Yes.

13 Q. Is that a true and accurate copy of what you would
14 have had in discovery?

15 A. It appears to be a true and accurate copy of what I
16 received from the solicitor's office in discovery.

17 Q. And you would have used that in your evaluation of
18 this case, in your advice to Mr. Sweatt?

19 A. Yes.

20 MR. JOHNSON: Your Honor, I introduce these -- or
21 offer these into evidence as Respondent's 3 and 4.

22 THE COURT: Any objection?

23 MS. BLANCHETTE: Your Honor, I object as to relevance
24 and I also would request that I be provided a copy of both
25 the autopsy and these photos because I was not provided

LELAND GREELEY - DIRECT EXAMINATION BY MR. JOHNSON

1 those prior to court today.

2 THE COURT: What's the relevance? These are
3 pictures?

4 MR. JOHNSON: Yes. It shows the injury to the child,
5 Your Honor, and also is basis of the evidence that would
6 be shown at the trial if you grant him a new trial. And
7 it is also Mr. Greeley's -- he relied upon this in his
8 advice to Mr. Sweatt.

9 THE COURT: I'll allow them over the objection. Do
10 you have copies of those for her as well?

11 MR. JOHNSON: I can certainly make copies.

12 THE COURT: Make copies, if you will. We'll give you
13 copies of those.

14 MR. JOHNSON: Need color copies?

15 MS. BLANCHETTE: If I could get color, that'd be
16 great.

17 MR. JOHNSON: Court's indulgence, Your Honor.

18 THE COURT: All right.

19 MR. JOHNSON: No further questions at this time, Your
20 Honor.

21 THE COURT: You may cross-examine the witness.

22 MS. BLANCHETTE: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MS. BLANCHETTE

25 Q. Mr. Greeley, during the course of Mr. Sweatt's

LELAND GREELEY - CROSS-EXAMINATION BY MS. BLANCHETTE

1 testimony, he was asked repeatedly by the State if he lied
2 when he gave his presentation of the events to the plea
3 court. Would you, having known the facts and have had
4 these candid discussions of Mr. Sweatt, ever encouraged
5 him to lie to the plea court when he gave his presentation
6 of what had happened that morning?

7 A. Encouraged him to lie, of course not.

8 Q. Would you have stood by in court knowing that he was
9 lying to the plea court regarding the facts?

10 A. I'll only speak in regard to this particular case,
11 okay.

12 Q. I appreciate that.

13 A. I've been doing criminal defense work for 26 years.
14 In this particular case, I had no reason to believe that
15 anything he presented to court during the plea was a lie.

16 Q. Now, one specific instance that Mr. Sweatt had
17 testified in the transcript -- do you have a copy in front
18 of you, or do you need me to hand --

19 A. I have one now, I think.

20 Q. On page 52, Mr. Thompson's responding to the Court's
21 question about whether there's any allegations of abuse as
22 to his older son, C.

23 A. Right.

24 Q. And on line 7 through 9, Mr. Thompson states that at
25 that time that Mr. Sweatt wasn't necessarily ever really

LELAND GREELEY - CROSS-EXAMINATION BY MS. BLANCHETTE

1 alone with C. during the caregiving time for any
2 length of time.

3 MR. JOHNSON: Your Honor, I actually ask to move
4 under Rule 106 to read the entire paragraph and not that
5 in isolation.

6 THE COURT: I'll let you redirect on that.

7 MR. JOHNSON: Yes, sir. Thank you.

8 Q. And, Mr. Greeley, if you need the context, you have
9 the transcript in front of you. Did you agree with that
10 statement that Mr. Sweatt was never alone with C. ?

11 A. Well, no. I mean, the facts of this case show he was
12 alone with C. . He was caring for C. that morning
13 when he was also caring for his other child.

14 Q. Is there any reason you didn't clarify that to the
15 court?

16 A. I can't -- I don't have an answer for that. No,
17 there was no particular reason that I did not say that. I
18 guess I felt that it was good that Mr. Thompson admitted
19 that there was no evidence whatsoever that C. had been
20 abused by anybody.

21 Q. Mr. Greeley, what was your reaction to the sentence
22 that Mr. Sweatt received?

23 A. Disappointed. I was disappointed.

24 Q. And this was an open plea, so he could have received
25 anywhere from zero to 20; is that correct?

LELAND GREELEY - CROSS-EXAMINATION BY MS. BLANCHETTE

1 A. He could have gotten 20 years. He could have gotten
2 probation. And I had been in front of the sentencing
3 judge on a number of times, and I knew that the sentencing
4 judge was a reasonable person. I knew he was a very good,
5 commonsensical judge with the experience that I had had
6 with him. And so I was disappointed on the sentence. And
7 I was -- it bothered me too. Not that it was necessarily
8 unjust. Just that we were hoping for much better.

9 Q. And, Mr. Greeley, the State was correct in
10 summarizing that a majority of the allegations today go to
11 failure to mitigate or to offer additional mitigating
12 evidence or factors at the plea. Would you agree that
13 only Judge Burch would be the one that could determine if
14 those factors would sway the amount of time that he would
15 have given Mr. Sweatt?

16 A. He was the one who was giving the sentence. Nobody
17 else. So yes.

18 MS. BLANCHETTE: Your Honor, if I could beg the
19 Court's indulgence one moment.

20 Your Honor, I have no further questions.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q. Did you see any reason to motion for a
25 reconsideration of the sentence?

LELAND GREELEY - REDIRECT EXAMINATION BY MR. JOHNSON

1 MS. BLANCHETTE: Your Honor, I believe this goes
2 outside the scope of my examination.

3 THE COURT: I'll allow it in this case. Overruled.

4 A. No.

5 Q. And why not?

6 A. Because in giving the sentence, Judge Burch seemed
7 quite committed to what he did and it appeared that
8 usually the driving force behind a sentencing in cases
9 like this or many times the driving force behind sentences
10 such as this is the fact that we have a dead infant. And
11 that's not going to change.

12 Q. Last question, Mr. Greeley. Was Judge Burch well
13 within his discretion to impose this sentence?

14 A. It was a lawful sentence. His discretion is within
15 the law.

16 MR. JOHNSON: No further questions, Your Honor.

17 THE COURT: Thank you. You may step down.
18 Mr. Greeley.

19 THE WITNESS: May I be excused?

20 THE COURT: Without objection, you may be excused.

21 THE WITNESS: Thank you.

22 MR. JOHNSON: Court's indulgence, Your Honor.

23 State has no further witnesses.

24 THE COURT: Anything in reply?

25 MS. BLANCHETTE: Just briefly, Your Honor. Your

1 Honor, we have no further witnesses. I do have just a
2 small legal argument to make, but mostly I would rest upon
3 the memorandum that I submitted.

4 THE COURT: Let me make sure -- I haven't had a
5 chance to read your memorandum. You're basically seeking
6 a retrial or a reconsideration of sentence. Is that
7 basically it?

8 MS. BLANCHETTE: Yes, Your Honor. We know that -- I
9 cited to 1720 -- South Carolina Code 1727-AD, and I know
10 that that's usually interpreted as you must ask for a new
11 trial, so we are asking for a new trial, but that also
12 says the court may grant any relief on the conviction or
13 sentence that the court deemed necessary or proper. So I
14 went through a number of cases in which specific relief
15 has been granted, and I provided a copy of all those cases
16 along with a recent decision by Judge Hyman in Horry
17 County, and I know that's not controlling because it's
18 merely just issued by another PCR judge. But there he did
19 give the specific relief of a resentencing or belated
20 motion to reconsider to be held in front of the sentencing
21 judge, and I provided a copy of the order because I
22 thought the analysis was very interesting there, that he
23 found that only the sentencing judge could determine what
24 the mitigation -- how that would have factored into his
25 decision as far as the sentence goes.

1 Also noted, and I believe the State would not
2 disagree with this, the State chose not to appeal that
3 decision by Judge Hyman. So, therefore, I don't have an
4 appellate decision on that that would have precedential
5 value. That's why I have submitted it as the PCR judge
6 decided it. And that is our primary allegation here today
7 is what we have presented is information, factors, and
8 evidence that Mr. Greeley failed to give to the court in
9 an open plea. This wasn't a cap. And I know he said that
10 it was an infant death, so those facts would have led to a
11 higher sentence, but it was an open plea, and it was his
12 job to do everything in his power and his ability to
13 persuade that judge to go to the lower end, and I believe
14 we have testimony to say that he informed my client and
15 his family that he felt that that could be accomplished.

16 So I would just ask that the Court review my
17 memorandum on that, and I would be happy to address any
18 questions. But I also submitted the Court a copy of Stalk
19 versus State. That just goes into investigation prior to
20 a guilty plea, as well as a copy of Cole versus State that
21 I referenced during my questioning. There the Supreme
22 Court gives a nice analysis about those questions of
23 satisfaction at a guilty plea and that those can be
24 considered conditional based upon the information that was
25 known at the time. And then I submitted the Court a copy

1 of Dove versus State. That just goes into the failure to
2 obtain medical records. It's not directly on point, but
3 it is the best case that I could find on that.

4 One final thing is, too, I believe the State has
5 alluded to the fact that during the plea, Mr. Sweatt
6 waived his rights to a jury trial, his constitutional
7 rights. And I currently have a case on appeal in the
8 South Carolina Supreme Court dealing with that issue, but
9 we have had cases decided -- specifically in Spoon versus
10 State, there the applicant waived his rights to a guilty
11 plea and a PCR. So by waiving those rights at the plea,
12 we would submit he in no way is waiving his right to a new
13 trial and to raise these allegations at this time. I
14 don't know if that was what the State was alluding to, but
15 I just wanted to submit that to the Court that there was
16 no specific waiver of any post-trial relief here as was
17 done in Spoon versus State. Unless the Court has any
18 questions of me, that would conclude the applicant's
19 presentation.

20 THE COURT: Again, I can read. Let me just, while I
21 got you here, is there any allegation on the petitioner's
22 part that there should have been a timely appeal?

23 MS. BLANCHETTE: Your Honor, I believe in reviewing
24 the record that if we made that allegation and were
25 granted a belated direct appeal, that appeal itself may be

1 meritless and would fail under the Rule 203(b) explanation
2 that is required. So we're not making that allegation
3 today because I didn't see anything in the record of the
4 plea that would lend itself to a meritorious direct appeal
5 in this case.

6 THE COURT: You make the statement that only Judge
7 Burch could decide whether or not mitigation matters.
8 Just as an aside, I guess the residing judge is going to
9 have to decide that, if it'd make a difference or not
10 whether Judge Burch can hear that. Wouldn't you agree
11 that I have to decide whether or not the mitigation could
12 matter to him? Might not matter, it may matter, but I'll
13 have to sort of -- on the cusp have to make that
14 decision --

15 MS. BLANCHETTE: It is an interesting analysis, Your
16 Honor, and that's why I gave you a copy of Judge Hyman's
17 decision. And I believe it does a good analysis of kind
18 of that quandary that you're put in as far as this
19 allegation is concerned.

20 THE COURT: I haven't read it, but I guess where he's
21 going is that not just any judge could resentence, only
22 the presiding judge.

23 MS. BLANCHETTE: Or it would have to fall to the
24 chief administrative judge. I think it would fall to the
25 person that would be sitting in the capacity in general

1 sessions to determine that mitigating evidence. It's
2 not --

3 THE COURT: Do you know if a different judge could
4 sentence him or only Judge Burch if I grant you your
5 relief?

6 MS. BLANCHETTE: I've ran into a situation where the
7 judge is no longer on the bench, and so I'm going in front
8 of the chief administrative judge on the matter.

9 THE COURT: Right. But with the judge still on the
10 bench.

11 MS. BLANCHETTE: Right. In the case that I provided,
12 it was a case that Judge John heard and made. It will go
13 back in front of Judge John.

14 THE COURT: Judge John's got to go back because
15 they're in the same circuit. I'm sure he didn't want to
16 mess with that.

17 I'll read the -- your brief, and again review the
18 transcript and try to issue a decision or send a letter
19 out for one of you to prepare me an order in the next
20 hopefully couple weeks. Thank you very much.

21 MR. JOHNSON: Thank you, Your Honor.

22 MS. BLANCHETTE: Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded.)
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for York County, South Carolina, on the 15
day of August, 2013.

February 26th, 2014

Aminah R. Hardy

Aminah R. Hardy, RPR, CVR-CM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Curtis R. Sweat, #346121,	)	2012-CP-46-0975
Applicant,	)	
v.	)	
	)	MEMORANDUM OF LAW
State of South Carolina,	)	
<u>Respondent.</u>	)	

By way of his Application and the testimony and evidence presented at the evidentiary hearing, Applicant submits that plea counsel rendered ineffective assistance of counsel with the mitigation he offered during Applicant's plea and when he failed to file a motion to reconsider under Rule 29(a), SCRCrimP. By way of his Application for Post Conviction Relief, Applicant has requested relief in the form of a "new trial", which is the standard form of relief in Post Conviction Relief Actions. Applicant submits that pursuant to the below discussed statutory language, case law, and based upon the testimony and evidence presented at the evidentiary hearing, the specific relief of a resentencing or a belated motion to reconsider is the appropriate relief in the instant case.

South Carolina Code § 17-27-80, in pertinent part provides:

If the Court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary or proper.
(emphasis added)

In the instant case, Applicant submits that it would be necessary and proper for this Court to find plea counsel was ineffective for his performance during the mitigation portion of the plea hearing and/or that counsel was ineffective for failing to file a motion to reconsider. As a result, Applicant would urge this Court to grant a resentencing or a belated motion to reconsider.

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), the United States Supreme Court held that a defendant has a right to effective assistance of counsel under the Sixth



Amendment to the United States Constitution. Interestingly, in Strickland, the Court addressed ineffective assistance of counsel during the penalty phase or sentencing portion of a death penalty case. As is established by Strickland, Applicant has the right to effective assistance with mitigation and during sentencing. Similarly, in New Jersey v. Hess, 207 N.J. 123, 23 A.3d 373 (2011), the Supreme Court of New Jersey reversed the lower court's denial of post conviction relief and found that counsel rendered ineffective assistance when he deprived the court of mitigating evidence that was necessary for a meaningful sentencing hearing and failed to object to a video tribute to the victim during the sentencing hearing. As a result, the court ordered a new sentencing hearing for Hess.

In South Carolina, the appellate courts have repeatedly crafted a remedy that was tailored to the precise injury suffered in Post Conviction Relief. In Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009), the South Carolina Supreme Court reversed the lower court's denial of relief and found that counsel rendered ineffective assistance when he failed to make a motion to withdraw applicant's guilty plea. Noting that the prejudice analysis presented in the case did not fit squarely within the traditional prejudice framework, the South Carolina Supreme Court remanded the case to the point in the plea proceeding in which counsel should have sought to withdraw the plea since this tailored relief remedied the precise prejudice resulting from counsel's deficient performance. Id. at 413-15, 683 S.E.2d at 474.

In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the South Carolina Supreme Court also reversed the lower court's denial of relief finding that counsel was ineffective for failing to communicate a fifteen year plea offer. The court reasoned that there was no evidence in the record that applicant expressed a desire to proceed to trial; therefore, a remand for a new trial was not the appropriate remedy. Id. at 615, 675 S.E.2d at 423-4. The Court concluded that

resentencing was the proper remedy because the remedy should be tailored to the injury suffered. Id. at 614, 675 S.E.2d at 423.

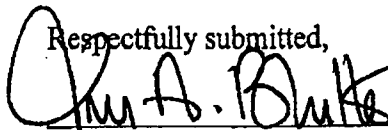
In Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010), the South Carolina Supreme Court reversed the lower court and remanded for resentencing. The Court found that counsel was ineffective when he failed to object to a ten year difference between the oral pronouncement of the sentence and the term written on the sentencing sheet. Id. at 275-6, 695 S.E.2d at 851-2. The Court noted previously rulings holding that post conviction relief “may be tailored to remedy the precise prejudice resulting from trial counsel’s deficient performance” and found that resentencing on the charge at issue was the proper remedy. Id. at 277, 695 S.E.2d at 852-3.

Similarly, to the instant case, Applicant has attached the recent decision of the Honorable Larry B. Hyman, Jr., in Jovon Brown v. State granting Brown a rehearing on sentencing or a belated motion to reconsider sentence. In this PCR Application out of Horry County (Docket No.: 2010-CP-26-4774), the attached Order Denying Post-Conviction Relief as to the Conviction but Granting Post Conviction Relief as to the Sentencing was issued on May 21, 2012. Applicant understands that this case does not hold any precedential value as it is not a published appellate decision, but it is of consideration that the State did not appeal this recent decision granting relief tailored to remedy the precise prejudice suffered by counsel’s deficient performance.

Based upon the above discussion of the law and the evidence and testimony presented at the evidentiary hearing, Applicant submits that plea counsel rendered ineffective assistance of counsel with the mitigation he offered during Applicant’s plea and when he failed to file a motion to reconsider under Rule 29(a), SCRCrimP. Alternatively to a new trial, Applicant further submits the necessary and proper relief in this case should be the granting of a resentencing or a

belated motion for reconsideration during which the Court could consider the mitigating evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tricia A. Blanchette", written over a horizontal line.

Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211



Palmetto Pediatrics

Hal E. Copple, MD
Douglas B. Hansen, MD
Hong Bui, MD
Wendy Baker, APRN, BC

April 19, 2010

To Whom It May Concern:

Minor was a patient at Palmetto Pediatrics, and I was her pediatrician. I examined her as a newborn at Piedmont Medical Center. I also evaluated her at each of her office visits at Palmetto Pediatrics. Minor was seen six times in the office. The first three visits on 9/18/09, 9/26/09, and 10/2/09 were for weight checks in the newborn period. During this time she had some issues with a diaper rash requiring a prescription cream. She was then seen on 10/16/09 for her 1-month-old well child visit and on 11/17/09 for her 2-month-old well child visit. Her physical examinations at these visits were normal and development was appropriate for age. My only concern at that time was that her parents were placing her on her belly to sleep, which can increase the risk of Sudden Infant Death Syndrome (SIDS). Minor's sixth and final visit was on 12/21/09 for an upper respiratory illness. Danielle Tucker, Minor's mother, was always appropriate and caring at each office visit. I had no concerns about Minor's care. There were no signs or indications of child maltreatment from my interactions with Danielle and Minor.

Sincerely,


Hong Bui, MD



Patient Name: Sweatt, Jr. Curtis
Patient #: 53594
Date of Service: 04/23/08

SUBJECTIVE:

This is a 25-year-old white male who is here for followup. The patient states that he is doing well, denies any chest pain, no short of breath, and no swelling in his legs. He states that he has been having a lot of problems with anxiety. He states that he has been on Lexapro for about a year and half and has been doing well, but then he has to cut back because he has not been afford that Lexapro and he has been taking just half the tablet and has been out of it for sometime. He has been having a lot of mood swings and has been very anxious and needs help with that. He also smokes and also wants to try and quit smoking. Other than that, he has no associated complaints. He is concerned that because he has no insurance.

MEDICATIONS:

List of medications was reviewed.

ALLERGIES:

Reviewed.

REVIEW OF SYSTEMS:

As per template.

OBJECTIVE:

As per template.

ASSESSMENT/PLAN:

1. **Anxiety:** At this point, I think the patient need to be on a stabilizer, so we will go ahead and get started him on 20 mg of Lexapro and see how he does. If not better, is to return and reevaluate the patient.
2. **Smoker:** He is advised to quit.
3. **Preventive healthcare:** The patient is to probably get some baseline blood work and we will have him evaluated in about a month.

Anju Choudhury, M.D.

D: 04/23/08

T: 04/24/08

Dictated but not read to expedite.



Metrolina Medical Associates

CC: Discuss Meds

Date/Time: 4-23-08
Alt: 5'4"

Name: Curtis Swartz Jr.
MR#: 53594
DOB: 5

Temp: 98.0 HR: 70 Resp: 12 BP: 120/78 Age: 25 Ht: 5'4" Wt: 187 LMP:

Meds: ☒ Reviewed & Updated Meds list
... or listed them here:

F/S/PMHx ☐ Reviewed today
and Updated Problem List

HPI: Signature: A. McCoy MD
Location, Quality, Severity, Duration, Timing, Context, Modifying Factors, Associated Signs/Symptoms or Blahs of Blahs

Smoker: ☒ Yes
Alcohol: 100
Work:
FHx:

Has been on Lexapro for 1 1/2 yrs when 1st dx

PMHx:

ROS:	Circle = Positive	Notes on other ROS items:
Constitutional:	☒ No fever ☐ chills ☐ fatigue ☐ appetite change ☐ dizzy	
Allergy:	☒ No Rxn to: ☐ meds ☐ pollen ☐ ragweed ☐ mold ☐ environment	DETAILS:
Skin:	☒ No rash ☐ itch ☐ warmth ☐ redness ☐ acne ☐ growths/warts	
Head/Eyes:	☒ No HA ☐ dizzy ☐ visual change ☐ congestion ☐ conjunctivitis	
ENMT:	☒ No S.T. ☐ otalgia ☐ sinus pressure ☐ vertigo ☐ tinnitus	
Lungs:	☒ No SOB ☐ cough ☐ wheeze ☐ prod. sputum ☐ pleuresy	
Heart:	☒ No CP ☐ syncope ☐ orthopnea ☐ palpitations ☐ nocturia	
GI:	☒ No NV ☐ GERD ☐ melena ☐ diar / constip. ☐ abd. pain	
GU/sexual:	☒ No dysuria ☐ odor ☐ hematuria ☐ discharge ☐ ED frequency ☐ ED	
Endocrine:	☒ No wt. change ☐ change in energy ☐ hot flashes	
Neuro:	☒ No weakness ☐ paresthesia ☐ numbness ☐ seizures ☐ LOC	
Muscles/Joints:	☒ No arthralgia ☐ myalgia ☐ spasms ☐ swelling	
Psych:	☒ No depression ☐ anxiety ☐ insomnia ☐ confusion ☐ dementia	
Heme/Lymph:	☒ No adenopathy ☐ bruising ☐ edema ☐ slow clotting	
		☐ All other ROS are negative

Exam:	NL	Abnormalities found / extra items examined:	Special Exams:
General:	☒ WDOWN, NAD	☐ obese ☐ vis ☐ perph.	☐ Feet, skin intact, nl pulses
Eyes:	☒ EOMI, PERRLA	☐ Fundi nl to extent visualized	☐ nl nails
ENMT:	☒ TM's clear, throat clear, no abn. nodes		☐ gulfac <u></u>
Neck:	☒ Supple, nl thyroid		
Lungs:	☒ CTA B, no R/RW		☐ BMI <u></u>
Heart:	☒ RRR, no Murmur Rub Bruit or gallop		☐ Body Type <u></u>
Abd:	☒ Soft, NTND, +BS, no HSM	☐ Rectal, no external masses	☐ Girth <u></u>
Skin:	☒ No rash, no lesion, warm & dry	☐ perineum	
Reflexes:	☒ Normal DTR ☐ Knee ☐ Ankle ☐ No clonus		
Neuro:	☒ CN 2-12 intact ☐ good fine motor ☐ gross motor ☐ cerebellar/balance		
Lymph:	☒ No abn. nodes, no edema		
M/Skel:	☒ NI ROM, strength and tone		
Breasts:	☒ No abn. masses or d/c, nontender		
Psych:	☒ Behav, Insight, Judgement, Mood <u>2 Mood Swings</u>		
GUM-F	☒ NI Genitalia	☐ NI urethra, meatus, vagina & bladder.	☐ NI cervix & uterus ☐ NI adnexa

- Tests Ordered:
- ☐ CBC
 - ☐ CMP
 - ☐ LIPIDS
 - ☐ TSH
 - ☐ hs-CRP
 - ☐ PSA
 - ☐ Liver/GGT
 - ☐ Spirometry
 - ☐ Hgb
 - ☐ Hemocult
 - ☐ EKG
 - ☐ U/A
 - ☐ Hgb-A1C
 - ☐ Microalbumin
 - ☐ X-Ray of:

- ① Anxiety
- ② Snoring
- ③ No more Ge

Impression/Plan

Provider Signature: [Signature]

Obtain old MR or Hx from another

Interp. CXR/EKG (Previous films) referral

Reviewed old MR or Hx from another or discussed w/provider

RTC

Counseling if > 50% Time:

Name Curtis Schubert

Chart #

58594Date 8-17-06

DOB

3(22)

re anxiety - (Lexapro 10mg)
out x 2-3 mo.) helped

PCr & ~~BUN~~ LFT

☐ 322768 BMP	WT <u>175</u>
☐ 322000 CMP	BP <u>100/70</u>
☐ 322755 LFT's	TEMP <u>97</u>
☐ 235010 LIP PANEL	PULSE <u>70</u>
☐ 005009 CBC	FSBS
☐ 000810 B12/FOLATE	O2 Sat
☐ 001453 HGBA1C	URINE
☐ 001321 IRON/IBC	SPEC. Grav
☐ 010322 PSA	PH
☐ 005199 PT	Leukocytes
☐ 005216 SED RATE	Nitrates
☐ 001149 T4	Protein
☐ 001156 T3 UPTAKE	Glucose
☐ 004259 TSH	Ketones
☐ 000820 THYROID PANEL	Urobilinogen
☐ 162289 H-PYLORI	Bilirubin
☐ 007401 DILANTIN	Blood
☐ 001180 K+	HGB

got separated from wife.

Name Curtis Sweatt

Chart #

53594

197

Date 11-2-05

DOB

(22)A. Allen

- ☐ 322758 BMP
- ☐ 322000 CMP
- ☐ 322755 LFT's
- ☐ 235010 LIP PANEL
- ☐ 005009 CBC
- ☐ 000810 B12/FOLATE
- ☐ 001453 HGBA1C
- ☐ 001321 IRON/IBC
- ☐ 010322 PSA
- ☐ 005199 PT
- ☐ 005215 SED RATE
- ☐ 001149 T4
- ☐ 001156 T3 UPTAKE
- ☐ 004259 TSH
- ☐ 000620 THYROID PANEL
- ☐ 162289 H-PYLORI
- ☐ 007401 DILANTIN
- ☐ 001180 K+

WT 180
BP 122/70
TEMP 98.8
PULSE 82
FSBS _____
O2 Sat _____
URINE _____
SPEC. Grav _____
PH _____
Leukocytes _____
Nitrates _____
Protein _____
Glucose _____
Ketones _____
Urobilinogen _____
Bilirubin _____
Blood _____
HGB _____

talk w/ you
personal

Recent Marriage / Sept 2005.
PTSD... ADD

wife seeing psychiatrist tomorrow

acute situational anxiety

Lexapro 10 1/2 d 0

Ø meds

added
1130

Piedmont Family Practice at Rock Hill

200 S. Herlong Avenue
Suite G
Rock Hill, SC 29732
Office: 803-325-1770 Fax: 803-325-1790

Eric G. Johnson, MD
Board Certified in
Family Medicine

PATIENT: Curtis Sweatt
DATE OF BIRTH: _____
DATE: 02/04/2009 3:30 PM
VISIT TYPE: Office Visit

Reason(s) for visit

1. anxiety
2. depression Onset: 2.5 year(s) ago. The first episode occurred in 2006. Date of initial visit for this episode: 02/04/2009. The patient reports it is extremely difficult to meet home, work, or social obligations. Status: worsening. Context: financial worries, relationship problems and unemployment. The symptoms are aggravated by conflict or stress at home or work and lack of sleep. There are no relieving factors. He is experiencing anxious, fearful thoughts, compulsive thoughts or behaviors, irritable mood, fatigue or loss of energy, poor concentration, indecisiveness, restlessness or sluggishness, significant change in appetite (weight loss or gain greater than 5%), sleep disturbance and thoughts of death or suicide. Pertinent negatives include panic attacks. Patient has the symptoms of a major depressive episode.

Social History

Reviewed, no changes. Last detailed document date: 11/25/2008.

Active Medications (started before visit, or continued this visit)

none.

Allergies:

Allergen/Ingredient
Sulfa (sulfonamides)

Brand

Reaction:

The patient is a tobacco user.

Review of Systems

Constitutional:

Negative for fatigue, fever and night sweats.

HEENT:

Negative for eye discharge and vision loss.

Negative for ear drainage, hearing loss and nasal drainage.

Gastrointestinal:

Negative for abdominal pain, constipation, diarrhea and vomiting.

Genitourinary:

Negative for polyuria.



Sweatt, Curtis 03/29/1983

1/2

Piedmont Family Practice at Rock Hill
200 S Herlong Ave Suite G
Phone 803-325-1770 Fax 803-325-1790

Piedmont Family Practice at Rock Hill

200 S. Herlong Avenue
Suite G
Rock Hill, SC 29732
Office: 803-325-1770 Fax: 803-325-1790

Eric G. Johnson, MD
Board Certified in
Family Medicine

PATIENT: Curtis Sweat
DATE OF BIRTH: 11/04/2009 9:15 AM
DATE: Office Visit
VISIT TYPE: Dr. Eric Johnson
REFERRING PHYSICIAN:

Reason(s) for visit

A 28 year old male presents with depression, medication refill, cold symptoms.

1. **depression** The first episode occurred in 2006. Date of initial visit for this episode: 02/04/2009. The patient reports it is somewhat difficult to meet home, work, or social obligations. Context: relationship problems. The symptoms are aggravated by conflict or stress at home or work. He is experiencing anxious, fearful thoughts, irritable mood and panic attacks. Pertinent negatives include diminished interest or pleasure, fatigue or loss of energy, poor concentration, indecisiveness or sleep disturbance.

2. **medication refill**

3. **cold symptoms** Onset 4 day(s) ago. The patient describes the cough as dry, moist and productive. Associated symptoms include cough, nasal congestion, post-nasal drainage and sinus pressure. Pertinent negatives include chills, fatigue, fever, hoarseness and sore throat.

Active Medications (started before visit)

Medication	Dose	Sig
Vistaril	80mg	take 1 capsule (50MG) by ORAL route 2 times every day

Allergies:

Allergen/ingredient	Brand	Reaction:
Sulfa (sulfonamide Antibiotics)		

The patient is a tobacco user.

Review of Systems

Constitutional Negative for fatigue, fever and night sweats.
GU Negative for polyuria.
Endocrine Negative for cold intolerance, heat intolerance, polydipsia and polyphagia.
MS Negative for bone/joint symptoms and weakness.

Vital Signs

BP	Temp F	Pulse	BMI	Resp Rate	Ht In	Wt Lb	Pain Score
129/88	98.8	70		20		190.0	

Comments

Physical exam

Constitutional: No apparent distress. Well nourished and well developed.

Nose / Mouth / Throat: No nasal deformity. Mucous membranes normal. Tongue and throat appear normal. No mucosal lesions.

Respiratory:

Auscultation can be described as diffuse rhonchi.

Abdomen: Soft, non-tender, without organomegaly or masses.

Genitourinary: No CVA tenderness. Normal external genitalia.

Sweatt, Curtis 03/29/1983

1/2

Neurological: Alert and oriented.

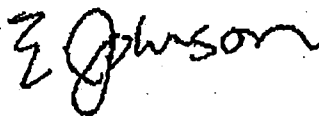
Psychiatric: No unusual anxiety or evidence of depression.

Assessment/ Plan

1. Bronchitis, acute (466.0)

Medications (started this visit):

<u>Medication</u>	<u>Dose</u>	<u>Sig</u>	<u>Dx Code</u>
Zithromax	250mg	take 2 tablet (500MG) by ORAL route every day for 1 day then 1 tablet (250mg) by oral	
Tegretol	200mg	take 1 tablet (200MG) by ORAL route every 12 hours	



Provider: Eric G. Johnson MD

Document generated by: Eric G. Johnson 11/04/2009 12:41 PM

PIEDMONT MEDICAL CENTER
222 S. Herlong Avenue
Rock Hill, SC 29732
AUTOPSY REPORT

10:AU000003

DECEDENT'S NAME: Minor K
AGE: 4 MONTH OLD (DOB:)
AUTOPSY AUTHORIZED BY: SABRINA GAST/DAVID CHAMBERS, YORK COUNTY CORONER'S OFFICE
DATE AND TIME OF DEATH: 1/8/10, 1117 HOURS
DATE AND TIME OF AUTOPSY: 1/9/10, 0800 HOURS, PMC MORGUE
PROSECTOR: ROBERT E. THOMAS, JR., M.D.
PERSON(S) PRESENT: D.CHAMBERS, EV AMICK, E.STRAIT, R.BARNWELL, C.NEELY, F.MOORE

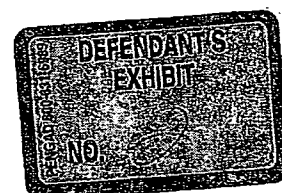
CLINICAL SUMMARY

The decedent was a 4 month old white female infant who had no significant past medical history and was born via unremarkable C-section. The decedent's father states that he had given the decedent a sponge bath after having a dirty diaper. The decedent's father stated that the decedent's neck suddenly "snapped back" after which the decedent became lethargic with labored breathing. The decedent's father called 911 and EMS transported the decedent to Piedmont Medical Center. The infant was stabilized and transferred to CMC Levine. At CMC, the decedent was non-unresponsive with bilaterally non-reactive pupils. A head CT performed at CMC was significant for the presence of diffuse bilateral cerebral edema and swelling, right convexity subdural hematoma, slight shift of midline structures to the left, and herniation. Also significant at CMC was the presence of multiple upper and lower extremity fractures (see medical record for complete details). The decedent was cared for at CMC and a determination was made after apneic testing that the decedent was brain dead. Ventilatory support was withdrawn and the decedent was pronounced dead at 1117 hours on 1/8/10. A full autopsy was performed the following day in the Piedmont Medical Center morgue at the request of the York County Coroner's Office. The autopsy lasted approximately 2 1/2 hours.

EXTERNAL EXAMINATION

The body is that of a white female infant appearing the stated age of four months. The body weighs 5.3 kg (11.6 lbs, 20th percentile for age) and measures 25 inches in length (75th percentile for age). The head circumference is 15 3/4 inches (approximately 30th percentile for age), the chest circumference 14 1/2 inches and the abdominal circumference 13 inches. The body is unclothed. The body is identified with an identification tag located on the decedent's left ankle. Evidence of medical therapy and/or emergency resuscitation includes a total of four puncture sites located on the right anterior tibial area, the left ankle area, the right antecubital fossa area, and the left dorsal hand area.

The hair is light brown and measures 1 1/2 inches in length at the crown. The anterior and posterior fontanels are open. The irises are blue in color. The pupils measure 5-6 mm. in diameter bilaterally. The conjunctivae are clear. The sclerae are clear.



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EXTERNAL EXAMINATION

(Continued)

The nose and nasal orifices are unremarkable. The ears and external auditory canals are unremarkable. Teeth are not present. The frenulum is intact. The neck is unremarkable. The chest is symmetric. The abdomen is flat. The genitalia are unremarkable. The anus is unremarkable. The back is unremarkable. The extremities are symmetric. All digits are present.

Rigor mortis is minimal in the extremities and the jaw. Lividity is partially fixed on the posterior aspect of the body as well as the right face area, except in areas exposed to pressure. The body is cool to touch.

INTERNAL EXAMINATION

The body is opened with a Y-shaped thoracoabdominal incision. All internal organs are in their normal anatomic position.

BODY CAVITIES: The abdominal cavity contains approximately 10 cc. of viscous yellow ascites fluid. The pericardial and pleural cavities are free of significant fluid accumulation.

NECK: The larynx is unremarkable. The thyroid is red-brown and has a firm cut surface. The hyoid bone is unremarkable. No significant strap muscle hemorrhage is identified.

THYMUS: The thymus weighs 21 grams and has a lobulated yellow-orange appearance. The cut surface is unremarkable.

HEART: The heart weighs 28 grams. The epicardial surface is smooth and shiny. The coronaries have a normal distribution. There is no significant cardiovascular disease. The myocardium is red-brown with no significant scarring. The left myocardial wall measures approximately 0.9 cm. in thickness. No atrial or septal defects are identified. The valves have the usual number of cusps/leaflets.

LUNGS: The right lung weighs 72 grams. The left lung weighs 66 grams. The pleural surface of each is pink red and smooth. The bronchi are free of obstructing material. The pulmonary vessels are free of thromboemboli. The cut surface of the lung parenchyma is red-brown and smooth. No parenchymal lesions are identified.

LIVER: The liver weighs 286 grams. The capsular surface is dark brown and smooth. The cut surface is smooth and homogeneous. No parenchymal lesions are identified. The gallbladder is present and contains several cc. of dark yellow bile.

SPLEEN: The spleen weighs 27 grams. The capsular surface is slightly wrinkled. The cut surface is soft. No lesions are

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(Continued)

identified.

KIDNEYS: The right kidney weighs 22 grams. The left kidney weighs 22 grams. The cortical surface is smooth. The capsular surface strips with ease from the underlying cortex. The cortex is of normal thickness. The corticomedullary junction is well defined. The collecting system is unremarkable.

ADRENAL GLANDS: The adrenal glands are of normal size. The cortex and medulla are unremarkable.

GASTROINTESTINAL SYSTEM: The esophagus is unremarkable. The mucosa is gray-white and unremarkable. The stomach contains less than 1 ml. of liquified food substance. The mucosa is pink-tan and contains normal rugal folds. The small intestine is unremarkable and contains a normal amount of soft fecal material. The appendix is identified. The large bowel contains a normal amount of fecal material.

PANCREAS: The pancreas is yellow-orange and has a lobulated cut surface. No lesions are seen.

GENITOURINARY: The urinary bladder is void of urine. The uterus, fallopian tubes, and ovaries are unremarkable.

BRAIN: The brain weighs 646 gms. There is diffuse bilateral cerebral edema with marked blunting of the normal gyral/sulcal pattern. The right cerebral lobe contains extensive central softening consistent with respiratory brain. There is an extensive right sided subdural hematoma involving the fronto-parietal, temporal, and occipital regions. This measures approximately 4 x 3 1/2 inches and ranges from 3 up to approximately 5 mm. in thickness. The spinal cord has been displaced posteriorly due to herniation of the brain material into the anterior aspect of the spinal column. Normal landmarks are not easily identified due to the extensive cerebral edema. The brain is further fixed. After fixation (approximately three weeks), the brain tissue is serially sectioned to reveal extensive soft necrotic brain tissue most apparent in the right cerebrum.

LABORATORY PROCEDURES: Blood is drawn (less than 2 cc.). Blood is obtained from hospital admission at PMC and CMC. Blood is submitted to NMS Laboratories for toxicology testing.

X-RAY PROCEDURES: Plain films are obtained in the morgue which reveal multiple fractures including the left ulna, left radius, right distal tibia, and left distal tibia.

ANCILLARY STUDIES: Skin biopsy is obtained to exclude osteogenesis imperfecta.

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INTERNAL EXAMINATION

(Continued)

ADDITIONAL STUDIES: Bilateral eyes are removed for examination and fixed. Liver, spleen and gastric contents are frozen.

CASSETTE SUMMARY:

- 1 - Liver, gallbladder
- 2 - Liver, spleen
- 3 - Left lung, lower lobe
- 4 - Left lung, upper lobe
- 5 - Right lower lobe of lung
- 6 - Right upper lobe of lung
- 7,8 - Bilateral kidneys and adrenal glands
- 9 - Thymus, pancreas
- 10 - Pancreas, thyroid, GI tract
- 11 - GI tract
- 12 - Heart
- 13,14,15 - Right sided dura with subdural hematoma
- 16 - Ribs
- 17 thru 19 - Right eye
- 20 thru 22 - Left eye
- 23 - Left frontal cortex
- 24 - Left parietal cortex
- 25 - Left temporal cortex
- 26 - Left cerebellum
- 27 - Right frontal cortex
- 28 - Right parietal cortex
- 29 - Right temporal cortex
- 30,31 - Mid brain/pons
- 32,33 - Miscellaneous necrotic brain material

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MICROSCOPIC DESCRIPTION

LIVER: Sections show mild congestion but are otherwise unremarkable.

GALLBLADDER: Sections show autolysis.

SPLEEN: Sections show congestion.

LUNGS: Sections show congestion but no significant acute inflammation. There is no increased chronic inflammatory component, hyaline membranes, or evidence of unusual inflammatory changes. Pulmonary edema is also appreciated in the right lower lobe.

KIDNEYS: Sections are unremarkable.

ADRENAL GLANDS: Sections are unremarkable.

THYMUS: Unremarkable.

PANCREAS: Unremarkable.

THYROID: Unremarkable.

GASTROINTESTINAL TRACT: Unremarkable.

HEART: Unremarkable.

EYES: Sections of the eyes reveal a mild degree of focal hemorrhage within the right retinal tissue.

BRAIN: Sections of the cerebral cortices and cerebellar tissue reveal extensive generalized edema and tissue necrosis. There is subarachnoid and subdural hemorrhage which is acute in nature. The additional sections of necrotic brain confirm the gross impression. Similar changes are seen in the pons, mid brain, and medulla. Sections of the subdural hematoma reveal acute hemorrhage with no to only minimal evidence of organization. Beta-Amyloid stains referred to PhenoPath Laboratories were negative.

BONE: Sections of the ribs reveal normal hematopoietic precursors.

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FINAL SUMMARY

The decedent was a 4 month old white female infant who had no significant past medical history and was born via an unremarkable C-section. The decedent was in the care of her father on the morning of 1/7/2010 when he states her neck suddenly snapped back after having a bath. The decedent reportedly became lethargic and developed labored breathing. EMS was called and the decedent was transported to Piedmont Medical Center, stabilized, and transferred to CMC Levine. The decedent was given care at CMC where workup revealed diffuse bilateral cerebral edema and a right convexity subdural hematoma with midline shift to the left and herniation. Multiple upper and lower extremity fractures were also documented. The decedent deteriorated and was pronounced dead at 1117 hours on 1/8/10. A full autopsy was performed the following day in the Piedmont Medical Center morgue at the request of the York County Coroner's Office.

Significant findings at autopsy included full body x-rays which confirmed the presence of multiple extremity fractures, including fractures of the left ulna, left radius, right proximal tibia, and left proximal tibia. Internal examination was significant for the presence of a diffusely edematous brain with extensive brain necrosis and evidence of herniation. A right sided subdural hematoma was present which measured approximately 4 x 3.5 inches and averaged approximately 4 mm. in thickness. Microscopic examination of the brain tissue confirmed the gross impression of generalized cerebral edema and brain necrosis. The subdural hematoma was acute in duration.

Examination of the decedent's eyes revealed focal retinal hemorrhage in the right eye. The rest of the exam including sections of the lungs were unremarkable with no source or evidence of natural disease.

Ancillary studies included the analysis of a skin biopsy referred to CMC Laboratories, and subsequently referred to Collagen Diagnostic Laboratory at the University of Washington. This was negative for any detectable collagen abnormality (See Separate Report).

Blood was submitted to NMS Reference Laboratories for toxicology examination. Blood was submitted from the inpatient stays at CMC and Piedmont, with only limited blood available. These were negative for common drugs of abuse and negative for acetaminophen (tylenol).

After extensive review of the decedent's past medical history, review of the medical records, complete autopsy examination, and toxicological examination, the cause of death is brain herniation secondary to massive bilateral cerebral edema and right sided subdural hematoma. The mechanism of injury giving consideration to the retinal hemorrhage documented at autopsy and by ophthalmologic

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FINAL SUMMARY

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examination premortem, the presence of extensive subdural hematoma formation, and cerebral edema is an acceleration/deceleration event. The presence of multiple skeletal fractures indicates ongoing trauma, supporting a manner of death as homicide by child abuse.

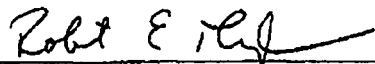
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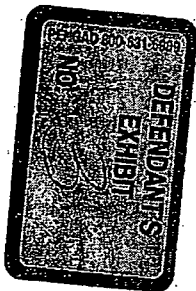
FINAL PATHOLOGIC DX

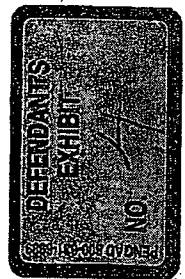
- I. BRAIN:
 - BILATERAL DIFFUSE CEREBRAL EDEMA
 - RIGHT CONVEXITY SUBDURAL HEMATOMA
 - EVIDENCE OF BRAIN STEM HERNIATION
- II. EYES:
 - FOCAL RIGHT RETINAL HEMORRHAGE
- III. RADIOGRAPHIC:
 - LEFT ULNA FRACTURE
 - LEFT RADIUS FRACTURE
 - RIGHT PROXIMAL TIBIAL FRACTURE
 - LEFT PROXIMAL TIBIAL FRACTURE
 - RIGHT DISTAL FEMUR FRACTURE (DOCUMENTED IN CMC RADIOGRAPHIC REPORT)
- IV. ANCILLARY STUDIES:
 - SKIN BIOPSY NEGATIVE FOR COLLAGEN ABNORMALITIES (OSTEOGENESIS IMPERFECTA)
- V. TOXICOLOGIC TESTING:
 - NEGATIVE FOR DRUGS OF ABUSE
 - NEGATIVE FOR ACETAMINOPHEN/TYLENOL

Signed



Robert Thomas Jr MD 06/02/10





STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Curtis R. Sweatt, #346121,

2012-CP-46-0975

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED-RECEIVED
2013 OCT 16 PM 4:07
DAVID JOHNSON
C.C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 16, 2012. Respondent made its Return on July 6, 2012. An evidentiary hearing into the matter was convened on August 15, 2013, at the Moss Justice Center in York, SC. Tricia Blanchette, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Gaye Allen-Cook, Danielle Tucker, Lynn Sweatt, Randy Sweatt and Applicant testified on Applicant's behalf. Leland Greeley, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, Applicant medical records, the autopsy report, autopsy photographs, Applicant's memorandum and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was charged with Involuntary Manslaughter (2011-GS-46-01523) and Infliction of great bodily injury to a child (2011-

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GS-46-01524). Applicant was represented by the Leland Greeley, Esquire. On May 20, 2011, Applicant waived presentment to the Grand Jury and pled guilty as indicted. The Honorable Paul M. Burch sentenced the Applicant to confinement for twenty (20) years suspended upon the service of sixteen (16) years, the balance of which is suspended for four (4) years' probation and five (5) years, concurrent, for Involuntary manslaughter. Applicant did not appeal his conviction or sentence.

In his original application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to advise client regarding placement on child abuse registry and properly advise regarding the likely sentence of the court."
 - b. "Misrepresentation of Applicants statements provided to plea counsel to plea to court"
2. Involuntary guilty plea
 - a. "Failure to fully evaluate the State's evidence and conduct an investigation prior to the entry of the plea."

In his amended application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to investigate and/or address Applicant mental health history. Failure to contact and/or utilize Applicant family doctor (Eric G. Johnson, M.D.)"
 - b. "Failure to call an expert (clinical child family therapist specializing in trauma and abuse) in mitigation at the plea or at trial (if a trial was pursued)."
 - c. "Failure to provide the Court with a reasonable defense and/or explanation of the events in question."
 - d. "Failure to refute the State summation of the medical findings and failure to oppose the Court's

review of the highly prejudicial autopsy photographs.”

- e. “Failure to file a Motion for Reconsideration of Applicant’s sentence.”

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel listed in his amended application.

SUMMARY OF TESTIMONY

Gaye Allen-Cook, a clinical child and family psychotherapist, testified she reviewed documents and interviewed Applicant twice in preparation for the PCR hearing. She stated her findings were that Applicant suffers from anxiety, has a “sketchy” memory of the incident and potentially has post-traumatic stress disorder. She also stated Applicant was remorseful and emotional concerning Victim’s death and did not appear to have malicious intent during the incident.¹ Mrs. Allen-Cook lastly testified she would have been willing to testify in mitigation at Applicant’s plea or a trial, if one had been pursued.

Danielle Tucker, Victim’s mother, testified she was very emotional when she made comments at Applicant’s guilty plea. She stated she was never contacted by Counsel before Applicant’s plea. She also stated that the Department of Social Services took custody of her son after the incident and that she does not want Applicant out of her son’s life (Applicant is son’s father). Ms. Tucker lastly testified she was at the PCR hearing to support Applicant.

On cross-examination, she admitted that her testimony at the guilty plea was different than during mitigation at the guilty plea in that she stated she did not want Applicant in her son’s life

¹ Mrs. Allen-Cook was not present during the incident.

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before son could decide for himself whether he wanted Applicant in his life. She lastly testified she was not responsible for Victim's death.

Lynn Sweatt, Applicant's mother, testified she worked in labor and delivery as a registered nurse as well as having worked as a grief counselor. She stated she became aware that something was wrong with Victim when she got a telephone call from the hospital from her daughter. She testified Applicant was shaken, worried, and in shock at the hospital. Mrs. Sweatt also testified she retained Counsel and met with him many times in preparation for a trial. It was not until seven to ten days before Applicant's plea that she became aware that a plea was a possibility. Her understanding was that Applicant would plead to Involuntary Manslaughter only and the Infliction of Great Bodily Injury upon a child charge would not be pursued. She also stated Counsel did not tell her what to write in her letter that was presented to the plea court and that had he advised her, she would have added additional comments in support of Applicant. In her opinion, the plea was a vicious proceeding by the prosecutor. Mrs. Sweatt lastly testified she was shocked by Applicant's sentence.

Randy Sweatt, Applicant's father, testified he received a telephone call and proceeded to the Emergency Room at the hospital where he found Applicant visibly upset. He stated this was a situation where he needed to hire an attorney and contacted Michael Smith. Subsequently, the decision was made to hire Counsel. Mr. Sweatt testified he met with Counsel several times and thoroughly discussed the case. He also stated he thought the case was going to result in a trial, and it was not until around one week before the plea that he and Counsel first discussed a plea. He testified Counsel stated that a "favorable judge" would be in the circuit to take Applicant's plea. Mr. Sweatt testified he wrote a letter that Counsel read aloud at the plea, and Counsel did not advise him what to write. He stated he has never witnessed Applicant hurt anyone or anything. He lastly testified he

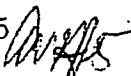


would have told the plea court that Applicant was not capable of committing this crime. On cross-examination, Mr. Sweatt admitted that he had an opportunity to address the plea court but had declined to do so.

Applicant testified there were issues not addressed properly at the plea hearing and that he wants a re-sentencing hearing or a new trial. He stated his family first hired Michael Smith who filed a Rule 5 motion and discovery on Applicant's behalf. Applicant then hired Counsel who reviewed the case with Applicant and prepared for a trial. Applicant stated Counsel did not review discovery materials with him but only discussed one or two defense strategies regarding Victim's autopsy, which showed there was no external bruising on Victim's head and neck. Applicant testified Victim's death was an accident and that part of his decision to plead guilty was that the charges he pled to contained no "intent" requirement. Applicant also testified his first attorney (Smith) hired a private investigator but Counsel did not work with this investigator.

Applicant also testified he had been a patient of Dr. Eric Johnson's for anxiety and depression prior to the incident for which he was prescribed medications. He admitted that he stopped taking these medications on his own accord. He stated Counsel did not discuss with him the idea of presenting this medical history in mitigation.

Applicant testified that approximately one week before the plea he decided to plead instead of proceeding with a trial. He claimed Counsel "sold" him on the plea because a visiting judge would be beneficial as Counsel had had prior cases before that judge where the defendant received a favorable sentence. Applicant also testified, while Counsel never promised he would receive probation only, Counsel stated that Counsel thought Applicant was a good candidate for probation.



He then claimed he pled on Counsel's advice. Applicant testified he did not think Counsel was properly prepared for trial, but that Counsel's strategy was to shift the blame.

Applicant also testified Counsel did not advise him concerning the Child Abuse Registry, but if Counsel had done so, he would have factored that into his decision to plead guilty because he "loves kids." He then stated Counsel told him to write a statement which Counsel edited, but never reviewed with him before the plea. Applicant also claimed Counsel, on the day of the plea, hurried through a five-minute meeting with him, where Counsel told Applicant he would have the last argument at the plea, but the State actually had the last presentation.

As to the guilty plea itself, Applicant testified he told the court he had no mental conditions because he was competent at the time to know what he was doing and nothing affected his understanding of the proceedings. He also stated he told the court he was satisfied with Counsel's representation because he thought Counsel was prepared for court. He then claimed Counsel misrepresented the facts of the case, and he attempted to correct and clarify what Counsel had said. Moreover, Applicant testified Wanda Tucker (Victim's maternal grandmother) said at the plea that Applicant stated, "if I hurt her, I did not mean to" at the hospital the day of the incident, but Applicant did not have an opportunity to explain what he meant at the plea. Further, Applicant claimed the forensic evidence presented at the plea did not match his story of what occurred, and Counsel failed to clarify the timeline of the events.

Applicant also testified he was not prepared for the State to ask the court for a twenty-year sentence. He stated he did not know the State could read the autopsy report findings to the court. Applicant claims to know that Victim was not in pain because while she cried when he supposedly dropped her and he heard a "popping noise," she was still conscious.

On cross-examination, Applicant admitted that he caused Victim's death, but claims it was an accident. He admitted that he waived his right to a trial by pleading guilty and stated while he did not want a trial at the time, he wants a new trial now. He agreed that there were not threats or promises to entice him to plead guilty. Applicant also testified while he had not seen the full autopsy report, he knew Victim's cause of death was massive trauma to the head and brain. He admitted that at the plea he stated under oath that he was satisfied with Counsel's representation, and never told the plea court he was not satisfied with Counsel's advice. He agreed he pled freely and voluntarily and admitted fault in Victim's death.

Importantly, Applicant admitted he told the plea court that Victim slipped from his grasp and hit her head on a changing table. However, an audio recording of Applicant's call to 911 on the day of the incident was played and heard on it was Applicant telling the 911 operator that Victim's "head snapped back a little" and he "heard a popping sound." When confronted with this tape, Applicant stated, "you can say I lied." When asked about the autopsy results, Applicant admitted he knew Victim suffered no neck injury, but suffered massive head trauma. He stated he was also alerted at the hospital that Victim had two previously broken lower legs and a previously broken forearm. He claimed he did not abuse Victim and did not know how Victim sustained these other injuries.

Lastly, Applicant admitted responsibility for his actions and that was the reason he pled guilty. He further stated he was, in fact, guilty of Involuntary Manslaughter and Inflicting Great Bodily Injury upon on Child.

Dr. Eric Johnson testified he has treated Applicant since 2005 for emotional issues including anxiety and depression. In 2009, Dr. Johnson diagnosed Applicant with a mood disorder, a form of bi-polar illness, and prescribed mood-stabilizers for Applicant. Dr. Johnson stated he never advised

Applicant to stop taking these medications because if Applicant did, the mood instability could return. He also stated Counsel did not contact him for these records.

Counsel testified he was hired by Applicant's family and met with Applicant several times to discuss and review the discovery in the case. The discovery included the incident report, autopsy, 911 tapes, witness statements and Applicant's statements. Counsel stated while Applicant's family hired a private investigator, he was never contacted by the investigator or vice-versa because he wanted to learn the case and determine what, if any, investigation should be conducted.

Counsel also testified Applicant explained to him Applicant's version of the facts. Upon learning this information, Counsel stated the case reached a point where Applicant had to decide whether he wanted to pursue a plea or a trial. In Counsel's opinion, a trial would be quite difficult, and if a trial was chosen, Applicant would have had to testify on his own behalf. Counsel testified he advised Applicant that, given the facts of the case, there was a very real possibility he would be convicted of Homicide by Child Abuse (the original charge) and sentenced to life in prison. Counsel then stated he worked with the State to find a "middle ground."

During their meetings, Counsel stated "something occurred" on the day of the incident that Applicant would not fully discuss. When Counsel questioned Applicant about the facts as given by Applicant, Counsel stated it was unusual for a father to give a bath to a three-month old child first thing in the morning. When Counsel said this, Applicant began to cry, and the discussions began.

Counsel testified he entered into plea negotiations with the State on Applicant's behalf to see if the State would be willing to allow Applicant to plead to Involuntary Manslaughter. The State originally declined, but would allow Applicant to plead straight-up to Involuntary Manslaughter and Infliction of Great Bodily Injury upon a Child. Counsel discussed this with Applicant, Applicant

agreed and accepted. Applicant did not want to plead to any offense which contained an "intent" element. Counsel stated he knew there was a wide sentencing range (0-20), but Applicant was facing a good possibility of life sentence if a trial was pursued.

Additionally, Counsel testified he presented mitigation at the plea hearing, including several witnesses who spoke on Applicant's behalf. Counsel also spoke on Applicant's behalf, telling the plea court that Applicant did not intentionally harm Victim. Counsel stated he did not present any of Applicant's medical history because he did not think it was relevant in mitigation. Moreover, Counsel stated he did not present his medical testimony along with evidence of Shaken Baby Syndrome because it was contrary to the accident/negligence theory of defense he was presenting on Applicant's behalf. He also testified he did not consider presenting an expert such as Ms. Allen-Cook because he did not know an "expert" like that existed. Counsel further stated he did not correct the State's facts during the plea because he did not think it necessary and because he approached the bench during the plea and got the State to agree not to mention the prior broken legs and forearm during the plea.

Counsel testified he never promised a certain sentence to Applicant or his family, but thought it would be between five and twenty years. He also stated he did not tell Applicant how to answer the plea court's questions, but did explain the plea process to him.

Lastly, Counsel testified he reviewed a second autopsy on Victim, which the previous attorney had conducted, the findings of which were not beneficial to Applicant. He also reviewed the autopsy photographs of Victim.

On cross-examination, Counsel testified he did not encourage Applicant to lie at the plea and had no reason to believe Applicant lied at the plea. He stated he was disappointed with the sentence



Applicant received, but it was a fair and just sentence. Counsel also testified he had appeared before the plea judge in prior cases and knew he was reasonable and used common sense. On re-direct examination, Counsel stated he found no reason to request a reconsideration of Applicant's sentence because that was in the sole discretion of the plea judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

including Applicant's memorandum

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds the testimony of the Applicant not credible while finding Counsel's testimony very credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Fraser v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

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Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that 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*. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds Counsel was competent and diligent in his representation of Applicant in this case. Counsel sufficiently advised Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactorily investigated this case based on the information supplied by Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to Applicant. This Court also finds Applicant was well informed by Counsel in this case. This Court is convinced that all of Counsel's strategies and his advice that Applicant accept a plea offer from the State were reasonable professional decisions based upon Counsel's experience and the facts of the case. As such, Applicant cannot show any resulting prejudice.

Failure to investigate Applicant's mental health history

Applicant claims Counsel failed to investigate or address Applicant's mental health history along with failing to contact Applicant's family doctor. At the PCR hearing, Counsel testified that

he knew of the prescriptions Applicant had been taking, but he chose not to address this issue in mitigation because Applicant's anxiety was not relevant to the defense's theory of an accident. Applicant even admitted that he stopped taking the medications on his own accord and not on the advice of Dr. Johnson. Further, even if Counsel had called Dr. Johnson to the stand, Applicant has failed to demonstrate that the outcome of the proceeding would have been different. *See Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1998). Applicant has failed to meet his burden as to this allegation.

Failure to call expert in mitigation at plea or trial

Applicant claims Counsel failed to call an expert on child trauma and abuse in mitigation at the plea or trial. At the PCR hearing, Counsel testified that he reviewed a second autopsy of Victim, but the results were not beneficial to Applicant's defense. Counsel also testified that he did not think he could find an expert to say Applicant meant no harm, thus the decision not to hire an expert was a legitimate trial strategy based on the facts of the case and also the conversations with Applicant. Therefore, Applicant has failed to demonstrate this decision fell below prevailing professional norms. *See McLaughlin v. State*, 352 S.C. 476, 483-484, 575 S.E.2d 841, 844-845 (2003) (holding that where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel).

Failure to provide plea court with reasonable explanation of facts

Applicant claims Counsel failed to provide the plea court with a reasonable defense or explanation of the events in question. At the PCR hearing, Counsel testified that he did provide an explanation for the events by arguing Applicant's conduct was an accident. A review of the transcript reveals that Counsel provided the plea court with a thorough and reasonable explanation of

the events. *See* Transcript of Record, May 20, 2011, p. 13-19. The transcript also reveals that Counsel had Applicant speak to the plea court, and Applicant himself characterized the events as "an accident," which corresponded with the defense's overall theory. *See* Transcript of Record, May 20, 2011, p. 35. Applicant, who has the burden of proof, has failed to put forward any evidence that Counsel failed to provide the plea court with a reasonable defense or explanation of the events in question.

Failure to refute the State's summation of medical findings

Applicant claims Counsel failed to refute the State's summation of the medical findings and failed to oppose the plea court's review of the autopsy photographs. Here, Applicant has not shown that Counsel acted unreasonable "under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625. Furthermore, the State's summation and autopsy photographs were not reviewed by an impressionable jury, but by an experienced circuit court judge thus any prejudicial effect, if any, was likely minimal. Accordingly, Applicant has failed to make any showing of prejudice, irrespective of whether he showed Counsel's performance was deficient.

Failure to file a Motion for Reconsideration

Applicant claims Counsel failed to file a Motion for Reconsideration of Applicant's sentence. A review of the transcript reveals that the plea judge accepting Applicant's plea described his rationale in sentence Applicant. *See* Transcript of Record, May 20, 2011, pp. 52-56. Even if Counsel had filed a Motion for reconsideration, Applicant has failed to demonstrate any reason for a change in the original sentencing rationale that would have ultimately reduced his sentence. Further, a sentence reduction is not a proper remedy in post-conviction relief. Accordingly, Applicant has failed to show any prejudice produced by Counsel's failure to file a Motion for Reconsideration.

In sum, Counsel's representation did not fall below the reasonable professional standard. Bennett v. State, 371 S.C. 198, 204 S.E.2d 673 (2006). Applicant has the burden of proving to the Court that, but for counsel's errors, there is a reasonable probability that the outcome of the proceeding would have been different. *See, e.g.* Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1998). Applicant has not satisfied this burden. Similarly, Applicant has not shown a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *See* Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

G. Edward Welmaker
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

30 Oct, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	DOCKET NO.: 2012-CP-46-0975
	)	
Curtis R. Sweatt, #346121,	)	
Applicant,	)	NOTICE OF MOTION AND MOTION
v.	)	FOR REHEARING PURSUANT TO
	)	RULE 59(a), SCRPC, AND/OR MOTION
STATE OF SOUTH CAROLINA,	)	TO ALTER OR AMEND PURSUANT TO
Respondent,	)	RULE 59(e), SCRPC
	)	

COMES NOW Applicant, through his undersigned attorney, and requests the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amendment of the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRPC.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on March 16, 2012. The State made its Return on July 6, 2012. An evidentiary hearing was held at the Moss Justice Center in front of the Honorable G. Edward Welmaker on August 15, 2013. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by J. Rutledge Johnson, Senior Assistant Attorney General.

On October 3, 2013, the Honorable G. Edward Welmaker issued an Order of Dismissal, which was filed on October 16, 2013. Applicant, through counsel, received written notice of the entry of the Order on October 21, 2013.

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully

request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant would further request that this Court review the evidentiary hearing transcript, reconsider the standing Order of Dismissal and rehear Applicant's case pursuant to Rule 59(a), SCRCP.

Specifically, Applicant would submit the following:

1. The Order of Dismissal fails to fully address the testimony of the witnesses offered in support of Applicant's claims, misconstrues the testimony of Applicant and does not accurately reflect the testimony of Leland Greeley, Esquire.
 2. On page 10 of the Order of Dismissal, a handwritten insertion is made to reference the Memorandum submitted by counsel at the evidentiary hearing, which addressed the specific relief of a belated motion for reconsideration. On pages 13-14 of the Order of Dismissal, the issue of "Failure to file a Motion for Reconsideration" is briefly addressed, but Applicant's Memorandum and the argument and request for specific relief contained therein and made at the evidentiary hearing is not addressed. Therefore, Applicant would request a ruling on his the arguments contained in the Memorandum and his request for specific relief in the form of a belated motion for reconsideration not a sentence reduction as is errantly stated in the Order of Dismissal.
- Order p. 13.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Curtis R. Sweat, #346121,)
Applicant,)

2012-CP-46-0975

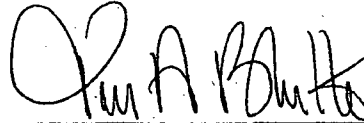
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 30th day of October 2013, a copy of Motion Pursuant to Rule 59(a) & (e), SCRCF, to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
ATT: J. Rutledge Johnson, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for Applicant
PO Box 12725
Columbia, SC 29211
(803) 988-0008

October ~~30~~, 2013

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Curtis R. Sweatt, #346121,

☒ Plaintiff

v.

State Of South Carolina

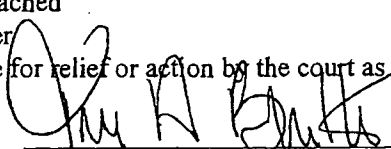
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-46-0975

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 12725 Columbia, SC 29211 phone: 803-988-0008 fax: 803-0988-8070 e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion Pursuant to Rule 59(a)&(e), SCRCP Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant October 30, 2013 Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Curtis R. Sweatt, #346121)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-46-0975

**ORDER DENYING APPLICANT'S MOTION
FOR REHEARING AND TO
ALTER/AMEND**

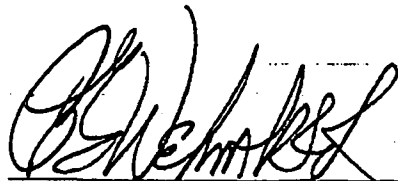
FILED-RECEIVED
2013 NOV 23 PM 2:43
DAVID WELMAKER
C.C. & GS
YORK COUNTY, SC

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRCP. Applicant asks this Court to reconsider its Order of Dismissal filed on October 16, 2013. Specifically, Applicant submits that the Order of Dismissal fails to fully and accurately reflect the testimony of witnesses, and the Order briefly discusses the issue of "Failure to File a Motion for Reconsideration" without addressing Applicant's request for specific relief.

After careful consideration of the record in this case and the arguments of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Applicant's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about October 16, 2013. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

November 23, 2013
Pickens, South Carolina



Honorable G. Edward Welmaker
Judge, Thirteenth Judicial Circuit

WITNESSES

YCSO / Neely

mac

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-46- 01523

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MAY 12, TERM 2011

THE STATE

vs.

CURTIS RANDALL SWEATT, JR.

Indictment for

INVOLUNTARY MANSLAUGHTER

SC Code: § 16-03-0060
CDR Code: 0218

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Curtis Randall Sweatt Jr
Defendant

Curtis Randall Sweatt Jr
hereby appear in my own proper person and plead guilty to the within indictment or to
as charged

Curtis Randall Sweatt Jr
Defendant

Witness:

Raymond R. Riddle
C.C.C. PLS. AND G.S. County Clerk

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2012 MAR 21 AM 9:30

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on May 12, 2011, the Grand Jurors of York County present upon their oath:

INVOLUNTARY MANSLAUGHTER

Curtis Randall Sweatt, Jr., did in York County on or about January 7, 2010, commit the crime of involuntary manslaughter against his three month old daughter, Minor. Mr. Sweatt acted with reckless disregard for the safety of Minor causing her death. The crime occurred at or near Drive in York County, South Carolina; all in violation of Section 16-03-0060, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Willy Thompson
DEPUTY SOLICITOR

COUNTY OF
STATE

York

VS.

Curtis Randall Sweatt, Jr.

INDICTMENT/CASE#: 2011-GS46-01524

A/W#: DI1101524

Date of Offense: 1/7/2010

S.C. Code § 16-03-0095(A)

CDR Code #: 2766

AKA:

Race: W

Sex: M

Age: 28

DOB:

SS#:

Address:

City, State, Zip: Rock Hill, SC 29732-7733

DL#: SID#: SC 019230

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Abuse / To inflict great bodily injury upon a child

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0095(A) of the S.C. Code of Laws, bearing CDR Code # 2766

☐ 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: Walter W. Thompson 65118 Curtis Randall Sweatt, Jr. David Hamilton 7850
Thompson, Walter W. 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 20 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 16 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 4

month/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: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$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 Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

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: Can not have care in custody
or control of any child under the
age of 10 during parole or
probation

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge David Hamilton

Judge Code: 2048

Sentence Date: 5/20/11

WITNESSES

YCSO / Neely

DOCKET NO. 2011-GS-46- 61524

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Curtis Randall Sweatt Jr.
Defendant

I *Curtis Randall Sweatt Jr.*
hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

COURT OF GENERAL SESSIONS

MAY 12, TERM 2011

ARREST WARRANT NUMBER

Direct Indictment

THE STATE

VS.

ACTION OF GRAND JURY

CURTIS RANDALL SWEATT, JR.

Curtis Randall Sweatt Jr.
Defendant

Witness:

Regina A. Riddick
C.C.C. PLS. AND G.S. Court Reporter

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

INFILCTION OF GREAT BODILY
INJURY TO A CHILD

SC Code: § 16-03-0095

CDR Code: 2766

Foreperson of Petit Jury

Date:

234

STATE OF SOUTH CAROLINA
 COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT

2012 MAR 21 AM 9:30

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

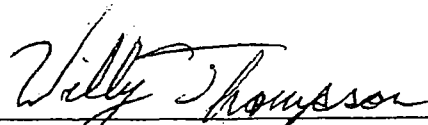
At a Court of General Sessions, convened on May 12, 2011, the Grand Jurors of York County present upon their oath:

INFLICTION OF GREAT BODILY INJURY TO A CHILD

Curtis Randall Sweatt, Jr., did in York County on or about January 7, 2010, inflict great bodily injury to his three month old daughter, ^{Minor}

The defendant's actions constituted a reckless disregard for the safety of his daughter and caused great bodily injury leading to her death. The crime occurred at _____ Drive in York County, South Carolina; all in violation of Section 16-03-0095(A), *Code of Laws of South Carolina* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEPUTY SOLICITOR

CITY OF York
VS.
Curtis Randall Sweatt, Jr.

INDICTMENT/CASE#: 2011-GS46-01523A/W#: DI1101523Date of Offense: 1/7/2010S.C. Code §: 16-03-0060CDR Code #: 0218

AKA:

Race: W Sex: M Age: 28DOB: SS#:

Address:

City, State, Zip: Rock Hill, SC 29732-7733DL#: SID#: SC 01923*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazardous ☐

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Involuntary manslaughterin violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218
☒ 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. C.R. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Walter W. Thompson 65118 SC Bar# Defendant Attorney for Defendant SC Bar# 7850

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*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 Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$ 1327

PTUP days/hours Public Service EmploymentObtain 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 FundOther:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David HamiltonCourt Reporter: Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2048Sentence Date: 5.20.11