

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2012-CP-40-4268
Appellate Case No. 2014-000374

Andrea Person, #00338104,.....Petitioner,

v.

State of South Carolina.....Respondent.

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1 MS. HARRIGAN: I would anticipate.

2 THE COURT: All right. Thank you. We'll come back
3 here how about at 2:15?

4 (A lunch break was taken.)

5 MR. WHITMIRE: All right.

6 MR. SOWELL: We call Dr. Mark J. Harari.

7 THE COURT: Come around and be sworn, Doctor.

8 The witness, MARC. J. HARARI, was first duly
9 sworn and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SOWELL:

12 THE COURT: State your full name for the record.

13 THE WITNESS: My name a Marc, M-a-r-c, initial J,
14 Harari, H-a-r-a-r-i.

15 Q. Just to repeat you are Dr. Mark Harari and in this case
16 that would be Mark Harari, Ph.D?

17 A. Yes, sir.

18 Q. And you hold a South Carolina Psychologist License
19 Number 875?

20 A. Yes, sir.

21 Q. And you are a principle in a business called
22 Comprehensive Psychological Services, LLC, located at 1816
23 Bull Street in Columbia?

24 A. Yes, sir.

25 Q. And were you engaged by Ms. Lindsay, my partner here,

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1 to perform some testing services -- well, let me back up, to
2 perform some interviews and some testing services with
3 respect to Ms. Andrea Person?

4 A. Yes.

5 Q. All right. If you would first, tell us what you were
6 engaged to do by our firm and Ms. Person?

7 A. Ms. Lindsay contacted me, I believe it was on
8 September 23rd explaining the situation about a post
9 conviction relief hearing and that it needed a report
10 expedited, and that it would take place in green -- the
11 evaluation would take place at a penitentiary in Greenwood.
12 So we did discuss logistics and my ability to get something
13 done in such a short amount of time. We agreed, you know,
14 kind of worked out my schedule, we agreed upon a rate for
15 the evaluation. And essentially I told her -- she gave me a
16 little bit of background about the case, what Ms. Person and
17 the defense concern. And I explained to Ms. Lindsay that I
18 feel uncomfortable to personality inventories in an
19 interview. I was not -- as far as the a coercion scale, I'm
20 not trained to do a coercion scale so I said I'll just stick
21 to what I do on a daily basis and what I do well. I'll do
22 some personality testing, interview and come up with a
23 psychological report based on her mental health functioning
24 pertaining to specifically interpersonal characteristics.
25 Q. And is that what you did in fact?

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- 1 A. Yes, I did.
- 2 Q. So first of all you interviewed Andrea Person.
- 3 A. Yes.
- 4 Q. So did you travel to Leath Correctional Institute in
5 Greenwood, South Carolina and interview her?
- 6 A. Yes. On the 25th of -- on a Wednesday, I believe it
7 was, I think last week, I went to Leath and interviewed her,
8 and I also administered three different psychological
9 inventories for her to complete.
- 10 Q. Now, was anybody with you when you did that?
- 11 A. I had an assistant with me during the interview
12 process.
- 13 Q. But neither of her counsel were with you.
- 14 A. No, just some of my staff.
- 15 Q. So you, your staff and Ms. Person for that interview.
- 16 A. Yes.
- 17 Q. And what did you do when you interviewed her?
- 18 A. I have a standard interview form that I use with
19 clients. I usually start with asking the presenting
20 concern. In this case she discussed the incident that
21 resulted in her -- a description of the incident that
22 resulted in her confession. She described that she wants to
23 do the PCR process. And then after discussing getting her
24 history about what transpired then I did a background of her
25 family history from family of origin, marital, physical

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1 health functioning, mental health functioning, mental health
2 history, educational history, employment history. When we
3 were discussing the employment history she went into more of
4 a background of her business in child care. And we
5 discussed symptoms of what she's experiencing, criminal
6 history, substance abuse history, if any. And then I
7 recorded her behavioral observations, and once the interview
8 was completed then I administered three psychological
9 inventories.

10 Q. Now, the interview that you completed, was that
11 consistent with the professional standards?

12 A. Yes.

13 Q. And what were the three tests that you administered,
14 the three psychological tests that you administered to
15 Ms. Person?

16 A. I administered in alphabetical order the MMPI2RF, which
17 is the Minnesota Multiphasic Personality Inventory, Second
18 Edition Restructured form. I also interviewed -- excuse me,
19 administered the PDS, or the Paulhus Deception Survey.

20 Q. Would you spell that?

21 A. Sure, it's P-a-u-l-h-u-s, Deception Survey. And also
22 she completed a personality assessment inventory.

23 Q. Now, is this document --

24 MR. SOWELL: I'm going to ask the reporter to mark this
25 as Applicant's 1 for ID and Applicant's 2 for ID.

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1 Q. I'll show these other copies to you. Is Applicant's 1
2 for identification, is that your curriculum vitae?

3 A. Yes.

4 Q. Is it complete?

5 A. Yes.

6 Q. Is it accurate?

7 A. It's updated -- on this one I have updated August 1st
8 of 2013.

9 MR. SOWELL: Your Honor, we would offer this as
10 Applicant's Exhibit 1.

11 MS. HARRIGAN: I have seen it, without objection.

12 THE COURT: So admitted.

13 (Harari's CV was received as Applicant's 1.)

14 Q. And is Applicant's Exhibit 2 for identification, is
15 that the cover page with your billing statement, a summary
16 of data you gathered, and then a summary report of your
17 psychological evaluation of Andrea Person?

18 A. Yes, it is.

19 Q. All right. On September 25, 2013?

20 A. Yes. With the report completed on the 27th.

21 MR. SOWELL: Your Honor, we would offer Applicant's
22 Exhibit 2 for identification as evidence.

23 MS. HARRIGAN: Without objection based on in-chamber
24 discussions that the record will be left open with regards
25 to Ms. Person's psychological evaluation.

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1 THE COURT: It will be. Admitted.

2 (Harari's report was received as Applicant's

3 2.)

4 Q. So Exhibit 1 is your CV and Exhibit 2 is actually your
5 report, the psychological evaluation with respect to Andrea
6 Person.

7 A. Yes, sir.

8 Q. All right. Now, the psychological evaluation you did
9 and the testing you administered, the MMPI, the PDS and the
10 PAI, are they all professionally accepted in your
11 psychological profession?

12 A. Yes. The PAI and the MMPI are the well recognized
13 personality inventories that are peer reviewed and
14 critically reviewed for forensic purposes, therefore that
15 was the reason I selected those. The Paulhus Deception
16 Survey is also a brief measure designed to assess known as
17 social desirability. I have the manuals here for each of
18 these evaluation and they're all recognized as forensic
19 psychological instruments, or could be used for forensic
20 purposes.

21 Q. When you did this testing, did you do it with
22 particular focus on whether she possessed this personality
23 characteristics that would indicate suggestibility through
24 coercive practices?

25 A. Yeah. My focus was on trying to identify interpersonal

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1 characteristics that would possibly make her susceptible to
2 coercion.

3 Q. If you would, tell the Court what you did with
4 respect -- I think I did three things, you did three tests.
5 If you would, summarize the conclusions from each of those
6 tests.

7 A. If I may, I'm going to go through the report a little
8 bit just to kind of explain my process and rationale. On the
9 first page I put the reason for referral. The
10 confidentiality notice requiring attorney/client privilege.
11 I put limitations to the report and the sources of
12 information. The introduction was based on clinical
13 interview information in terms of the reason why -- kind of
14 setting the grounds for the report.

15 Q. Let me ask you this real quick, and I apologize for the
16 interruption. But under the heading limitations of the
17 present report which you just eluded to, in the last
18 sentence, did you note that the examiner utilized forensic
19 instruments that contain validity indices embedded within
20 them to assess for response bias?

21 A. Yes.

22 Q. And you did that?

23 A. Yes, I did, all three.

24 Q. Okay.

25 A. And then after the introduction which describes the

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1 scenario, I posed three psychological questions. One, did
2 Andrea appear to respond in a candid and realistic manner
3 during the course of the testing administration? Two, does
4 Andrea appear to possess major symptoms, clinical syndrome,
5 sociopathic characteristics or other personality disorder
6 tendencies? Three, does Andrea possess certain personality
7 characteristics? For example, interpersonal passivity, lack
8 of assertiveness, acquiescence, so forth, that would
9 indicate susceptibility to coercive practices by individuals
10 in authoritative of positions. And I went on, my attempt
11 was with these questions to empirically verify whether this
12 is -- these questions are true or not true so to speak, or
13 can they be demonstrated through the interview and through
14 my psychological data that I acquired.

15 Q. And is that consistent with the practice of your
16 profession?

17 A. Yes.

18 Q. Industry standard in the practice of your profession?

19 A. Yes.

20 Q. Well regarded?

21 A. Yes.

22 Q. And accepted?

23 A. Yes.

24 Q. All right. Now, if you would take the three questions
25 separately, and pose the question and then tell us what you

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1 concluded with respect to each of them.

2 A. Okay. As far as the first question goes, did Andrea
3 appear to respond in a candid realistic manner during the
4 course of the testing administration. As far as the
5 clinical interview information goes that's a judgment call,
6 and she presented --

7 MS. HARRIGAN: Your Honor, we would object, he hasn't
8 been offered as an expert or accepted as an expert.

9 MR. SOWELL: Well, I offer him if I need to.

10 THE COURT: Expert as to what, what if she was candid?

11 MS. HARRIGAN: Psychological testing, I haven't had a
12 chance to voir dire him.

13 THE COURT: Well, do you want to voir dire him?

14 MS. HARRIGAN: I would like to briefly.

15 VOIR DIRE EXAMINATION

16 BY MS. HARRIGAN:

17 Q. Mr. Harari, what's your primary area of focus?

18 A. Psychological testing.

19 Q. It appears from your CV that a lot of your previous
20 work has been with juveniles, would that be a correct
21 characterization?

22 A. Since -- as far as my professional career, from 2000 to
23 2000 and -- parts of 2005 I worked with juveniles at the
24 Department of Juvenile Justice. My psychological training
25 has been -- as far as from graduate school focused on both

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1 children and adults, and I work with adults while I was a
2 graduate student, and my internship was at the university.

3 Q. Have you ever been involved in any psychological
4 evaluations involving alleged false confessions?

5 A. No.

6 Q. Have you attended any training regarding false
7 confessions?

8 A. No.

9 Q. Have you reviewed any materials regarding false
10 confessions?

11 A. No.

12 Q. How many times have you been qualified as an expert in
13 court?

14 A. I would estimate over 45 times.

15 Q. And in any particular subfield?

16 A. I have done evaluations for child custody evaluations,
17 parenting evaluations. I've testified in sexual abuse cases
18 from an evaluation I performed, a child homicide case. I've
19 done evaluations in correctional settings for mitigating
20 circumstances, risk assessments. The majority of my
21 testimony has been in family court. I could think of three
22 occasions I was in criminal court as well.

23 Q. But your primary focus has been in family court.

24 A. For court testimony, yeah.

25 Q. Have you ever been ruled unqualified in court?

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- 1 A. No.
- 2 Q. Have you ever testified for the prosecution?
- 3 A. Yes, I have.
- 4 Q. How many times have you been consulted but not used for
- 5 in-court testimony?
- 6 A. Consulted but not used?
- 7 Q. Yes.
- 8 A. For criminal or for both?
- 9 Q. For criminal.
- 10 A. I would estimate about ten times.
- 11 MS. HARRIGAN: No further questions, Your Honor.
- 12 MR. SOWELL: May I proceed, Your Honor?
- 13 THE COURT: Sure.
- 14 MR. SOWELL: He's a clinical psychologist and that's
- 15 the reason he's been engaged.
- 16 MS. HARRIGAN: As long as he's not being admitted as an
- 17 expert in the subfield or anything regarding false
- 18 confessions we stipulate to his expertise as a clinical
- 19 psychologist.
- 20 THE COURT: All right. I'll find he's so qualified as
- 21 an expert in clinical psychology.
- 22 THE WITNESS: Can I make a -- technically I'm a
- 23 licensed counselor in psychology.
- 24 THE COURT: Okay.
- 25 Q. There's no difference in South Carolina between the two

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1 for the purposes of licensing.

2 A. The license is -- I'm a licensed psychologist, they
3 don't differentiate in South Carolina.

4 Q. Where we were before the voir dire was we were talking
5 about three separate questions, the first of which at the
6 bomb of page three was did Andrea appear to respond in a
7 candid realistic manner during the course of this testing
8 administration. And what was the answer?

9 A. As I was stating earlier, as far as -- there's two
10 processes to assessing candid and realism, typically three,
11 I was able to utilize two. The first is clinical judgment
12 based on presentation during the interview. Like I said,
13 that's a clinical judgment. She appeared reasonable,
14 candid, there were no indications of high levels of faking
15 good or faking bad meaning unrealistic portrayal as either
16 overestimating issues or underestimating symptoms or issues.
17 The second level of checks that I was not able to obtain was
18 through collateral information because that was limitation I
19 put in the report that I was not able to acquire collateral
20 information to verify her statement, so it was taken at her
21 word. The third, and I think the most compelling evidence
22 to support whether or not she responded in a candid and
23 realistic manner, is based on the psychological test
24 results. As I mentioned earlier, these three inventories,
25 the MMPI2 and the PAI have validity indices to assess for a

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1 broad range of deception such as malingering, overestimating
2 symptoms, guardedness, defensiveness, inconsistency, random
3 responding. The PAI and the MMPI2 assess all of those
4 variables. The PDS is solely designed as a faking good
5 measure, meaning positive -- to assess whether someone is
6 engaging in an unrealistic positive self portrayal. I think
7 this information is meaningful because typically individuals
8 and circumstances would be tempted to present themselves as
9 if, almost like a job interview, dishonestly, or at least
10 only favoring their good points and not their flaws and bad
11 points. So I took an accumulation of these three validity
12 scales and in my conclusion essentially she responded there
13 were no significant or even moderate elevations on any of
14 the scales on these inventories pertaining to social
15 desirability, faking good, faking bad. So there was no
16 indication of a deceptive approach while completing the
17 psychological test.

18 Q. Where is that focused on in your report, that
19 conclusion?

20 A. On page eight at the second paragraph from the bottom
21 "Examining the social scales on each of the administered
22 surveys including the PDS, PAI and the MM2RF, Andrea's
23 responses did not result in any significant elevations or
24 even moderate elevations on any of the scales. Furthermore
25 Andrea did not engage in any negative impression management

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1 on the validity scales embedded within the PAI and MMPI2RF.

2 These findings provide objective psychological evidence that

3 Andrea presented in a realistic manner in which she did not

4 attempt to overestimate or underestimate her psychological

5 symptoms or problematic personality tendencies."

6 Q. Was that your conclusion with respect to the first

7 question that was posed?

8 A. Yes, sir.

9 Q. Now, the second question that was posed, which is,

10 "Does Andrea appear to possess major symptoms, clinical

11 syndrome, sociopathic characteristic or other personality

12 disorder tendencies?" What did you do with respect to that

13 question and what did you conclude.

14 A. It's the same steps. It's based on clinical interview

15 information in terms of my interview with her. She

16 described situational symptoms of distress based on her

17 circumstance being incarcerated, missing her family members,

18 the whole situation. We talked about her mental health

19 history and also her childhood history, adolescent history

20 to kind of where she was to this point today. As far as her

21 self-report data went, there was no indication of chronic

22 emotional issue suggesting the presence of major mental

23 illness or axis one condition. She appeared fully

24 functional in society prior to her incarceration. There was

25 no reports of any criminal history, and sociopathy

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1 assessments usually there is a pattern of crimes or charges
2 that lead up to the present and that was not evident based
3 on her self-report. No history of conduct disorder,
4 delinquency et cetera. So based on the clinical interview
5 information, my hypothesis was she seemed to be functioning
6 with situational symptoms of distress but not chronic
7 symptoms or chronic mental health issues. She did not
8 appear personality disordered based on her presentation.
9 And I relied on the psychological inventories then for
10 further verification regarding personality characteristics.
11 Both the PAI, MMPI2 and even the PDS have narcissism scales,
12 there was no evidence of narcissism. The PAI and MMPI2 both
13 have scales for aggression, criminality, sociopathy, there
14 was no evidence of elevations on those scales. The PAI and
15 MMPI2 contain scales pertaining to major clinical syndromes
16 commonly depression, anxiety, attention deficit disorder,
17 obsessive compulsive disorder, PTSD, so forth. There were
18 no elevations on scales pertaining to those issues. So
19 essentially based on the findings, the clinical findings, I
20 did not find evidence of any major clinical syndromes that
21 are chronic, sociopathic characteristics based on her
22 history or test results or other personality disorder
23 tendencies.

24 Q. So with respect to questions one and two, can you state
25 to a reasonable degree of certainty, you might say

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1 psychological certainly, that Andrea appeared to respond in
2 a candid realistic manner during the course of the testing
3 administration?

4 A. Yes.

5 Q. And can you say to a reasonable degree of psychological
6 certainty that Andrea does not appear to possess major
7 symptoms, clinical syndrome, sociopathic characteristics or
8 other personality disorder tendencies?

9 A. Correct.

10 Q. All right. Let's turn to number three, question number
11 three, which is, "Does Andrea possess certain personality
12 characteristics, for instance, interpersonal passivity, lack
13 of assertiveness that would indicate susceptibility to
14 coercive practices by individuals in authoritative
15 positions?" Would you please tell the Court what you did
16 and what you concluded?

17 A. As far as assessing those variables I relied primarily
18 on the psychological inventories. Those are characteristics
19 that are hard to assess in an interview other than her being
20 a little nervous. But one could rule her -- consider her
21 being nervous because she wasn't aware she was going to be
22 tested and she was in a strange situation. So she did
23 present with anxiety during the interview, but she became
24 more comfortable once she realized the purpose. So the
25 psychological inventories, they contained separate scales

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1 regarding interpersonal tendencies. I'll explain each one
2 in itself. The Personality Assessment Inventory, I'll start
3 with that one, has two scales called the dominant scale and
4 warmth scales. And individuals, let's say they're
5 aggressive and callus usually would score high on a dominant
6 scale and low on the warmth scale. Some people are -- if
7 they score high on both scales they possess characteristics
8 where they're attention seeking and assertive and dominant
9 but also seeking others. When people score high on the
10 warmth scale and low on the dominant scale they tend to be
11 on the passive side, they want peace, they don't want like
12 conflict and they typically do not handle tough situations
13 well. They lack assertiveness, they may be conforming in an
14 effort to maintain peace so to speak. So that is the
15 dynamic of those two scales that's described in the manual.
16 My hypothesis before testing her was that these results
17 would be accurate the dominant scale would be low and the
18 warmth scale would be average or high. Her results on the
19 dominant scale came out to be with a moderately low score
20 according to the manual.

21 Q. Which manual are you referring to?

22 A. The Personality Assessment Inventory manual. And
23 essentially these types of individuals who respond similarly
24 tend to be very open, genuine and conforming. They are
25 self-conscious, they are not skilled in asserting

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1 themselves, they tend to avoid leadership positions, and
2 they feel more comfortable in a background of a setting, not
3 in the forefront. They are considered eager to please by
4 others. And as far as situations where they feel tension
5 they may appear meek, unassertive, have difficulty standing
6 up for themselves even when warranted.

7 Q. Does that mean they would be more likely than not
8 susceptible to suggestion?

9 A. I would hypothesis that those qualities, they would be
10 more likely than not susceptible to coercion. And so the
11 PAI scale came out consistent with the hypothesis. Moving
12 to the MMPI, the MMPI2RF is the restructured form, they
13 contain a lot of different scales. And part of the scales
14 are -- they have several scales that are in the
15 interpersonal domain meaning how do they interact with
16 others, and they kind of have similar -- this is on page
17 seven -- they have similar scales. One is called IPP, which
18 is interpersonal passivity, another is called social
19 avoidance, and there's also an introversion scale as one of
20 the five scales on the new inventory.

21 Q. This discussion starts with the third paragraph up from
22 the bottom?

23 A. This is actually on the I would say the fourth --
24 referring to the MMPI2 I start on the fourth paragraph from
25 the top.

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1 Q. The part that starts with finally Andrea was
2 administered an MMPI2RF?

3 A. Yes.

4 Q. An objective measure, a personality function and then
5 clinical syndrome?

6 A. Yes. So I explained with the T scores is a statistical
7 measure. And essentially the only elevations were on two
8 scales, it was on the interpersonal passivity scale and the
9 social avoidance scales, and like I said, there was also an
10 elevation on the introversion scale. So consistent with the
11 PAI results these findings suggest a lack of assertiveness,
12 an individual with passive/submissive tendencies or roles,
13 likely a desire to avoid certain social situation,
14 introversion and some emotional restriction. So again these
15 are -- these results coincide with the PAI results as low
16 dominance and average warmth.

17 Q. Now, these results from the PAI and the MMPI, are they
18 primarily objective measures of function?

19 A. Yes.

20 Q. Do you have anymore conclusions with respect to the
21 MMPI?

22 A. No. The was the only elevations on the MMPI were those
23 interpersonal scale.

24 Q. So what was conclusion down at the bomb of page seven?

25 A. Okay. I mean, the last sentence I put was, "The

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1 present test results provide confirmatory evidence that
2 Andrea's passive submissive interpersonal tendencies would
3 appear to make her susceptible to coercive situations by
4 individuals in authoritative positions."

5 Q. That's at the bottom of page nine.

6 A. I'm sorry, what did you ask, sir?

7 Q. Well, that's okay. Go ahead and read again the
8 conclusion at the bottom of page nine so we'll know where we
9 are.

10 A. Okay. The bottom of page nine, the last sentence I
11 wrote, "The present test results provide confirmatory
12 evidence that Andrea's passive submissive interpersonal
13 tendencies would appear to make her susceptible to coercive
14 situations by individuals in authoritative positions."

15 Q. And at the bottom of page seven that first sentence in
16 the last paragraph, what does it state?

17 A. "Review of the MMPI2RF test findings suggest that
18 Andrea endorsed a lack of assertiveness.

19 THE COURT: Slowdown, Doctor. The court reporter has
20 got to take it down.

21 A. I'm sorry. Should I start again? I'll just say, "A
22 lack of assertiveness and she presents as an individual that
23 is passive and submissive in her interpersonal
24 relationships. She further described an avoidance of social
25 situations. While Andrea did not indicate social anxiety

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1 she's likely introverted, has difficulty formulating close
2 relationships and tends to be emotionally restrictive.

3 Individuals with similar profiles exhibit passive-submissive
4 behavior and attempt to avoid social interactions."

5 Q. Are these your conclusions and opinions with respect to
6 the question posed as number three?

7 A. Yes.

8 Q. And are they stated to a reasonable degree of
9 psychological certainty?

10 A. Yes.

11 Q. Now, these evaluations, these tests, the evaluations
12 and the conclusions, are they done in a raw state?

13 A. I collect raw data, meaning I collect information from
14 the interview, and I collect the test results from each of
15 the inventories, and then I formulate the report.

16 Q. And are all three of the inventories objective
17 indicators?

18 A. Yes.

19 Q. All right. And the characteristics that are being
20 measured and were being measured in the case of Andrea
21 Person, are they stable enduring characteristics?

22 A. Yes. According to the research, yes.

23 Q. And that means they would represent a longstanding
24 personality data assessment?

25 A. Yes.

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1 Q. And have you been utilizing the MMPAI (sic) since at
2 least the year 2003?

3 A. Yes.

4 Q. And have you done thousands of these types of
5 evaluations?

6 A. I would estimate I do ten evaluations a week, and I've
7 been in practice since 2005, so I have done thousands of
8 evaluations.

9 MR. SOWELL: Bear with me just one second. That's all.
10 Thank you, please answer any questions.

11 CROSS EXAMINATION

12 BY MS. HARRIGAN:

13 Q. Dr. Harari, what collateral information did you use in
14 formulating this report? Your report states that you were
15 provided collateral information from Ms. Lindsay. Would you
16 describe what that was?

17 A. Yes. I took notes from a phone call and I would be
18 glad to share that.

19 Q. Could you describe -- could you read some of those for
20 the Court?

21 A. Yes. I took two -- one two-sided page of notes. On
22 the first page is Andrea's inmate information, contact
23 information for the penitentiary. I was told that Andrea
24 was diabetic to make sure she has had a tray before I
25 interview so she would have eaten. And I have my own

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1 handwritten kind of scratch notes where I put
2 characteristics of suggestibility where I was brain storming
3 how I would possibly measure that, and I wrote down MMPI2,
4 PAI and PDS thinking in my mind that those would be good
5 inventories.

6 Q. When you state brain storming how to measure, had you
7 ever been asked to perform testing for this sort of PCR or
8 something like this before in court? Is this your first
9 time being asked to analyze a subject for this scenario?

10 A. Is this my first PCR?

11 Q. Or -- regarding false confessions. I believe you
12 testified before that you --

13 A. Yeah. I have never done a false confessions evaluation
14 before.

15 Q. So you were brain storming how to measure --

16 A. Yes. What she was asking was essentially for coercion
17 or suggestibility, and that's essentially characteristics of
18 someone who would make a false confession. And I sort of
19 brain stormed ideas, well, I think these measures would
20 hit -- especially the PAI and the MMPI2 would hit on
21 interpersonal measures like passivity, neatness, lack of
22 assert necessary, acquiesce and so forth, and that's what I
23 brain stormed and I documented there. And that's on my
24 first page. On my second page I took some more notes, I'll
25 read them to you, lengthy interrogation of something that

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1 occurred describing Andrea's where --

2 Q. Do you have any notes as to -- when you've got lengthy,
3 did Ms. Lindsay tell you how long the interrogation was?

4 A. She said -- I have not -- I said it was several hours,
5 I wasn't sure how many hours it was. Let's see if I wrote
6 it down or not. And it might and confounded because then I
7 asked Andrea when I was with her and she said I know it was
8 more than several hours according to what I was told.

9 Anyway, what I wrote, "Lengthy interrogation is something
10 that occurred ten years prior about another baby that died
11 in her business." I asked -- she said -- we talked about
12 that child the baby had -- we talked about the deaths of
13 three of the children from 1998 to --

14 Q. With Ms. Lindsay before you met with Ms. Person?

15 A. Yes.

16 Q. Okay.

17 A. I just asked, she said baby had pneumonia, one other
18 had classic SIDS and another was overheated. And then she
19 told me -- this is what Lindsay told me -- that Andrea did
20 not have an attorney. She went to talk about the death of
21 the -- the most recent death and then they started asking
22 questions and polygraph about Zachary's death years ago.
23 There were concerns -- the concerns from their point of view
24 was was she influenced by suggestion, suggestive statements,
25 "could you have done that, maybe I did that." She said no

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1 several times. So she just described some details. She
2 said there was already a false confessions expert. This is
3 something called a post conviction relief action and it
4 was -- she was convicted by homicide by child abuse for 22
5 years.

6 Q. So you were told the purpose behind this report was to
7 help in her defense or put on her case that her counsel was
8 ineffective for not having her evaluated prior to the trial,
9 correct?

10 A. That's not what they told me, that's something Andrea
11 told me. They did not mention anything about her counsel.
12 They just mentioned they contend a new assessment to assess
13 the validity of her confession and that this report would be
14 part of the defense.

15 Q. The only collateral information you received was from
16 Ms. Lindsay and then Ms. Person regarding the background in
17 this case.

18 A. Right, yes.

19 Q. Do you think this created a bias going into your
20 interview?

21 A. Well, I mean, I knew that I only had one point of view,
22 I didn't have the whole other side so I knew that going in.
23 So, you know, for that reason I emphasized the measures that
24 I used. I've interviewed many defendants, adolescents and
25 adults in my life, so usually when I go into an interview I

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1 know they're going to try to present themselves in a way
2 that helps them, so that's expected. My role as an
3 objective psychologist is to take the information and pretty
4 much what I told Ms. Lindsay was if the results come out
5 where the validity scales are blown, there's no way I would
6 testify because there would be no point, or if the scales
7 came out was she sociopathic or pathological in some kind of
8 way or it came out assertive and dominant then I would put
9 that in the report. My role from Lindsay was to be
10 completely objective with my findings that I could defend in
11 court. So, I mean, the answer to your question, I don't
12 think I was blindly biased. I think I came in with an
13 awareness of that this is what they're going to portray, and
14 then my role was to objectively as possible provide measures
15 to see if that indeed occurred.

16 Q. So be as objective as possible.

17 A. Yes.

18 Q. And you testified prior that you have no background on
19 the social science and false confessions, correct?

20 A. I don't.

21 Q. And you've never attended any lectures or classes
22 regarding false confessions?

23 A. No, I have not.

24 Q. And read no reports or journals?

25 A. On false confessions, no.

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1 Q. In your report and in your testimony prior you
2 discussed your hypothesis regarding false confessions,
3 correct?

4 A. Yes.

5 Q. But you testified that you have no training in this,
6 correct?

7 A. Correct.

8 Q. And you've read no reports on the subject or journals,
9 correct?

10 A. Not on confession, my knowledge was based on
11 suggestibility. And I do clinical interviews, I've done
12 supervision of forensic interviewers. Suggestibility you're
13 not -- again, people are influenced by the examiner's
14 questions so I based it more on my knowledge of
15 suggestibility.

16 Q. What is your background regarding suggestibility?

17 A. It's general and through my training because I do
18 evaluation. It's something -- as an examiner you have to
19 learn what kind of questions to ask, because if you ask
20 leading questions or if you present in a way you could
21 influence or have an undue influence on the interviewee.

22 Q. And what was your hypothesis one more time? I know you
23 testified on direct and it's your report, but what was your
24 hypothesis regarding false confessions?

25 A. I will read what I have. Here is what I put in, it's

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1 not on false confessions, it is hypothesized that
2 individuals who tend to be overly passive and lack
3 assertiveness may experience mistreatment or exploitation by
4 others or they may conform to others in an effort to avoid
5 being the focus of attention.

6 Q. Has this hypothesis been tested by you before
7 Ms. Person's case?

8 A. I think it's a pretty -- it's been tested -- I mean in
9 terms of the literature, yeah, because that's how the scales
10 have ended up being formulated.

11 Q. But this is your first time doing these types of tests
12 regarding --

13 A. Well, not these types -- for this particular issue.

14 Q. For this issue regarding false confessions. You've
15 done the MMPI and other tests before.

16 A. Yeah. And again, there's multiple reasons I've seen
17 people for evaluations and for lack of assertiveness, that's
18 not an uncommon issue with people in personality
19 characteristics.

20 Q. You've testified that you've lack of assertiveness is
21 something that you've tested before in what types of
22 scenarios?

23 A. Sometimes not in forensic but in clinical situations,
24 interpersonal relationship problems, making recommendations.
25 I made recommendations in anger management. Some people are

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1 passive aggressive, some people are overly aggressive so
2 that's a common variable I assess very typically.

3 Q. Those have been in clinical situations, not forensic.

4 A. In forensic situations I'll say I have done -- that has
5 been assessed as part of custody evaluations in terms of
6 dynamics between parents and conflict resolution. So, you
7 know, how to cope with stress, how to deal with stressful
8 situations is something I commonly deal with.

9 Q. And you met with Ms. Person last Wednesday, correct?

10 A. I met with her on the 25th if that was last Wednesday.
11 Yes, I believe it was.

12 Q. And you mentioned in your report as well as in your
13 testimony that the time constraints impacted your report,
14 correct?

15 A. Well, yes. I completed --

16 Q. If you -- Oh, sorry, I didn't mean to --

17 A. Yeah. I completed this in two days.

18 Q. If you would have had more time do you think this would
19 have had an impact on your report?

20 A. The difference would have been I would have gathered
21 more collateral information to verify some of her
22 statements.

23 Q. What types of collaring information?

24 A. Well, essentially to verify her background, to, you
25 know -- for example, her family history is mainly her self

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1 report. I talked maybe to family members. I would may run
2 for example a records check and make sure there is no other
3 criminal history, you know, just to verify, corroborate the
4 statements she made.

5 Q. And you weren't able to do that in this case, correct?

6 A. With the short amount of time to turn around the
7 report, I told Ms. Lindsay that I wouldn't and she said
8 that's understandable.

9 Q. And this report is not retroactive, correct?

10 A. What exactly do you mean?

11 Q. It doesn't hypothesis how Ms. Person was six years ago
12 when she was interrogated or questioned?

13 A. No. But what this report does is examine longstanding
14 personality tendencies, so these aren't situational
15 qualities what I'm talking about in terms of her
16 interpersonal presentation.

17 Q. And this reporter was taken six years after her
18 statement to law enforcement, correct?

19 A. Yes.

20 Q. And she's been incarcerated for most of the time since
21 that statement was taken in 2007, correct?

22 A. Yes.

23 Q. Your CV indicates you've previously done a lot with DJJ
24 and juvenile offenders, correct?

25 A. Yes.

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- 1 Q. So you've previously worked with inmates?
- 2 A. I've worked with the juvenile delinquents and I've
3 worked in private practice -- inmates is only juvenile.
- 4 Q. But previously with -- you said inmates is only
5 juvenile, other people in the penal system?
- 6 A. That's what I was thinking, only through assessments,
7 not through day to day interactions.
- 8 Q. Based on your professional experience, would you agree
9 that incarceration in the penal system would likely have a
10 significant impact on a person?
- 11 A. Yes.
- 12 Q. Including their psyche?
- 13 A. Yes.
- 14 Q. And their personality?
- 15 A. Arguably no. Personality is hypothesized to be
16 longstanding features. Whether someone who is extroverted
17 on the outside, for example, would likely be extroverted on
18 the inside. Personality measures, essentially why they're
19 so regarded and used is they suggest that a person generally
20 is stable and consistent over time. So I met with a lot of
21 adolescents, people incarcerated and they certainly had
22 their personalities and I would hypothesize that they were
23 stable out of prison as well.
- 24 Q. On page six of your report you state that Andrea did
25 endorse situational symptoms of anxiety and depression since

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1 being incarcerated, correct?

2 A. Yes, uh-huh.

3 Q. Based on your previous testimony you think she also had
4 these personality traits prior to being incarcerated,
5 correct?

6 A. Yes. Let me kind of explain. According to the D074TR
7 there is sort of axis one characteristics and axis two
8 characteristics. Axis one is current clinical syndrome so
9 to speak, and axis two is personality disorder tendencies.
10 They were split in to different categories because the
11 personality disorders tend to be viewed -- or personality
12 characteristics in general tend to be viewed as chronic and
13 longstanding, whereas on axis one a diagnosis of situational
14 adjustment disorder with mixed anxiousness and depressed
15 mood is the direct and proximate result of her situation.
16 So an adjustment disorder typically lifts when the stressful
17 situation is done. If she was diagnosed with something like
18 major depressive disorder or generalized anxiety disorder
19 that would probably maintain in both settings.

20 Q. Can you say to a reasonable degree of psychological
21 certainty that she possessed these characteristics from the
22 MMPI and your other testings back in 2007 when she was
23 giving the statement to law enforcement?

24 A. I would hypothesize, yes, based on the results of the
25 psychological inventories.

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1 Q. But that's just your hypothesis.

2 A. Yes. That's -- I can't speak for 2007, but if the test
3 results are valid and do what they're supposed to do the
4 results would suggest that.

5 Q. And you never had an opportunity to work with Andrea in
6 2007, correct?

7 A. No. I have no knowledge of Andrea until this report.

8 MS. HARRIGAN: No further questions.

9 THE COURT: Mr. Sowell?

10 MR. SOWELL: Very briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SOWELL:

13 Q. Just to make sure we're straight, what you measured and
14 tested objectively in respect to Andrea Person were stable
15 and enduring qualities?

16 A. Well, actually I assessed boat, situational and stable
17 and enduring qualities, and there's different -- because
18 both are relevant. But I did assess both and that's why the
19 scales I used have measures for both.

20 Q. But your conclusions to a reasonable degree of
21 certainty with respect to suggestibility and acquiescence,
22 that is a stable enduring characteristic in your opinion.

23 A. Yes. According to the research, yes.

24 Q. And did the information that you referred to on the two
25 pages of notes that you got from Ms. Lindsay, did she

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1 influence the results of these objective tests?

2 A. No.

3 MR. SOWELL: Thank you.

4 THE COURT: Anything?

5 MS. HARRIGAN: Briefly.

6 RECROSS EXAMINATION

7 BY MS. HARRIGAN:

8 Q. When you say hypothesis, do you mean speculate?

9 A. Hypothesis is a scientific question so it's -- it means
10 there's a justification for an investigation.

11 MS. HARRIGAN: No further questions, Your Honor.

12 THE COURT: All right. Thank you, Doctor, you can step
13 down.

14 MS. LINDSAY: We would like to call Andrea Person.

15 (A recess was taken.)

16 The witness, ANDREA PERSON, was first duly
17 sworn and testified as follows, on:

18 DIRECT EXAMINATION

19 BY MS. LINDSAY:

20 THE COURT: If you would have a seat and tell us your
21 full name, please.

22 THE WITNESS: My name is Andrea Person.

23 Q. Speak loud and clear in the microphone.

24 A. Yes, ma'am.

25 Q. Andrea, how old are you?

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- 1 A. I am 46.
- 2 Q. And briefly tell me about your family and children.
- 3 A. I've been married to my husband for 24 years now.
- 4 Q. And his name is?
- 5 A. His name is Rodney.
- 6 Q. Is he here today?
- 7 A. Yes, he is. He's right there with the glasses in the
8 gray. My son, who is Tyler, he's 21, he's seated beside my
9 husband. And my daughter -- my daughter is Coco and she's
10 20, and she's seated behind.
- 11 Q. And you have some other family members here, you have
12 some other family back there.
- 13 A. I do. My sister, Mary. My nephew, Demarr. My niece,
14 Diera (phonetically.) My husband, Rodney. My son Tyler.
15 My Auntee Pearl. My mommy, Sam wells. My knees Asia. I
16 believe Zion is down there somewhere, there's Zion. And my
17 daughter Coco, and my sister Rachel.
- 18 Q. Now just quickly, are both of your children in school?
- 19 A. Yes, they are attending college. Coco is at Claflin,
20 she's a junior, she's pursuing law also. And Tyler is now a
21 senior -- oh my goodness pat the College of Charleston and
22 he's getting ready to go in to grad school for architecture.
- 23 Q. Thanks. Where do you currently live?
- 24 A. I reside at Leath Correctional Institution in
25 Greenwood.

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1 Q. And how long have you been there?

2 A. I have been there since 2009, November of 2009.

3 Q. Who were your lawyers during your trial in 2009?

4 A. Ms. Fielding Pringle and Douglas Strickler.

5 Q. Do you see them here today?

6 A. Yes, I do.

7 Q. Okay. Now, you originally filed a PCR application last
8 year but that was before I was appointed as your lawyer,
9 correct?

10 A. That is correct.

11 Q. And then I was appointed your lawyer shortly
12 thereafter.

13 A. Yes, ma'am.

14 Q. And I wrote and filed your amended PCR application.

15 A. Yes, ma'am.

16 Q. And we talked about the arguments I was going to make,
17 correct?

18 A. Yes, ma'am.

19 Q. And I've several long visits with you at Leath; is that
20 correct?

21 A. Yes, ma'am.

22 Q. And Mr. Sowell is here today, a partner at my firm, who
23 has volunteered to work on this case has also visited you
24 multiple times in jail; is that right?

25 A. Yes, ma'am.

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1 Q. And we have met with your husband and mother as well;
2 is that true?

3 A. Yes, ma'am.

4 Q. And we explained to you that the granting of a PCR does
5 not mean you walk out of jail, it just means that you get a
6 new trial and the process starts all over.

7 A. Yes, ma'am.

8 Q. Okay. Now, over a ten year period a total of three
9 babies died in your daycare; is that correct?

10 A. Yes, ma'am.

11 Q. Do you remember a pretrial hearing in 2008 where Judge
12 Lee that if the State wanted to move forward against you on
13 all three that they had to be separate trials?

14 A. Yes, ma'am, I do.

15 Q. And the State chose to move forward first with the
16 trial for the death of Zachary Ulenchong; is that correct?

17 A. Yes, ma'am.

18 Q. And you were offered a plea deal which would have
19 required you to serve only four years but you did not take
20 it.

21 A. Yes, ma'am.

22 Q. And why was that?

23 A. Because I was innocent and I didn't want to take that
24 plea. I was innocent.

25 Q. And in that trial for Zachary Ulenchong for his death

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1 you were charged and convicted with homicide by child abuse;
2 is that correct?

3 A. Yes, ma'am.

4 Q. And what's the length of your sentence?

5 A. I was given 22 years.

6 Q. Now, we're going to move into the Jackson v. Denno
7 hearing. First of all, was your alleged confession always
8 considered -- in your conversations with the lawyers, was
9 your alleged confession always the central aspect of your
10 case?

11 A. Yes, ma'am.

12 Q. Did Mr. Strickler or Ms. Pringle talk to you about the
13 Jackson v. Denno hearing that was held about a week before
14 your trial?

15 A. Yes, ma'am.

16 Q. And do you remember them telling you that at this
17 hearing Judge Lee would look at the totality of
18 circumstances and determine whether your confession was
19 given voluntarily?

20 A. Yes, ma'am.

21 Q. They fully explained it.

22 A. Yes, ma'am.

23 Q. Had you and Mr. Strickler or Ms. Pringle decided long
24 before this hearing that you would be testifying at your
25 trial?

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- 1 A. At my trial, yes, ma'am.
- 2 Q. Did you discuss with Mr. Strickler or Ms. Pringle
3 whether you should also testify at the Jackson v. Denno?
- 4 A. I can't recall. Yes, ma'am.
- 5 Q. But you did not testify?
- 6 A. I did not testify.
- 7 Q. Did you have any discussion with your lawyers about
8 your personality or your psychological makeup and how law
9 enforcement could influence you during your interrogation.
- 10 A. I'm sorry, could you ask that question again?
- 11 Q. Did you have any discussion with your lawyers about
12 your personality or your psychological make-up and how that
13 could have influenced your police interrogations?
- 14 A. Yes, ma'am.
- 15 Q. Did your trial lawyers ever have you evaluated with a
16 psychologist?
- 17 A. No, ma'am.
- 18 Q. Did you have new discussions with Mr. Strickler or Ms.
19 Pringle regarding who else would testify at the Jackson v.
20 Denno?
- 21 A. Yes, ma'am. I knew I wasn't going to testify, I'm not
22 sure who was.
- 23 Q. You already knew about Dr. Kassin at this point?
- 24 A. Yes, ma'am.
- 25 Q. Did you discuss whether he should testify at a hearing

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1 related to your confession as he was a false confessions
2 expert?

3 A. Yes, ma'am.

4 Q. You did discuss it?

5 A. I knew that we had secured Dr. Kassin, that's all I
6 knew.

7 Q. Did he testify at the Jackson v. Denno?

8 A. He did not.

9 Q. At the Jackson v. Denno on October 30th of 2009, were
10 you present?

11 A. I'm sorry, say that again.

12 Q. Were you present at the hearing?

13 A. Yes, ma'am.

14 Q. Did your lawyers call any witnesses?

15 A. No, ma'am.

16 Q. And you did not testify.

17 A. I did not.

18 Q. Did your lawyers make an argument to the Judge about
19 all the reasons your confession was involuntary?

20 A. No, ma'am.

21 Q. Until I was appointed as your lawyer were you even
22 aware that at that hearing your confession could have been
23 found to be given voluntarily?

24 A. No, ma'am.

25 Q. Involuntarily, excuse me. Based on the evidence

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1 presented to Judge Lee, did the Judge rule at the end that
2 your confession was voluntary?

3 A. Yes, she did.

4 Q. Now, you did testify at trial, correct?

5 A. Yes, ma'am.

6 Q. But when you testified at trial about your
7 interrogation, were you limited by certain things because
8 the jury was present?

9 A. Yes, ma'am, I was.

10 Q. And what would you not mention during your trial
11 testimony?

12 A. During the trial testimony I could not testify to the
13 time limit of the interrogation. I could not testify to the
14 polygraph and I could not testify to the other children,
15 that would be opening the door.

16 Q. So there was always the concern that you would open the
17 door to the other two victims.

18 A. Yes, ma'am.

19 Q. Now, we're just going to go to the interrogation and
20 primarily focus on what you would have testified differently
21 at the Jackson v. Denno, but I'm going to get a little bit
22 of background first. Did you voluntarily go to the
23 sheriff's department on April 17, 2007?

24 A. Yes, ma'am, I did.

25 Q. Had you contacted a lawyer?

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- 1 A. No, ma'am.
- 2 Q. Why not?
- 3 A. Because I wanted to help. I was not hiding anything
- 4 and I wanted to help.
- 5 Q. Did you even tell Rodney that you were going?
- 6 A. No, ma'am.
- 7 Q. What kind of stress were you under that day when you
- 8 went to the sheriff's department?
- 9 A. The fact that I was grieving over the child that
- 10 passed. The fact that I was no longer going to be able to
- 11 be a help to my husband and my family financially. And the
- 12 fact that --
- 13 Q. Was there an issue going on with Rodney?
- 14 A. Yes, there was. There was a paternity issue during
- 15 that time. He was being tested to see if he was the father
- 16 of my best friend's child.
- 17 Q. And that day when you went to the sheriff's department
- 18 those results were pending.
- 19 A. Yes, ma'am.
- 20 Q. What time did you get to the sheriff's department?
- 21 A. Approximately between 12:00 and 12:30.
- 22 Q. And had you eaten that day?
- 23 A. No, ma'am.
- 24 Q. And when was the last time you had eaten?
- 25 A. I had eaten the night before.

TESTIMONY OF ANDREA PERSON

- 1 Q. Are you a diabetic?
- 2 A. I am.
- 3 Q. Had you taken your shot that day?
- 4 A. Yes, ma'am, I had taken my insulin.
- 5 Q. Had you taken your pills?
- 6 A. No, ma'am, I had not.
- 7 Q. And how long were you at the sheriff's department that
- 8 day?
- 9 A. I was at the sheriff's department up until 8:30.
- 10 Q. Did you have anything to eat the entire time?
- 11 A. No, ma'am, not until later on that evening.
- 12 Q. Did your family bring you a fruit cup around 7:00 or
- 13 7:30?
- 14 A. Yes, ma'am.
- 15 Q. And as a diabetic, could you explain what happens when
- 16 you haven't taken your medicine, you haven't eaten for a
- 17 long time and then are in a highly stressful situation?
- 18 A. When that occurs your sugar drops through the floor,
- 19 you become confused, you can't focus, you're irritated,
- 20 confused, you can't put a sentence together, you can't
- 21 focus, you can't make sense of things. You want things
- 22 better.
- 23 Q. But at trial when you testified you could not testify
- 24 to the actual time that you were interrogated, could you?
- 25 A. No, ma'am.

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1 Q. And what was the timeframe that the jury heard you were
2 interrogated?

3 A. They heard, if I'm not mistaken, that I was only
4 interrogated for three and a half hours.

5 Q. But the stressful situation actually lasted until 8:30;
6 is that correct?

7 A. Yes, ma'am.

8 Q. When you went to the station which baby did you think
9 the polygraph was going to be about?

10 A. I thought the polygraph was going to be about Michael
11 Walker.

12 Q. And you agreed to take it.

13 A. Yes, ma'am.

14 Q. Did you have any clue they were going to polygraph you
15 about Elijah Brown and Zachary Ulangchong?

16 A. I was clue less, totally blindsided.

17 Q. So when they first mentioned those two babies names it
18 was out of the nowhere to you.

19 A. Out of nowhere, yes, ma'am.

20 Q. Particularly because Zachary had died ten years before.

21 A. Right.

22 Q. And the cause of death had been ruled pneumonia.

23 A. Yes, ma'am.

24 Q. But you cannot testify to this sort of baby switch
25 tactic at trial, could you?

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- 1 A. No, ma'am.
- 2 Q. Who does Captain White question you about first?
- 3 A. He questions me about the Walker baby.
- 4 Q. And then what does he do?
- 5 A. And then he tells me that I did fine, I passed the
- 6 exam, and then he re-tightens the things, the restraints and
- 7 he said, "We're going to talk about Zachary now."
- 8 Q. And did just the fact that he is questioning you about
- 9 Zachary who died ten years earlier start to make you think
- 10 that the police are suspicious?
- 11 A. Yes, ma'am, it did.
- 12 Q. And what did Captain White tell you about your results
- 13 regarding Zachary?
- 14 A. He said I failed.
- 15 Q. And did he testify at the Jackson v. Denno?
- 16 A. Yes, he did.
- 17 Q. Did he testify that you did not actually fail?
- 18 A. Yes, he did.
- 19 Q. And at that time did you think that polygraphs -- at
- 20 the time when you were there in 2007, did you think that the
- 21 polygraphs were accurate?
- 22 A. Yes, I did.
- 23 Q. Had you ever taken one before?
- 24 A. No, ma'am.
- 25 Q. Did you know anything about polygraphs?

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1 A. No, ma'am.

2 Q. But the jury never heard any of this evidence related
3 to the polygraphs, correct?

4 A. No, ma'am.

5 Q. Had you had any prior dealings with law enforcement?

6 A. None at all.

7 Q. Did you know that law enforcement sometimes lied about
8 results?

9 A. No, ma'am.

10 Q. Did you know that law enforcement sometimes presented
11 false evidence?

12 A. No, ma'am.

13 Q. How did hearing that you failed make you feel and what
14 did that make you start doing?

15 A. I was shocked, confused and he began to question me
16 about Zachary and that question scared me because I wasn't
17 there to talk about Zachary. He began to ask me all kinds
18 of questions and tell me that I did not pass the exam and we
19 had to -- this doesn't make sense because I kept telling him
20 I didn't hurt him, I didn't do anything to the baby, he was
21 sick.

22 Q. How did the fact that Zachary had died ten years prior
23 to this interrogation affect your frame of mind?

24 A. It happened ten years before this interrogation and the
25 family and I, we had closure, we thought everything was

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1 taken care of. The police came and did what they do and I
2 was not convicted or charged with anything in that case, I
3 thought it was done, so to bring it up now was confusing and
4 scarry.

5 Q. Did law enforcement use the fact that three babies died
6 in your care to induce your confession?

7 A. Yes, ma'am.

8 Q. What did they say to you about how the fact that there
9 were three babies total?

10 A. How can you explain it, it just doesn't make sense,
11 there's three children in your care that have passed. And
12 this further went to make me feel as if they were blaming me
13 for those babies. I felt intimidated, pressured to make
14 something make sense. They kept asking me to make something
15 make sense.

16 Q. Did it become clear that they had already reached the
17 conclusion that you were responsible for this?

18 A. Yes, ma'am.

19 Q. But none of the evidence relating to those three babies
20 and the use of that in the interrogation could come in at
21 trial, correct?

22 A. No, ma'am.

23 Q. Did they tell you that you could go home if you gave
24 them something that made sense?

25 A. They certainly did.

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1 Q. Now, were you stressed and desperate to leave the
2 sheriff's department?

3 A. Yes, ma'am.

4 Q. Crying?

5 A. Yeah, upset, wanting it to be done. I was desperate to
6 get out of there. I came thinking I was helping and then
7 all of the sudden I'm being accused of hurting these babies.

8 Q. And it never occurred to you that you could leave on
9 your own because up were there to help.

10 A. I was there to help, I didn't have anything to hide.

11 Q. Did the police threaten that they could dig up the
12 other two babies to figure out the details?

13 A. Yes, they did.

14 Q. Could you testify at trial about how you were confused
15 about something so long ago when you were grieving over an
16 incident that had just happened?

17 A. No, I couldn't.

18 Q. Because it could own the door for the prosecution.

19 A. Yes, ma'am.

20 Q. So the jury did not hear about the actual length of
21 time you were interrogated?

22 A. No, ma'am.

23 Q. The bait and switch regarding the three different
24 babies.

25 A. No, ma'am.

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- 1 Q. Or the polygraph.
- 2 A. No, ma'am.
- 3 Q. And you didn't testify at the Jackson v. Denno outside
4 the presence of the jury when you would have been able to go
5 into all of that evidence, did you?
- 6 A. No, ma'am, I did not.
- 7 Q. Okay. Now we're going to move onto Kimberly Collins
8 and issues related to the cause of death. At the time of
9 Zachary's death in 1998 was an autopsy done?
- 10 A. Yes, ma'am.
- 11 Q. Do you remember that the cause of death -- what the
12 cause of death was listed as on the autopsy?
- 13 A. Yes, I do. It was listed as pneumonia and acute
14 bronchitis.
- 15 Q. Did this come as a surprise to you?
- 16 A. No, ma'am.
- 17 Q. And why was that?
- 18 A. Because Baby Zachary was sick most of his life and he
19 was sick on that day when I received him.
- 20 Q. Moving forward over ten years, were you aware that
21 Dr. Armstrong, the doctor who performed the autopsy in '98,
22 went back and changed the cause of death to suffocation?
- 23 A. Yes, ma'am.
- 24 Q. And at trial did Dr. Armstrong testify that based
25 largely on your alleged confession he now believed the cause

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1 of death was smothering?

2 A. Yes, ma'am.

3 Q. Did Dr. Nichols, the State's forensic pathologist
4 expert, also testify that the cause of death was smothering
5 based largely on your alleged confession?

6 A. Yes, ma'am.

7 Q. So was it crucial that the defense call an expert who
8 had testified --

9 MS. HARRIGAN: Objection, leading.

10 THE COURT: No kidding. Don't lead.

11 MS. LINDSAY: I'm sorry, I apologize. I will restate
12 that question.

13 Q. Was it crucial that the defense call an expert who
14 would testify that Zachary died of pneumonia?

15 THE COURT: Don't lead.

16 Q. What sort of forensic pathologist was required? What
17 did you need them to say?

18 A. I needed our expert witness to say he was -- the
19 autopsy, the cause of death was pneumonia.

20 Q. Was Dr. Collins the expert that the -- the only expert
21 that the defense called relating to cause of death?

22 A. Yes, ma'am.

23 Q. Did she say there was enough pneumonia to cause death?

24 A. Yes, she did.

25 Q. Did she say that if you had held your hand over

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1 Zachary's mouth for 15 to 20 seconds it would not have
2 killed him?

3 A. Yes, ma'am.

4 Q. What was her final conclusion as to cause of death?

5 A. Her final conclusion was suffocation because of the
6 confession.

7 Q. So she considered your alleged confession.

8 A. Yes, ma'am.

9 Q. And I'm sorry, I'm not trying to lead, it's just a
10 multipart question. But as you just said, at one point she
11 said that holding your hand over 15 to 20 seconds would not
12 have killed him.

13 A. Yes, ma'am.

14 Q. She said there was enough bronchitis to kill him.

15 A. Yes, ma'am.

16 Q. But then she ultimately said she had to consider your
17 confession.

18 A. Yes, ma'am.

19 Q. Does that make sense to you?

20 A. Not to me.

21 Q. So did Dr. Collins basically bolster the State's
22 evidence?

23 MS. HARRIGAN: Objection, leading.

24 THE COURT: Sustained.

25 Q. Were you aware that Dr. Collins was going to testify

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1 this way?

2 A. I was aware she was going to testify, yes.

3 Q. Were you aware of what her ultimate conclusion would
4 be?

5 A. I thought it would be that he died of pneumonia. I was
6 not aware that she was going to testify that he died of
7 smothering.

8 Q. Were you surprised?

9 A. Yes, ma'am.

10 Q. Would you have wanted her to be a witness had you
11 known?

12 A. No. If that was going to be her diagnosis or whatever,
13 no.

14 MS. LINDSAY: No more questions. Thank you.

15 CROSS EXAMINATION

16 BY MS. HARRIGAN:

17 Q. Good afternoon, Ms. Person. You testified at trial
18 that you attended UNC Chapel Hill, correct?

19 A. Yes, ma'am.

20 Q. And that was on an academic and athletic scholarship,
21 correct?

22 A. Yes, ma'am.

23 Q. And I believe you testified, I'm not sure if it was at
24 trial or in your psychological evaluation, that you were on
25 the volleyball team there, correct?

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- 1 A. Yes, ma'am.
- 2 Q. How many years did you play on the volleyball team?
- 3 A. Four years.
- 4 Q. And the report said you have a history of performing
- 5 well academically, correct?
- 6 A. Yes, ma'am.
- 7 Q. Did you make Dean's list while you are at Chapel Hill?
- 8 A. I can't recall.
- 9 Q. You completed four years at UNC, correct?
- 10 A. Yes, ma'am.
- 11 Q. And you were just four elective credits short of
- 12 graduating?
- 13 A. Yes, ma'am.
- 14 Q. And you majored in psychology, correct?
- 15 A. Yes, ma'am.
- 16 Q. What sort of psychological classes did you take for
- 17 your psychology major while you were there?
- 18 A. Just the basic classes.
- 19 Q. Had you satisfied all of your requirements for your
- 20 psychology major for graduation?
- 21 A. I'm not sure, I think so.
- 22 Q. And you have diabetes, correct?
- 23 A. Yes, ma'am.
- 24 Q. Do you have any other health concerns?
- 25 A. They're monitoring my high blood pressure.

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- 1 Q. Any mental health concerns?
- 2 A. No, ma'am.
- 3 Q. Any family history?
- 4 A. No, ma'am.
- 5 Q. Since college where have you been employed?
- 6 A. I was employed at a telethon bank, I was employed at a
- 7 nursing home, and I ran my own business for 15 years as a
- 8 daycare provider.
- 9 Q. When did you begin your in-home daycare?
- 10 A. When my children were born.
- 11 Q. What year was that?
- 12 A. Tyler was born in 1992.
- 13 Q. And you ran this from your home, correct?
- 14 A. Yes, ma'am.
- 15 Q. And during this time three children died in your care,
- 16 correct?
- 17 A. Yes, ma'am.
- 18 Q. Zachary Ulengchong in 1998?
- 19 A. Yes, ma'am.
- 20 Q. Elijah Brown in 2001, correct?
- 21 A. Yes, ma'am.
- 22 Q. And Michael Walker in 2007?
- 23 A. Yes, ma'am.
- 24 Q. So three children within nine years, correct?
- 25 A. Yes, ma'am.

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1 Q. At the time of Michael Walker's death you were
2 operating this daycare without a license, correct?

3 A. Yes, ma'am.

4 Q. And you knew you needed a license to operate lawfully,
5 correct?

6 A. Yes, ma'am.

7 Q. How long had you not had a license in order to operate?

8 A. I don't recall.

9 Q. A few years?

10 A. I don't recall.

11 Q. You also had more children than the maximum allowed by
12 DSS regulations, correct?

13 A. I think so.

14 Q. You had nine children at one point?

15 A. Yes, ma'am.

16 Q. And the maximum was six, correct?

17 A. Yes, ma'am.

18 Q. And this is at the time of Michael Walker's death in
19 2007, correct?

20 A. I don't recall.

21 Q. But you don't dispute that at this time you were not
22 licensed to be a daycare provider.

23 A. Yes, ma'am.

24 Q. After Michael's death in 2007 law enforcement asked you
25 to come speak with them regarding his death, correct?

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1 A. Yes, ma'am.

2 Q. As well as the deaths of the other two children,
3 correct?

4 A. No, ma'am.

5 Q. So when you first went to the sheriff's office on
6 April 11th you thought it was only in regards to Michael
7 Walker's death.

8 A. Yes, ma'am.

9 Q. When did you learn it would be involving the other two
10 children?

11 A. When I was sitting in that polygraph seat.

12 Q. On the 17th?

13 A. Yes, with Mr. White.

14 Q. Do you recall how long you were at the sheriff's
15 department on April 11th?

16 A. No, I can't recall.

17 Q. A few hours possibly?

18 A. I can't recall.

19 Q. Was it a full day?

20 A. No, ma'am.

21 Q. And at that time you were able to leave voluntarily and
22 go home, correct?

23 A. Yes, ma'am.

24 Q. And you were asked if you would come back to take a
25 polygraph test, correct?

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- 1 A. Yes, ma'am.
- 2 Q. And you voluntarily agreed to come back, correct?
- 3 A. Yes, ma'am.
- 4 Q. You came back six days later on April 17th, correct?
- 5 A. Yes, ma'am.
- 6 Q. And this was for the polygraph test.
- 7 A. Yes, ma'am.
- 8 Q. And you came in a little after 1:00 p.m. correct?
- 9 A. I believe it was before.
- 10 Q. A little before 1:00?
- 11 A. Before 12:00 and 12:30.
- 12 Q. And you testified prior you do have diabetes, correct?
- 13 A. Yes, ma'am.
- 14 Q. And you recall that you had taken your insulin that
- 15 morning, correct?
- 16 A. Correct.
- 17 Q. But not your medicine.
- 18 A. Correct.
- 19 Q. Do you recall telling your attorneys, Ms. Pringle or
- 20 Mr. Strickler that you had taken your medicine that day?
- 21 A. I can't recall.
- 22 Q. Do you recall telling them that you couldn't recall if
- 23 you had taken your medicine that day?
- 24 A. I can't recall.
- 25 Q. And you didn't testify to not taking your medicine that

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1 day at your trial, correct? You didn't tell the jury
2 anything about whether you had taken your medicine, correct?

3 A. Correct, I think.

4 Q. And you testified at trial that you couldn't recall
5 whether or not you had eaten anything that day, correct?

6 A. Yes, ma'am.

7 Q. But your testimony here today is you know for certain
8 six -- four years later that you didn't eat anything that
9 day.

10 A. Yes, ma'am.

11 Q. You testified on direct when Ms. Lindsay was asking you
12 questions that you were dealing with financial worry at that
13 time, correct?

14 A. Yes, ma'am.

15 Q. But at this time you'd already been told by DSS you
16 weren't licensed to run a daycare, correct?

17 A. Yes, ma'am.

18 Q. So you already had this financial worry, it was an
19 illegal daycare you were running, correct?

20 A. Yes, ma'am.

21 Q. And the issue regarding your husband's paternity test,
22 didn't you actually learn of that right before Michael
23 Walker's death?

24 A. No, ma'am.

25 Q. When did you learn of that?

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- 1 A. I was at Alvin S. Glenn when we finally learned of it.
- 2 Q. So you didn't learn about his paternity test until
- 3 after the polygraph meeting.
- 4 A. I learned of the result of the test.
- 5 Q. When did you learn that this was a issue for your
- 6 family and for yourself?
- 7 A. Before the death.
- 8 Q. Before Michael Walker's death.
- 9 A. Yes, ma'am.
- 10 Q. So this was something that was on your mind.
- 11 A. Yes, ma'am.
- 12 Q. Did it cause you a great deal of worry?
- 13 A. Worry? It was stressful.
- 14 Q. Emotional stress? You signed a waiver of rights,
- 15 correct, on April 11?
- 16 A. Yes, ma'am.
- 17 Q. And another one on April 17th, correct?
- 18 A. Yes, ma'am.
- 19 Q. And you testified at trial that you understood these
- 20 rights, correct?
- 21 A. Yes, ma'am.
- 22 Q. And you understood that you were waiving them.
- 23 A. Yes, ma'am.
- 24 Q. And you understood what this meant.
- 25 A. Yes, ma'am.

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- 1 Q. And the implications of that.
- 2 A. Yes, ma'am.
- 3 Q. So that was two separate instances, first on April 11th
- 4 and then on April 17th, correct?
- 5 A. Yes, ma'am.
- 6 Q. And on April 11th you had been allowed to leave after a
- 7 few hours of questioning, correct?
- 8 A. Yes, ma'am.
- 9 Q. And your testimony is you were told that you failed the
- 10 polygraph, correct?
- 11 A. Yes, ma'am.
- 12 Q. Were you told you failed or that you didn't clear the
- 13 polygraph?
- 14 A. He told me I failed the polygraph.
- 15 Q. Do you know if your attorneys, Ms. Pringle or Mr.
- 16 Strickler, consulted with any polygraph experts in
- 17 preparation for your trial?
- 18 A. I don't know.
- 19 Q. You don't recall that or don't --
- 20 A. I don't recall. I don't know whether or not they did.
- 21 Q. Would you be surprised to learn if they had?
- 22 A. Yes, ma'am.
- 23 Q. Would you be surprised if those experts formed an
- 24 opinion that based on the results there was indicated
- 25 deception --

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1 MR. SOWELL: Your Honor --

2 MS. LINDSAY: Could you repeat the question? I'm
3 sorry.

4 THE COURT: Would she be surprised if the experts from
5 her side of the case indicated that there was deception.

6 MS. LINDSAY: I don't know where the basis of that came
7 from.

8 THE COURT: I don't know.

9 MS. HARRIGAN: I'll withdraw the question.

10 Q. After your polygraph you gave a verbal statement
11 regarding Zachary's death, correct?

12 A. Yes, ma'am.

13 Q. And your overall polygraph testing lasted approximately
14 three hours, correct?

15 A. Yes, ma'am.

16 Q. And you testified earlier that you were stressed and
17 desperate, correct?

18 A. Yes, ma'am.

19 Q. But you testified to this at trial, correct?

20 A. Yes, ma'am.

21 Q. That you were desperate, you wanted to go home, and
22 that was all during your trial, correct?

23 A. Yes, ma'am.

24 Q. So the jury got to hear all of that.

25 A. No. The jury got to hear -- I was not able to speak

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1 about the length of time that I was being interrogated. I
2 was not allowed to speak about the polygraph at all, and I
3 was not allowed to mention anything that would open the door
4 to speak about the other two babies. The jury did not get
5 to hear the full story.

6 Q. Let's talk about length of time. You testified that at
7 trial the jury only got to hear that you were questioned for
8 approximately three hours, correct?

9 A. Yes, ma'am.

10 Q. Just based on Zachary Ulungchong's death, correct?

11 A. Yes, ma'am.

12 Q. But your first statement, your oral statement to
13 Investigator -- or Sergeant White was after the polygraph,
14 correct?

15 A. Yes, ma'am.

16 Q. And that was after only three hours, correct?

17 A. Yes, ma'am.

18 Q. And you gave this first statement orally to Sergeant
19 white, correct?

20 A. Yes, ma'am.

21 Q. Then you gave it to Sergeant Eisenhower, correct?

22 A. Yes, ma'am.

23 Q. And then you gave it to Chief Wilson, correct?

24 A. Yes, ma'am.

25 Q. You testified at trial that you went to the restroom in

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- 1 between giving it to Sergeant White and Sergeant Eisenhower,
2 correct?
- 3 A. Yes, ma'am.
- 4 Q. And that Sergeant Eisenhower followed you to the
5 restroom, correct?
- 6 A. Yes, ma'am.
- 7 Q. But this was after you had already made the verbal
8 statement that implicated you in Baby Zachary's death,
9 correct?
- 10 A. Yes, ma'am.
- 11 Q. You then signed an additional waiver of your rights,
12 correct?
- 13 A. Yes, ma'am.
- 14 Q. What you testified at trial was again voluntary,
15 correct?
- 16 A. Yes, ma'am.
- 17 Q. And you testified you understood your rights, correct?
- 18 A. Yes, ma'am.
- 19 Q. And you testified to all of this during your cross
20 examination at trial, correct, in front of the jury?
- 21 A. Yes, ma'am.
- 22 Q. Then you proceeded to give a written statement,
23 correct?
- 24 A. Yes, ma'am.
- 25 Q. And you signed this statement.

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1 A. I did, yes, ma'am.

2 Q. And you testified at trial that these were your own
3 words, correct?

4 A. I testified at trial that those were my own words that
5 the investigator coached me to say.

6 Q. You said you wrote them because you just wanted to go
7 home, correct?

8 A. I wanted to go home. I was desperate, I was tired, I
9 was confused, I was intimidated, I was uncomfortable, I
10 wanted it to end.

11 Q. And this was after the three hour polygraph when you
12 made your first oral statement.

13 A. Yes, ma'am.

14 Q. And again, you acknowledge that you had been allowed to
15 return home just six days prior after just a few hours of
16 questioning, correct?

17 A. Yes, ma'am.

18 Q. But this time after three hours you were desperate,
19 tired, intimidated and wanted to go home.

20 A. I was desperate and wanted to go home. I was not
21 intimidated on the 11th, they just interviewed me, they just
22 interviewed me. It wasn't any pressure situation, they just
23 interviewed me.

24 Q. Following this statement that you made orally to three
25 different people and then verbalized in writing and signed,

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1 you made other statements regarding the death of Elijah
2 Brown, correct?

3 A. Yes, ma'am.

4 Q. And you were arrested that evening following all of
5 your statements about both Baby Ulungchong and Baby Brown,
6 correct?

7 A. Yes, ma'am.

8 Q. How soon after you were arrested were Mr. Strickler and
9 Mrs. Pringle appointed to represent you?

10 A. When I came to court.

11 Q. Were they your first attorney?

12 A. Yes, ma'am. We had a -- we had somebody there to deal
13 with the bond hearing and Mr. Strickler showed up then.

14 Q. So early on you were represented by Mr. Strickler and
15 Ms. Pringle.

16 A. Yes, ma'am.

17 Q. How long were you incarcerated before you were released
18 on bond?

19 A. Seventeen months.

20 Q. And you were released before trial, correct?

21 A. Yes, ma'am.

22 Q. Did you meet with Mr. Strickler and Ms. Pringle
23 frequently?

24 A. Yes, ma'am.

25 Q. Can you estimate the frequency of the meetings? Was it

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1 one a week?

2 A. No, ma'am.

3 Q. Once or twice a month?

4 A. We met -- as the trial date came upon us we met more
5 frequently. It wasn't a once a week thing or twice a month
6 thing until it got closer to --

7 Q. Closer to the trial the frequency increased?

8 A. Yes, ma'am.

9 Q. Did you also discuss your case with them by telephone?

10 A. Yes, ma'am.

11 Q. By letter?

12 A. Letter?

13 Q. Did you write them letters back and forth when you were
14 still in pretrial detention about your case?

15 A. I can't recall.

16 Q. Did they also meet with members of your family?

17 A. I can't recall. Yes.

18 Q. How involved were you in the preparation of your
19 defense for trial?

20 A. I was involved.

21 Q. Did you discuss possible defenses with Mr. Strickler
22 and Ms. Pringle?

23 A. They told me that pretty much my testimony was going to
24 be -- they wanted me to testify and that was pretty much
25 going to be my case.

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1 Q. I believe you testified on direct that you knew they
2 consulting a false confession expert, correct?

3 A. Yes.

4 Q. And you knew that they had retained Dr. Kassin,
5 correct?

6 A. Uh-huh.

7 Q. Do you recall how far out in advance of trial you
8 learned about that?

9 A. I'm not sure.

10 Q. Did you review the State's discovery with your
11 attorneys?

12 A. The State's --

13 Q. The evidence the State had against you.

14 A. The only thing -- the only thing I remember them having
15 was my statement and my written statement.

16 Q. Did you discuss possible witnesses that would be called
17 at trial on your behalf for the defense?

18 A. Yes, ma'am.

19 Q. Did you discuss calling your husband or other possible
20 members of your family?

21 A. Yes, ma'am.

22 Q. So you were actively involved in defenses and possible
23 witnesses?

24 A. Yes, ma'am.

25 Q. Did you ever discuss the severance of your charges so

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1 that you could have three separate trials for each deceased
2 baby?

3 A. Yes, ma'am.

4 Q. And this is something you wanted to pursue?

5 A. Yes, ma'am. They told me it would be best.

6 Q. That way the jury wouldn't have to hear about all three
7 infant fatalities.

8 A. Yes, ma'am.

9 Q. And your attorneys were successful in getting a
10 severance of these cases, correct?

11 A. Yes, ma'am.

12 Q. So the State would have to proceed on each separate
13 death one at a time, correct?

14 A. Yes, ma'am.

15 Q. And the State decided only to call the Zachary
16 Ulungchong case to trial, correct?

17 A. Yes, ma'am.

18 Q. Did you speak with Mr. Strickler and Ms. Pringle about
19 suppressing your statement so that it would be excluded from
20 your trial?

21 A. I think so.

22 Q. Did you tell them it wasn't true?

23 A. Yes, ma'am.

24 Q. Did you tell them it was your words, it was just
25 coerced?

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- 1 A. I told them it was coerced, yes, ma'am.
- 2 Q. Did you discuss a Jackson v. Denno hearing with them?
- 3 A. I knew we were having it, I knew I wasn't going to
- 4 testify.
- 5 Q. So you discussed whether or not you would testify, I
- 6 believe you testified to that on direct, that you --
- 7 A. Yes, ma'am.
- 8 Q. Was at that a joint decision between you and your two
- 9 attorneys?
- 10 A. They thought it would be best.
- 11 Q. Did you agree with them?
- 12 A. Yes, ma'am.
- 13 Q. Did they discuss the likelihood of winning such a
- 14 hearing?
- 15 A. No. They thought it was -- they thought it was
- 16 something they couldn't win.
- 17 Q. Something that you couldn't win?
- 18 A. Yes, ma'am, it's not usually granted.
- 19 Q. Did they discuss with you the risks of you possibly
- 20 testifying at this hearing and then giving the State a
- 21 preview of your testimony at trial?
- 22 A. Yes, ma'am.
- 23 Q. Did they discuss that same risk in regards to
- 24 Dr. Kassin?
- 25 A. I can't recall.

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1 Q. And the Jackson v. Denno was held about two or two and
2 a half week before your trial, correct?

3 A. I think so, yes, ma'am.

4 Q. Did you ask either of your attorneys if they had ever
5 won such a hearing before?

6 A. No, ma'am.

7 Q. And you have been incarcerated with SCDC since 2009,
8 correct?

9 A. Yes, ma'am.

10 Q. And I believe you testified before you were
11 incarcerated pretrial as well before you bonded out.

12 A. Yes, ma'am.

13 Q. And you testified that you've never received any mental
14 health treatment before prison, correct?

15 A. Correct.

16 Q. Have you received any since you've been incarcerated?

17 A. No, ma'am.

18 Q. And you testified on direct that one of your primary
19 concerns as well as the concerns of your attorneys was
20 opening the door to the deaths of the other two children,
21 correct?

22 A. Yes, ma'am.

23 Q. So the primary focus would be not letting the jury know
24 about these two other deceased children, correct?

25 A. Yes, ma'am.

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1 Q. You testified on your direct about the effects of low
2 blood sugar and you, correct?

3 A. Yes, ma'am.

4 Q. Why didn't you testify about this to the jury?

5 A. Because that would have brought in the fact of the
6 timeline, how long I had been there, how long they
7 interrogated me, how long they switched me from one man to
8 the next to the next.

9 Q. But your first statement was after three hours,
10 correct? Your oral statement was to Sergeant White after
11 the polygraph, correct?

12 A. Yes, ma'am.

13 Q. And that was after three hours, correct?

14 A. Yes, ma'am.

15 Q. And the jury heard that you were interrogated regarding
16 Baby Ulengchong for three hours, correct?

17 A. I think so.

18 Q. So this is something you could have testified before
19 the jury regarding that three hours, the effect of low blood
20 sugar, that it makes you irritated, have headaches, et
21 cetera?

22 A. I guess so.

23 Q. Because you did testify that you couldn't recall
24 whether or not you had eaten, correct?

25 A. Yes, ma'am.

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1 Q. But you chose not to testify about anything related to
2 diabetes, correct?

3 A. Because of the timeline.

4 Q. And again, you gave your first statement after three
5 hours at the police department, correct?

6 A. Yes, ma'am.

7 MS. HARRIGAN: No further questions, Your Honor.

8 THE COURT: All right. Ms. Lindsay?

9 MS. LINDSAY: No questions.

10 THE COURT: All right. Thank you, ma'am, you may step
11 down.

12 MS. LINDSAY: Your Honor, the applicant rests.

13 THE COURT: All right. Anything from the State?

14 MS. HARRIGAN: Yes, Your Honor. The State will have
15 two witnesses. The first would be Ms. Fielding Pringle.

16 The witness, FIELDING PRINGLE, was first duly
17 sworn and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. HARRIGAN:

20 THE COURT: State your name for the record.

21 THE WITNESS: Elizabeth fielding Pringle.

22 Q. Good afternoon, Ms. Pringle. How long have you been
23 practicing law?

24 A. Since 1996, fall of 1996.

25 Q. Where are you presently employed?

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1 A. The Richland County Public Defender's Office.

2 Q. What is your position there?

3 A. Chief public defender for Richland County.

4 Q. Where have you previously been employed?

5 A. I was first employed out of law school as a staff
6 attorney with the South Carolina Supreme Court. I have been
7 in private practice doing primarily capital defense work.
8 The rest of my career has been spent with the Richland
9 County Public Defender's Office.

10 Q. Do you recall when you were appointed in this case?

11 A. Mr. Strickler -- this was actually Mr. Strickler case,
12 he assigned this case to himself, but as we often do on more
13 complex cases he brought me in very quickly. I think he got
14 involved in April and I got involved in May.

15 Q. Had you worked on cases together prior to this one?

16 A. Yes.

17 Q. Was Ms. Person in pretrial detention at that time?

18 A. Yes.

19 Q. How long had her charges been pending when you became
20 involved?

21 A. A month. She was arrested, I think, on April 17th of
22 2007, I think I first met with her on May 8th, or
23 thereabouts, 2007. But Mr. Strickler met with her before I
24 did.

25 Q. Do you recall how many times you met with Ms. Person

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1 before the trial?

2 A. Too many to count. We went back and looked, we do try
3 to keep notes and keep record of it. It was ultimately
4 somewhere around 29 or 30 times that I had a record of, and
5 various places. I had -- when she was released on bond she
6 and I began to talk on the phone with some regularity right
7 after she got released. We didn't talk constantly but as we
8 get closer we talked very frequently.

9 Q. Did you meet with members of her family?

10 A. I did.

11 Q. What members of her family?

12 A. I met with her husband. I met with her children. I
13 was in frequent contact with Mr. Person. I met with her
14 mother, spoke with her mother on the phone with regularity.
15 I met with her -- with Rachel, I think, and Mary. I spoke
16 with her brother, Dale Lyles I believe was his name, I can't
17 recall if that was on the phone or in person. There may be
18 others. I did have rather frequent contact with her
19 immediate family members particularly while she was
20 incarcerated, but we also interviewed them in anticipation
21 of trial.

22 Q. Would you say that you put more man hours into this
23 case than your average case you get as a public defender?

24 A. I would say that this was a very complex case because
25 you had three homicides, you had three separate incidents

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1 over almost a decade. It was a different kind of case and
2 very, very complicated. It required investment of
3 tremendous amount of resources and man hours, but I don't
4 know that I could say -- I would rather not answer
5 relatively because every case is different.

6 Q. And Ms. Person testified that she was involved in her
7 defense.

8 A. She was.

9 Q. Was she more involved than your typical client?

10 A. I don't think I would say that. I think that she was
11 very helpful and very informed but I don't know that I would
12 say she was more involved.

13 Q. Would you characterize Ms. Person as very intelligent?

14 A. She is intelligent, yes, educated as well.

15 Q. Did she seem to understand her discussions with you and
16 Mr. Strickler?

17 A. Yes.

18 Q. Did you file any Brady or Rule Five motions in this
19 case?

20 A. Yes.

21 Q. Did you renew those?

22 A. Yes, I'm sure we did.

23 Q. Did you review these discovery materials with your
24 client?

25 A. Yes.

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1 Q. Would you briefly characterize the Stat's evidence
2 against Ms. Person?

3 A. Well, to start with the main evidence they had was that
4 there was the coincidence of three children who had died in
5 her care and that was what sparked their interest and how
6 the entire investigation began. Once they were able to
7 interrogate her on the 17th and obtain statements from her I
8 would say that the case, as has been discussed today, very
9 much centered on her confessions, her statements, her
10 alleged confessions. They were also able to -- well, they
11 spoke with the original pathologist who conducted the
12 autopsy and he reversed his -- changed his finding to
13 suffocation after he had said lobular pneumonia. They had
14 also I think a pediatrician out of Greenwood who said that
15 babies like this don't just become sick rapidly and die that
16 quickly without more evidence. But the main evidence once
17 we were able to sever the case was her statement, and then
18 there was the pathologist. They had Dr. Nichols, I believe,
19 Dr. Armstrong, and I think his name was Dr. Grattan.

20 Q. In regards to the severance, the State originally
21 wanted to call all three cases at once in one trial,
22 correct?

23 A. That was the plan.

24 Q. And you and Mr. Strickler wanted a severance, correct?

25 A. Yes.

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1 Q. What are the benefits of a severance in a case like
2 this?

3 A. Well, first of all I think it would have been
4 completely improper to join them, these cases were not
5 related. The only thing that tied them together was the
6 fact that she was the defendant. To me then and now I
7 believed that the inflammatory nature of having the fact
8 that there were three babies in the same home under the care
9 of the same caregiver was very, very prejudicial to the
10 point that it would be almost impossible to get beyond in
11 order to get the jury to listen to the evidence and listen
12 to what we believed to be the truth. I thought that that
13 outweighed any positive benefit of letting all of that
14 evidence in.

15 Q. Did you discuss this with Ms. Person?

16 A. Extensively, we talked about this a lot.

17 Q. And she was on board with the decision to move for a
18 severance?

19 A. She was. Ms. Person is very agreeable. She was, as
20 you can see from her personality and from the testimony she
21 is a very compliant client who would ask questions but she
22 deferred to us to make those decisions with her input and
23 her being informed about it.

24 Q. In regards to her statement about Zachary Ulenchong's
25 death, she came to the sheriff's department voluntarily,

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1 correct?

2 A. She did.

3 Q. And this was six days after she was previously
4 interviewed by the sheriff's department, correct?

5 A. It was on the 11th, yes.

6 Q. To the best of your recollection was she allowed to
7 leave on the 11th?

8 A. She was.

9 Q. Did Ms. Person tell you she suffered from any medical
10 conditions?

11 A. We knew that she had diabetes. I think she also had
12 had a full hysterectomy and I knew about that pretty early
13 on.

14 Q. Did she ever tell you or Mr. Strickler whether or not
15 she had taken her diabetes medication or insulin on the
16 17th?

17 A. She did. I have conflicting notes about that. I know
18 that Mr. Strickler's notes indicate that she said she had
19 taken her insulin, I have notes that say she took her
20 insulin. There were times with Ms. Person where she
21 couldn't recall things so sometimes you would ask her and I
22 think she just -- that day rattled her so much that
23 sometimes when you try to ask her questions about that day
24 she would not be able to remember. But I have notes that
25 she took her insulin and I know that my cocounsel did as

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1 well.

2 Q. Did you ask her whether or not she had eaten that day?

3 A. I'm sure we discussed it. I always thought she hadn't
4 eaten because I remember the fruit cup being very
5 significant, her family brought the fruit cup. I don't
6 think she had -- I think she told me that she hadn't eaten,
7 but that may have also gone back and forth with memory.

8 Q. Do you recall her testifying in this regard at trial as
9 to whether or not she had eaten?

10 A. I don't remember.

11 Q. The first oral confession. Do you recall how long it
12 was until she gave her first oral confession?

13 A. She got -- well, the first waiver of rights with James
14 White was around 1:10 or 1:11, I think, and then her
15 statement about Zachary Ulenchong was at 3:56, so the first
16 statement happened from between 1:10 and 3:56. In that
17 period of time the polygraph was also conducted, but that
18 statement about Zachary Ulenchong was written at 3:56.

19 Q. And was this before or after the polygraph test?

20 A. After.

21 Q. Did you do some research or based on your criminal
22 defense experience as to whether or not this was a valid
23 polygraph that was given by law enforcement?

24 A. I did.

25 Q. Can you discuss your interpretation of polygraph tests,

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1 whether it was valid or not?

2 A. Yes. I didn't interpret it because I don't know how to
3 read them. I sought funding initially in 2008 to have an
4 expert by the name of Tom Williams who does a lot of work
5 nor Navy and Marine Corps, federal folks down out of
6 Charleston. He conducted the initial review, gave me
7 initial results in February of '08. I also subsequently --
8 and prior to him I tried to retain Rick Johnson who's a
9 local polygraph examiner, but Mr. Johnson had a conflict
10 because he is friends with Mr. White, James White so he
11 immediately sent it back to us. At that point I found
12 Mr. Williams and I sent the charts to him, and I can't tell
13 you why, but I had it reviewed again in October of 2009 by
14 Johnny Hartley, and I don't remember why I did that, but
15 their findings were the same.

16 Q. And what were their findings?

17 A. There were two series of charts. When she first got
18 there she was polygraphed on Michael Walker, which is the
19 third baby. On Michael Walker both of my experts concurred
20 with Mr. White and said she passed that polygraph and there
21 was no deception indicated whatsoever. There was a second
22 series administered following Michael Walker's questions in
23 which she was actually asked about Elijah Brown and Zachary
24 Ulungchong in the same series. Both of the examiners I had
25 look at this said that that is an invalid way of going about

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1 conducting a polygraph, you shouldn't put two separate
2 instances in the same polygraph. However, both of my
3 experts said that while they would call it inconclusive for
4 that reason that there was very marked deception noted on
5 the Zachary questions. They were in agreement, they never
6 spoke to each other. I don't know why I had Mr. Hartley
7 look at it again other than maybe to -- I don't know, but
8 they said the same thing.

9 Q. So both of your independent experts determined that
10 there was deception in regards to the Baby Ulengchong?

11 A. To those questions. The problem with the polygraph and
12 this was just very dicey for us in figuring out how to
13 navigate around it to use it. I wanted to use it with
14 Dr. Kassin and I would have sought to introduce it had it
15 either just been inconclusive or if you didn't have the
16 other babies involved. If you would have had a simple clean
17 finding on the second one. I don't recall what Mr. White
18 said that was referred to a little while ago about lying to
19 her, but there were problems with the polygraph that I felt
20 were not helpful to her.

21 Q. Did you discuss this with Ms. Person?

22 A. I'm sure I did, I'm sure I did. I don't have any
23 specific recollection of that.

24 Q. Did you discuss with Ms. Person whenever you consulted
25 with experts in this case?

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1 A. I'm sure I did. It's my practice to -- you know, one
2 of things you do when you go down and see a client regularly
3 is see here is what's going on, here is what we're doing. I
4 remember specifically talking to her about Dr. Kassin and
5 I'm sure I talked to her about having this looked at as
6 well.

7 Q. In Ms. Person's amended application the subject of
8 family turmoil regarding a paternity test comes up. Were
9 you aware of this at the time of your representation?

10 A. I was early on informed about that.

11 Q. Based on your discussions with your client, was this an
12 ongoing subject at the time of Michael Walker's death? Did
13 she already know there was a question regarding paternity?

14 A. If I'm not mistaken, my notes indicate if I'm not
15 mistaken that she knew about that years ago, and that's what
16 my notes indicate, is that she knew that it was possible,
17 that her husband had talked to her about this. But they had
18 attempted to do paternity testing years ago and it didn't
19 work or it -- something happened and so they were doing it
20 again around this time and they were pending paternity
21 testing. I thought I read in the amended application that
22 she got the results on the day that she was interrogated but
23 I didn't -- I was not aware of that if that is the case. I
24 did know that this was something that was going on around
25 the time of Michael Walker's death, which would be very

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1 close to the time of her interrogation.

2 Q. Is this something you wanted the jury to hear about
3 considering it was going on around the time that Michael
4 Walker died?

5 A. Well, the jury wouldn't have known about that. So in
6 thinking back about it now it could have been something I
7 asked her about. That was a stress that was going on. I
8 think you could have asked that cleanly without it getting
9 into the Michael Walker situation my first reaction when she
10 told me about it was I didn't want that to come out because
11 it was -- it spoke to her mental state around an incident
12 about which they had no evidence and I just did not think
13 that that was good information. Now, once we got to trial
14 on one baby, which was a different situation, I could have
15 asked her about that, I can't tell you why I didn't. But it
16 didn't have anything to do with Michael Walker once we got
17 to trial.

18 Q. Following Ms. Person's oral statement to Sergeant
19 White, do you recall whether she gave a statement to any
20 other people at the sheriff's department, any other
21 sergeants or chiefs?

22 A. Well, they continued to interrogate her about Elijah
23 Brown after that and I think maybe about Michael Walker as
24 well. I know she spoke with Dave Wilson, Major -- I don't
25 remember his title, Major Chief Dave Wilson, Captain

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1 Eisenhower, I think Eisenhower actually took her statement,
2 wrote it down, and Stan Smith may have been involved but I
3 don't think so, I'm not sure. I know he was involved on
4 April 11th, I can't remember if he came back in.

5 Q. Was this memorialized in a written statement?

6 A. What?

7 Q. Her oral statement first to Sergeant White, then to
8 Eisenhower, then to Wilson.

9 A. Yes. There were two separate statements that day, one
10 I believe at 3:56 and the other at 8:00 that night,
11 7:00 o'clock that night.

12 Q. Did Ms. Person tell you that these were false
13 statements?

14 A. Yes, from the very beginning.

15 Q. Did she give you any justification or rational as to
16 why she had made them?

17 A. Yes. She -- yes. She described a very classic
18 situation of the stress and anxiety produced by an
19 interrogation. She had difficulty articulating that for me.
20 But it was an extraordinarily stressful situation where she
21 felt very trapped, she felt very, very anxiousness and upset
22 and freighted, and ultimately was doing what she thought
23 would get her out of there. She started talking to them and
24 saying things and going along with suggestions when denial
25 didn't work and so we talked about that extensively. But

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1 there were times where her memory was -- she had trouble
2 going through detail by detail. But as far as what happened
3 to her that day we talked about it extensively and I think I
4 had a very good understanding of it.

5 Q. Did she inform you as to whether she signed advice of
6 right and waiver of right forms?

7 A. I don't know if I knew that from her or the discovery.
8 I knew that that was done. Miranda was never an issue or
9 question.

10 Q. Did she ever indicate to you that she didn't understand
11 these rights?

12 A. No, never.

13 Q. Did she ever indicate that she didn't understand the
14 implications of waiving these rights?

15 A. I think she comprehended what her rights were. I don't
16 think that Andrea would have ever not waived her rights, so
17 whether she understood the consequences of going in there
18 and what was going to happen to her, you know, that's a
19 complicated question. But did she -- do I believe she
20 understood her Miranda rights in the competent to waive her
21 Miranda rights? I believe she did.

22 Q. Do you recall the total timing of her interrogation
23 before she was arrested?

24 A. I didn't back and look at the after 3:56. I think it
25 was about seven and a half hours before they -- I can look.

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1 Her first waiver is at 1:11, her final statement and her
2 only other statement was at 18:57.

3 Q. So roughly seven and a half hours. As Chief Public
4 Defender of Richland County you had experience with
5 interrogations of your clients, correct?

6 A. Yes.

7 Q. Do most of them last longer than seven and a half
8 hours?

9 A. No.

10 Q. In your professional opinion, do you believe that seven
11 and a half hours is over excessive?

12 A. Seven and a half hours, yes, I do, I do. If an
13 individual is in there denying and they won't accept the
14 denial, seven and a half hours is a long time to be under
15 the pressure of an interrogation, I do, and I would make
16 that argument. But this wasn't seven and a half hours.

17 Q. It was three hours, correct?

18 A. It was about three and a half, and there was a fight
19 about that actually. Because I had said that in opening and
20 then they argued that I had opened the door to the other
21 babies because part of that time she was being interrogated
22 about the other babies. But just doing it as strictly as
23 cleanly as you could, she got started at 1:11 and she gave
24 the Zachary Ulenchong statement about three and a half
25 hours later, and so that was the timeframe I was working

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1 with.

2 Q. Based on your conversations with Ms. Person regarding
3 her statement, did you decide to seek any sort of outside
4 expert testimony to be used at trial?

5 A. Yes.

6 Q. What sort of expertise did you seek out?

7 A. I retained Dr. Saul Kassin who is an expert in the area
8 of false confessions, among other things, but that's the
9 main area of his expertise.

10 Q. Had you used Dr. Kassin before?

11 A. I had tried. He won't testify and he won't become
12 involved in every case, he's very, very selective. I have
13 tried but he would never agree.

14 Q. Why did he agree to become involved in this case?

15 A. Because he believed it was a false confession, and that
16 there was actual innocence, he will only testify when he
17 believes that, and he's very, very picky about it. He's in
18 high demand, he gets to pick what he wants.

19 Q. Did you have extensive conversations with him prior to
20 his testimony at trial?

21 A. I did.

22 Q. Were these by phone?

23 A. I think they were all by phone, yes, and by email. I
24 don't think he ever came down here because he didn't see her
25 or evaluate her, so I don't think there was any reason he

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1 would have ever come down here.

2 Q. Is it a standard practice not to evaluate people based
3 on your extensive conversations with him?

4 A. No, it depends. He doesn't do that, that's not his
5 approach. He is -- he'll say that's what a clinical -- a
6 forensic psychologist who comes at it from a more clinical
7 approach, he's more of the professorial, looks at it and
8 provides the tools to the jury. You can do both, there's no
9 reason why you couldn't put him up and an expert in the area
10 of false confession that comes at it from a more clinical
11 approach that evaluates the defendant, conducts a battery of
12 tests, a full psychological battery of tests and testifies
13 about the specific characteristics and evaluation of that
14 defendant. So, no. I have done that, I've done that
15 recently, I've done it in past cases, I did not do that in
16 this case.

17 Q. In your discussions with Dr. Kassin, did he go over the
18 risk factors of someone who is more likely to give a false
19 confession?

20 A. He did.

21 Q. Do you recall what some of those are?

22 A. Yes. You look at maturity of the defendant, you look
23 at age, you look at intellect, you look at background and
24 education, you look at personality features, you look at the
25 anxiety and stress of the situation. Just talking

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1 about just dispositional factors of the defendant though, if
2 you look at -- it's similar to the voluntariness Denno
3 factors. You're looking at specifics about the defendant's
4 personality, their experience, their education, background,
5 age. There are certain very specific risk factors
6 involving -- there's two sets of risk factors, one is
7 dispositional, which is the defendant, then there's risk
8 factors from the interrogation, if it was conducted
9 improperly, and then there's the innocence risk factors.
10 But what you're asking me about is the person and those are
11 some of them.

12 Q. Do you recall when Dr. Kassin was retained to come
13 testify at trial?

14 A. I tried to pull my voucher this morning before I came
15 up here to see exactly because I don't know exactly. I
16 started calling him really early and it took me awhile to
17 persuade him. I sent him material -- numerous materials
18 before he agreed and then I obtained funding. But it was
19 early, I mean, it was -- I think I had it for a year or
20 two -- I don't know exactly, but it wasn't last minute with
21 him.

22 Q. A few months prior?

23 A. No, no. It was -- well, the trial was in November '09.
24 I have notes in prepping for trial because we had
25 different -- we had trial dates that didn't go. But I had

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1 notes back in August of '08, and that may have been when I
2 was trying to get him solidly on board, I don't know. But I
3 know that I was actively working with him in August of '08
4 which was over a year before this and I'm sure I was talking
5 to him before that as well.

6 Q. Did you discuss a Jackson v. Denno with him?

7 A. Yes, I'm sure I did. Mr. Mr. Strickler and I made that
8 decision not to call him, I'm sure he asked if I was going
9 to, but I don't really remember debating that with him.
10 That wouldn't know have been -- his experience across this
11 country is very different from what happens in a South
12 Carolina courtroom, so we may have discussed it and I tried
13 to explain to him why I wasn't going to put him up, but I
14 don't remember him weighing in on that one way or the other.

15 Q. When you say his experience is very different than in a
16 South Carolina courtroom, can you elaborate on that or
17 explain that statement?

18 A. Well, that may be -- I would like to modify that
19 statement. He believes -- I think he would very strongly
20 believe that this statement should have been suppressed, and
21 based on everything that -- all of the factor that were
22 present that this should have never gone to court. Now,
23 whether that's just based on his training and knowledge in
24 this area or seeing lots of confessions suppressed and cases
25 dismissed across the country I don't know so I shouldn't

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1 have said that. But he -- I'm sure that he would have
2 believed that this, based upon everything he knew, should
3 have been suppressed based on my interaction with him and
4 what I learned.

5 Q. How many Jackson v. Denno hearings have you
6 participated in in your career?

7 A. I have no idea, maybe -- as lead counsel and
8 cocounsel --

9 Q. Numerous?

10 A. Over a dozen, probably a good bit more.

11 Q. And how many were you able to successfully exclude the
12 statement from trial, suppress it?

13 A. None. I think I've had -- I think I can remember some
14 parts of statements or Miranda issues. On voluntariness,
15 none.

16 Q. Never on voluntariness?

17 A. No. And that is what this would have been about, if
18 anything.

19 Q. Did you explain this to Ms. Person, the likelihood was
20 very small of winning a Jackson v. Denno hearing?

21 A. I'm sure I did.

22 Q. In both -- would you characterize that both you and Mr.
23 Strickler made decisions regarding a Jackson v. Denno
24 hearing?

25 A. We made decisions throughout the trial together. When

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1 we work together we don't separate, we make decisions very
2 collaboratively.

3 Q. What was your strategy regarding the Jackson v. Denno
4 hearing?

5 A. To do not much in the Jackson v. Denno hearing, to not
6 challenge it. Based on what I knew, the information that I
7 had at the time, what I knew that Ms. Person would testify
8 to, what I believed law enforcement would testify to, based
9 on the applicable legal standard, based on my experience
10 with Jackson v. Denno hearings, Mr. Strickler's Jackson v.
11 Denno hearing experience, our collective experience in
12 looking at it, we did not believe that it was worth giving
13 the State a preview of Ms. Person's testimony, bringing in
14 Dr. Kassin to let them have a full preview of his testimony,
15 that the potential benefit to that would ever outweigh
16 whatever we believed to be the ultimate come out. And
17 that's not just because it's not a common thing, it's
18 because the factors in this case, just in my opinion, and
19 Mr. Strickler and I agreed, that it was not likely that this
20 would be suppressed, and so you didn't gain anything by
21 putting her up subjecting her to cross examination, she had
22 difficulty in testifying, and it was just not worth it.
23 There were other things that came in to play, but ultimately
24 that was the decision that we made, and the reason.

25 Q. And you just testified that she had difficulty in

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1 testifying. Can you elaborate on that?

2 A. She just has difficulty remembering. I think she was
3 traumatized from that day and it is hard for her. I don't
4 think that she -- I don't think she ever misrepresented
5 anything to me but she had a hard time recalling facts and
6 details, and I think that you could lead her, she is
7 suggestible and passive. And so to give them two shots at
8 her and have her locked in, it just -- it would not have
9 been good for her. It also would have raised, I believe,
10 her anxiety level tremendously. We had very aggressive,
11 very good, very seasoned prosecutors, and I felt that that
12 would be really difficult for her to cope with and would
13 make her terrified to take the stand or more. So she was
14 very frightened to testify in general.

15 Q. When you say locked in, are you referring to possible
16 impeachment purposes at trial when she testified?

17 A. Yes.

18 Q. Because at this time was it already determined that she
19 would be testifying?

20 A. Absolutely, that is absolutely true. There's no
21 question -- she knew she didn't have to, but if you went to
22 trial and she didn't testify she had nothing, she had to
23 testify. But, of course, she knew her right to remain
24 silent, but the plan was, and she was in agreement, was to
25 testify.

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1 Q. You testified a moment ago that because of the factors
2 in this case it was not likely that her statement would be
3 suppressed. Can you review those factors for the Court?

4 A. She just didn't have many of the risk factors.
5 Ms. Person was educated. She's not of low intellectual
6 functioning. She's not mentally retarded. She has grown up
7 with educated people. The medical condition was not
8 something I was able to use, the diabetes was not ultimately
9 something that I was able to use, though we tried and we
10 talked about it.

11 Q. Why were you not able to use the diabetes?

12 A. Because while she could articulate what it would do to
13 you and the affect it would have on her, she just really
14 couldn't say that on that day what it did to her, and so I
15 just -- there was nowhere I could go with that. She did
16 have risk factors and Dr. Kassin and I talked about those
17 and identified those. But in a situation where you would
18 expect a statement to be suppressed it wasn't that kind of
19 situation, that she did not have something that I felt I
20 could convince Judge Lee that her will was overborn by the
21 type of interrogation that she was subjected to. Though I
22 believe it was I don't think I could have prevailed on that
23 given what I did have.

24 Q. At the time of the Jackson v. Denno hearing were you
25 negotiating a plea on Ms. Person behalf?

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1 A. We were. We were. We were desperately trying to
2 negotiate a plea where she didn't have to go back to jail,
3 and that went -- those negotiations took place right until
4 the eve of trial which was the Friday before trial. On that
5 Friday we were literally talking about the government,
6 Mr. Ross, had indicated they would entertain any
7 counteroffer if she would agree to go back to jail for any
8 amount of time. Judge Lee had said she would consider
9 taking an Alford plea, which Judge Lee never does, or in a
10 general practice doesn't, so we were negotiating that the
11 whole time. I don't think that putting her up to testify
12 two weeks in advance of trial while that he was going on
13 would have improved those negotiations in my opinion.

14 Q. Did you consider having Ms. Person evaluated by a
15 psychologist?

16 A. I apparently did. I don't have independent recall of
17 this, but looking at my notes I spoke to Dr. Jeff McKee in
18 October of 2009 right before trial, and he suggested -- he's
19 a local psychologist. He could conduct a battery of tests
20 but he had a number of reasons why he suggested we not do
21 it. I will say that was October of 2009 and I had not -- it
22 had not occurred to me for a variety of reasons to do it
23 before then, but in hindsight it could have been helpful
24 perhaps.

25 Q. Why did he recommend Ms. Person not be evaluated?

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1 A. He said that there are suggestibility instruments that
2 you could administer but he said they aren't normed for this
3 situation, for a criminal defendant in a false confession
4 kind of situation. And I don't know what he was -- I don't
5 have notes about if he was talking about the same tests that
6 Dr. Harari conducted or not, so I don't know if it was the
7 same. What I do know is I have prosecutors who if there was
8 a vulnerability to that testimony they would have found it
9 and Dr. McKee, it was least -- based on our conversation he
10 didn't recommend it. But I will say I didn't do that until
11 October of 2009, and I think that's because Andrea comes
12 across -- she is educated and smart and I wouldn't -- I just
13 didn't think to do a standard psychological workup.

14 Q. And this trial was mid to late November of 2009,
15 correct?

16 A. November 16th.

17 Q. Did Ms. Person have any history of mental illness based
18 on your conversations with her?

19 A. No.

20 Q. Did she have a family history?

21 A. Not that she reported.

22 MS. HARRIGAN: Courts indulgence.

23 (Break in proceedings.)

24 Q. Based on your extensive communications with Dr. Kassin
25 before trial and his testimony at trial, did he review with

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1 you any characteristic or personality traits that would make
2 Ms. Person more likely to give a false confession?

3 A. The risk factors that he had identified that my notes
4 indicated were that she was very -- her naivety, her
5 passivity, her tendency toward being nonconfrontational, her
6 urgency to get out of there, the fact that she was
7 distressed, this is by her report, crying, her head ached,
8 her eyes were swollen, the fact that this was eight years
9 ago, that she might not have known it was a homicide
10 investigation. And the fact that it was -- she was
11 surprised that she was being asked about the other babies
12 instead of Michael Walker, those were the main risk factors.

13 Q. Did you think her naivety was exemplified to the jury
14 during her testimony?

15 A. I don't know that that would be. I think you could
16 tell she was very passive but I don't know if you could
17 see -- she's very sheltered and I think she led a very sort
18 of protected life, very, very close family and I tried to
19 bring that out in her testimony. But as far as being naive
20 I don't know that I was able to do that.

21 Q. Do you recall calling her husband to testify?

22 A. I do.

23 Q. Do you recall him testifying in regards to her being
24 naive and trusting?

25 A. I do.

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1 Q. In regard to the allegations surrounding your
2 decision -- you and Mr. Strickler decision to call
3 Dr. Collins as an expert, have you previously had -- at the
4 time of the trial had you previously used Dr. Collins?

5 A. I can't remember, I don't know the answer to that. I
6 knew who she was.

7 Q. How so? Through other cases?

8 A. Representation, colleagues.

9 Q. What was her representation?

10 A. Exemplary. She is, I would say, the best expert in the
11 area of child fatalities at least in the state by a long
12 shot. She's an -- ordinarily she's an outstanding witness,
13 very difficult to impeach, though that was not the case
14 here.

15 Q. Does she typically testify for the State or the defense
16 based on your experience with her?

17 A. I couldn't tell you how much for either side. She was
18 a medical examiner for years so she would have been called
19 probably by the State.

20 Q. In Charleston County, correct?

21 A. Yes. And I don't know -- I can't answer that. I know
22 she does both, but she's known to be a very even-handed kind
23 of expert, which lends her a great deal of credibility.

24 Q. Did you discuss her findings with her prior to trial?

25 A. I believe I got her on board. Mr. Strickler and I went

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1 to Charleston together and interviewed her. He did the
2 actual prep for trial, which I think they did by telephone.
3 But I did meet with her with him in Charleston in advance of
4 the trial.

5 Q. She provided testimony at trial regarding the physical
6 evidence that Baby Zachary had died from pneumonia, correct?

7 A. Correct.

8 Q. Do you recall how she categorized the pneumonia?

9 A. I think she said moderate. It was a level more severe
10 than what Dr. Armstrong or Doctor Nichols had said.

11 Q. Do you recall if she referred to it as chronic or
12 widespread?

13 A. That sounds right. She wasn't my witness and I don't
14 have quite as good a memory of all of that. But I know that
15 she -- one of the reasons to call her was that she believed
16 it was more severe than the government's pathologist.

17 Q. Do you recall her testimony in regards to the blue
18 fingernails and glans penis that were indicative of
19 pneumonia?

20 A. Yes.

21 Q. Do you recall any sort of testimony regarding whether
22 vomiting was associated with pneumonia?

23 A. I remember testimony that it wasn't associated with
24 suffocation. Mit may have been both but I know that we
25 addressed that with her.

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1 Q. But you do recall that her testimony was vomiting
2 wasn't associated with asphyxiation, correct?

3 A. Right. There was vomit -- or we believe vomit on the
4 bedding, which made absolutely no sense. If you place your
5 hand over a child and suffocate them when do you vomit?
6 That just did not take any sense. So she was helpful in
7 that regard.

8 Q. Do you recall any testimony from her regarding whether
9 body temperature is a good indicator of time of death?

10 A. I think she said it wasn't, I think she said that was a
11 very, you know, just -- I think Mandy Fortson said he was
12 cold to the touch and she said that wasn't very useful, I
13 believe.

14 Q. Do you recall any testimony regarding physical signs of
15 smothering?

16 A. There weren't any.

17 Q. But do you recall if you heard testimony regarding
18 whether or not in her years of experience there are physical
19 signs of smothering?

20 A. There can be. There can be I think torn frenulum, I
21 think this came from our end -- and abrasions from the teeth
22 from the pressure of an object or hand placed over the
23 mouth.

24 Q. Based on your recollection of the trial, do you recall
25 whether any of the State's witnesses testified as to

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1 physical symptoms or signs of smothering?

2 A. There weren't any. I don't remember -- I'm sure Mr.
3 Strickler crossed them on that, but there weren't any that I
4 can recall.

5 Q. And Dr. Collins was a witness that Mr. Strickler
6 handled, correct?

7 A. He put her up.

8 MS. HARRIGAN: No further questions, Your Honor.

9 THE COURT: All right. Ms. Lindsay, is this you?

10 MR. SOWELL: May it please the Court?

11 CROSS EXAMINATION

12 BY MR. SOWELL:

13 Q. I think what you said on direct examination was that
14 after you got the severance that the main evidence with
15 respect to the Ulungchong case was the statement, or
16 statements with respect to Zachary Ulungchong and also the
17 pathologist, correct?

18 A. That's correct.

19 Q. And they actually at trial were intertwined.

20 A. What were?

21 Q. They were intertwined. In other words, the conclusions
22 of the pathologist became ultimately intertwined with and
23 based upon in some part the statements.

24 A. Yes.

25 Q. And when we say confession, we ought to make it clear I

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1 think, that the only thing she ever made a statement about
2 was putting her hand over Zachary Ulengchong's mouth and
3 nose for 15 to 20 seconds.

4 A. Nothing that she confessed to, or allegedly confessed
5 to, the words and statements that she gave them would have
6 killed that child, nothing in her statement is a confession
7 to homicide. Nothing.

8 Q. Right. And she never did.

9 A. No.

10 Q. That was the outside parameter of it, that after
11 Lieutenant White he's been called -- he's been called a lot
12 of things -- but after Lieutenant White administered the
13 polygraph he told her that, according to her testimony, that
14 she had failed, correct?

15 A. I do think that's what she recalls them telling her,
16 yes.

17 Q. Well, I think she testified that she was told that she
18 had failed.

19 A. Today.

20 Q. And then -- I think she testified to it at trial. But
21 it's no of particular moment, we can go back and it will be
22 in the transcript, I think she testified at trial that --
23 well, no she didn't testify about the polygraph, you're
24 exactly right, I take it all back. So you got the testimony
25 and Mr. Strickler cross examined Lieutenant White at some

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1 point, and this was during the Jackson v. Denno hearing,
2 that's what's confusing me, and got him to state that,
3 "Well, no, I probably didn't tell her that she failed, but I
4 told her that she did not clear the polygraph;" is that
5 correct?

6 A. I did not recall that specifically, but I wouldn't
7 disagree with you if that's what you say that the transcript
8 says.

9 Q. That is what it says.

10 A. I'll agree with you, I don't independently recall.

11 Q. And would you agree that there's not much of a
12 distinction if it is it's the finest of shades between you
13 failed and you did not clear the polygraph.

14 A. I think her impression was that they were telling her
15 she failed.

16 Q. And you heard Dr. Kassin today talk about if he would
17 have testified at the Jackson v. Denno he would have talked
18 about the polygraph and the coercive -- the inherent, subtle
19 coercive nature of the polygraph examination.

20 A. I was not in here today, but he and I discussed that at
21 great length. I've read a lot about it, I know that
22 polygraphs are a classic interrogation tactic, one of the
23 most powerful, in fact. So I'm aware of that and I know his
24 possession on that and we discussed it in relation to her
25 case.

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1 Q. Right. And back to my confusion a minute ago, of
2 course she couldn't testify about the polygraph at trial
3 because the polygraph had been ruled inadmissible or
4 stipulated as inadmissible.

5 A. Well, we didn't try to go in to it because it was a
6 little dicey because of the problems that I saw with it.
7 I'm not sure that it -- based on Judge Lee's statements on
8 the record it didn't sound like she would entertained it,
9 but I didn't ask to introduce it that I recall. We didn't
10 bring that up, I didn't try.

11 Q. But it was the subject of cross examination by Mr.
12 Strickler at the Jackson v. Denno.

13 A. Yes.

14 Q. And he did a good job, I'm sure you will agree, I will
15 agree, he did a good job of getting this Lieutenant White to
16 testify and confess or whatever that she had not failed the
17 polygraph examination.

18 A. I think what he was saying was that this was a -- you
19 couldn't tell her she had failed because -- you couldn't
20 call it a fail because of the same problems that I indicated
21 my expert saw, which is -- I think he said he used it as a
22 utility test because she had been on the box so long that
23 you couldn't do all three separately. So I think he knew
24 there were inherent problems in how he constructed the test.

25 Q. Right. But in the end what he told her, whether he

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1 told her that she failed or she did not clear, was not the
2 truth, was it?

3 A. I don't think you could say she failed. Now, that she
4 did not clear, you know, I would have to use that specific
5 language and call the two people I talked to and ask them
6 what that means. They would say and did say to me that
7 there was deception noted on those questions, cleared, I
8 don't know.

9 Q. I'm not asking you about your people now. Your people
10 did not come up at the Jackson v. Denno.

11 A. I did not call them.

12 Q. Because that would not have been a good thing to do.

13 A. I don't think so, I don't think it would help.

14 Q. Yeah. So Mr. Strickler cross examined Lieutenant
15 White, correct?

16 A. Yes.

17 Q. And that was a defense in the Jackson v. Denno with
18 respect to the polygraph and the coerced confession and how
19 they might tie together.

20 A. What do you mean by a defense at the Jackson v. Denno?

21 Q. I should say the attack I suppose, the defense is not
22 the appropriate word. That would have been the attack on
23 the voluntariness of that confession, in other words, the
24 use of that polygraph exam by a fibber, a criminal
25 investigator fibber who tells her that she did not clear the

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1 polygraph test when he testified expressly that it was
2 undecided what the result was on the polygraph test with
3 respect to Zachary Ulengchong.

4 A. What is the question, I got lost in the --

5 Q. Well, that was the attack.

6 A. That was the line of questioning, I will agree with
7 that, that was a line of questioning and information that
8 Mr. Strickler was seeking to elicit. We probably didn't
9 know at that point exactly what he was going to say about
10 that.

11 Q. But he said it pretty good, did he not, in the end
12 after Doug Strickler's cross examination.

13 A. He said what?

14 Q. That the Zachary Ulengchong polygraph was not
15 determinative.

16 A. I think everybody would agree with that, yes. And I
17 think he --

18 Q. Let me ask you -- I'm going to show the you Jackson v.
19 Denno so we can get it straight from the transcript. This
20 is page 71, this is what I'm referring to as Mr.
21 Strickler -- it is his cross examination and I suppose you
22 could say his attack on the voluntariness of that statement
23 in the case of Zachary Ulengchong. So you look at line ten,
24 and the question is, "So no opinion in actually the first
25 exam you ran as far as related to the Walker death your

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1 conclusion was what?"It was on line 13.

2 A. As the Walker case was actually that she cleared the
3 examination is his answer.

4 Q. And the question from Doug Strickler was. "Okay. No
5 deception?"

6 A. And he says, "Yes, sir."

7 Q. All right. So then you go to the second series, which
8 is the one you said that you had talked to, I think
9 Mr. McKee, Jeff McKee about. But it didn't come up at the
10 Jackson v. Denno, did it?

11 A. No.

12 Q. It would have been foolish to bring it up, I assume.

13 A. I was very, very troubled about this so those are hard
14 questions. This is something that was of great debate
15 internally and between us, and it was a struggle to figure
16 out how to cope with that. Ultimately when we determined
17 that we didn't believe that there was much to gain by
18 attacking the statements in the way that is being argued
19 today, we ultimately decided based on that decision and what
20 we had learned from our experts to leave that alone.

21 Q. And I want you to understand, I'm not criticizing you
22 for that decision, in fact, what I'm saying is it didn't
23 come up in the Jackson v. Denno. The only thing that came
24 up was Doug Strickler's cross examination, which starts --
25 and I'll ask this question here on page 71, line 17, the

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1 question is, this is to lieutenant white. "All right. Now,
2 your decision, there's no opinion on series two." Is that
3 what Doug Strickler asks him.

4 A. Yes.

5 Q. "Isn't it true that you informed Ms. Person that she
6 failed to second test?" And what was his answer?

7 A. He says, "No, sir. The norm would be that I informed
8 the person that they did not clear the examination. If
9 somebody fails the test I will tell them, 'You failed the
10 examination.' And I do realize it's probably playing with a
11 semantics or words that you didn't clear the exam but that's
12 the normal passive approach I take to when I start the
13 interview is that you're not clearing the examination and I
14 would like to talk with you about why you're having problems
15 on the test."

16 Q. Well, if he took the normal passive approach he would
17 tell her that there's no opinion on series two, wouldn't he?

18 A. He said, "The norm would be that I inform the person
19 they did not clear the examination."

20 Q. Right. And he described that as the normal passive
21 approach, I describe that as a fib. And so I say the normal
22 passive approach would be to tell her there's no opinion on
23 series two, not to tell her she failed the test, correct?

24 A. Sure. He should have told her that it was
25 inconclusive.

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1 Q. Yes. If he would have been honest with her he would
2 have said it was inconclusive.

3 A. I agree with that.

4 Q. And if Dr. Kassin had come to the Jackson v. Denno --
5 and he talked about it extensively today when he testified
6 and I'll just represent that to you and you can either take
7 it or reject it, but he said he would like to have been able
8 to testify about the inherently subtle effect -- subtle
9 coercive effects of a polygraph examination.

10 A. And he and I discussed that so I'm aware of what he
11 would have done in that regard.

12 Q. And did he not get to do that because he only testified
13 at trial and the polygraph was out in the ocean somewhere,
14 it was not in the trial.

15 A. Yes. I don't think bringing it up at trial would have
16 been a good idea, but we did not call him at Denno and so he
17 never had any opportunity to address it.

18 Q. Right. We know -- and this goes back to something that
19 Judge Barber was asking earlier this morning -- we know that
20 the polygraph came up extensively in the Jackson v. Denno
21 because we were looking at this cross examination, good
22 cross examination by Doug Strickler, of this guy, Lieutenant
23 White, who essentially confesses that he tried to trick her
24 by telling her she did not clear the polygraph examination.

25 A. It came up, that's the question that came up during the

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1 Denno.

2 Q. So like Dr. Kassin said, he would like to have been
3 able to testify about the subtly and inherently coercive
4 nature of the polygraph exam, he could not because he did
5 not testify at the Jackson v. Denno.

6 A. Right. I did not ask them about that in front of the
7 jury. I would have like to have able to go into that if
8 there were a safe way to do it. I think that is what made
9 her become hopeless and desperate, and they tell them that
10 science doesn't lie and that's very, very -- so I would have
11 like to have been able to do it in front of a jury. I
12 couldn't find a safe way to do it and he didn't do it during
13 the Denno hearing.

14 Q. In this case -- and I don't ask you to use my words but
15 this was essentially a hop, skip and a jump, was it not,
16 from a polygraph examination, to a statement that was not
17 really a confession of homicide, it was a confession that
18 she covered his mouth and nosey 15 or 20 seconds, to the
19 changed testimony of these pathologists Armstrong and
20 Nichols including Kimberly Collins, that most likely the
21 cause of death was smothering solely attributable to that
22 statement.

23 A. You said hop, skip and a jump so I'm trying to stay
24 with you. But the statement was elicited very quickly after
25 the polygraph, that is true, and I think it crushed her

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1 spirit, I would agree with that, and I think it is what
2 broke her resolve to maintain her innocence which I believe
3 as well. But -- so I don't know if I answered.

4 Q. I'm going to go back to the hop, skip and the jump. Of
5 course, that's only in my mind I can't put it in yours. But
6 they hopped from a polygraph which they used I would say at
7 to trip her into a -- I won't say confession, I will say a
8 statement of which there was a battle about if it's
9 voluntary --

10 THE COURT: Mr. Sowell, I don't mind you leading but
11 we're not going to let you testify, we have got to move this
12 case along.

13 MR. SOWELL: This is cross examination.

14 THE COURT: Lead, don't testify.

15 MR. SOWELL: On cross examination?

16 THE COURT: You cannot testify to anything, Mr. Sowell,
17 to explain what a hop, skip and a jump is. If you want to
18 ask a question leading asking that question do it.

19 MR. SOWELL: Thank you.

20 Q. But the way the case was constructed -- I'm going back
21 to what you said in your direct testimony is that after the
22 severance the main evidence was the statements and the
23 pathologist.

24 A. That's correct.

25 Q. And we agree that the statement about the 15 to 20

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1 seconds was induced by the polygraph examination.

2 A. I think that's correct, yes. Based on my conversation
3 with her, based on what I know about the effective
4 polygraphs.

5 Q. And I believe -- I may be confused about a couple of
6 these people, but these medical examiner pathologist people,
7 Nichols and Armstrong, or at least one of them had already
8 given an autopsy with respect to Zachary Ulungchong nine
9 years earlier and had found the cause of death to be I think
10 it was lobular pneumonia.

11 A. That was the pathologist who performed the autopsy, and
12 that is correct, that was the original cause of death for
13 Zachary.

14 Q. And he changed his testimony at trial.

15 A. Completely.

16 Q. And he changed it because of the confession.

17 A. Completely, I agree.

18 Q. And then the defense called Kimberly Collins.

19 A. We did.

20 Q. The best expert in the state.

21 A. We did.

22 Q. She changed her opinion based upon the confession.

23 A. What we tried to do with her was to have her parse
24 those two things out and one, provide good solid testimony
25 about the medical issue that we believed was better than

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1 Armstrong and Nichols, and she was able to speak to the
2 pneumonia in a more informed and I think credible and
3 believable way. We also hoped that what she would say is
4 that that is a piece of evidence that could be taken into
5 consideration, but if you take that out this is pneumonia.
6 Now, she ultimately went further than that but that was our
7 hope.

8 Q. So what you testified to on direct from counsel was
9 that she indicated maybe a stronger form of pneumonia.

10 A. Yes.

11 Q. And that she indicated that the emissions from the
12 mouth and/or the nose which looked like maybe it was formula
13 was not consistent with strangulation.

14 A. Asphyxiation.

15 Q. Asphyxiation. The baby was not strangled with
16 asphyxiation. So she mitigated some of the things that
17 Armstrong and Nichols had said.

18 A. I thought so.

19 Q. But back in the beginning, just so this is clear,
20 Armstrong and Nichols or one of them, whoever did the
21 autopsy in the beginning, concluded it was pneumonia that
22 was the cause of death and it lasted that way for eight or
23 nine years, actually up until the trial in November of 2009,
24 I believe.

25 A. That's right. I don't know when they spoke to him to

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1 change that, but that's right.

2 Q. And then they changed their testimony at trial?

3 A. They did.

4 Q. Because of the confession.

5 A. That is correct.

6 Q. That was induced by the polygraph.

7 A. And I believe he even changed some of his medical --
8 his medical findings sort of evolved and changed also, but
9 it was as a result. As far as I'm aware there would be no
10 other information he was provided than that.

11 Q. Yeah. So in the end in Andrea Person's trial the
12 confession was everything, it was the be all, end all, the
13 everything. Because it not only turned out to be a
14 confession which -- well, it wasn't a confession, it was a
15 statement against interest, I suppose, an admission that she
16 put her hand over the child's mouth and nose for 15 or 20
17 seconds, which Kimberly Collins, by the way, testified to
18 very directly, did she not, that that did not induce death
19 in that child.

20 A. Yes, she did.

21 Q. And so she testified to that, but these other people
22 that the State was using, Armstrong and Collins, testified
23 that they believed it was sufficient or something along
24 those lines, correct?

25 A. That 15 to 20 seconds was sufficient?

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1 Q. Well, I'm not sure to tell you the true. What did they
2 testify to?

3 A. I don't think -- Mr. Strickler may have better
4 recollections -- I don't think that Dr. Nichols and
5 Dr. Armstrong said that 15 to 20 seconds would kill the
6 child, I think they just tried to say that she -- I don't
7 think that anybody would kill that child.

8 Q. But their conclusions in the end in terms of cause of
9 death, pathology and cause of death, was that the child died
10 due to being asphyxiated.

11 A. Yes.

12 Q. I'm going to hand you Kimberly Collins' testimony at
13 trial and I'm going to ask the reporter just a mark a copy
14 for identification. If we could, let's look at page 628 at
15 line seven. And I'm going to do like we do in civil court,
16 I'm just going to read the questions, if you would read the
17 answers and we will give it out. In line seven on page 628
18 the question from Doug Strickler to -- and this is your
19 witness, Kimberly Collins, correct?

20 A. This is defense witness Mr. Strickler examined.

21 Q. "Will obstructing breathing for 15 to 20 seconds kill
22 someone?"

23 A. She says, "No."

24 Q. "Are you relatively confident in making that
25 statement?"

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1 A. She says, Yes. You would need much more, a longer
2 duration of hypoxia or not, inability to breath than 15 to
3 20 seconds."

4 Q. "What does the literature usually speak about, two to
5 three minutes?"

6 A. Answer, "Yes. That's probably the most common time
7 frame given."

8 Q. Now, talking about it, we've talked about voluntary and
9 involuntary confessions all day today. She never ever, ever
10 says that she put her hand over that child's mouth and face
11 to anybody. I know she denies even saying that, correct?
12 She denies that she ever told them that particular part.

13 A. I don't think so. I think she says that what -- I'm
14 not positive, but I think that she says that once she
15 decided to start going along with them she's just making
16 things up. She made up the hysterectomy, she's s just
17 making things up and I think -- that's was my recollection
18 that those were her words but totally fabricated. And I
19 think they suggested you put -- that she put her hand over
20 his mouth, but she's just trying to give them what they want
21 and put words to it that were all made up.

22 Q. But by no stretch of the imagination, and even more
23 pertinent anywhere in the record, does she ever say she put
24 her hand over anybody's mouth or nose for more than 15 or 20
25 seconds.

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1 A. Nowhere in the record, not in her statements, nowhere.

2 Q. So these two pathologists, these two scientists, I use
3 that word, who had concluded that the baby died from lobular
4 pneumonia, one of them nine years earlier, concluded based
5 upon that statement that the baby died as a result of
6 asphyxiation.

7 A. Yes.

8 Q. If you would look at page 634 at line ten. And this is
9 still Doug Strickler cross examining Kimberly Collins, I
10 will ask the questions down through line 19. "All right. I
11 will just ask to go back to the beginning. Again, we're
12 assessing this from the -- without going to the statements
13 because you -- up front you indicate what your opinion is if
14 you consider the statements. All right?" And what was the
15 answer?

16 A. "Yes."

17 Q. So it appears that Doug knows that she's willing to say
18 that if you look at the statement you've got to go to this
19 awful conclusion that the pathology of the cause of death
20 was asphyxiation.

21 A. I don't know. I can see how you would read that that
22 way, I don't know.

23 Q. And then on line 16 the question is, "Someone else gets
24 to consider those." You think that's a reference to the
25 statements?

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1 A. Yeah. I think that he was saying the jury is going to
2 determine if it's a true or false confession, you take that
3 out of it, what's the cause of death.

4 Q. Right. And then he says, "Without considering those
5 what is your opinion as to the cause of death of Zachary
6 Ulengchong?"

7 A. She says, "Lobular pneumonia."

8 Q. All right. And everybody up until the confession
9 induced by the polygraph thought that the cause of death was
10 lobular pneumonia.

11 A. I don't know what everybody thought. I think they
12 started to rethink it when there was a third death, I don't
13 know. That was the only finding out there as to cause of
14 death until her interrogation and statement.

15 Q. About 15 or 20 seconds.

16 A. That's right.

17 Q. If you would look at page 642. Guess we ought to start
18 at 641 down at the bottom. Now, this is John Meadors who is
19 cross examining Kimberly Collins, correct?

20 A. Yes.

21 Q. And he says at line 24 at the bottom of 641, "That kind
22 of goes into your opinion too of smothering, doesn't it?"

23 A. You want me to read the answer?

24 Q. Yes.

25 A. "No. The only way you can diagnose smothering is by

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1 confession."

2 Q. "The only way you can diagnose smothering is by
3 confession." And what is the answer?

4 A. Right. When you have no other as the findings I
5 mentioned before, but that's not asphyxia, that would be the
6 smothering."

7 Q. So these state hired pathologists decided that because
8 of the confession that was the only diagnosis they could
9 give with respect to cause of death.

10 A. You mean our pathologist?

11 Q. No, the State's, I am getting to our's.

12 A. I'm sorry, I'm lost. We're on Dr. Collins right now.

13 Q. Right. You're right, I take it back, you're exactly
14 right. But back to the question, State's pathologist have
15 changed their prior conclusions to smothering.

16 A. Yes.

17 Q. So then you --

18 A. Well, one had changed, one had been brought in
19 subsequently. The original pathologist had changed.

20 Q. So let's go to page 649 and line 18. This is back with
21 John Meadows' cross examination of Dr. Collins. The
22 question is, "That's fine. But going back to the autopsy of
23 Dr. Armstrong, at that time your diagnosis or your opinion
24 based on this would be young Zachary Ulenchong's cause of
25 death was what?

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1 A. "Lobular pneumonia."

2 Q. Let's go to page 651, we're still on John Meadors'
3 cross examination start at line 11. The question is, "Now,
4 Doctor, on today's date, November 19th of 2009, do you have
5 an opinion to a reasonable degree of medical certainty of
6 the cause of death of Zachary Ulenchong?" What does she
7 say?

8 A. She says, "If I was -- if this was my autopsy and I was
9 giving the statement by the defendant?"

10 Q. I think that means given?

11 A. I agree.

12 Q. Question, "I'm just asking you your opinion you stated,
13 I think, on direct to a reasonable degree of medical
14 certainty on today's date based upon everything you have
15 reviewed, your opinion as to the cause of death of Zachary
16 Ulenchong is what?"

17 A. She says, "Yes. If I had received the confession --"

18 Q. "Would you say your opinion is --"

19 A. -- "and then." What's happening here is they're
20 interrupting each other and he's asking her.

21 Q. Right. "And then you can explain it. What was
22 your "-- then we can just skip down to page 652, line eight.
23 Question, "Do you have a reasonable -- do you have an
24 opinion to a reasonable degree of medical certainty the
25 cause of death of Zachary Ulenchong? And the answer?"

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1 A. She says, The only reason I want to make clear because
2 I will answer you, but you said that I stated earlier the
3 cause of death, and I did state earlier as I was asked by
4 Mr. Strickler the cause of death based upon the autopsy was
5 lobular pneumonia."

6 Q. "Yes, ma'am. I "--

7 A. She says, "But when you're given the same findings but
8 you're given a statement that a person claims they put their
9 hand over a child and smothered them, then it would change
10 the cause of death to asphyxia due to smothering."

11 Q. All right. And then question at line 21, "Okay.
12 That's what I think he asked you and what I'm asking you
13 now, based on your review of all of the records and
14 statements that you were provided I think is what you told
15 him your opinion today the cause of death of Zachary
16 Ulungchong on 12-2-1998 is that he was smothered?"

17 A. She says, "Yes."

18 Q. Asphyxiated.

19 A. She says, "Yes."

20 Q. "And that's the same conclusion Dr. Nichols came up
21 with."

22 A. There's no answer, it says "indicating."

23 Q. It doesn't -- and I know this is a kind of
24 argumentative, but doesn't that just put the nail right in
25 to Andrea Person in this case through the defense's own

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1 expert witness?

2 A. I don't know how to answer that question.

3 Q. But were you surprised by it, that she would say
4 something like that?

5 A. I was, the direction it went. I don't know what
6 happened. I think that when she started getting crossed I
7 think you can see if you look in the transcript she starts
8 getting really frustrated, and one of the things he says to
9 her that he suggests to her is that she testified to that on
10 direct and I don't think she testified to any such thing on
11 direct. So I think he was just very effectively rapid
12 fire -- I think he rattled her and I would tell you that it
13 surprised me that that could happen with her, so yes. Was I
14 surprised?

15 Q. Yes.

16 A. Yes, a bit. I knew that she would say in the abstract
17 if you have a confession that you would take that in to
18 consideration and she would help us to parse that out and
19 demonstrate that, I don't think I expected her to say that.

20 Q. What she said at the end?

21 A. No, not in that way.

22 MR. SOWELL: I'm going to ask the reporter to mark this
23 as Applicant's Exhibit 4, I guess.

24 Q. Now, the team, you and Doug Strickler were clearly on
25 the defense team, or the public --

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1 MS. HARRIGAN: Your Honor, can I see -- I don't know
2 what exhibit they're referring to. Do you have a copy of
3 this? I have never seen this before.

4 MR. SOWELL: I probably do. You can have this whole
5 file.

6 Q. But you and Doug were on the defense team.

7 A. Yes.

8 (Break in proceedings.)

9 Q. Anyway, this is the memo from Doug Strickler about the
10 Andrea Person case.

11 A. It appears to be. I don't remember it, but it does
12 appear to be.

13 Q. I'll represent --

14 A. I don't know if this was in his notes, I don't remember
15 it.

16 Q. I'll represent to you we got it from your file.

17 A. Well, I have six banker box files so I don't know if it
18 was in his folder, we keep our notes separately. I don't
19 recall seeing it but I may have.

20 Q. You see -- look at the next to the last paragraph, the
21 last sentence there. Do you see where it says, "There has
22 been enough press in this that we might be able to get the
23 court of public opinion educated a bit. I don't think we
24 will be giving anything up by way of showing our hand on the
25 confession issue. Any competent prosecutor has to realize

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1 that attacking that would be central to the defense in this
2 matter."

3 A. I see that.

4 Q. And that is true, is it not?

5 A. Can you give me just a minute?

6 Q. Sure.

7 (Break in proceedings.)

8 A. And your question was what?

9 Q. To say that the confession -- we have already covered
10 this, but the confession is central to the whole case, is it
11 not?

12 A. Yes, absolutely, I don't dispute that at all.

13 Q. Okay. Let me show you this.

14 MR. SOWELL: I'm going to ask the reporter to mark this
15 as Exhibit 5.

16 Q. These are somebody's notes.

17 MS. HARRIGAN: If could have an opportunity to look at
18 it. I've never seen these documents before.

19 MR. SOWELL: I'm sorry.

20 (Break in proceedings.)

21 Q. The day on this note is it August 20, 2007?

22 A. Yes.

23 Q. Which is I guess a little over two years prior to
24 trial.

25 A. Yes. She had been arrested in April of '07, this was

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1 August.

2 Q. Do you know whose notes these are?

3 A. That appears to be Doug's -- Mr. Strickler's
4 handwriting.

5 Q. What did it say under bullet point number six, or
6 number six?

7 A. It says, "Psychology? Re, confession, Follingstad,"
8 presumably Diane Follingstad.

9 Q. Is she a clinical psychologist?

10 A. I think she's a -- has her master's in social work. I
11 don't really know, I've never used her, I don't think.

12 Q. Doesn't she typically testify, though, as a
13 psychologist?

14 A. I don't know. I thought she was an MSW, I don't know.

15 Q. Do you know what that note is about that says,
16 "Psychology? Regarding confession Follingstad?"

17 A. We may have been talking about doing a battery of
18 testing. I don't know, these aren't my notes.

19 Q. Okay.

20 MR. SOWELL: I'm going to ask the reporter to mark this
21 as Exhibit 6.

22 (A recess was taken.)

23 MR. SOWELL: If I could have the reporter mark this 7
24 for ID.

25 Q. Do you recognize this note?

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- 1 A. I have two in front of me. I have 8/26/08 and I have
2 one that says eight ten weeks.
- 3 Q. Do you recognize the eight to ten weeks?
- 4 A. I don't.
- 5 Q. Do you know whose handwriting that is?
- 6 A. It looks like Doug's handwriting except he's got Jeff
7 McKee's name spelled wrong, which I don't think Doug would
8 do and there's some larger handwriting that doesn't look --
9 I don't know. That looks like Doug's handwriting in the
10 smaller parts, but I think he would know how to spell
11 Dr. McKee's first name and it just doesn't look quite right
12 to me.
- 13 Q. So there's a reference to Donna Schwartz-Watts.
- 14 A. There is, it says Donna Schwartz-Watts 5,000, Jeff
15 Mackey 3,000.
- 16 Q. She's actually a psychiatrist, is she not?
- 17 A. She is.
- 18 Q. Jeff McKee is a psychologist?
- 19 A. Yes. And I don't think you would use
20 Dr. Schwartz-Watts unless you thought there was some mental
21 illness or mental disturbance. Jeff McKee is a
22 psychologist.
- 23 Q. So it says, "Call Jeff, re testing next week --
24 suggestibility.
- 25 A. It does.

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1 Q. So that was considered to call him regarding the
2 concept of suggestibility with respect to the voluntary
3 nature of Andrea Person's statements.

4 A. I think Doug can answer that, I don't recall this. I
5 will tell you this, I don't -- I wouldn't -- I don't
6 specifically remember thinking about doing that and I don't
7 know why. But it may be that we would know to do that. I
8 have done that in other cases and I have done it recently
9 and I have done it since this case, so that is something
10 that should have occurred to us and we didn't do it. I
11 can't really speak to that note. I don't have notes about
12 doing that that I recall except at the end.

13 Q. Right. So if you had decided that it was advisable you
14 could have called a clinical psychologist like Dr. Harari at
15 the Jackson v. Denno.

16 A. Yes. I think it would have been helpful to call him at
17 trial as well.

18 Q. And you could have called a social psychologist like
19 Dr. Kassin at the Jackson v. Denno.

20 A. Yes.

21 Q. And he would have among other things bounced off of a
22 Dr. Harari's type testimony about suggestibility.

23 A. Yes. I think he -- I don't know about bounced off of,
24 but I think it could have been useful. I heard Dr. Harari
25 today and I would agree that that could have been useful.

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1 Q. And you could have discussed at any length, or you
2 wanted to, the affect of a polygraph exam upon a so-called
3 voluntary confession.

4 A. At the Denno hearing.

5 Q. Yes, at the Denno.

6 A. Yes.

7 Q. To whatever length you wanted to.

8 A. Sure, yes.

9 Q. So in summation at the Jackson v. Denno there was no --
10 I know this was obvious but there was no clinical
11 psychologist, there was no social psychologist, there was no
12 Andrea Person who testified, and, in fact, the defense
13 called no witnesses at the Jackson v. Denno.

14 A. That's correct.

15 Q. The only witnesses at the Jackson v. Denno were four
16 policemen.

17 A. That's correct.

18 Q. And when Mr. Strickler was asked on page 123 of the
19 Jackson v. Denno by Judge Lee if he wanted to make arguments
20 he said no.

21 A. That's correct.

22 Q. So he made no arguments.

23 A. That's correct.

24 Q. So in the end at the Jackson v. Denno, which is --
25 surrounds this whole question of voluntary confession, and

TESTIMONY OF FIELDING PRINGLE

1 is an opportunity whether one has been granted any time or
2 not to get a confession stricken, suppressed, but there was
3 no evidence presented and there was no argument made.

4 A. There was none.

5 Q. And I'm not sure whether you had this or not, I've got
6 a note that's dated 8/26 of '08, do you have that? It says
7 Andrea Person at the top of it.

8 A. Yes.

9 Q. All right. And it says over on the far left, is that
10 marked for identification, Madam Reporter? It should be.
11 Owe yeah, there it is. So marked for identification 6. Do
12 you know whose notes those are?

13 A. Those appear to be Mr. Strickler's.

14 Q. But it has got a date of August 26, '08 and it
15 references, "Conference with Fielding and Kassin?"

16 A. Kassin.

17 Q. Okay. And is there a reference down in the middle of
18 that page to the polygraph being a false evidence ploy?

19 A. "P-graph equals false evidence ploy."

20 Q. And that would probably had come from Dr. Kassin?

21 A. Yes.

22 Q. To you and Mr. Strickler?

23 A. Yes. And he was giving us a suggestion of a polygraph
24 examiner. He probably didn't know -- either I had already
25 initiated my own in that regard or -- and that would be

TESTIMONY OF FIELDING PRINGLE

1 something I would necessarily tell him.

2 Q. You probably wouldn't tell him.

3 A. No.

4 Q. And on the next page at the top page two he says flat
5 out, does he note, that the polygraph feedback is prevalent
6 in proven false confessions (tell them test is infallible.)

7 A. Yes, we knew that. In the process of him just
8 educating us we knew that that was a powerful tool.

9 Q. But there was no attempt I guess at the Jackson v.
10 Denno to attack the polygraph beyond the cross examination
11 by Mr. Strickler of Lieutenant White.

12 A. No. There was no challenge to the voluntariness of the
13 confession at all.

14 Q. Now, was there also a note -- we'll look at page three
15 of this Exhibit 6. Is there a note at the end of page three
16 that says "-- any way to determine how vulnerable any given
17 individual is to interrogation/false confession?"

18 A. Yes. And I will tell you that I have several times in
19 my notes or at least a couple of times in talking to him the
20 note that says "vulnerability can't be measured." And I
21 don't know what that means but that sounds like what he was
22 talking about. And I added in my initial direct outline --
23 I don't think I asked that when he testified. I don't know
24 what that means but I think that's a similar reference.

25 Q. I mean, under the circumstances given that there was no

TESTIMONY OF FIELDING PRINGLE

1 defense evidence for interrogators who testified and no
2 argument that Judge lee have any choice but to rule that
3 statement admissible at the Jackson v. Denno.

4 A. No, we didn't make an argument.

5 Q. And the burden is on the State to prove voluntary
6 statements.

7 A. Yes. And I think -- but I think -- yes. I do think
8 that, though, to have even had a color of argument we would
9 have had to present evidence we didn't want to present. I
10 don't think that would have risen to the level necessary but
11 we didn't do it, so I don't know.

12 MR. SOWELL: Thank you.

13 THE COURT: Anything else, Attorney General?

14 MS. HARRIGAN: Court's indulgence for a brief moment.

15 (Break in proceedings.)

16 MS. HARRIGAN: No further questions of this witness.

17 THE COURT: All right. Let me ask you a couple of
18 questions. You didn't put up any evidence at the Jackson v.
19 Denno hearing based upon a strategic decision you made; is
20 that correct?

21 THE WITNESS: Yes, sir.

22 THE COURT: And that was, one, you believe whatever you
23 did probably wouldn't be successful based on your experience
24 with the courts here in South Carolina.

25 THE WITNESS: Yes, sir.

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1 THE COURT: And two, you didn't want to give away your
2 case with your witnesses giving the State the opportunity to
3 question your witnesses, see what type of witnesses they are
4 and see what answer they would give the questions; is that
5 correct?

6 THE WITNESS: That is correct.

7 THE COURT: And with respect to -- y'all apparently did
8 consider a psychologist at some point in time and you ruled
9 that out, you made the decision at some point in time based
10 on the advice that you had gotten that that was something
11 you wanted to rule out.

12 THE WITNESS: In October of '09 right before trial is
13 when I talked to Dr. McKee.

14 THE COURT: All right. And then with respect to
15 Dr. Collins, you were familiar with Dr. Collins, you had
16 some experience with her and you believed she was good, she
17 testified. Did y'all prep her?

18 THE WITNESS: I didn't, Mr. Strickler did. I did meet
19 with her when we were initially determining whether or not
20 to call her as a witness. Mr. Strickler actually prepped
21 her, I think, by telephone.

22 THE COURT: She indicated what she would be willing to
23 testify when you prepped her?

24 THE WITNESS: I don't know -- I know I thought --

25 THE COURT: You met with her and --

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1 THE WITNESS: Yes, sir. And when we met with her we
2 were actually talking about all three babies, so it was at
3 that point when I met with her we were talking about each of
4 three babies so we were finding out what her findings would
5 be on those. I don't recall in that Charleston meeting her
6 saying -- I don't recall ever saying I would find to a
7 reasonable degree of medical certainty what she says on
8 cross.

9 THE COURT: But that did surprise you based upon the
10 interaction you had had with her, or Doug had had with her
11 in this case?

12 THE WITNESS: It did that she went that far and she
13 said it the way -- I knew she would say in the abstract that
14 is something that pathologists consider and that that would
15 have an impact and you would factor that in. I was
16 surprised at how she said it, and I don't know what Mr.
17 Strickler would say to that, but I was -- the way that it
18 unfolded in cross was --

19 THE COURT: You thought it was effective cross
20 examination by Mr. Meadors.

21 THE WITNESS: It was.

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

23 MR. SOWELL: May I ask one last question?

24 REDIRECT EXAMINATION

25 BY MR. SOWELL:

TESTIMONY OF FIELDING PRINGLE

1 Q. Can you tell me who these --

2 MR. SOWELL: Let's have these marked if you don't mind
3 as 8.

4 THE COURT: Is this something that's different from
5 what I just asked her about?

6 MR. SOWELL: I just wanted to know --

7 THE COURT: Is this something different from what I
8 just asked her about?

9 MR. SOWELL: I don't think so, I think it's directly
10 related.

11 THE COURT: I'm just asking. All right. What's the
12 question?

13 BY MR. SOWELL:

14 Q. Whose notes are these?

15 A. These are -- just this one?

16 Q. The first page.

17 A. I have a three pages dated 4/17/08, those appear from
18 my experience to be Mr. Strickler.

19 Q. All of them?

20 A. Yes.

21 Q. Do you see there -- of course, that's 4/17/08, that's
22 way early in the timeline, right? Do you see there where it
23 has an asteric regarding cause of death, "Only way to
24 diagnose is by suffocation, juvenile suffocation?"

25 A. I see that, yes.

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1 Q. "Pneumonia, no problem calling it as cause of death."

2 Do you see that?

3 A. I see that.

4 Q. Does that appear to be some notes from a conversation
5 with Kimberly Collins?

6 A. It could be, I have no idea, it doesn't say.

7 MR. SOWELL: Thank you.

8 THE COURT: Thank you, Ms. Pringle, you may step down.

9 Do you have any objection to Ms. Pringle being excused?

10 MS. HARRIGAN: No, Your Honor.

11 MR. SOWELL: No.

12 THE COURT: All right. Now, the question is do y'all
13 want it try and get Mr. Strickler?

14 MS. HARRIGAN: If I may have a brief moment to confer
15 with cocounsel, it will be very brief, Your Honor.

16 (Break in proceedings.)

17 MS. HARRIGAN: The State has no additional witnesses to
18 call.

19 THE COURT: All right.

20 MS. HARRIGAN: The State rests its case.

21 MR. SOWELL: All right. The applicant has no
22 additional witnesses. I guess we might call Doug Strickler.

23 THE COURT: In reply to something they offered?

24 MR. SOWELL: I would think so, I can't think that fast.

25 THE COURT: Well, we're going to limit it to reply to

TESTIMONY OF DOUGLAS STRICKLER

1 what they've offered.

2 MR. SOWELL: I got that idea a minute ago.

3 THE COURT: All right. Mr. Strickler.

4 The witness, DOUGLAS STRICKLER, was first duly
5 sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MR. SOWELL:

8 THE COURT: State your full name for the record.

9 THE WITNESS: My name is Douglas Steven Strickler.

10 Q. Good afternoon. I'm going to show you Exhibit 4. You
11 have been listening to all of this, that is your memorandum?

12 A. Correct.

13 MR. SOWELL: We offer this, Your Honor, as Applicant's
14 Exhibit 4.

15 MS. HARRIGAN: Without objection.

16 THE COURT: So admitted.

17 (The memo was received as Applicant's 4.)

18 THE COURT: Which ones are you going to do there,
19 Mr. Sowell?

20 MR. SOWELL: 4, 5, 6, 7 and 8.

21 THE COURT: Assuming that Mr. Strickler can identify
22 these as his documents, do y'all have any objection?

23 MS. HARRIGAN: No, Your Honor.

24 THE COURT: All right.

25 Q. I'm going to show you all of them, 5 through eight and

TESTIMONY OF DOUGLAS STRICKLER

1 see if those are all your notes.

2 A. Yes.

3 THE COURT: All right. So admitted.

4 MR. SOWELL: Offered and admitted. Thank you.

5 (The notes were received as Applicant's 5-8.)

6 Q. Very quickly. The first note, which is at Applicant's
7 Exhibit 5, August 20th of 2007, can you tell the Court what
8 the reference to number six is all about, the reference to,
9 "Psychology? Regarding confession?"

10 A. There was a question as to whether we should retain
11 Diane Follingstad -- or I think -- and I just think, these
12 were my notes in preparation for the team meeting on
13 August 20, '07. In other words, I don't think that they are
14 notes of precisely what we discussed. I might be wrong,
15 okay, that's six years ago.

16 Q. But if you look at -- I'm sorry, go ahead.

17 A. Number six it says, "Psychology? Re: Confession,
18 Follingstad." So I either wondered whether we should get
19 someone and Follingstad was a name -- and Ms. Pringle quite
20 frankly is far better with psychological aspects of things
21 than I am, I'm a bull in a china shop there -- so either
22 prior to the meeting or during the course of the meeting we
23 discussed whether a psychologist should be retained or I
24 wondered whether we should talk about retaining a
25 psychologist, that's the best I can give you.

TESTIMONY OF DOUGLAS STRICKLER

1 Q. Now, Exhibit 6.

2 A. Okay.

3 Q. Those are your handwritten notes, also?

4 A. Correct.

5 Q. And these are handwritten notes from a conversation
6 with Fielding Pringle and Saul Kassin?

7 A. Well, the first two pages are handwritten notes of the
8 conversation with Ms. Pringle and Mr. Kassin on August 26th
9 of 2008. And I'm not sure whether the third is, it's
10 stapled together.

11 Q. Okay.

12 A. It's staled together in my file but it's not labeled
13 with the number three in the upper right-hand corner which
14 is my -- when I have multiple pages of notes is my habit and
15 custom, so I'm not sure if the third page goes with that or
16 not. I typically do not staple my notes together at the
17 time I make them, I staple them together later on, so I'm
18 not sure. But go ahead. They're all my notes.

19 Q. Right. But the first two pages --

20 A. Definitely relate to a conversation that was in
21 Ms. Pringle's office over the telephone, I sat in, I did
22 very little of the talking. Fielding had already been
23 dealing with Dr. Kassin and I was there more to educate
24 myself more than anything else.

25 Q. But he did inform you that a polygraph is a common

TESTIMONY OF DOUGLAS STRICKLER

1 false evidence ploy?

2 A. That was not news to me, I already knew that, yes.

3 Q. And on the second page, the polygraph feedback is
4 prevalent proven false confessions?

5 A. Those are my notes and that's what he told us, yes,
6 sir.

7 Q. All right. If you would look at Exhibit 7, they're
8 also your notes?

9 A. These are my notes. I misspelled Jeff McKee's name, my
10 bad. I've only known him for 20 plus years and it really is
11 embarrassing.

12 Q. But there was a discussion about having Andrea Person
13 tested with respect to suggestibility.

14 A. I have no idea whether there was a discussion about it.
15 These notes as is not any habit and custom don't reflect the
16 date they were made on, whether it was a conference with
17 anyone else. Typically I'll have the date of the meeting on
18 the left-hand corner, I'll have the meeting participants
19 immediately underneath, that location of the meeting
20 underneath that and then my rough guestimate as to the time
21 spent in the meeting, all of those are missing. I'm not
22 sure what this was but they reflect at some point in time I
23 talked about Donna Schwartz-Watts and \$5,000 and Jeff McKee
24 and \$3,000, and indicated call Jeff re: testing next week --
25 suggestibility. If I had to guess, and it would be nothing

TESTIMONY OF DOUGLAS STRICKLER

1 but a guess, I would say that it would be most likely that
2 that was contemporaneous with the notes that Ms. Pringle had
3 in the case notes which reflect that that took place, that
4 she talked with Mr. McKee October 20th of 2009, so this
5 would have been at some point in time prior to that, but
6 probably close in time prior to that. I also have a note to
7 email Collins.

8 Q. Right. And that would be Kimberly Collins.

9 A. That would be correct. I also have a note to provide
10 for offenses for Amy -- that would be Amy Clifford for some
11 upcoming CLE and work on the data base archives.

12 Q. All right. Well let's look at, if you would,
13 Applicant's Exhibit 8, which is dated April 17th of 2008,
14 correct?

15 A. Yes.

16 Q. These are your notes.

17 A. Those are my notes and I took a chance to look for --
18 an opportunity while you were going through that to look
19 through our case notes, and the 17th was when Ms. Pringle
20 and I went to Charleston and met with Dr. Collins. So these
21 would be my notes of the meeting with Dr. Collins.

22 Q. So she tells you, if your notes are an indicator -- you
23 can decipher it better than I?

24 A. The only way to diagnose suffocation -- go ahead.

25 Q. Well, she says -- first of all cause of death, right?

TESTIMONY OF DOUGLAS STRICKLER

- 1 A. Right.
- 2 Q. The only way to diagnose is by suffocation, juvenile
3 suffocation, right?
- 4 A. Right.
- 5 Q. And she said pneumonia, no problem calling it as cause
6 of death.
- 7 A. Correct.
- 8 Q. She says she can see normal -- I guess that's what that
9 says, normal pneumonia?
- 10 A. Right.
- 11 Q. Which goes back to what Ms. Pringle was talking about,
12 that these other people wanted to say it was slight but she
13 was willing to say it was more than slight?
- 14 A. Correct.
- 15 Q. All right. But now I'm going to show you Applicant's
16 Exhibit 3, which is the Kimberly Collins testimony at the
17 trial. If you look at page 628 first. Without going
18 through the reading of it, but there on line seven through
19 18 she essentially says 15 to 20 seconds will not kill
20 anybody?
- 21 A. Correct. And that any competent practicing forensic
22 pathologist would say the same thing.
- 23 Q. Right. And that the literature usually speaks to two
24 or three minutes.
- 25 A. Correct.

TESTIMONY OF DOUGLAS STRICKLER

1 Q. And then if you go over to page 634 we're continuing
2 with your direct examination of her at line 11. You say --
3 or you kind of tip-toe around the statements -- you say to
4 her at line 11, "Again, we're assessing this from the --
5 without going to the statements because you upfront you
6 indicate what your opinion is if you considered the
7 statements. All right?" And she says what?

8 A. "Yes."

9 Q. And you say, "Someone else gets to consider those."

10 A. Talking about the jury, yeah.

11 Q. "Without considering those what is your opinion as to
12 cause of death of Zachary Ulengchong?"

13 A. Correct.

14 Q. Lobular pneumonia.

15 A. Right, same as the original doctor.

16 Q. But it appears you knew that if she was questioned
17 about the statement 15 to 20 seconds over the mouth and nose
18 she was going to change her opinion.

19 A. I knew that she's a competent, very competent forensic
20 pathologist, and a forensic pathologist arriving at their
21 conclusions would consider not just the medical findings
22 during the course of an autopsy but also the findings
23 surrounding the investigation -- the police investigation.

24 Q. Right.

25 A. Which would include the statements.

TESTIMONY OF DOUGLAS STRICKLER

1 Q. And John Meadors asks her on page 642 -- actually it's
2 the bottom of 641, he says, "That kind of goes into your
3 opinion, too, of smothering, doesn't it?" And she answer,
4 "No. The only way you can diagnose smothering is by
5 confession."

6 A. Right.

7 Q. And she's already told you that back in April of 2008,
8 correct, when you went down and interviewed her? Where she
9 says next with a asteric on Exhibit 8, "The only way to
10 diagnose is by suffocation, juvenile suffocation."

11 A. Yeah.

12 Q. So when she was called to testify you knew she was
13 going to testify that the cause of death was asphyxiation.

14 A. I knew that she would testify that if you separated the
15 confession element, which is someone else's business to
16 determine whether you could use it, and diagnose it solely
17 on the basis of the medical evidence that she would say it's
18 pneumonia, which she did. That few included the police
19 findings, if you include the statement then she would change
20 her diagnosis, sure, I knew that. Now, I didn't know that
21 she would go ahead and come across with it in the fashion
22 that she did when Mr. Meadors cross examined her, she was
23 fairly -- I was surprised at the reaction to the cross
24 examination. But I was not surprised that she would say if
25 the question is put to her that if you consider the

TESTIMONY OF DOUGLAS STRICKLER

1 confession then the call would be asphyxiation. I wasn't
2 surprised about that at all.

3 Q. Which takes us back to the proposition and that is that
4 the confession of Andrea Person was everything.

5 A. Okay.

6 Q. Does it not? And the first opportunity to do something
7 about that in an expansive way, or nor expansive way than at
8 trial was at the Jackson v. Denno.

9 A. Well, I agree that that's the first opportunity to do
10 it, I disagree that we should have done it then. Okay. I
11 think that we discussed it and, you know, we can arrive at
12 wrong decisions. If that's a wrong decision then that's a
13 wrong decision and someone else decides what happens at that
14 point. But we didn't just waltz into it and not consider
15 that. We considered the pros of her testifying, she would
16 have had to testified in that situation in order to go ahead
17 and open up the various other attacks that you're talking
18 about, all of which are valid. And the likelihood that in
19 balance that would have been sufficient to go ahead and
20 convince Judge Lee to suppress the statement, which in my
21 experience is a number approaching zero, with the downside
22 there, which would be to give the State an opportunity to go
23 ahead and cross examine her, and they cross examined her
24 with great affect at trial, and in my opinion had they had
25 the opportunity to do it ahead of time there would have been

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1 no incentive on their part to go ahead and continue with
2 plea negotiations in the case, which were still ongoing at
3 that point in time. I mean, it's not an easy question to
4 answer.

5 Q. Andrea always professed her innocence.

6 A. She certainly did. You can go back to the notes I took
7 the first time I spoke with her.

8 Q. And if you had done the Jackson v. Denno you clearly
9 would have been able to talk as you did, but maybe even talk
10 more about affects, the inducements of the polygraph
11 examination.

12 A. No question, especially if we would have brought
13 Dr. Kassin down and had him testify, there's no question
14 about that.

15 Q. And if you would have brought the clinical psychologist
16 to support Dr. Kassin.

17 A. Yeah, maybe. The clinical psychologist we consulted
18 said those tests that were testified to today, or I assume
19 those tests that were testified to today, are set up for a
20 clinical setting, not a forensic setting. And, you know,
21 there are problems with that and the State in all likelihood
22 would have picked up on that.

23 Q. But no question but what there was one here today who
24 testified to --

25 A. Sure.

TESTIMONY OF DOUGLAS STRICKLER

1 Q. -- the susceptibility of Andrea Person to be coerced.

2 A. Right.

3 Q. And at the Jackson v. Denno there was no testimony of
4 Dr. Kassin, none from a clinical or a forensic psychologist,
5 none from Andrea Person, none from anybody.

6 A. Correct.

7 Q. And no argument with respect to the suppression of that
8 statement?

9 A. That was used as a discovery tool more than anything
10 else, just an opportunity to hear the statement.

11 MR. SOWELL: Thank you.

12 THE WITNESS: Yes, sir.

13 MS. HARRIGAN: Very briefly, Your Honor.

14 CROSS EXAMINATION

15 BY MS. HARRIGAN:

16 Q. Mr. Strickler, what was your goal in calling
17 Dr. Collins?

18 A. To counteract the testimony of Doctors Armstrong and
19 the other guy.

20 Q. Nichols.

21 A. Excuse me?

22 Q. Nichols.

23 A. Nichols, Dr. Clay Nichols. I'm drawing a block there
24 for some reason, probably a good reason.

25 Q. And I believe you testified to this, but based on your

TESTIMONY OF DOUGLAS STRICKLER

1 pretrial discussions with Dr. Collins you were aware that
2 she would be able to provide stronger testimony regarding a
3 diagnosis of pneumonia and pneumonia as the cause of death?

4 A. I was aware of that, and indeed I believe she did at
5 trial.

6 Q. I believe she testified that it was moderate pneumonia
7 as opposed to mild or lesser pneumonia.

8 A. I'm going to let the transcript speak in that regard.

9 Q. And you argued to the jury at your closing that
10 Dr. Collins' testimony regarding pneumonia as the cause of
11 death needed to be separated from the statement, correct?

12 A. Correct.

13 Q. Do you have a copy of transcript in front of you?

14 A. No.

15 MS. HARRIGAN: May I approach, Your Honor?

16 THE COURT: You may.

17 Q. Mr. Strickler, if you will please read that highlighted
18 portion on page 913, line six through lines 23, please.

19 A. "You know, the only thing they did with her is set up
20 what's called a straw man. Mr. Meadors built it up. "Did
21 you see this about the questioning? Were you privy to these
22 facts about the questioning?' At the beginning of my
23 discussion with Dr. Collins I cleared all of that up. So
24 he -- you didn't hear, you didn't get full details on the
25 questions. Well, she may not have, because it doesn't

TESTIMONY OF DOUGLAS STRICKLER

1 matter, because the premise is if you knew there was a
2 confession you would call it suffocation or a confession.
3 Okay. That was a given. So let's take that out because
4 it's a question of whether there's a confession or not, it
5 is not for her to decide, it is for each and every one of
6 you to decide ultimately. So I wanted to focus their
7 attention on what the medicine says and what the pathology
8 says so that you could weigh her information with facts
9 supplied by people from the State."

10 MS. HARRIGAN: No further questions, Your Honor.

11 MR. SOWELL: None, thank you.

12 THE COURT: All right, Mr. Strickler you may step down.
13 Thank you. Anything further from the applicant?

14 MS. LINDSAY: Since the record is being left open I
15 would prefer that the record was closed to make a any sort
16 of argument.

17 THE COURT: All right. Let's wait and see because if
18 they do something and y'all -- I don't know if y'all want to
19 do it by deposition if they elect to call another witness or
20 come back up here for an additional hearing but that would
21 probably change -- it might change with what you tell me
22 here tonight.

23 MS. LINDSAY: I guess if we end up not having a
24 subsequent hearing if I could just submit a brief --
25 supplemental brief since I'm not going to make an argument

1 now.

2 MS. HARRIGAN: The State would prefer the opportunity
3 to do that as well.

4 THE COURT: I would prefer to have y'all trip up here
5 and argue.

6 MS. LINDSAY: We can do that, too.

7 MS. HARRIGAN: The State as well.

8 THE COURT: All right. Well, we'll figure out one of
9 two. Y'all decide what it is, if anything, you're going to
10 have to do with respect to anybody in the department of
11 mental health and let me know. I'll be happy to let you
12 come up here and make your closing on a limited nature or --
13 that to me would be more effective than a written
14 memorandum.

15 MS. LINDSAY: I agree.

16 THE COURT: But see what y'all want to do and then we
17 will come back.

18 MS. HARRIGAN: We will let you know within 30 days.

19 THE COURT: Well, you've got 30 days to keep the
20 record -- we're keeping the record open for 30 days, you're
21 going to have to let me know -- both of you let me know what
22 you do. Obviously if we come back here for some closing
23 we'll have to have some time that you can get your client
24 here, so that may be one thing about a memo that would take
25 that out. But we'll talk about it, y'all figure out where

1 you are.

2 (End of the hearing.)

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2 I, the undersigned, Michael C. Watkins, Official Court
3 Reporter for the Sixth Judicial Circuit of the State of South
4 Carolina, do hereby certify that the foregoing is a true,
5 accurate and complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned case (as
7 reported by Elizabeth Harris and transcribed by me) relative
8 to appeal, in the Court of General Sessions for Richland
9 County, South Carolina, on the 2nd day of October, 2013.

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

12

13

May 2, 2014

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15


Michael C. Watkins
Court Reporter

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(Reported live by Elizabeth Harris.)

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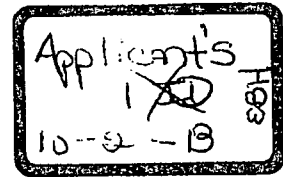
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Marc J. Harari, Ph.D. 1



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EDUCATION

August, 2002	Ph.D., Counseling Psychology Department of Psychology The University of Akron: Akron, OH Program fully accredited by the American Psychological Association
August, 1999 - August, 2000	Psychology Intern (APA Accredited Internship) Counseling & Human Development Center, University of South Carolina
August, 1996	M.A., Counseling Psychology University of Akron: Akron, OH
May, 1994	B.A., Psychology, High Honors Rutgers, the State University of New Jersey: New Brunswick, NJ Henry Rutgers Scholar; Honors in Psychology

PRIMARY CURRENT PROFESSIONAL POSITION

January 2004 - Present	Private Practitioner, Clinical Supervisor Comprehensive Psychological Services, LLC, Columbia SC

Responsibilities: President of private practice. Supervise employees that include post-doctoral fellows, psychological testing assistants, therapists, and administrative staff. Perform psychological evaluations for children, adolescents, and adults with a wide range of concerns including child custody, competency, educational, parenting, independent medical evaluations, and mental health diagnostic exams. Perform expert witness testimony, forensic consultation, and conduct seminars on varied topics related to psychological assessment and forensic psychology. Have service contracts with organizations including Department of Disability Services, Department of Social Services, and private referrals from attorneys and physicians in the Columbia community. In network with Aetna, APS, Cigna, Comppsych, Medicaid (For SCDSS), Blue Cross/Blue Shield, & Tricare.

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SUPERVISORY/CLINICAL/ASSESSMENT EXPERIENCE

April 2007 –
November 2009

Clinical Supervisor (Part-time)
Dickerson Center for Children, Inc.

Responsibilities: Served as a part-time supervisor for master's level clinicians that performed forensic interviews on children that have allegedly been physically or sexually abused. Responsible for providing feedback to evaluators and sign-off on Medicaid reports.

September 2003 -
April, 2005

Treatment Director/Psychologist IV
South Carolina, Department of Juvenile Justice (SCDJJ). Broad River Road Complex (BRRC), John G. Richards Campus

Responsibilities: Served as Treatment Director and lead psychologist for the Alcohol and Other Drugs (AOD) and the Communities in School (CIS) programs. Responsible for treatment services for up to 196 male juveniles ages 12 - 18 housed in five living units. Treatment services included training licensed clinicians to perform individual therapy, group counseling, family therapy, and referrals to the campus psychiatrist. Provided direct supervision to the AOD program manager, three campus psychologists, and nine social workers. Oversaw all aspects of treatment programming including the development of program manuals, daily schedules, and treatment teams.

January, 2003 -
September 2004

Contract Psychologist (Part-time - evenings/weekends)
South Carolina, Department of Juvenile Justice (SCDJJ).

Responsibilities: Conducted forensic psychological evaluations for male and female juveniles housed in the Midlands Evaluation Center (MEC). Responsibilities included performing clinical interviews, administering and interpreting psychological and intelligence tests. Provided written reports and recommended juveniles disposition and treatment needs.

March, 2003 -
April,, 2005

Coordinator of the Victim-Offender Mediation Program
South Carolina, Department of Juvenile Justice (SCDJJ)

Responsibilities: Coordinated comprehensive rehabilitative program based on Balanced and Restorative Justice Principles. Conduct group counseling sessions between crime victims, juvenile offenders, and community representatives. Wrote program manual on Victim-Offender Mediation for SCDJJ. Provide training and outreach to the SCDJJ community.

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October, 2002 -
September 2003

Treatment Director/Psychologist IV

South Carolina, Department of Juvenile Justice (SCDJJ). Willow Lane Campus.

Responsibilities: Served as Treatment Director and lead psychologist with the primary responsibility of coordinating treatment services for up to 140 male juveniles ages 12 - 18. Treatment services include individual psychotherapy, group counseling, family therapy, and referrals to the campus psychiatrist. Provided direct supervision and training of two program managers, two campus psychologists, and eight social workers housed in four treatment programs. Oversee all aspects of treatment programs including the development of their behavioral level systems, written program manuals, daily schedules, multi-disciplinary treatment teams, and special activities. Participated in numerous committees representing the Willow Lane Management Team.

August, 2000 -
September, 2002

Program Director/Psychologist IV

South Carolina, Department of Juvenile Justice (SCDJJ)

Responsibilities: Served as Program Director for the Systematic Treatment for Aggression Replacement Program (S.T.A.R.) and Young Offender Program (YOP). Coordinated programming and treatment for both units. S.T.A.R. program is a self-contained maximum security unit for physically aggressive juvenile offenders. The YOP is designed for a special population of 12-14 year-old juvenile offenders. Responsibilities of both programs included the development of a behavioral level system, written program manuals, coordinating multidisciplinary treatment teams, and arranging special activities. Responsible for supervising clinical staff.

August, 1999 -
August, 2000

Psychology Intern (APA Accredited Internship)

Counseling and Human Development Center
University of South Carolina

Responsibilities: 2000-hour-pre-doctoral internship requirement for the Ph.D. in Counseling Psychology. Provided individual, couples, and family therapy to a culturally diverse, urban, university clientele. Coordinated and facilitated groups including self-hypnosis, meditation, and dissertation support. Performed crisis intervention, program development and delivery, psychological assessment reports, outreach and consultation activities, and supervision of masters level practicum students.

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PUBLICATIONS AND PROFESSIONAL PRESENTATIONS

- January, 2005 Harari, M.J., Waehler, C.A. & Rogers J.R. (2005, January). An empirical investigation of a theoretically-based measure of perceived wellness. The Journal of Counseling Psychology, 52, 93-103.
- August, 2003 Harari, M.J., Waehler, C.A. & Rogers J.R. (2003, August). An Empirical Investigation of a Theoretically-Based Measure of Perceived Wellness. Poster presentation at the National Convention of the APA, Toronto.
- August, 2002 Harari, M.J. (2002). A Psychometric Investigation of a Model Based Measure of Perceived Wellness. Completed Dissertation.
- August, 1999 Harari, M.J. & Waehler, C.A. (1999). The effect of first session attention to termination on counselor social influence rating. Journal of College Student Psychotherapy, 13, 67-79.
- August, 1998 Harari, M.J. & Waehler, C.A. (1998, August). Effects of discussing termination on counselor social influence rating. Poster at the National Convention of the American Psychological Association, San Francisco.
- August, 1996 Harari, M.J. & Waehler, C.A. (1996, August). Effects of first session attention to termination on counselor rating. Poster presentation at the National Convention of the American Psychological Association, Toronto.

STRUCTURED WORKSHOP PRESENTATIONS/OUTREACH TOPICS

- January, 2011 **Introduction Court Testimony for Clinicians:** Presentation to The Sexual Trauma Services in Columbia, South Carolina. Audience includes social workers and counselors who service sexual assault victims.
- May, 2008 **Introduction to Relevant Legal Matters for Clinicians:** Presentation to The Counseling and Human Development Center Bi-Annual Reunion. Audience including psychiatrists, psychologists, social workers, and pre-doctoral interns.
- April, 2008 **Parent Support Weekend Retreat:** Presentation about the purpose of psychological testing to Children Unlimited, an organization that conducts a weekend retreat for parents who adopted children from the foster care system.
- February, 2008 **Utilizing Psychological Evaluations for Diverse Populations-** Presentation to Post-Trauma Resources, a private practice in Columbia, South Carolina.

Marc J. Harari, Ph.D. 5

- September, 2007 **Court Testimony for Clinicians: Ethical and Legal Issues:** Presentation to Crossroads Counseling Center, a private practice in Columbia, South Carolina. Audience included licensed professional counselors.
- March, 2007 **Differentiation between Forensic and Clinical Roles for Psychologists**
Presentation to the University of South Carolina's Counseling and Human Development Center Staff. Audience included licensed psychologists, social workers, and pre-doctoral interns.
- July, 2006 **The Role of Psychological Evaluations in Custody/Parenting Evaluations-**
Presentation to DSS Guardian *Ad Litem* Office at Richland County Family Court
- September, 2005 **Utilizing Psychological Evaluations for DSS Clients-** Presentation to Lexington County DSS staff.
- April, 2005 **Assessing Adolescents for Conduct Disorder Symptoms –** Presented to attorney conference for CE credits, Columbia, South Carolina
- May, 2001 &
February 2002 &
October, 2003 **Balanced and Restorative Justice: Victim Offender Mediation
A Practical Application-** Presentation on Balanced and Restorative Justice, and the process of Victim-Offender Mediation for SCDJJ clinical staff.
- September, 2000 &
February, 2001 **Therapeutic Interventions with Aggressive Juveniles –** Workshop conducted for the SCDJJ Carolina Department of Juvenile Justice. Trained officers and clinical staff on basic techniques to de-escalate conflict.

SPECIALIZED TRAINING RECEIVED

- August 31, 2012 **Forensic Psychology for Mental Health Professionals: The Latest Trends**
(PESI Home-Study Workshop) 1.5 CE credits addressing issues related to competency, expert witness role, and psychological testing.
- August 20, 2012 **Dementia: What You Need to Know for Effective Assessment and Treatment**
(PESI Home-Study Workshop) 1.5 CE credits addressing issues related to dementia.
- August 17, 2012 **Brain Functioning: The Neurochemistry Behind Mental Health Disorders and Their Treatment**
(PESI Home-Study Workshop) 1.5 CE credits pertaining to neurochemistry and mental health conditions.

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- August 9, 2012 **Advanced Assessment and Diagnosis Using the DSM-IV-TR and a Preview of the DSM-5** (PESI Home-Study Workshop) 6.0 CE credits pertaining to Dr. Brooks Baer's review of the DSM-IV and upcoming changes to the DSM-5.
- July 24, 2012 **Assessment of ADHD in Children and Teens** (PESI Home-Study Workshop) 1.5 CE credits pertaining to Dr. Russell Barkely's diagnostic and testing strategies for ADHD and differential diagnosis.
- May 19, 2012 **Mentoring** (FFI-CHDC-PPI) 6.0 CE credits pertaining to mentoring conducted by Dr. Russell Haber, Dr. Malcolm Anderson, and former interns of the Counseling and Human Development Center at the University of South Carolina)
- March 24, 2012 **Financial Psychology** (2012 SCPA Conference) – 2.0 CE credits pertaining to reimbursement issues and application of financial psychology.
- June 28, 2011 **Seven Habits of Highly Effective Brains** (PESI Home-Study Workshop) 1.5 CE credits pertaining to Dr. Jonathan Jordan's theories of neuropsychological optimization.
- October 3, 2011 **Autism: A Guided Tour from the Inside-Out** (PESI Home-Study Workshop) 1.5 CE credits pertaining to William Stillman's analysis of treatment and assessment strategies for individuals with Autistic Disorder and Asperger's Disorder
- July 11, 2011 **Mood and Disruptive Behavior Disorders in Children and Adolescents** (PESI Home-Study Workshop) 1.5 CE credits pertaining to differentiating childhood disorders (major depression, bipolar disorder, ADHD, and disruptive behavior disorders)
- July 1, 2011 **A New Look at ADHD: Treatment for Multiple Mental Health Disorders and Emotional Regulation** (PESI Home-Study Workshop) 4.5 CE credits pertaining to Dr. Russell Barkely's theory of ADHD as a disorder of executive functioning and emotional regulation deficits.
- June 28, 2011 **Seven Habits of Highly Effective Brains** (PESI Home-Study Workshop) 1.5 CE credits pertaining to Dr. Jonathan Jordan's theories of neuropsychological optimization.

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- June 24, 2011 **What Makes Relationships Work?** (PESI Home-Study Workshop). 1.5 CE credits pertaining to Dr. John Gottman's theory of practical relational skills for couples.
- May 13, 2011 **Legal Issues in Behavioral Health in South Carolina** (Live Workshop conducted by Mark Brinkley, Esquire). 6 CE credits pertaining to ethical and legal issues pertaining to the practice of psychology in South Carolina.
- June 4, 2010 **When the Bough Breaks: Crisis and Trauma Supervision** (Columbia International University Workshop). 6 CE credits pertaining to supervising graduate student trainees with particular attention toward PTSD and crisis management.
- March 28, 2010 **Advanced Child Custody Issues** (AAFP Workshop). 7 CE credits pertaining to advance child custody issues including relocation, abuse allegations, and parental alienation.
- January 8, 2010 **Bipolar: A New Slant On the Disorder** (Cross Country Education Workshop). 6 CE credits pertaining to diagnosis and treatment of Bipolar Disorder.
- January, 2009 **Introduction to Child Custody and Parenting Evaluations** [Attended Workshop at the American Academy of Forensic Practice (AAFP)]. 7 CE credits pertaining to performing child custody evaluations, parenting evaluations, and child protection matters).
- January, 2009 **Children, Divorce, and Custody: New Research & New Roles for Psychologists.** [Attended Workshop at the American Academy of Forensic Practice (AAFP)]. 7 CE credits pertaining to research on the impact of divorce and alternative resolutions for custodial disputes.
- February, 2008 **Introduction to Child Custody and Parenting Evaluations** [Attended Workshop at the American Academy of Forensic Practice (AAFP)]. 7 CE credits pertaining to performing child custody evaluations, parenting evaluations, and child protection matters).
- February, 2008 **Parenting Coordination: Working with High Conflict Families** (AAFP Workshop). 7 CE credits pertaining to the proper utilization of strategies to facilitate conflicted families through the process of Parenting Coordination.

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- May, 2007 **Forensic Psychology Written Examination:** (AAFP Written Examination). 4 CE credits. Passed written test pertaining to basic principles of forensic psychology).
- April, 2007 **Intensive Survey in Forensic Practice I & II** Attended Workshop at the American Academy of Forensic Practice (AAFP)]. 14 CE credits pertaining to forensics, clinical roles, ethical issues, legal system fundamentals, rules of evidence, conducting forensic interviews, report writing, personal injury examinations, malingering and response style, trial competency, assessment of insanity, and assessment of parents and children involved in litigation of parenting time and responsibility (both custody and child protection matters).
- April, 2007 **Comprehensive Assessment in Forensic Practice** (AAFP Workshop) 7 CE credits pertaining to assess potential malingering of cognitive impairment, memory disorders, and psychosis.
- October, 2006 **Certificate of Continuing Professional Education** (Home Study Activities). 6 CE credits pertaining to Treatment Resistance in Depression and PTSD; Schizophrenia; Methamphetamine; and Pharmacological Treatment for Substance Abuse Disorders.
- October, 2006 **Ethical Issues for the Forensic Practitioner** (AAFP Workshop) 7 CE credits pertaining to ethical/legal standards of forensic psychologists.
- October, 2006 **Evaluating Juveniles' Pretrial Capacities: A Developmental Approach** (AAFP Workshop) 7 CE credits pertaining to issues related to juvenile's competency to stand trial and waiving of Miranda rights.
- October, 2006 **Assessment for Parenting Planning in Child Custody Litigation** (AAFP Workshop) 7 CE credits pertaining to performing child custody evaluations.
- October, 2006 **Preparing for Board Certification in Forensic Psychology ABPP** (AAFP Workshop) 7 CE credits pertaining to the process of obtaining board certification in forensic psychology.
- April, 2005 **Detecting of Malingering in Clinical and Forensic Assessment** - (SCPA Workshop) 2 CE Credits pertaining to malingering and dissimulation.
- April, 2005 **Conducting Disability and Independent Medical Evaluations** - (SCPA Workshop) 3 CE Credits pertaining to disability evaluations.

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- February, 2005 **Legal and Ethical Risks and Risk Management in Professional Psychological Practice: Sequence II – (SCPA Workshop) 6 CE Credits** pertaining to risk management in specific high risk areas.
- July, 2004 **A Family Court Lawyer's Perspective on Expert Testimony in Family Court – (SCDJJ) 2 CE Credits** pertaining to expert testimony.
- December, 2002 **Employee Grievance Committee - (SCDJJ) 7 hour training course** to become a panel member for the SCDJJ employee grievance process.
- November, 2002 **Employee Progressive Discipline -(SCDJJ) 7 hour course** to apply agency policy for employee progressive discipline and personnel issues.
- February, 2001 **Training of Trainers- (SCDJJ) 35 Hour course** to enhance training skills.
- September, 2001 **Front Line Leadership - (SCDJJ) 40 Hour course** to enhance development of management skills.
- March, 2001 **Peer Mediation- (SCDJJ) 20 Hour course** on peer mediation.
- February, 2001 **Restorative Justice: Principles, Practices, and Implementation- 40 hour course** designed to teach participants theoretical and practical applications of Balanced and Restorative Justice. U.S. Department of Justice, National Institute of Corrections

TEACHING EXPERIENCE

- August 2002 - **Adjunct Instructor**
May, 2003 Midlands Technical College, Columbia, SC

Responsibilities: Taught two sections of General Psychology to a community college population. Prepare lecture material, paper assignments, tests and final grades. Class sizes ranged from 25 - 30.

- January, 1998 - **Instructor, Pre-Practicum (Counseling Psychology)**
May, 1999 The University of Akron

Responsibilities: Graduate assistantship position for Pre-Practicum, a graduate level course designed to facilitate first year doctoral student's acquisition of basic counseling skills through discussion, training and observation. Evaluated trainee performance.

Marc J. Harari, Ph.D. 10

August, 1997 - December, 1997 **Teaching Assistant, Principles and Practice of Intelligence Testing**
The University of Akron

Responsibilities: Observed and assisted in teaching and grading graduate students performing the Wechsler Scales (WAIS-R, WISC-III, and WPPSI). Lectured on WAIS-R, and created WAIS-III observation sheets.

August, 1996 - May, 1997 **Instructor, Developmental Psychology**
The University of Akron

Responsibilities: Taught two sections of an upper level class. Prepared lecture material, paper assignments, tests, and grades. Topics reviewed the life-span of psychological development. Class size ranged from 20-50.

August, 1995- May, 1996 **Instructor, Introduction to Psychology**
The University of Akron

Responsibilities: Taught four sections of Introduction to Psychology during two course semesters. Participated in weekly teaching seminars. Class sizes ranged from 15 to 40.

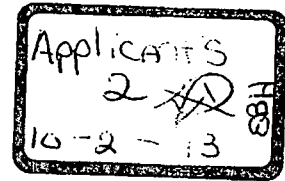
PROFESSIONAL ORGANIZATION MEMBERSHIP

Professional Organizations

November 2007 – present	Association for the Advancement of Psychology - Member
February 2007 – present	South Carolina Legislative Committee (of SCPA) - Member
January 2007 – present	APA Division 41 – American Psychology Law Society
December 2003 - present	South Carolina Psychological Association (SCPA)- Member
September 2002 - present	American Psychological Association - Member
October 1994 - August 2002	American Psychological Association - Student Affiliate
October 1994 – August 2002	APA Division 17 – Counseling Psychology

Billing Statement

Marc Harari, Ph.D.
Comprehensive Psychological Services, LLC
1816 Bull Street
Columbia SC 29201
Phone – (803) 422 – 0017
Fax – (803) 799-5996



To: Ms. Alexis Lindsay of Sowell, Gray, Stepp, and Laffitte

Service: Psychological Evaluation on Andrea Person conducted 9/25/13 at Leath Correctional Institution.

Cost: \$3000.00

Data Gathered:

Clinical Interview

Collateral Information Provided by Ms. Alexis Lindsay

Psychological Testing Administered:

Minnesota Multiphasic Personality Inventory – Two – Restructured Form (MMPI-2-RF)

Paulhus Deception Survey (PDS)

Personality Assessment Inventory (PAI)

Please provide payment of \$3000.00 to the address listed above. If you have any questions, do not hesitate to contact me.

Respectfully,

Marc Harari, Ph.D.

9/25/13

Marc Harari, Ph.D.
Licensed Counseling Psychologist (#875)

PSYCHOLOGICAL EVALUATION

Marc Harari, Ph.D.
1816 Bull Street
Columbia, SC 29201
Phone (803) 422-0017

Date of Testing: 9/25/13
Date of Report: 9/27/13

Client: Andrea Person

DOB: 8/30/67

REASON FOR REFERRAL

Andrea Person was referred for a psychological evaluation by her attorney, Ms. Alexis Lindsay. The purpose of this evaluation is to provide a mental health and personality assessment utilizing objective forensic psychological data. These test findings are to be utilized by Ms. Lindsay to assist with Andrea's case for Post-Conviction Relief (PCR). Her hearing is scheduled for October 2, 2013.

NOTICE

This report is meant for use by Ms. Alexis Lindsay on behalf of her client, Andrea Person. No unauthorized disclosure of this report or data contained in this report is allowed. Any person who, without proper authorization, discloses data contained in this report assumes all associated liability.

LIMITATIONS OF PRESENT REPORT

This examiner was contacted on 9/23/13 regarding the prospects of conducting the present psychological evaluation. Given Andrea's hearing was coming up in the near future, the present report needed to be expedited. Aside from the information provided by Ms. Lindsay, this examiner was not able to obtain further collateral data corroborating Andrea's statements. In forensic reports, it is typical that further collateral information is obtained from objective sources for verification purposes. Therefore, the present report is reflective of Andrea's self-reported information and response pattern on three forensic instruments. For this reason, this examiner utilized forensic instruments that contain validity indices embedded within them to assess for response bias.

SOURCES OF INFORMATION

Clinical Interview with Andrea Person
Collateral Information Provided by Ms. Alexis Lindsay, Andrea's Attorney
Psychological Testing:
 Minnesota Multiphasic Personality Inventory-2- Restructured Form (MMPI-2-RF)
 Paulhus Deception Survey (PDS)
 Personality Assessment Inventory (PAI)

INTRODUCTION

This examiner was contacted by Ms. Alexis Lindsay to conduct a psychological evaluation on Andrea Person as a part of the defense for her upcoming PCR hearing. Specifically, it was requested that this examiner assess Andrea's mental health and personality functioning. Of particular concern is whether she possesses personality

characteristics that would indicate suggestibility to coercive practices. While this examiner cannot measure "suggestibility to coercive practices" directly, certain personality scales obtained from established forensic psychological instruments (e.g., the PAI, MMPI-2-RF, and PDS) can provide indicators of Andrea's interpersonal tendencies to include interpersonal passivity and a lack of assertiveness that may make her susceptible to coercion.

It is hypothesized that individuals who tend to be overly passive and lack assertiveness may experience mistreatment or exploitation by others, or they may conform to others in an effort to avoid being the focus of attention. Additionally, the established forensic psychological instruments utilized by this examiner also measures broad psychological variables such as sociopathy, general mental health functioning, and personality disorder characteristics. Moreover, validity indices are embedded within each of the administered inventories assessing for response bias/deception such as positive impression management, defensiveness, lack of insight, overconfidence, symptom exaggeration, inconsistency, and random responding.

Andrea reported that she was charged with Homicide by Child Abuse in November 2009. She believes that a lengthy interrogation process in which she felt coerced by the law enforcement officers resulted in her making a false confession. Andrea maintained her denial that she never engaged in any form of behavior that would harm a child. In hindsight, she stated that she was naïve to continue engaging with law enforcement when she felt pressured to help them develop a coherent account of the child's death that occurred over 10 years prior to her being questioned. Andrea emphasized that she made several denials to the interrogating officers regarding any form of behavior that would result in her harming a child, but they continued to present her with scenarios and request further information. Furthermore, the interrogators implored that she would be released after the interview so she could return home. After a few hours, Andrea stated that she relented and agreed to some of the officer's statements resulting in her being accused of smothering the child. She contends that she simply wanted to be finished with the interview. Andrea recalled feeling shocked when she was arrested.

Regarding Andrea's ultimate conviction, she believes that her original criminal defense attorney did not perform adequately. For example, Andrea was told that she would have an expert witness testify about false confessions and coercion. However, this individual did not testify at her pre-trial hearing. Additionally, Andrea did not previously participate in a psychological evaluation that may have facilitated her case. After being incarcerated, she sought PCR and sought the legal counsel of her present attorney, Ms. Lindsay. Andrea understood that these test results could be utilized in her defense. However, she was not aware of the purpose of the psychological evaluation or the specific questions that this examiner intended to assess.

SPECIFIC QUESTIONS TO ADDRESS VIA PSYCHOLOGICAL ASSESSMENT

1. Did Andrea appear to respond in a candid and realistic manner during the course of this testing administration?
2. Does Andrea appear to possess major symptoms, clinical syndromes, sociopathic characteristics, or other personality disorder tendencies?

3. Does Andrea possess certain personality characteristics (e.g., interpersonal passivity, lack of assertiveness) that would indicate susceptibility to coercive practices by individuals in authoritative positions?

BEHAVIORAL OBSERVATIONS/TEST VALIDITY

The present psychological evaluation transpired at the Leath Correctional Institution, a Level 3 security prison within the South Carolina Department of Corrections. Andrea is a 46-year-old African American female of heavy-set stature who appeared consistent with her chronological age. She was dressed in prison attire and demonstrated adequate hygiene. Andrea's motor movement was normal and she appeared focused during the interview and on the varied mental health inventories. Her speech quantity was talkative, and she spoke in a logical and coherent manner. Her mood was generally calm with an appropriate expression of affect. However, Andrea did exhibit sadness when discussing her problematic life circumstances. She also initially demonstrated feelings of anxiety related to the testing situation, although she became more comfortable once she developed rapport with the examiner and testing assistant. Andrea's presentation did not suggest adaptive deficits, as she was oriented to all spheres, and in full contact with reality.

Overall, Andrea appeared to respond in a candid manner, suggesting a valid clinical interview. Additionally, her response pattern on the validity indices contained within three forensic psychological inventories did not suggest prominent levels of symptom exaggeration, response inconsistency, social desirability, or defensiveness. (See Psychological Test Results below). To further facilitate data collection, collateral information was obtained from her attorney (Ms. Lindsay). Therefore, it can be concluded within a reasonable degree of psychological certainty that this appears to be a valid administration of psychological testing.

BACKGROUND

Family History

Andrea reported that she was raised in the home of her biological parents in Canton, Ohio. She described positive relational interactions with her parents and siblings. Andrea denied knowledge that she was ever the victim of a significant trauma within her family of origin. She stated that her parents treated her and her siblings quite well. Andrea mentioned that other children in her school and community sometimes exhibited jealousy toward her because she came from a good family.

Andrea met her husband during her first year of college. She stated that her only experience with dating prior to meeting her husband was for her high school prom. Andrea described an excellent marital relationship with her husband. They have two grown children together who are currently ages 21 and 20 years old. Andrea reported that both of her children attend college. She noted that her husband has a career in the banking industry.

Academic/Career

Academically, Andrea stated that she performed quite well throughout her history. She denied any history of special education services. Andrea recalled that her parents

emphasized the importance of education. She also participated in athletic activities such as volleyball. Andrea earned a scholastic and athletic scholarship to attend college at the University of North Carolina. She stated that she attended this academic institution for four years, but she was two electives shy of completing the requirements for her Bachelor's Degree. Andrea chose to leave school after she married her husband. She expressed regret that she did not complete her college education. However, Andrea stated that she was busy with employment and marital responsibilities.

For employment, Andrea worked in various positions to include call centers, nursing homes, and as a church daycare worker. She performed quite well performing daycare work, and she was encouraged to pursue her own business by various members of the community due to her childcare skills. Andrea eventually began operating a daycare business in her home. She reported that she performed childcare duties in her household for the next 15 years. Andrea insisted that she was committed to performing with excellence in her role as a caregiver.

In 1998, Andrea described a tragic event when a child named Zachary died while he was in her home. She reported that she was a close friend of the child's parents. Zachary had a history of pneumonia and was reportedly a sickly child. After the child's passing, Andrea stated that the coroner ruled that he died due to complications related to pneumonia and bronchitis. However, she was still grief-stricken and questioned whether she should continue serving in her working capacity. Andrea reported that Zachary's parents and other members of the community encouraged her to continue her service and work as a daycare provider.

Andrea stated that two other children died in her home between 1998 and 2009. She stated that a child named Elijah died due to complications related to being overheated. Andrea was not implicated with any wrongdoing surrounding this death. Additionally, a child named Walker passed away in 2009, in which the cause of death was related to SIDS. During each instance, Andrea reported that she cooperated with law enforcement. After Walker's death, the police contacted her to conduct a lie detector test. Andrea volunteered to attend the polygraph administration without an attorney. She was told that she passed the lie detector test pertaining to Walker. Afterward, Andrea reported that law enforcement requested that she participate in a polygraph test related to Zachary's death in 1998. She complied with the firm belief that she did not engage in any wrongdoing.

After Andrea's lie detector test pertaining to Zachary was completed, she stated that the law enforcement officer told her that she failed the polygraph. Afterward, the aforementioned interrogation process began. Andrea recalled that she vehemently denied engaging in any wrongdoing to the investigators. However, they presented her with various hypothetical situations and suggestions pertaining to what could have happened to the child. As reported earlier, Andrea ultimately stated that she might have put her hand on the child's mouth. She claimed that she made this statement to agree with the officers in the hope that she could go home. Thereafter, Andrea was arrested. She was ultimately convicted of Homicide by Child Abuse in November 2009. Andrea has since been incarcerated.

Physical/Mental Health Functioning

Andrea denied physical health problems at birth or during her childhood. There are no reports of seizures, head injuries, or developmental delays. Andrea was athletic during the course of her adolescence and early adulthood. She participated in an athletic scholarship for volleyball when she attended college. Presently, Andrea is receiving medical treatment for diabetes. She also recently had an eye injury when she was exposed to chemicals while working in prison. Andrea has since received treatment for her left eye, and she stated that her vision is steadily recovering.

Andrea denied prominent psychological concerns during the course of her childhood, adolescence, and adulthood. She did not endorse any history of suicidal ideation, psychosis, major mood disturbance, problems with illicit substances, or previous interactions with the criminal justice system. Andrea did endorse situational symptoms of anxiety and depression since being incarcerated. She misses her family members and close friends. Andrea also acknowledged that she has lost several friends over the allegations that she committed such a heinous crime. At prison, she indicated that she has adjusted as well as can be expected. Andrea tends to stay to herself. She relates adequately with her roommate and engages in primarily solitary activities. Andrea maintains her strong faith in God and relations with her husband, children, and remaining friends.

PSYCHOLOGICAL TEST RESULTS

Note to the Reader about the Interpretation of Psychological Tests

The interpretations of psychological tests presented in this report are hypotheses and should not be used in isolation from other information in this matter. The interpretative statements are primarily computer-generated, actuarial, and expert predictions based on the test patterns. The interpretations reflect characteristics of persons who have provided test response patterns that are similar to those of the current individual. Test results are probabilistic in nature and should be interpreted cautiously incorporating other data. Therefore, the reader should examine the test interpretations for general trends and not put too much weight on one specific statement. In the integration and presentation of the test data, when the results were unclear or in conflict, this examiner selected the most likely hypotheses for presentation here.

Behavioral/Emotional/Personality Measures

Andrea completed the PDS, an inventory designed to measure two forms of response bias including impression management and self-enhancement deception. The Impression Management (IM) subscale purports to measure conscious forms of social desirability while the Self-Enhancement Deception scale (SDE) measures underlying motivations to make an overly positive presentation and narcissistic tendencies. Her response pattern on the IM scale (T = 57) resulted in an average score, suggesting that she did not exhibit patterns of positive impression management. On the SDE scale, Andrea's score (T = 48) indicated adequate insight. These results did not suggest the presence of a socially desirable presentation. Additionally, she presented as an individual with adequate insight and did not endorse overconfidence in her abilities.

Andrea was next administered the PAI, a self-report measure of personality functioning designed to provide diagnostic information of adults. It is noted that this examiner utilized the PAI computerized scoring program to facilitate interpretation of these test findings. Andrea's response pattern on the validity indices suggests that she responded in a candid and realistic manner (PIM, T = 57; DEF, T = 51). Specifically, these test findings do not indicate an attempt to intentionally distort her profile. Therefore, Andrea's PAI profile appears fully interpretable. Andrea's scores did not result in any significant elevations suggestive of clinical psychopathology. Regarding her self-concept, she presents as a woman who approaches life with a clear sense of purpose and distinct convictions. Andrea considers herself resilient in dealing with broad life stressors.

Examining the interpersonal scales, Andrea's profile resulted in a moderately low score on the Dominance Scale (DOM, T = 38) and an average score on the Warmth scale (WRM, T = 56). Interpersonally, these scores suggest that she can be best characterized as "open, genuine, and conforming." Andrea's score further suggests that she is self-conscious in social situations and not skilled in asserting herself when needed. Such individuals tend to avoid a leadership role, and they feel most comfortable in the background of a social setting. These individuals are generally considered by others to be fairly eager to please. Andrea endorsed an adequate social support system to include family and friends.

Pertaining to treatment motivation, Andrea feels satisfied with herself and sees little need for changes in her behavior. However, the test data suggested that she presents with difficulties related to the appropriate expression of anger. According to the PAI profile report, "The respondent describes herself as a very meek and unassertive person who has difficulty standing up for herself, even when assertiveness is warranted." While Andrea did not present as motivated to pursue therapeutic interaction, she does report a number of strengths that are positive indications for a smooth treatment process, if she was willing to attend outpatient therapeutic treatment services.

Finally, Andrea was administered the MMPI-2-RF, an objective measure of personality functioning and clinical syndromes. The MMPI-2-RF solely utilizes T-scores. Any T-score above 65 suggests clinical significance. Her response pattern on the validity indices suggests that she produced a protocol. Specifically, Andrea responded to items relevantly based on the item content, and there were no indications of over-reporting (F, T = 42) or under-reporting (L, T = 47, K, T = 55).

Examining the three higher order scales, her responses were in the normal range [Emotional/Internalizing Dysfunction (EID), T = 46 Thought Dysfunction (THD), T = 39; Behavioral/Externalizing Dysfunction (BXD), T = 40]. There were also no significant elevations (T > 65) on the Restructured Clinical Scales, PSY-5 Scales, Internalizing Scales, Externalizing Scales, Somatic/Cognitive Scales, or Interest Scales. However, there were significant elevations on two of the Interpersonal Scales including Interpersonal Passivity (IPP, T = 68) and Social Avoidance (SOV, T = 70). Additionally, there was a significant elevation on one of the five PSY-5 Scale (Introversion, T = 67).

Review of the MMPI-2-RF test findings suggest that Andrea endorsed a lack of assertiveness, and she presents as an individual that is passive and submissive in her interpersonal relationships. She further described an avoidance of social situations. While Andrea did not indicate social anxiety, she is likely to be introverted, has difficulty formulating close relationships, and tends to be emotionally restricted. Individuals with

similar profiles exhibit passive-submissive behavior and attempt to avoid social interactions.

DSM-5 DIAGNOSTIC IMPRESSIONS

309.28 Adjustment Disorder with Mixed Anxious and Depressed Mood
250 Diabetes Mellitus

ADDRESSING OF QUESTIONS VIA PSYCHOLOGICAL ASSESSMENT PROCESS

1. Did Andrea appear to respond in a candid and realistic manner during the course of this testing administration?

The accumulation of acquired data obtained during the clinical interview and on the mental health inventories suggested that she responded in a candid and reasonable manner during the course of this evaluation. Examining the acquired evidence, she presented credibly during the clinical interview. Andrea provided a coherent background of her history and present circumstances. She also appeared to provide a coherent account of her perspective about what transpired when she was interrogated by law enforcement and issued what she contends was a false confession.

Andrea also completed three mental health inventories that contain validity indices embedded within them that assess the examinee's response consistency, overestimation of symptoms, underestimation of symptoms, openness, and self-deceptive enhancement. Individuals facing Andrea's circumstances are prone to respond in a socially desirable manner, meaning they tend to engage in a presentation in which they are defensive, minimize the extent of their psychological issues and problematic personality tendencies, and attempt to present themselves in an overly favorable manner. Additionally, these individuals may engage in negative impression management, which includes symptom exaggeration, malingering, or an overemphasis of problematic personal qualities.

Examining the social desirability scales on each of the administered surveys including the PDS, PAI, and MMPI-2-RF, Andrea's responses did not result in any significant elevations, or even moderate elevations, on any the scales. Furthermore, Andrea did not engage in any negative impression management on the validity scales embedded within the PAI and MMPI-2-RF. These findings provide objective psychological evidence that Andrea presented in realistic manner, in which she did not attempt to overestimate or underestimate her psychological symptoms or problematic personality tendencies.

2. Does Andrea appear to possess major symptoms, clinical syndromes, sociopathic characteristics, or other personality disorder tendencies?

Andrea reported that she receives medical treatment for diabetes. She stated that her symptoms are generally under control when she monitors her diet and follows her treatment regimen. Andrea endorsed situational symptoms of anxiety and depression that appears related directly to her incarceration. She also described a tendency to avoid social interactions with other inmates, although she contends that she behaved more socially prior to her incarceration. Andrea

did not report any history of participation in mental health treatment. She contends that she has never been prescribed psychotropic medication. Andrea reported that she is coping as well as can be expected given her present life circumstances. Her family members and close friends appear to serve as some buffer for her situational distress.

Andrea did not indicate any history of chronic emotional issues suggesting the presence of mental illness or major clinical syndromes. She described herself as fully functional in society prior to her incarceration. Andrea did not indicate any history of sociopathy. She denied prior interactions with the criminal justice system prior to her arrest and incarceration for her present charge that she is disputing. Andrea did not report any indicators of oppositional defiant disorder or conduct disorder behavior tendencies during the course of her childhood or adolescence. Common risk factors for delinquency and criminal behavior are not evidence based on her reported history. For example, Andrea obtained a full academic and athletic scholarship for college. She has been married for 24 years with two grown children. The PAI and MMPI-2-RF results also did not reveal the presence of sociopathic personality tendencies. Specific scales designed to assess these characteristics did not result in any elevations. Moreover, Andrea does not appear to meet the diagnostic criteria for any personality disorder tendencies based on her reported history and the test data obtained from the PAI and MMPI-2-RF findings.

3. Does Andrea possess certain personality characteristics (e.g., interpersonal passivity, lack of assertiveness) that would indicate susceptibility to coercive practices by individuals in authoritative positions?

The accumulation of acquired information derived from the clinical interview and psychological inventories suggest that Andrea presents with passive-submissive interpersonal tendencies. The psychological test data derived from the PAI and MMPI-2-RF resulted in moderate to high elevations on all scales pertaining to interpersonal passivity, conforming tendencies, and meek characteristics that makes it difficult to stand up for herself, even when assertiveness is warranted. As reported earlier, this examiner is operating under the hypothesis that individuals who tend to be overly passive and lack assertiveness may experience mistreatment or exploitation by others, or they may conform to others in an effort to avoid being the focus of attention. The present test results provide confirmatory evidence that Andrea's passive-submissive interpersonal tendencies would appear to make her susceptible to coercive situations by individuals in authoritative positions.

Marc Harari, Ph.D.

Marc Harari, Ph.D.
Licensed Counseling Psychologist (875)

9/27/13

Kimberly Collins

Applicant's
3-ID
HSH

STATE OF SOUTH CAROLINA

GENERAL SESSIONS

County of Richland

07-GS-40-3510

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

ANDREA PERSON,

DEFENDANT,

November 16 - 20, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE; and a jury.

APPEARANCES:

WARREN B. GIESE, SOLICITOR
JOHN P. MEADORS, DEPUTY SOLICITOR
JOANNA McDUFFIE, ASSISTANT SOLICITOR
Attorneys for the State

DOUGLAS S. STRICKLER, PUBLIC DEFENDER
FIELDING PRINGLE, DEPUTY PUBLIC DEFENDER
Attorneys for the Defendant

KAREN TRACY
Official Court Reporter

1 problem. We will figure that out and go -- go with it.

2 Anything else we need to take up at this point?

3 MR. STRICKLER: Nothing from the defense.

4 MR. MEADORS: Nothing from the State, Your Honor.

5 THE COURT: You can ask the jury to come in, please.

6 THE BAILIFF: I'll be glad to, Your Honor.

7 (WHEREUPON, the jury came into open court at
8 approximately 2:56 p.m.)

9 THE BAILIFF: The jury is all present, Your Honor.

10 THE COURT: You may call your next witness.

11 MR. STRICKLER: Thank you, Your Honor. May it please
12 the Court. The defense calls Dr. Kim Collins.

13 KIMBERLY COLLINS, after being duly
14 sworn, testified as follows:

15 THE CLERK: Please have a seat. State your full name
16 for the record.

17 THE BAILIFF: Watch your step for me, please, and
18 speak into the microphone.

19 THE WITNESS: Dr. Kim A. Collins, C-O-L-L-I-N-S.

20 DIRECT EXAMINATION:

21 BY MR. STRICKLER

22 Q Good afternoon, Doctor.

23 A Good afternoon.

24 Q If you could, please, I would like to have you tell
25 us a little bit about yourself. Could you start, please,

1 with your education, beginning with college, and moving
2 forward?

3 A Yes. I went to college at the University of Georgia,
4 and I received my bachelor's degree there in microbiology.
5 Following college, I went to medical school at the Medical
6 College of Georgia in Augusta and received my M.D.

7 After medical school, I completed a five-year
8 combined anatomic pathology and clinical pathology
9 residency at Wake Forest University School of Medicine,
10 Bowman Gray Hospital. Following my residency, I then
11 completed a forensic pathology fellowship at the Medical
12 University of South Carolina in Charleston.

13 Q And still on your education, if I could, did you
14 receive any honors as far as graduating from college? You
15 graduated magna cum laude?

16 A Yes; yes, I did.

17 Q Were you also elected to the Phi Beta Kappa Society?

18 A Yes; that's correct.

19 Q Subsequent to, and I guess current with, some of your
20 education, you held positions in the area of pathology?

21 A Yes, I have.

22 Q Could you briefly describe these positions for us?

23 A Well, at the Medical University of South Carolina, I
24 was director of autopsy and forensic pathology. I was a
25 Professor of Pathology and Laboratory Medicine, and when

1 Charleston County had a medical examiner system in place,
2 I was Chief Medical Examiner.

3 On a national level, I have been Chair, and am
4 immediate Past Chair, of the College of American
5 Pathologists Autopsy Committee, and I've been active with
6 the National Association of Medical Examiners and the
7 American Academy of Forensic Sciences.

8 I've been the director of the Pediatric Forensic
9 Pathology Conference which makes place annually, and I am
10 the speaker at the Armed Forces Institute of Pathology
11 speaking on pediatric forensic pathology.

12 Q Thank you, Doctor. You are currently licensed to
13 practice medicine?

14 A Yes, I am.

15 Q In North Carolina?

16 A Yes.

17 Q South Carolina?

18 A Yes.

19 Q And Georgia?

20 A Yes.

21 Q And are you currently certified in any areas in
22 pathology?

23 A Yes, I am, anatomic and clinical pathology, and
24 forensic pathology.

25 MR. STRICKLER: And at this point, Your Honor, we

1 would offer Dr. Collins as an expert in the area of
2 forensic pathology?

3 THE COURT: Any voir dire?

4 MR. MEADORS: No questions, no objection.

5 THE COURT: I'll find her qualified as an expert in
6 the field of forensic pathology.

7 MR. STRICKLER: Thank you.

8 BY MR. STRICKLER

9 Q Now, Doctor, are you acquainted with issues
10 surrounding the death of Zachary Ulenchong on December 2,
11 1998?

12 A Yes, I am.

13 Q Have you been retained by the defense in this regard?

14 A Yes, I have been.

15 Q And you been paid, what, \$5,000?

16 A \$5,000, yes, sir.

17 Q Okay. And do you remember when it was we first
18 retained you?

19 A No. I'm not sure of the exact date. I know it's
20 been awhile.

21 Q Okay. In that regard, you've had -- have you had the
22 opportunity to review materials regarding the case?

23 A Yes.

24 Q Have you had the opportunity to consult on multiple
25 occasions with both myself and Ms. Pringle regarding the

1 case?

2 A Yes, sir.

3 Q Okay. And you are now here to testify in that
4 regard, correct?

5 A Yes, sir.

6 Q If you could, please -- if you could, please briefly
7 describe for the jury what is pathology.

8 A Pathology is a branch of medicine, and probably
9 everyone here has been treated by a pathologist in the
10 past. Anytime you have ever had your blood drawn, you've
11 given a urine specimen, you had a pap smear, all of that
12 went to a pathologist.

13 A pathologist is a physician who diagnoses diseases,
14 diseases such as cancer, strep throat, H.I.V., infections,
15 and works with other clinicians in treating patients.

16 There are several laboratories that fall under
17 pathology. There's the hematology laboratory where your
18 blood would go for analysis; there's microbiology, and
19 there's also the autopsy pathology laboratory.

20 Q And you been qualified as an expert in the area of
21 forensic pathology. How does that differ, or can you
22 describe, please, what forensic pathology is?

23 A Forensic pathology is a branch of anatomic pathology
24 where we use the laboratory when we investigate unnatural
25 trauma or deaths, looking at cause of death and manner of

1 death.

2 We use the autopsy as our main investigative
3 pathology tool, but we also use the other laboratories,
4 putting the pieces together looking at cause of death and
5 trauma.

6 Q And in relation to the death of Zachary Ulengchong on
7 December 2nd, 1998, have you had an opportunity to review
8 his birth records?

9 A Yes.

10 Q Have you had an opportunity to review his records
11 from Moncrief Army Hospital, emergency room pediatrics?

12 A Yes, I have.

13 Q Have you had an opportunity to review not only his
14 birth records from Richland Memorial Hospital but also
15 records regarding his being brought there on December 2nd,
16 1998?

17 A Yes.

18 Q And his treatment there on November 23rd, 1998?

19 A Yes.

20 Q Okay. Have you had an opportunity to review the
21 E.M.S. run sheet for December 2nd, 1998?

22 A Yes.

23 Q And you had an opportunity to review the autopsy that
24 was conducted --

25 A Yes, I did.

1 Q -- initially in this case? Have you had an
2 opportunity to review the histology in this case?

3 A Yes, I have.

4 Q All right. Could you please tell the jury what
5 histology is?

6 A When we perform an autopsy or a biopsy on an
7 individual, we will take the tissue section and will
8 dissect an organ or tissue a particular way, and then
9 we'll submit the tissue to the laboratory, the histology
10 laboratory.

11 In that laboratory, they'll prepare a glass slide
12 that we can look at under a microscope. So the materials
13 that I received for 15 glass slides that were taken from
14 tissues at the time of the autopsy.

15 Q Okay. So you had an opportunity to review all the
16 slides associated with this particular autopsy?

17 A Yes, I have.

18 Q And you have had an opportunity to review statements
19 on the part of Ms. Person that were made in 2007?

20 A Yes.

21 Q Okay. Now, what was the conclusion of the autopsy
22 conducted in 1998, before it had been -- February, I
23 believe, of '99, final autopsy in February of '99.

24 A The conclusion as the cause of death was lobular
25 pneumonia, and that was designated as a natural death.

1 Q Okay. And I want to ask you about that, and what I'd
2 like to do first is this: As a forensic pathologist,
3 should you consider information external to the actual
4 autopsy in arriving at a conclusion as to cause or manner
5 of death?

6 A Yes.

7 Q To include statements such as you have been provided
8 in this particular case?

9 A Statements, scene investigation, medical records,
10 yes.

11 Q Okay. And what I would -- let me just ask you this:
12 Considering statements in addition to the findings of the
13 autopsy, and your review of the autopsy, would you have a
14 conclusion as to cause and manner of death in this
15 particular case?

16 A Yes.

17 Q And what would that be?

18 A If I included the statement --

19 Q Yes.

20 A -- besides the autopsy?

21 Q Yes.

22 A Of the smothering.

23 Q Now, understanding that the question of whether the
24 statements are to be believed or not is an issue at trial
25 here.

1 A That's correct.

2 Q I'd ask you to exclude the statements, okay. In
3 essence, turn the -- turn the hands of time back to 1998
4 with the information that was available at that point in
5 time.

6 A Yes, sir.

7 Q Okay. So that we can consider the conclusions of the
8 autopsy that was conducted at that point in time, right?

9 A Okay.

10 Q And you've already indicated that the -- that the
11 cause of death was lobular pneumonia. Do you concur in
12 that analysis?

13 A Yes, I do.

14 Q And can you tell me why?

15 A Yes. Looking at the gross autopsy findings, there
16 were no signs of trauma. The main findings -- and gross
17 meaning with the naked eye.

18 The main findings were that the lungs were heavy, and
19 also looking at the spleen and the spleen is like a filter
20 in your body, there were certain areas of the spleen they
21 were prominent. These areas become prominent at times of
22 infection.

23 So those were the two findings that were noted at
24 autopsy, but in particular, looking under a microscope at
25 the tissue samples that were taken at autopsy, it was

1 significant for pneumonia in many of the sections of the
2 lung.

3 And we diagnosed pneumonia under the microscope
4 looking at the air spaces where you breathe, and we see
5 blood within those air spaces. We see edema, and we see
6 the cells that make up pus, and these are neutrophil. And
7 within many sections of the lungs that I looked at under a
8 microscope, there was pus, edema, red blood cells, and
9 those were indicative of the pneumonia.

10 Also, the larger airways that branch off from the
11 trachea, the bronchi and the bronchiales, were also very
12 inflamed. They had the findings of inflammation and
13 infection in those areas also.

14 That is why you call it bronchopneumonia, so this was
15 very impressive in several of the sections that were
16 submitted for microscopic study.

17 Q Now, are you drawing on -- the statements that you
18 made, are those consistent with the conclusions of the
19 autopsy conducted in 1998, recorded February 4th, 1999?

20 A Yes, they are.

21 Q Okay. Are they that autopsy's conclusions, or are
22 they your conclusions?

23 A Both.

24 Q Both, okay. So you did an independent evaluation of
25 the evidence from the autopsy?

- 1 A Yes.
- 2 Q Okay. Now, having -- having had an opportunity to
3 review the medical records of Zachary Ulangchong, is it
4 surprising to you that you could find pneumonia in that --
5 in the child?
- 6 A No.
- 7 Q Why would that be?
- 8 A It's not surprising in that age group. It's not
9 surprising in that age group when a child is exposed to
10 other children and in day care.
- 11 Also, with the medical records, he had been to the
12 energy room before for respiratory infections, including
13 pneumonia, and recently before death he had been taking
14 Dimetapp, which is a cold medication for upper respiratory
15 or lower respiratory infection.
- 16 Q Do you remember how close to the time of death he was
17 taking Dimetapp?
- 18 A I want to say it was approximately a week before the
19 time of death.
- 20 Q November 23rd, when he was treated for the cut to his
21 head?
- 22 A Yes.
- 23 Q Okay. That's noted in the medical records from the
24 visit to the hospital at that point in time?
- 25 A Yes, it is.

1 Q Okay. So Dimetapp, is it on over-the-counter
2 medication, or is it a prescribed medication?

3 A It is over the counter.

4 Q Over the counter, but it's used to treat what?

5 A It's for cough and colds, so a child that has a cold,
6 cough, runny nose.

7 Q Respiratory infection?

8 A Yes.

9 Q What is pneumonia?

10 A Pneumonia is also a respiratory infection. Pneumonia
11 means that we've got an infection and inflammation down in
12 the lower aspect of your lungs, so it's past the trachea,
13 past the bronchi into the areas that are responsible for
14 gas exchange and for breathing.

15 In this case, though; we did have infection of the
16 bronchi, as well as the other airways leading down to the
17 lung tissue itself. So there was inflammation at multiple
18 levels or infection at multiple levels.

19 Q Okay. In reviewing the medical records for Zachary
20 Ulengchong, in addition to Dimetapp on November 23rd, did
21 you find treatment of him with Augmentin in the spring of
22 2000 -- or 1998?

23 A Yes, I did.

24 Q And what is that medication used for?

25 A Augmentin is a combination of Amoxicillin and

1 Clavulanic acid, and they put them together to treat a
2 bacterial infection. In this situation, it was to treat
3 pneumonia, so he was given Augmentin for pneumonia.

4 Q And, additionally, in the late summer of 1998, did
5 you find reference in the records to treatment with
6 Zithromax?

7 A Yes, I did.

8 Q And can you tell us what that is?

9 A Zithromax is also known as Z-Pack, and it's an
10 antibiotic that is given most commonly for respiratory
11 infection.

12 Q Now -- thank you. Let me ask you just -- I'm going
13 to jump around a little bit, and I apologize. I'm trying
14 to cover everything. Skin temperature as indicative of
15 time of death, is that or is that not a reliable tool for
16 assessing time of death?

17 A Actually, there are a few tools for time of death,
18 and the least reliable is the skin or body temperature.
19 So no, that is not a reliable tool.

20 Q Specifically, why is it not a reliable tool?

21 A Too many variables come into play. First of all, we
22 don't know the individual's normal body temperature.

23 Depending upon the size of the individual, we've got
24 a different surface area, such as children have a large
25 surface area.

1 We don't -- we have to take into account the
2 clothing. We take into account the time of year, the
3 temperature of the room, the circulation of the room.

4 And so too many factors come into play to be able to
5 use any type of body temperature in relating that to cause
6 of death. That's even when you're using a thermometer.

7 If you're going to be even more crude and use what
8 someone feels as a body temperature, or "I feel something
9 is cool or something is warm," that is even less reliable
10 than using body temperature with a thermometer.

11 Q Spitz and Fisher's Medicolegal Investigation of
12 Death, are you acquainted with this volume?

13 A Yes. I own that volume. That's the most current
14 volume --

15 Q Okay.

16 A -- or edition.

17 Q Can you characterize its status in the forensic
18 pathology community?

19 A I'm sure that every forensic pathologist has a copy
20 of Spitz and Fisher. It's a reference text that we use
21 daily. All the residents or trainees are encouraged to
22 read it cover to cover.

23 Q Well --

24 A Which, the ones of us practicing have done many
25 times.

1 Q If you know, fine. Can you think of another
2 reference text regarding a medical legal investigation of
3 death that is more widely used than Spitz and Fisher?

4 A No.

5 Q Okay. Would you agree or not with the statement in
6 Spitz and Fisher that the larger surface -- body surface
7 ratio to body mass, such as in children, will increase
8 relative heat loss, and therefore, increase the rate of
9 cooling?

10 A Yes, I do; that's true.

11 Q And you just testified to that effect, in essence,
12 correct?

13 A Yes.

14 Q So that's one of many factors that you have been
15 outlining that affect cooling rate and the validity of
16 assessing of body temperature by feeling the skin?

17 A Yes.

18 Q Okay. Now, there has been testimony before this
19 Court regarding -- I want to show you State's Exhibit No.
20 2, Zachary Ulengchong being found by Ms. Person face down
21 in this Pack N Play in a pool of milk vomit, as reflected
22 in this photograph, the stain.

23 A Yes.

24 Q There has been testimony regarding copious amounts of
25 milk coming from the child when he was turned face down

1 during C.P.R.

2 There is testimony regarding when blowing into the
3 child's chest, hearing gurgling sounds. Can you tell us,
4 is -- is vomiting associated with pneumonia in the first
5 place?

6 A Yes, especially in children, infants.

7 Q Okay. And is vomiting associated with asphyxiation
8 by placing a hand over the mouth and nose?

9 A No. I've never heard of that.

10 Q Have you ever?

11 A No. I've never heard of that, or read that, or had
12 that in one of my cases.

13 Q Can you rule out, and I understand the cause of
14 death, but what's the possibility of asphyxiation in this
15 particular case on vomiting?

16 A It could be -- it could have happened. You would
17 usually notice that with the first responders, individuals
18 that are performing C.P.R., that are analyzing or
19 investigating the scene, you'd see vomitus at the scene.
20 You'd see vomitus in the airway during the recitation.

21 Q Okay.

22 A You could also see it at the time of autopsy.

23 Q Okay. Would you expect to see it at the time -- at
24 the time of autopsy?

25 A Depending on how much was relieved of the airway

1 during recitation.

2 Q Is that also contingent on the quality and
3 extensiveness of the autopsy that was performed?

4 A Definitely.

5 Q Okay. In this particular case, was there a height
6 estimated for Zachary Ulengchong in the autopsy?

7 A No. There was never a height, nor a body weight,
8 that was given.

9 Q Is assessing height and weight a common procedure in
10 conducting an autopsy?

11 A Yes, in every autopsy.

12 Q Is there any indication as to whether there were any
13 teeth present on the young man?

14 A No. There was no notation of the teeth, and there
15 was no notation of the inside of the cheeks or the lips or
16 the gums either within the mouth.

17 Q Why would that be significant?

18 A That's significant in cases of any trauma to the
19 face, including smothering. If there are teeth present
20 and you have the hand over the mouth, you can often see
21 tearing of the inner lips secondary to the pressure of the
22 hand and the teeth.

23 Q Okay. I take it, Doctor, that you would agree with
24 the statement that in asphyxia in small children, often
25 you see no signs; is that correct?

1 A Yes. The younger the child, the fewer instances
2 you'll see any signs of asphyxiation or smothering.

3 Q Is that or is that not the same as saying you will
4 never see signs of asphyxiation a small child?

5 A No.

6 Q What are signs that can be seen of asphyxiation --

7 A Which --

8 Q -- or can be encountered?

9 A If asphyxiation is by smothering with the hand over
10 the mouth, you can see abrasions, or scraping, or maybe
11 some bruising on the outside of the nose or the lips.

12 You can see tearing on the outside of the mouth
13 secondary to the teeth. You can also see tearing of the
14 frenulum, which is that small piece of tissue that
15 connects your upper lip to your gum and your lower lip to
16 your gum. Right in front of your teeth, there's an upper
17 and lower frenulum. You can see tearing in that area.
18 You can see bruising within the inside of the mouth.

19 Q Okay. Now, back again to the autopsy as conducted in
20 the finding of lobular pneumonia, can you describe, again,
21 please, your observations upon reviewing the slides of the
22 relevant sections involved in this case as to the amount
23 of pneumonia, the degree of pneumonia, in this particular
24 matter?

25 A The several sections were taken from the lungs that I

1 examined, and throughout the sections, there was
2 pneumonia. I would classify it as moderate pneumonia.

3 Q Moderate pneumonia?

4 A Several areas. The air spaces where you would be
5 breathing were totally filled by pus and inflammation.
6 There were airways, the larger airways that were filled
7 with pus and inflammation, and that was in several
8 sections. It wasn't an isolated finding.

9 Q It wasn't an isolated finding?

10 A No.

11 Q How is that significant to you if it wasn't an
12 isolated finding?

13 A It's significance in that the person who is doing the
14 autopsy is taking representative pieces of the lungs, and
15 to find the same inflammation in several different areas
16 is representative of what's going on throughout the entire
17 organ of the left and right lungs.

18 Q Let me just ask you this, please, because there was a
19 term that was tossed. We heard from some doctors
20 yesterday. There was a term that was tossed around a
21 little bit, which I'm not sure was explained. In a -- in
22 the context of pathology, what does a nonspecific finding
23 mean?

24 A When we're looking with the naked eye and under the
25 microscope, we're looking for pathology or diseases or

1 abnormalities that point to a certain condition.

2 There are certain findings, for instance, that are
3 diagnostic of diabetes or diagnostic or specific for a
4 heart attack. Then there are other findings that you see
5 in so many autopsies regardless of the cause of death that
6 we call them nonspecific.

7 They really don't help us point to any disease
8 entity, or classification, or cause of death, or illness.
9 So we'll note what these findings are, but they're
10 nonspecific. They don't really classify or pigeonhole you
11 into a definite diagnosis.

12 Q All right. So yesterday, we heard from Dr. Armstrong
13 as reflected in -- in his autopsy, early swelling of the
14 brain. That's a nonspecific finding; is that correct?

15 A Yes. We see early swelling of the brain and anything
16 from having acute heart attack, having a drowning death,
17 having cancer, having epilepsy, having trauma to the head.
18 It's very nonspecific.

19 Q So is there any basis for implying that it's useful
20 in assessing whether or not asphyxiation occurred?

21 A Absolutely not.

22 Q Do you find it in cases of asphyxiation?

23 A I find it in cases of asphyxiation. I also do not
24 find it in certain cases of asphyxiation. I mean, it's
25 nonspecific. It doesn't mean anything as far as

1 classifying the cause of death.

2 Q And you also find it among many other things in that
3 list you just started to --

4 A Hundreds, thousands of other entities.

5 Q Additionally, there's a finding in the autopsy of
6 alveolar hemorrhaging, which is nonspecific but which was
7 indicated yesterday could be found in drowning and
8 suffocation. Can it be found in drowning and suffocation?

9 A Yes.

10 Q Can it be found in anything else?

11 A It can be found in almost any type of death. If
12 we're talking about hemorrhaging, which is the alveolar
13 spaces, the lung space is full of blood. That's not what
14 we had here.

15 Q Okay.

16 A We did not have that here. There are certain
17 pulmonary hemorrhagic syndromes that do have frank
18 bleeding into the lungs.

19 You can have red blood cells in the lungs for other
20 reasons. It could be congestion from a heart attack, or
21 in this case, pneumonia.

22 When you have damage to the lungs, you can have
23 leakage of the red blood cells into the air spaces mixed
24 in with the pus, and that's what we have.

25 Q All right. Is there any support for finding alveolar

1 hemorrhaging here as -- as being a Hallmark of suffocation
2 or asphyxiation?

3 A No. And, in fact, there is no Hallmark for
4 suffocation or asphyxiation by smothering. There is no
5 Hallmark.

6 Q During his testimony yesterday, Dr. Armstrong
7 indicated that he -- in 1998, 1999 -- returned a finding
8 of lobular pneumonia because he had a lack -- he had a
9 lack of any other specific findings. Should one do that?
10 Find lobular pneumonia when you don't have any other
11 specific findings?

12 A Well, what you're looking for is any diseases or
13 abnormalities, and there were no other specific findings,
14 no other diseases, no other birth defects, et cetera,
15 except for the pathology in the lungs, and there was
16 lobular pneumonia; therefore, that's your cause of death.

17 Q Dr. Armstrong also testified that because -- I need
18 to inform you. As of yesterday, he changed his opinion on
19 cause of death to suffocation.

20 I've asked him to describe the reasons why, and I'd
21 like to run through them for you and ask you for your
22 comments in that regard.

23 A Okay.

24 Q First of all, the severity of the pneumonia was not
25 great enough to cause death. He would like to have seen

1 it more extensive before it would be called pneumonia as
2 the cause of death. Can you comment on that, please?

3 A I disagree with that. There was moderate pneumonia.
4 There was actually necrosis and death of some of the lung
5 tissue.

6 We had pneumonia, not only in different sections of
7 lungs -- we had it at different levels the respiratory
8 tree, the bronchi, the bronchial, the alveolar spaces.

9 Also, what you're looking at with pneumonia is not
10 just the inflammation and the pus, but they are markers
11 that bacteria are there. We don't even see the bacteria
12 with the naked eye, but there are markers that they are
13 there, as well as the toxins and poisons that can go
14 throughout the body with the pneumonia.

15 Q Okay. Did you have any opportunity to go ahead and
16 observe what bacteria were present there?

17 A No. Unfortunately, there were no blood cultures or
18 lung cultures taken at the time, so we don't know the
19 agent that caused the pneumonia.

20 Q There are various different agents that can cause
21 pneumonia?

22 A Yes. There are -- the most common in children is the
23 viral pneumonia, which can be followed, and it's usually
24 followed in severe cases by a bacteria pneumonia.

25 The most common one is respiratory syncytial virus.

1 It accounts for hundreds of thousands of hospitalizations
2 and deaths every year, and then we have -- so that's a
3 type of various.

4 We have bacterial pneumonias. We have parasites. We
5 have fungal pneumonias. There are many, many causes of
6 pneumonia.

7 Q Is there any assistance, or would there have been any
8 assistance, in assessing and culturing the lungs to
9 determine what the bacteria was that was involved?

10 A It would be nice to know what bacteria was involved,
11 what caused the pneumonia. You need to -- for
12 epidemiology, for taking care of other children that had
13 been around the boy. It would have helped us to classify
14 the type of pneumonia.

15 Q Are different bacteria -- or do different bacteria
16 have different levels of toxicity?

17 A Yes, they do. Different levels of toxicity,
18 different clinical presentations, timeframe, severity,
19 complications.

20 Q Okay. So how easy is it to assess how widespread
21 pneumonia is in the course of an autopsy?

22 A With naked eye?

23 Q Well, between naked eye and the histology, I mean,
24 how easy is it to assess that?

25 A Sometimes you can see the pneumonia with the naked

1 eye. You can even see frank pus within the air spaces.
2 Depending on the size of the individual -- with children,
3 the air spaces are so small that it's more common not to
4 see it evidenced with the naked eye but to see it instead
5 when you look at the tissue under the microscope.

6 Q Okay. If you have different levels -- different
7 bacteria being had in different levels of toxicity, could
8 a -- could a pneumonia be more toxic a pneumonia that
9 affects "X" percentage of the lung, okay, be more toxic,
10 depending on what the actual agent was that was causing
11 it? I don't know if I'm being clear or not.

12 A Yeah. It's not only a factor of how much of the lung
13 is involved, left lung, right lung, part of the lung, but
14 it's also the toxins or the chemical changes that the
15 bacteria can cause throughout the body that results in,
16 for instance, septic shock.

17 Q Okay. And we have no idea of what those were in this
18 particular case?

19 A That's right.

20 Q Because there were no cultures done.

21 A There was no culture performed. There were no blood
22 tests that would be analyzed by the microbiology
23 laboratory related to the cause of the pneumonia.

24 Q Okay. And if I understand you correctly, some
25 bacteria involved in causing pneumonia can be highly

1 toxic, indeed.

2 A Yes. It can be highly toxic, especially in different
3 age groups, yes.

4 Q In returning to reasons for Dr. Armstrong changing
5 his opinion from lobular pneumonia to asphyxiation,
6 suffocation, he ended up testifying -- and as reflected in
7 the autopsy -- that the nails were slightly blue, and the
8 glans penis was very blue. I believe he indicated that's
9 always seen in suffocation. Can you comment on that,
10 please?

11 A The nail beds, all that means is that there's
12 under-oxygenated blood. Most commonly, we see this in
13 heart disease and lung disease.

14 In children, it's most commonly seen with congenital
15 heart disease and with pneumonia infection. We also see
16 it with some cystic fibrosis patients.

17 Q You see nails, slightly blue nails, associated with
18 pneumonia?

19 A Yes. Anything that could cause a poor -- you've got
20 to have time to get the level of oxygen in the hemoglobin
21 down to a normal level to cause the blue coloring of the
22 lips or the nail beds.

23 Q And extremities?

24 A Yes, but it has no association specifically with
25 smothering.

1 Q Okay. But it does have an association with
2 pneumonia?

3 A Yes.

4 Q All right. And as to the glans penis being very
5 blue?

6 A That has no association with any entity whatsoever
7 aside from a type of defect in the penis itself. It has
8 nothing to do with smothering or asphyxiation. It has
9 nothing to do with pneumonia.

10 Q And are you aware of any, any literature associating
11 with that condition with suffocating or asphyxiation?

12 A No, none whatsoever.

13 Q Have you looked?

14 A Well, I -- I lecture on pediatric forensics,
15 including asphyxiation, and I've never heard of that
16 association.

17 Q Okay. I'd like now to turn briefly to the second
18 doctor we heard from yesterday, Dr. Nichols.

19 And again, Dr. Nichols indicates and he finds his
20 conclusion after reviewing the autopsy and much of what
21 you reviewed. He finds asphyxiation, suffocation.

22 The first reason he listed was there was an
23 insufficient degree of pneumonia to cause death. Comment
24 on that, please.

25 A Well, first of all, I disagree that there was

1 insufficient pneumonia because it was present in many of
2 the areas looking in the microscope, and some areas, as I
3 mentioned, totally occluded or filled up the air spaces at
4 the different levels of the respiration system,
5 respiratory system.

6 Q Let me ask you this: Dr. Nichols also said that, you
7 know, "Poor children don't put up much of a fight when
8 they're suffocated." Can you comment on that, please?

9 A Yes, I can. That is an old fashioned, antiquated
10 myth. They put up a great deal of fighting. I've seen it
11 on videotapes, on nanny cams, on hidden cameras where
12 someone will intentionally occlude with their hand the
13 mouth of the child.

14 These children, as small as they are, they put up as
15 much of a fight as they can. Their arms are waiving back
16 and forth. They're kicking. It's not what used to be
17 called in old times "a gentle death", none whatsoever.

18 You may not have findings of smothering on these
19 little children because they don't have the teeth, and
20 they don't have much of the strength, but it's definitely
21 -- a suffering is definitely a violent death, and they do
22 put up as much of a struggle as their little bodies can
23 put up.

24 Q Thank you. Now, I'd like to turn, just for a second,
25 to a couple of portions of -- of Ms. Person's statement

1 relating to the death of Zachary Ulengchong. Are you
2 acquainted with the fact that she indicated that she kept
3 her hand over his mouth and nose for 15 to 20 seconds?

4 A Yes.

5 Q That's contained in her statement?

6 A Yes.

7 Q Will obstructing breathing for 15 to 20 seconds kill
8 someone?

9 A No.

10 Q Are you relatively confident in making that
11 statement?

12 A Yes. You'd need much more, a longer duration of
13 hypoxia or not -- inability to breathe than 15 to 20
14 seconds.

15 Q What's the literature usually speak about, two to
16 three minutes?

17 A Yes. That's probably the most common timeframe
18 given.

19 Q Two to three minutes is usually the most common
20 timeframe. And if someone is suffocated, hand over mouth
21 and nose, and the hand is taken away, does the per--- does
22 the child, the innocent child, does the child take a deep
23 breath at that point in time?

24 A They take a deep breath, and then they scream --

25 Q They scream?

1 A -- according to -- to the videos that I've seen, yes.

2 Q Okay. And if they take a deep breath, have they been
3 suffocated?

4 A No.

5 Q Successfully suffocated?

6 A No.

7 Q Okay. And if they take a dead breath and scream,
8 certainly, they are still alive. They are not dead?

9 A Their airway is patent, correct.

10 Q Okay. Now, Dr. Nichols termed the bronchitis -- that
11 was also the finding in the autopsy, correct, bronchitis?

12 A Yes.

13 Q Dr. Nichols termed the bronchitis he reviewed as
14 minimal. Can you comment on that? What was your
15 observation?

16 A I will say not all the areas of the larger airways,
17 the bronchi, were inflamed, but many of them were. They
18 had chronic, meaning some viral inflammation, as well as
19 the pus, the acute inflammation, within the wall.

20 Q Can you -- can you give us a characterization as to
21 minimum, medium, maximum, how inflamed? Or how would you
22 term "bronchitis"?

23 A Looking at all the sections as a group, I would say
24 it was a moderate bronchitis with areas of marked
25 inflammation throughout the -- from the outside to the

1 inside of the bronchus, so all the way through the walls
2 of the bronchus.

3 Q And Dr. Nichols termed the pneumonia in this case
4 after review of the slides in the autopsy as "minimum".
5 Do you concur or disagree with that?

6 A No, I disagree. Again, looking over all the
7 sections, I would say it's moderate, and in some areas,
8 it's marked with total occlusion of the air spaces and
9 death of the tissue.

10 Q Dr. Nichols indicated that prior to death, he had
11 seen a lengthy and well-known course of illness. If I
12 could, referencing again Spitz and Fisher, I'm going to
13 ask to read a statement to you and ask whether you agree
14 or not.

15 "The observer is impressed with the striking
16 discrepancy between the classical textbook description of
17 the clinical manifestations demonstrated by the patient
18 with grave pneumonia; that is to say shock, frustration,
19 marked dyspnea, and the like, and the fact that many
20 persons with extensive pneumonia are able to be up and
21 about and to carry on in some fashion up to the moment of
22 collapse and death." Did you agree with that statement?

23 A Yes. It's true.

24 Q Okay. Is that statement consistent or not with
25 someone having to have a lengthy and known course of

1 illness prior to succumbing?

2 A No. And the more that we learned through the
3 autopsy, the more we realized that yeah, there are some
4 cases where there's a prolonged and lengthy illness.

5 There are many cases that the term is shorter, and we
6 see this especially in children. And, again, especially
7 with children who have had a viral infection, and on top
8 of that, they get a bacterial pneumonia.

9 Q Okay. Dr. Nichols also stated that no matter what,
10 the amount of pneumonia present could not have caused
11 death. Is there any way to make such a statement?

12 A No.

13 Q Why not?

14 A Well, first of all, in children, as far as the cause
15 of death, natural deaths are the most common, and
16 pneumonia is number two, with Sudden Infant Death Syndrome
17 being number one.

18 So we know that pneumonia can cause death. Even in
19 all ages, it's in the top two to three as a cause of death
20 in this country; heart disease being number one.

21 So I don't know what he was referring to or why he
22 would say that no matter to what degree pneumonia could
23 not be the cause of death.

24 Q Okay. Is it easy to determine how long someone has
25 had a pneumonia infection?

1 A No, it's not.

2 Q Let me ask you, again, I'm turning to Spitz and
3 Fisher, would you agree with the following statement:
4 "Accurate aging of acute bronchopneumonia is difficult,
5 and evaluation should cautiously consider the following
6 factors: Acute bronchopneumonia may develop within a
7 short period of time, within four to six hours, and the
8 earliest we've seen is two hours."

9 MR. MEADORS: Your Honor, was that question related
10 to adults or children? I couldn't hear. I don't know.

11 MR. STRICKLER: It's not age specific.

12 MR. MEADORS: Thank you.

13 BY MR. STRICKLER

14 Q Would you agree with that statement?

15 A Yes, I would.

16 Q First of all, it uses the term "bronchopneumonia" as
17 opposed to lobular pneumonia. Would you agree with that
18 statement as it relates to -- in relation to lobular
19 pneumonia as opposed to bronchopneumonia, or does it make
20 any difference?

21 A It doesn't make a difference. Bronchopneumonia means
22 that the infection begins in the bronchus or the bronchia,
23 which lead out to the lobules. So lobular pneumonia,
24 bronchopneumonia, they are used interchangeably.

25 Q Okay. So acute bronchopneumonia may develop in a

1 very short period of time?

2 A Yes.

3 Q You agree with that.

4 Just a few more questions, if I could, please,
5 Doctor.

6 We heard from Dr. Gratin Smith, who is a
7 pediatrician, yesterday -- who reviewed some of the
8 documents available -- reviewed the autopsy, not the
9 slides, and indicates that in his opinion, the child had,
10 in his words, "a small amount of pneumonia".

11 First of all, can you assess the extent of the
12 pneumonia without evaluating the slides?

13 A No.

14 Q Why not?

15 A Because in children and in adults, especially in
16 children, often the gross or the naked-eye examination
17 does not convey what is present under the microscope. So
18 you don't actually see the pneumonia at the time of
19 autopsy.

20 Q Okay. He indicated in that regard that finding that
21 it was a small amount of pneumonia was drawn from --
22 however, two places in the autopsy report; however, the
23 right lower and upper lobes have a darkened appearance
24 over the pleural surface; whereas, the left is completely
25 pink.

1 This is from the gross description. And from the
2 microscopic description associated with the bronchitis as
3 an acute lobular pneumonia, it is patchy. That's the sum
4 total of what he indicated he relied on in saying the
5 child had a small amount of pneumonia.

6 Is there any basis for arriving at that conclusion by
7 relying on those two statements by themselves?

8 A No. Those two statements cannot help you medically
9 or scientifically quantitate a pneumonia.

10 Q All right. I'll just ask to go back to the beginning
11 again. Again, we're assessing this from the -- without
12 going to the statements because you -- upfront you
13 indicate what your opinion is if you consider the
14 statements, all right.

15 A Yes.

16 Q Someone else gets to consider those. Without
17 considering those, what is your opinion as to the cause of
18 death of Zachary Ulengchong?

19 A Lobular pneumonia.

20 Q Is there any basis contained in the autopsy,
21 contained in the slides or changing an opinion rendered in
22 1998 of lobular pneumonia to one of asphyxiation or
23 suffocation?

24 A No.

25 Q No?

1 A No.

2 MR. STRICKLER: Doctor, thank you very much. Please
3 answer any questions the prosecutors may have for you.

4 THE COURT: I tell me you what, let's take a brief
5 break.

6 Ladies and gentlemen, we'll take a short break for
7 the purposes of stretching and using the restroom
8 facilities.

9 I remind you not to discuss this matter among
10 yourselves, s you still haven't heard all the testimony
11 that has to be presented. Let's take a very brief break,
12 and we'll come back and continue on.

13 (WHEREUPON, the jury left open court at approximately
14 3:49 p.m.)

15 THE COURT: Dr. Collins, you may be excused during
16 this break. I ask that you not discuss your testimony
17 with anyone. You have not completed it, so it would be
18 inappropriate to discuss it during the break.

19 THE WITNESS: Okay. Thank you.

20 THE COURT: Let's take a brief break, and we'll come
21 back.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Is there anything we need to take up
24 before we bring the jury out?

25 MR. MEADORS: No.

1 MR. STRICKLER: No, ma'am.

2 THE COURT: Ask the jury to come out.

3 THE BAILIFF: I'll be glad to, Your Honor.

4 (WHEREUPON, the jury came into open court at

5 approximately four o'clock p.m.)

6 THE BAILIFF: The jury is all present, Your Honor.

7 THE COURT: Mr. Meadors?

8 MR. MEADORS: If it, pleases Your Honor.

9 CROSS-EXAMINATION:

10 BY MR. MEADORS

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q How -- how hard did Andrea Person press Chief

14 Wilson's hand?

15 A Press whose hand?

16 Q Chief Wilson.

17 A I don't -- I don't know.

18 Q I mean, do you know who Chief Wilson is?

19 A I beg your pardon?

20 Q Do you know Chief Wilson's involvement in this case?

21 A No. I'm not -- if you could tell me who it is. I

22 don't remember names but...

23 Q Are you aware that Andrea Person demonstrated to

24 Chief Wilson how she put the hand over Zachary

25 Ulengchong's nose and mouth?

1 A I don't remember her -- I remember the statement that
2 she did it. I don't remember her describing a force.

3 Q Okay. Or Chief Wilson's statement saying that she
4 did that? Did you not review that?

5 A I reviewed the statements that she did put her hand
6 over the child's mouth.

7 Q Yeah, and I'm not fussing at you. I'm just trying to
8 say --

9 A Yeah.

10 Q Did you review Chief Wilson's -- a summary of where
11 he said that Andrea told her (sic), "I put my hand over
12 her nose and mouth," and he asked for -- she showed him
13 how -- well, like this. Do you mind if I touch you?

14 She just showed him, "How hard you do it?" I mean,
15 did you know that was in this case, that information case?

16 A I don't recall her demonstrating it to Wilson, but I
17 -- it could be. I just don't remember his name.

18 Q Well, that would further, I guess, today strengthen
19 your opinion of smothering, I guess? It wouldn't take
20 away from it.

21 A It would -- I'm sorry? Would what -- I'm not trying
22 to be difficult.

23 Q That would still be consistent with your opinion
24 today of smothering? After reviewing all -- this is even
25 additional evidence you didn't know about.

- 1 A That she put --
- 2 Q That she showed him how hard she --
- 3 A Oh, yeah. That she demonstrated it?
- 4 Q Right; yes, ma'am. That's a better word.
- 5 A Okay. Yes. I just know that that's what she gave in
6 2007, I believe.
- 7 Q All right. Okay. Yes, ma'am. I didn't...
8 Mr. Strickler asked you at the outset what
9 materials -- they had you look at the materials. Please
10 tell me what materials you did review.
- 11 A Okay. I brought them all with me.
- 12 Q Okay.
- 13 A I reviewed the autopsy which was contained in the
14 coroner's file, so there's information in the coroner's
15 file, handwritten notes, medical records from Richland, as
16 well as Moncrief. There is the autopsy report,
17 toxicology. There's some news reports and 15 histologic
18 slides from the autopsy, and there were some Xerox
19 photographs.
- 20 Q Did you -- did he ask you -- I couldn't see back
21 there. Did you review the statements from the defendant?
- 22 A Yes.
- 23 Q I mean, just specifically these statements right
24 here? Did you see this handwritten statement?
- 25 A No. I knew there existed a handwritten note, but I

1 don't remember getting a Xerox of that.

2 Q And as a forensic pathologist -- and you have been
3 around, and I don't mean that bad. I mean, you've got an
4 extensive career -- and you said when Mr. Strickler asked
5 you all of these factors, in addition to the body, you
6 like to consider, and actually did consider in rendering
7 your opinion, right at direct, correct?

8 A Yes.

9 Q So I mean, it would be important to know not only
10 there was a letter but what was in the letter, correct?

11 A As far as the smothering?

12 Q Yes.

13 A Yes, because you'd want to take in the history and
14 scene findings or events surrounding the death.

15 Q And I guess, I mean, you knew of the letter, but you
16 didn't actually see it.

17 A I don't recall ever seeing the letter.

18 Q That's kind of just what I was trying to --

19 A Okay.

20 Q And the statement of April 17th, 2007, did you have
21 this and review it?

22 A I don't believe that was part of the coroner file. I
23 could be mistaken, but I don't remember reviewing that.

24 Q Okay. That's fine. That's her statement to Kevin
25 Isenhoward on April 17th, so that didn't even go into your

1 opinion?

2 A It went into my opinion as far as the -- I know she
3 made that statement.

4 Q And what did she tell James White?

5 A I know that she had reported that she put her hand
6 over the child's mouth and then for -- I think she said 15
7 seconds, 15, 20 seconds, and then removed her hand. The
8 child took a breath and died.

9 Q She told -- who else -- how many people did she tell
10 that to?

11 A I don't know.

12 Q And did it go into your opinion that she told Kevin
13 Isenhoward that the child went limp after she did that?

14 A Yes.

15 Q I mean, that -- "and the child went quiet after I did
16 that"?

17 A Yes.

18 Q And as a forensic pathologist, I mean that's
19 important about cause of death, isn't it?

20 A Yes.

21 Q I mean, something happens after you put your hand
22 over a nose and mouth of somebody, right?

23 A Yes.

24 Q I mean, that is, isn't it?

25 A Yes.

1 Q Clearly, in your career, you come to an opinion, and
2 after getting additional evidence or researching, you
3 change that opinion, I'm sure. Everybody has, correct?

4 A Yes.

5 Q As a part of all of this, too, did you talk with
6 Ms. Andrea Person?

7 A No. No, I did not.

8 Q I don't have that many questions for you, Doctor.

9 Let me just ask you a few -- I say common sense,
10 maybe I'm wrong. If you're two-and-a-half hours away from
11 death from pneumonia versus mild or moderate pneumonia,
12 isn't your body going to exhibit different symptoms?

13 A It can.

14 Q And most often it does, doesn't it?

15 A I don't know most often, but I know there are cases
16 where it does, and other cases where you're surprised that
17 at the time of the autopsy that there was pneumonia.

18 Q And in this case, in reviewing the materials you had,
19 there were no symptoms consistent with that real bad
20 pneumonia that you were two-and-a-half hours away from,
21 correct?

22 A That's correct. There wasn't a prodrome that was
23 identified.

24 Q And that kind of goes into your opinion, too,
25 smothering, doesn't it?

1 A No. The only way you can diagnose smothering is by
2 confession.

3 Q The only way you can diagnose smothering is by
4 confession?

5 A Right. When you have no other -- as the findings I
6 mentioned before, but that's not asphyxia. That would be
7 the smothering.

8 Q Did you see any other evidence or anything else
9 provided to you that anybody else did anything to the
10 mouth and nose of Zachary Ulangchong except the defendant,
11 Andrea Person?

12 Were you provided any -- that's the only information
13 you were provided, correct?

14 A Yes, that and C.P.R.

15 Q And there was no evidence of vomit in the lungs, was
16 there?

17 A That's correct.

18 Q As a matter of fact, how many people said that the
19 child did vomit?

20 A How many people said the child did vomit?

21 Q Yes, ma'am.

22 A I'm not sure. I only know at the scene there was a
23 wet Pack N Play and the -- I forgot the name, but the --
24 one of the first or probably the first individual that did
25 the C.P.R. said that there was vomitus coming up from the

1 mouth.

2 Q That there was vomitus coming up from the mouth?

3 A Yes.

4 Q Did she say she saw a little bit of milk on the lip?

5 A I don't remember how she phrased it.

6 Q Would you dispute it was milk and not vomit?

7 A Stomach contents. Maybe we can put it that way.

8 Q Would it surprise you to know that the only person
9 that said "vomit" was the defendant?

10 A No.

11 Q But there was no vomit in the lungs of little Zachary
12 Ulengchong.

13 A None that I saw in the autopsy report, no.

14 Q And what were the slides of?

15 A The slides were -- I can give you the exact listing
16 but...

17 Q Just list --

18 A Lungs, heart, spleen, liver, brain, kidneys, thymus.

19 Q Would you have seen any vomit in there?

20 A Not if the only -- what was described in the stomach
21 was a milky form, and you would not see that under the
22 microscope.

23 Q And you didn't see any of that under the microscope?

24 A That type of material you would not see. You could
25 see food substances, vegetable matter, meat, et cetera,

1 but I did not expect to see that under the microscope.

2 Q Was there a bottle? I mean, did you -- and how many
3 bottles did Andrea give Zachary that morning when he got
4 there?

5 A What I read was two.

6 Q If he drank one or two of those, that would be
7 inconsistent with being two-and-a-half hours away from
8 your death, wouldn't it?

9 A No. No, I don't follow that connection.

10 Q Okay. If you were really that sick, and you could
11 down two bottles of liquid? I mean, just common sense. I
12 know not all the doctors are not --

13 A It would be hard to make a generalization like that.

14 Q And I think you had me start off the question about
15 David Wilson. You -- when Mr. Strickler asked you with
16 young children, you're not likely to see signs of
17 smothering, right?

18 A Right.

19 Q I think he said that you hardly ever see it, and you
20 agreed?

21 A Yes.

22 Q He then he said you could see under certain
23 circumstances, but most of the time, you wouldn't see it,
24 correct?

25 A That's correct. If you saw something, what would it

1 be, or what could it be?

2 Q Right. Thank you. Now, this pneumonia is patchy,
3 isn't it? I mean, you wouldn't disagree with the autopsy
4 that just says "patchy"?

5 A No, and that's another way you see lobular.

6 Q And lobular is a geographical location?

7 A Yes.

8 Q He's asking about what the doctor says. We have a
9 doctor that says "small" or "minimal", and you're saying
10 moderate, correct?

11 A Yes.

12 Q Would that still mean there's 50 percent plus air
13 capacity in the lungs with moderate?

14 A No. It doesn't -- you don't quantitate it as the
15 amount of air space that's open.

16 Q If you had this type of pneumonia, in which I know
17 you're not saying it was there, but if you have this type
18 of pneumonia where you're going to be dead in
19 two-and-a-half hours, wouldn't that affect your organs?

20 A You mean organs besides the lungs?

21 Q Sure, any; yes, ma'am.

22 A It could, depending on how hypoxic you became.

23 Q Most likely it would, wouldn't it?

24 A About --

25 Q Toward the end of the death -- what would it affect?

1 What could it affect?

2 A Well, if you just had the pneumonia, it could affect
3 your lungs, and you could have a cardiovascular collapse,
4 which is the same as shock.

5 It could cause swelling of the brain if it's
6 prolonged long enough. It just depends on how -- if the
7 bacteria escapes from the lungs and gets in the blood
8 stream or what toxins. Again, it comes back to what's the
9 cause of the pneumonia.

10 Q And there wasn't any evidence of that in Zachary, was
11 there?

12 A Any evidence of what?

13 Q Of those organs just exploding, organ damage or
14 anything like that in Zachary's body?

15 A Multiple organ failure?

16 Q Yes, ma'am.

17 A The only finding of significance was the lungs.

18 Q What about respiratory failure? Wouldn't you expect
19 some of that, really bad coughing and all of this stuff,
20 right before somebody is fixing to die? I mean, if you're
21 really that bad with pneumonia, would be just it be
22 obvious the child is having trouble and hurting, having
23 trouble breathing? I mean, wouldn't that -- just real --
24 and is that right?

25 A It could be, yes.

1 Q Just, I think Mr. Strickler asked you, in one of the
2 -- I think it's April 98 when Zachary went to one of
3 the -- the doctor -- I think they thought pneumonia, but
4 the slide or x-ray showed it wasn't pneumonia, actually.
5 Do you agree with that?

6 A I know one time there was a pneumonia, and another
7 time they treated him for a respiratory infection. I
8 don't remember the date.

9 Q And the first pneumonia actually turned out it
10 wasn't, shown on the x-ray if you -- if you've got that
11 file here.

12 A I don't --

13 Q Do you have those files with you? You said you had
14 them, right?

15 A Which one? Where? Is there -- can you give me the
16 Bates number?

17 Q Right now I can. Yes, ma'am.

18 (Pause).

19 Can I approach the doctor?

20 Can I just hand you this, Doctor?

21 A The date?

22 Q Can't see. Hold on one second.

23 A There you go. That's transportation date but go
24 ahead.

25 Q That would be the 29th. So I think the -- I think

1 the visit was the 28th?

2 A The exam date was April 28th, 1998.

3 Q And what does that show as far as the lungs, was
4 clear?

5 A It says, "Compared to previous films from
6 February 2nd, the lungs are clear."

7 Q Okay. Thank you. Did you -- did you say you
8 reviewed the E.R. record? I think you did.

9 A Yes.

10 Q And there was no indication there that the day care
11 worker had reported any odd behavior on behalf of Zachary,
12 correct?

13 A That's correct.

14 Q I'm about through.

15 (Pause).

16 Just so I'm clear, looking at -- oh by the way, I've
17 got to ask you about the slides. When did you get the
18 slides?

19 A I don't remember when I received them. It was -- I
20 believe it was with the other material but at one time.
21 They came from Columbia.

22 Q I really don't know when you received them either.
23 Can you give me an idea?

24 A Say a year ago.

25 Q Okay. Thank you. And when did you send the slides

1 back to us or to Dr. Armstrong or somebody?

2 A I received a phone call from Dr. Nichols last
3 Thursday, and he said he would like to look at them. So I
4 overnighted them to his practice.

5 Q So they actually came back in this county Friday?

6 A Yes.

7 Q And -- and where did you have them? I'm just
8 curious.

9 A In my office.

10 Q Did you have them in your attic or something like
11 that?

12 A Well, my office is on the second floor.

13 Q Okay. I apologize.

14 A I told Dr. Nichols -- I couldn't remember if I had
15 mailed them back already. I told him I would check, and I
16 had them still so I gave him a phone call and said, "Here
17 they are. I'll overnight them to you."

18 Q That's fine, but going back to the autopsy of
19 Dr. Armstrong, at that time, your diagnosis or your
20 opinion, based on this, would be young Zachary
21 Ulengchong's cause of death was what?

22 A Lobular pneumonia.

23 Q And, Doctor, with all due respect, I know you're a
24 working doctor. You're getting paid. You got paid 5,000
25 already?

1 A Yes.

2 Q All right. And you're going to be getting paid for
3 today.

4 A Yes.

5 Q Okay. And how much is your time here today?

6 A 5,000.

7 Q 5,000 for today?

8 A Yes.

9 Q So that's a total of 10,000. Is there going to be
10 anymore?

11 A No.

12 Q That's it? 5,000, and 5,000. There's no extra for
13 court time?

14 A This is court time.

15 Q Okay. All right. I'm going to hurry up and finish.

16 Your Honor -- Doctor, after reviewing the autopsy,
17 the emergency and all the stuff you reviewed, including
18 being given a summary of the statements made by the
19 defendant reviewing the time line -- you're familiar with
20 the time line, correct? I mean, the time he got there,
21 and the time he died?

22 A That day?

23 Q Right.

24 A Yes.

25 Q And you're familiar with the time line from the time

1 she gave him the bottles, and then the time she said she
2 came back and just found him motionless?

3 A Yes. I know that there is -- around nine, 9:15,
4 there's a bottle, and I think the call was received at
5 10:05, I believe.

6 Q And as a forensic pathologist, as you stated, reviews
7 all the evidence, the body and anything else pertinent to
8 try to get a cause of death for everybody. I mean, that's
9 what y'all do, correct?

10 A Yes.

11 Q And, Doctor, on today's date, November 19th, 2009, do
12 you have an opinion to a reasonable degree of medical
13 certainty of the cause of death of Zachary Ulenchong?

14 A If I was -- if this was my autopsy and I was giving
15 the statement by the defendant?

16 Q I'm just asking you your opinion. You stated, I
17 think, on direct to a reasonable degree of medical
18 certainty on today's date, based on everything you have
19 reviewed, your opinion as to the cause of death of Zachary
20 Ulenchong is what?

21 A Yes. If I had received the confession --

22 Q Would you say what your opinion is --

23 A -- and then --

24 Q -- and then you can explain it. I mean, what was
25 your --

1 A Well, I had told --

2 Q What was your --

3 A Well, you had said that earlier --

4 MR. STRICKLER: I object, Your Honor. I object.

5 THE COURT: Ask her the question and let her answer
6 the question.

7 BY MR. MEADORS

8 Q Do you have a reasonable -- do you have an opinion to
9 a reasonable degree of medical certainty on the cause of
10 death of Zachary Ulengchong?

11 A The only reason I want to make clear, because I will
12 answer you, but you said that I stated earlier the cause
13 of death. And I did state earlier, as I was asked by
14 Mr. Strickland (sic) the cause of death based on the
15 autopsy was lobular pneumonia.

16 Q Yes, ma'am. I --

17 A But when you're given the same findings, but you're
18 given a statement that a person claims they put their hand
19 over a child and smothered them, then it would change the
20 cause of death to asphyxia due to smothering.

21 Q Okay. And that's what, I think he asked you, and
22 what I'm asking you now. Based on your review of all the
23 records, the statements that you were provided, I think is
24 what you told him, your opinion today of the cause of
25 death of Zachary Ulengchong on 12/02/1998 is that he was

1 smothered?

2 A Yes.

3 Q Asphyxiated?

4 A Yes.

5 Q And that's the same conclusion Dr. Nichols came up
6 with.

7 A (Indicating).

8 MR. MEADORS: That's all. Thank you.

9 MR. STRICKLER: Just a couple of questions, Your
10 Honor, if I may.

11 REDIRECT EXAMINATION:

12 BY MR. STRICKLER:

13 Q Spring of 1998, the records reflect that Zachary
14 Ulenchong was diagnosed with pneumonia, correct?

15 A I know it was one of those months in 1998. I would
16 have to go back to the exact medical record.

17 Q Oh, you have -- you have the file in front of you.
18 Our Bates Stamp number 2185, the E.R. visit on April 28th.

19 A Okay. I have 2185.

20 Q Right.

21 A This is where he received Tylenol. We might have to
22 get my glasses, actually. This is when he was given the
23 Augmentin.

24 Q Yes, ma'am.

25 A Okay.

1 Q April 28th, on the left side of the page, halfway
2 down, it says "assessment, diagnosis"?

3 A Yes. On the left column, it's typed in "assessment".
4 Diagnosis is the form, and then handwritten is the
5 pneumonia.

6 Q Okay. And, indeed, he did improve, as the records
7 reflect, over time from that diagnosis, correct?

8 A Yes.

9 Q All right. Now, running around a moment ago, you
10 indicated at the very beginning of my questioning of you,
11 you take into consideration the statements of 2007, your
12 diagnosis, your opinion would be suffocation, right?

13 A Yes.

14 Q Okay. So after cross, that's still your statement?

15 A Ye--- yes.

16 Q On direct I asked you to exclude that information and
17 evaluate the medical information available in the case,
18 the autopsy and the slides that have been done and to ask
19 for your opinion in that regard, and your opinion was
20 lobular pneumonia.

21 A That's correct. The child definitely had lobular
22 pneumonia.

23 Q Okay. And that would be an appropriate finding as to
24 cause of death if you exclude the statement?

25 A Correct.

1 Q No change in your opinion at that time?

2 A Correct.

3 Q Okay. Any basis for anyone to say that the pneumonia
4 that was present could not have killed the child?

5 A No.

6 MR. STRICKLER: All right. Thank you very much.

7 THE COURT: Yes, sir.

8 RE CROSS-EXAMINATION:

9 BY MR. MEADORS

10 Q As a forensic pathologist, you're taught you can't
11 exclude these statements, can you?

12 A Right. We say in light of the historical scene and
13 autopsy information, the cause of death is "blank".

14 MR. MEADORS: Thank you.

15 THE COURT: You may step down.

16 MR. STRICKLER: Permission to be excused, Your Honor,
17 please?

18 THE COURT: Any objection to her being excused?

19 MR. MEADORS: No doctor.

20 THE COURT: You may be excused. Thank you. You may
21 call your next witness.

22 MR. STRICKLER: The defense calls name Nam Viravan.

23 THE BAILIFF: Place your left hand on the Bible,
24 raise your right hand and approach.

25 NAM VIRAVAN, after being duly sworn,

1 testified as follows:

2 THE BAILIFF: Have a seat, and state your full name,
3 and speak into the microphone.

4 MS. McDUFFIE: Your Honor, may we approach?

5 (WHEREUPON, a bench conference was held in the
6 presence but not within the hearing of the jury).

7 THE COURT: Counsel, if I can see you just one
8 moment, please.

9 (WHEREUPON, a bench conference was held in the
10 presence but not within the hearing of the jury).

11 THE COURT: If you would please state your name, and
12 spell your last name, please?

13 THE WITNESS: Nam Viravan, V-I-R-A-V-A-N.

14 THE COURT: Thank you.

15 DIRECT EXAMINATION:

16 BY MR. STRICKLER

17 Q Good afternoon, Ms. Viravan.

18 A Hi.

19 Q My name is Doug Strickler. You reside here in
20 Columbia, ma'am?

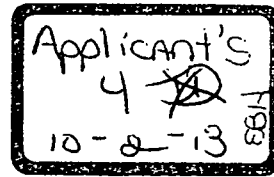
21 A Yes.

22 Q And are you working anywhere now?

23 A Yes. I am working retail now.

24 Q In retail?

25 A Uh-huh.



All,

My thanks to Hannah who dug up the bond material for Gail Cutro. \$200,000 pretrial. \$300,000 after reversal on appeal, and after mistrial.

We have some benchmarks, now we need to figure out how to (1) reinforce them as a starting point, and (2) if possible differentiate this case from Gail's so that these figures are the high end. It's also time to kick in the PR on this case.

With those factors in mind, my first thoughts are that we will need the following:

1. Family and Andrea informed so they are prepared for a best case outcome, both emotionally and financially.
2. At the time we schedule the hearing we will make sure the press is informed.
3. We'll need this anyway for the trial, but will need the literature on false confession – specifically statistics on its frequency, the information from the Innocence Project as to the number of capital reversals in cases that featured a confession, information on the Reid method of interrogation.
4. Statistics on the natural death rate of infants in the age range of those in this case.
5. A complete biography of defendant, including her academic transcript. Any prior record – arrest or conviction.
6. School records and medical records of her natural children.
7. Contact with victims in the case? Fielding – let's talk.
8. A complete summary of the evidence we have been supplied in this case, and a listing of what should be present extrapolated both from what we have, and from what common experience indicates should be present.
9. ~~A brief on what constitutes reasonable bond from both constitutional and rational perspectives.~~
10. Non-family character witnesses.
11. A complete timeline surrounding the most recent death re: compliance with child care guidelines/requirements as well as the law and DSS literature in this regard, to include their records on this case if we can get them without going through the solicitor.

This is an on the fly list, and I'm sure it needs to be expanded. In short what I'd like to accomplish is to both make the case for a reasonable bond in this matter, and use the forum to attack the state's theory/innuendo in this matter. There has been enough press in this that we might be able to get the court of public opinion educated a bit. I don't think we'll be giving anything up by way of showing our hand on the confession issue – any competent prosecutor has to realize that attacking that will be central to the defense in this matter.

I've included JoJo on this as I am assigning her to assist in this case. I'll get this email to Hannah and will ask that she take JoJo to the jail with her when she next sees Andrea so they can meet.

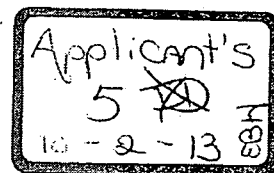
Please get with me on additions or suggestions as to deletions to this list. I would like to meet once Fielding and Kay are back from Chicago to finalize our direction in this matter and to make sure we are underway.

Thanks,

Doug

8/28/07
Team
meeting
- office -
Field's
+
KAY
1.4

Andrea Person

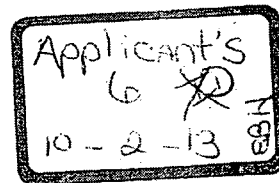


- Review email
- Experts needed + where we are in the process.
- Need to review deie. + get list of what is missing.

1. Kathn → FALSE CONF. - NEED FUNDING
 2. Forensic Path → Ophover
 3. IMV. → Lee - #
 4. Toxicology (sickle cell / methadone) →
- if forensic path.
 5. Stephens → re: pathology → ATTACK NICHOLS
 6. Psychology ? re: Confusion FORWARD STAD
 7. Med. exp. → ~~diabetes~~ Diabetes ??
 8. Death by ~~overheating~~ → mediant.
- ME - Funding order for Lee.

5/26/08
at wt.
Feldy
Kassir
l. l

Andrea Pecora



- 3 hrs.
 - hysterectomy
 - amputation
 - enough in what they said
 - told people she was coming home.
 - normalization
 - minimization
 - What under you think you are qualified to interrogate - get them to boast to defend self as opposed to
 - P-graph = false evidence play.
- Charles Houts - Boise A. Idaho
P-graph

HOUTS@MAC.COM

- ① ~~No~~ Diabetic
- ② Denials ignored.
- ③ Extreme stress.

* Can a few/15 secs. be enough to kill?

(2)

*? for 1/2
copy.

- ① P' graph feedback - prevalent
in proven false confessions.
* (tell them test is infallible).
- trap her by wt. of evidence
- ② Create them
- ③ Provide script
- ④ ~~less~~ minimize significance
of what did
- ⑤ She doesn't realize she is
confessing - tells people
she is coming home soon.
- * - She didn't understand she
confessed to murder.

*
A but
careful
on
time.

S.C.	- Billy Wayne Cape	2004	Rock Hill.
Tennant	- Wally Myers.	2007	W. Ches.
	- Dennis Stevens	1998	Baltimore.

- What to ask ^{the cops} ~~them~~ to set him
~~up~~ up?

What does it do if he says
he failed? ^{to your T.?}

- Any way to determine how
valuable any given individual
is to ~~an~~ interrogation / false
confession.

Don't ever get a hard re:
admissibility.

* → Call O. Lee's clerk. → Lexington

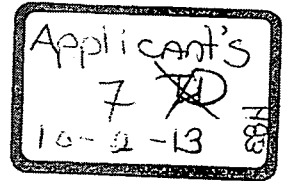
8-10
wks.

Donna Schwab White

- \$5,000.

Jeff McKie

- \$3,000



- call Jeff re: testing next
wk.
- suggestibility

Call
Email

Collms

- Officers to Admin.
- Database to Archives.

4/17/08

Andrea Person

Applicant's
8 ~~7~~
10-2-13 ~~12~~

①

- 'Cause of death
- * - only way to diagnose is by resection. juv. suffocation.
- Pneumonia - no problem calling it as cause of death.
- wound / pneumonia - can see.
- early rigor in jaws - better of adults than of child.
- * - cool / very cold - can't really put a fine on it.

Brown

- Classic SIDS due to age, race + sex 2-6 mos, b/m.
- pet. heart, lungs + thymus.
- face down
- something can give perturbation.
- over wrapping + overheating + risk factor for SIDS.
- no specific finding support this @ autopsy.
- Play into SIDS + / or accident.
- * would need to see actual temperatures.

sickle cell
trait =
risk factor
for SIDS

more
prominent
in SIDS
sequency.

(2)

- hypothermia - ? how long it takes for hypothermia.

WALKER

- abrasion ≠ that ~~unimpressive~~ impressive to her.

- Contusion is more interesting.
 - see with shaking + being hit in head.

* Can get expert work. + see if it lines up.

- no sectioning of contusion. or follow up by Nields on this.

* no medical ~~support~~ ~~change~~ information to support change in diagnosis

- True decomposition in child - doesn't know why.

* - Would leave it as undetermined. absent confusion.

Confusion = only Jantz + Fisher +
way see DeMarco.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4004268

Andrea #338104 Person

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 January 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Andrea #338104 Person

Alexis Kaylor Lindsay

Robert Daniel Corney

Andrea #338104 Person

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Andrea Person, #00338104,

Case No. 2012-CP-40-4268

Applicant, C.C.P. & G.S.

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed June 19, 2012. Respondent made its Return on July 3, 2012, requesting an evidentiary hearing be held. Thereafter, Applicant, through her counsel, filed an Amended Application on September 25, 2013. An evidentiary hearing into the matter was convened October 2, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsels Alexis K. Lindsay, Esquire, and Thornwell F. Sowell, III, Esquire. Respondent was represented by Assistant Attorney Generals Megan E. Harrigan and Walt Whitmire of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the May 2007 term of the Richland County Grand Jury for Homicide by Child Abuse (2007-GS-40-3570). Douglas S. Strickler, Esquire, and Elizabeth Fielding Pringle, Esquire, represented Applicant. On November 16-20, 2009, Applicant proceeded to a jury trial before the Honorable Alison R. Lee, where she was convicted as indicted. Judge Lee sentenced Applicant to twenty-two years imprisonment.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentenced by unpublished opinion. State v. Person, 2012-UP-068 (S.C. Ct. App. filed February 8, 2012). The Remittitur was issued on March 5, 2012.

In her amended application for post-conviction relief, Applicant alleged the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of trial counsel at a critical stage of the case, the pre-trial Jackson v. Denno hearing, including the failure to properly prepare for the hearing, the failure to call witnesses or offer testimony at the hearing, the failure to effectively cross-examine the State's witnesses, the failure to make any sort of argument to the judge regarding the voluntariness of the statement, and failing to advise Applicant on the importance and implication of the hearing or her right to testify at it.
2. Ineffective assistance of trial counsel for calling Dr. Kimberly Collins as an expert witness and/or for failing to properly prepare the witness.

Applicant proceeded forward on these grounds as listed in her amended application at the evidentiary hearing.

SUMMARY OF FACTS ADDUCED AT TRIAL

On November 17, 1997, Gina Ulengchong ("Gina") gave birth to a baby boy, Zachary. ("Victim"). (Tr. p. 110). Gina remained at home with Victim for approximately six weeks and then enrolled him in Applicant Andrea Person's home day care. (Tr. p. 111). Applicant took care of Victim at her home during the day on Mondays through Fridays. (Tr. p. 112). Typically, Gina dropped Victim off with Applicant at approximately 7:30 a.m. and picked him up by 6:00 p.m. (Tr. pp. 113-114).

In April of 1998, Victim was diagnosed with a slight case of pneumonia and received antibiotics as treatment. (Tr. p. 113). However, the treating physician took x-rays of Victim's chest after the diagnosis, and no signs of pneumonia were present in Victim's lungs. (Tr. pp.

440-441). Victim was sick for approximately one week, responded to the treatment, and got better. (Tr. p. 114). He never had any trouble breathing while ill. (Tr. p. 114). In October of 1998, Gina took Victim to the doctor to seek treatment for a stuffy nose. (Tr. pp. 114-115). Victim was again given antibiotics and recovered from his illness. (Tr. p. 115). His symptoms did not return. (Tr. p. 115).

On the evening of December 1, 1998, Victim appeared fine and slept through the night. (Tr. p. 116). On the following morning, Gina dropped Victim off at Applicant's day care around 7:30 a.m. to 7:45 a.m. (Tr. p. 117). Victim was not ill at the time, was laughing, seemed fine, and did not have a stuffy nose or fever.¹ (Tr. p. 117).

Later that morning, Mandy Fortson, a certified emergency medical technician and volunteer with the Sandhill Fire Department, was dispatched to Applicant's home in response to a report of an infant male not breathing. (Tr. pp. 144-145; p. 147; p. 149). She arrived on the scene within two to four minutes and entered the residence. (Tr. p. 149; p. 151). Upon entry, Fortson observed Applicant, who appeared nervous and tearful, pacing back and forth while using the phone. (Tr. p. 151; p. 155). Victim was lying on his back on the middle of Applicant's living room floor. (Tr. p. 152; p. 154).

Fortson asked Applicant about Victim's medical history and condition, and Applicant informed her Victim had pneumonia two weeks earlier but was off his medication and was better as far as Applicant was aware. (Tr. pp. 52-53). Applicant told Fortson she fed Victim before his nap, laid him down in a collapsible crib, found him unresponsive twenty to forty minutes later, and attempted to revive him. (R. pp. 156-157; p. 161). Fortson observed a small trickle of

¹ During trial, Applicant testified on cross-examination she told Gina that Victim needed to be taken to the doctor at the time he was dropped off. (R. p. 364). However, in rebuttal, Gina testified Applicant never told her Victim was sick and needed to be taken to the doctor when she dropped him off at Applicant's day care on the morning of his death. (R. p. 516).

formula coming out of the corner of Victim's mouth. (Tr. p. 157). She then began to perform C.P.R. on Victim, and one and a half to two ounces of milk came out of Victim's mouth and nose. (Tr. p. 159). Victim's skin was cold when Fortson began compressions.² (Tr. p. 168). Subsequently, paramedic Andrew Stewart arrived on the scene and assisted Fortson in the resuscitation efforts. (Tr. p. 162). Together, Stewart and Fortson performed C.P.R. on Victim for eight to ten minutes prior to the ambulance's arrival. (Tr. pp. 164-165). Once the ambulance arrived, Victim was rapidly transported from the scene. (Tr. p. 165).

Fortson remained at the day care for several hours to provide assistance to Applicant. (Tr. pp. 166-167; p. 174). She attempted to get in touch with Victim's parents and advise them of the situation. (Tr. p. 167). She also examined Victim's crib and found a bottle containing eight to ten ounces of formula that was "ice cold." (Tr. pp. 171-172). The crib had a large pool of liquid on the mattress at the bottom, and the liquid was already soaked in and absorbed into the mattress. (Tr. pp. 171-172). Additionally, Fortson spoke with Applicant, who repeatedly expressed concern for herself and what was going to happen. (Tr. pp. 172-173). However, Applicant never inquired about Victim's condition. (Tr. p. 173).

Meanwhile, while at work, Gina received word to call her babysitter around 10:30 a.m. (Tr. p. 118). She quickly called Applicant's home, and a paramedic answered the phone and told her Victim had been taken to the hospital. (Tr. p. 118). Gina went to the hospital and left a message for her husband. (Tr. p. 118). Her husband joined her at the hospital, and they were informed Victim had died. (Tr. pp. 119-120).

Later that day, Deputy Coroner Eric McFarland spoke with both Gina and Applicant and went to Applicant's residence in response to Victim's death. (Tr. pp. 182-183; p. 184).

² Fortson believed Victim's skin was colder than it should have been based on the time frame reported by Applicant, and she concluded Victim was deceased at the time she began performing resuscitation efforts. (R. pp. 64-65).

Applicant informed McFarland she put Victim in his crib and found him blue in color when she checked on him approximately thirty minutes later. (Tr. p. 187). McFarland asked Applicant if Victim had been ill, and Applicant did not report anything significant. (Tr. pp. 187-188). McFarland then relayed the information he collected to a pathologist, and an autopsy was conducted. (Tr. pp. 188-189).

Dr. William Armstrong, a pathologist and expert in forensic pathology, performed the autopsy of Victim on December 2, 1998. (Tr. pp. 340-342). During his examination, Dr. Armstrong discovered no signs of external injuries but found that Victim had a mild case of pneumonia. (Tr. pp. 344-345). Tissue samples were collected for analysis. (Tr. p. 189). Additionally, Dr. Armstrong noted Victim had swelling of the brain, acute hemorrhagic edema in his lungs, and blue fingernails and extremities. (Tr. p. 346; p. 347; pp. 352-353). Based on the autopsy results, Dr. Armstrong concluded Victim died from pneumonia based on the lack of any other specific findings. (Tr. p. 347). However, he did not have Victim's medical records or a specific time line of the day of Victim's death at the time he made his initial findings. (Tr. p. 348). Subsequently, the preliminary report prepared by the Coroner's Office left the cause and manner of Victim's death open for continuing investigation. (Tr. p. 190; p. 195). However, the coroner signed a certificate of death for Victim on February 22, 1999, which listed the cause of death as lobular pneumonia and the manner of death as natural. (Tr. p. 195).

Several years later, on April 2, 2007, Sergeant Kevin Isenhoward, an investigator with the Richland County Sheriff's Office, responded to Applicant's home day care to investigate the death of another child in Applicant's care³. (Tr. pp. 248-249). Through his investigation into the incident, Sergeant Isenhoward learned about the death of Victim in 1998. (Tr.. p. 249).

³ Another infant child died in Applicant's home on April 2, 2007; this was the third child to die while under Applicant's direct care and supervision. (Jackson v. Denno Tr. p. 75-76).

However, Applicant failed to reveal anything about Victim's death when Sergeant Isenhoward spoke with her that day. (Tr. p. 249).

On April 10, 2007, Sergeant Isenhoward spoke with Victim's mother about Victim's health before he died. (Tr. pp. 249-250). He then contacted Applicant and spoke with her the next day at the sheriff's department. (Tr. p. 250). During their meeting, Applicant was advised of her rights, signed a waiver of rights form, voluntarily agreed to speak with the officer, and informed him she did not reveal Victim's death during their April 2, 2007 encounter because she did not want to look bad. (Tr. p. 251). She then left the sheriff's department after their meeting. (Tr. p. 251).

Subsequently, Sergeant Isenhoward arranged another meeting with Applicant, and she voluntarily returned to the sheriff's department around 1:00 p.m. on April 17, 2007. (Tr. p. 251). Sergeant Isenhoward met Applicant in the lobby and noticed her appearance and personal hygiene had gradually deteriorated with each of their meetings. (Tr. pp. 252-253). He then took her to an interview room to meet with Lieutenant James White, with the interview beginning at approximately 1:05 p.m. (Tr. p. 216; p. 251). At the outset, Lieutenant White informed Applicant of her rights, and she again signed a waiver of rights form. (Tr. p. 216; p. 219; p. 221). They progressed with the interview, including a polygraph examination, and Applicant initially denied injuring Victim. (Tr. p. 230; p. 242). However, Lieutenant White advised Applicant he did not believe she was being truthful with her statements about Victim's death. (Tr. p. 230). Applicant then confessed to placing her hand over Victim's face and mouth for approximately fifteen seconds after she could not get Victim to stop crying. (Tr. p. 231). Applicant stated Victim became motionless and quiet so she returned him to his crib. (Tr. p. 232). Applicant indicated she panicked, left Victim in the crib, and returned fifteen minutes later to find Victim

lifeless. (Tr. p. 232). Applicant informed the officer she then called emergency services and falsely reported how Victim died. (Tr. p. 233). She expressed remorse and stated she was untruthful because she was afraid she would go to jail. (Tr. p. 232; p. 233).

Following her statements, Lieutenant White contacted Sergeant Isenhoward and informed him Applicant admitted to suffocating Victim. (Tr. p. 234; pp. 253-254). Sergeant Isenhoward entered the interview room, knelt beside Applicant, and asked her what happened. (Tr. p. 254). With Lieutenant White present in the room, Applicant repeated her statements to Sergeant Isenhoward. (Tr. p. 234; pp. 254-255). Applicant stated she placed her hand over Victim's mouth for fifteen to twenty seconds until he went limp, left him for fifteen minutes, discovered him lifeless, called 911, and repeatedly lied to everyone about his death from that point forward. (Tr. p. 234; pp. 254-255). She said she did it because Victim was fussy, irritable, and crying. (Tr. p. 255).

Afterwards, Applicant used the bathroom and drank some water; she was offered something to eat but declined any food (Tr. p. 256). Sergeant Isenhoward then brought Applicant to Deputy Chief David Wilson's office, and she again revealed the circumstances of Victim's death. (Tr. p. 256; p. 258; p. 320). Applicant told the officers Victim was fussy when he arrived and would not take a pacifier. (Tr. p. 259; p. 321). She indicated he was uncooperative and she was afraid he was going to wake the other children. (Tr. p. 259). Applicant stated she held Victim, and, when he continued to cry, she put her hand over his nose and mouth for fifteen to twenty seconds until he stopped crying in order to quiet him. (Tr. p. 140; pp. 197-199). Chief Wilson asked Applicant to demonstrate how much pressure she applied to Victim's face, and Applicant demonstrated a firm grip on Chief Wilson's hand. (Tr. p. 259; p. 323). Applicant stated Victim then gasped for air, stopped crying, and she put him in his crib.

(Tr. p. 259; p. 323). She informed the officers she later discovered he was lifeless and gave a false report of his death to the 911 operator. (Tr. pp. 259-260). Applicant indicated she had a hysterectomy around the time of Victim's death and believed it might have been affecting her behavior. (Tr. p. 264; p. 324).

Next, Sergeant Isenhoward took Applicant to his cubicle in order to take a written statement from her. (Tr. p. 264). Sergeant Isenhoward recorded Applicant's written statement at 3:56 p.m. after informing her of her rights. (Tr. p. 267; p. 270). In the statement, Applicant admitted the following about Victim's death:

On that day [Victim]'s mother dropped him off at my house at [my address]. He arrived there at around 8am. He was sick with a cold and was very fussy. I fed him when he arrived that morning and laid him down for a nap. I got him up at around 9:00-9:30 am and changed his diaper. I fed him his second bottle at around 10am. He was still fussy and I couldn't pacify him. He was sick and full of cold. I went on about dealing with all of the other children and he was crying the whole time. It was naptime and I still couldn't pacify him. I picked him up and held him in my arms. I tried to pacify him and rock him to sleep. He was not responding to it. He was still crying very loudly. He was whining and I didn't want the other children to wake up. I put my hand over his nose and mouth and held it there for 15-20 seconds. [Victim] got quiet. When I took my hand off he took a deep breath and it appeared to me that he fell asleep. He wasn't moving and I carried him into the daycare room. I put him in his crib. I went and cleaned up the house and straightened up the kitchen and living room. That took about 15-20 minutes. I got worried because he had been crying all day and now he wasn't crying anymore. I went into the daycare room and checked on [Victim]. I picked him up and he wasn't breathing. I immediately tried to give him mouth-to-mouth resuscitation. He wasn't responding to it. I called 911. A short while after that the ambulance arrived and took him to the hospital.

(Tr. pp. 273-274; State's Ex. #9 at Tr.). Applicant indicated she felt her actions were responsible for Victim's death, stating: "Yes. I should have chosen a different way to handle him. I should not have put my hand over his face. It was not my intent to kill him. I just wanted him to go to

sleep. I am so sorry.” (Tr. pp. 278-279; State’s Ex. #9 at Tr.). Applicant concluded the statement by stating:

I cannot convey how sorry I am. I should have taken a step back. If I could change things I would. I’m tired of holding on to this. It feels good to say it to someone. I know this is going to change things in my life with my friends but it is the right thing to do. I was wrong for what I did. I want to ask for forgiveness and move on in my life.

(Tr. p. 280; State’s Ex. #9 at Tr.). After the statement was prepared, Applicant reviewed each page and signed it multiple times. (Tr. pp. 280-283). In addition to Sergeant Isenhoward, Chief Wilson witnessed Applicant sign the statement. (Tr. pp. 275-276).

After making the statement, Applicant alerted Sergeant Isenhoward she wanted to apologize to Victim’s parents. (Tr. pp. 283-284). He offered her a blank piece of paper to write a letter to Victim’s family, and Applicant wrote an apology. (Tr. pp. 284-285). In the apology letter, Applicant stated: “Please forgive me and know it was not my intention to cause you such loss. I didn’t want to hurt him. But I did. I should have stopped & walked away. What I did was wrong and I’m so sorry.” (Tr. p. 286).

Subsequently, Applicant was arrested and indicted for homicide by child abuse. After a renewed investigation into Victim’s death, the coroner’s report was amended on April 18, 2008, to reflect a cause of death of cardiac arrest due to asphyxiation due to hand over mouth, and the manner of death was ruled a homicide. (Tr. p. 189). Applicant was also indicted for two additional counts of Homicide by Child Abuse for the deaths of two other infants who died while in Applicant’s care. The State intended to call all three cases to trial together. (August 12, 2008 Motions Hearing Tr.). Upon motion of Applicant’s trial counsel, the trial court ruled that the cases must be severed, making a specific finding that the charges could not be tried together because they did not arise out of a single chain of circumstances. (August 12, 2008 Motions

Hearing Tr.). The trial court also denied the State's motion to reconsider this ruling (August 28, 2008 Motions Hearing Tr.).

On October 30, 2009, Applicant, alongside her counsels Douglas Strickler and Fielding Pringle, appeared for a Jackson v. Denno hearing before Judge Lee to determine if Applicant's statements were admissible. At the hearing, the State called four witnesses: Captain James S. Smith of the Richland County Sheriff's Department; Lieutenant James E. White of the Richland County Sheriff's Department; Investigator Kevin Isenhoward of the Richland County Sheriff's Department; and Chief David Wilson of the Richland County Sheriff's Department. After examination and cross examination of all witness, the Court ruled that Applicant's statements were "made freely and voluntarily and without coercion or threats or promises" and were admissible. (Jackson v. Denno Hearing Tr.)

Applicant then proceeded to trial. During trial, Victim's mother and Fortson testified about their experiences on the day of Victim's death. (Tr. pp. 116-117; pp. 152-157). Additionally, the investigating officers testified about the circumstances surrounding Applicant's statements to law enforcement. (Tr. p. 215; pp. 255-256; p. 321). The officers confirmed no threats, force, coercion, or interrogation techniques were employed to elicit Applicant's statements. (Tr. p. 223; p. 231; p. 245; p. 261; p. 308; p. 334; pp. 338-339). They further testified Applicant was cooperative, remorseful, relieved, and volunteering of her statements. (Tr. pp. 245-246; p. 260; p. 309; pp. 335-336; p. 339). The officers denied suggesting any details or information to Applicant during the interviews. (Tr. p. 245; pp. 298-299; p. 308; p. 322).

During Chief Wilson's testimony, the following exchange occurred while the solicitor was questioning the witness:

[Solicitor]: Once she had made that statement, the written statement, did you have any contact with her that day?

[Witness]: I did.

[Solicitor]: And not on this case –

[Witness]: No.

[Solicitor]: Not on any matter –

[Witness]: No.

[Solicitor]: -- concerning this event?

[Witness]: No, sir.

[Defense Counsel]: Objection, Your Honor. I have a matter of law to take up.

[Trial Judge]: Yes, sir. You can approach.

(Tr. p. 329). The trial judge then conducted a bench conference with counsel, noted an objection for the record, and allowed questioning to continue. (Tr. p. 330). Following the bench conference, the solicitor did not ask any additional questions regarding the objected-to line of questioning. (Tr. p. 330).

Subsequently, outside the presence of the jury, the trial judge acknowledged Applicant made a mistrial motion based on an allegedly improper question asked to Chief Wilson. (Tr. pp. 371-372). Applicant asserted the reference to law enforcement contact with Applicant related to another matter or charge “raised the speculum of additional charges” and warranted the grant of a mistrial. (Tr. p. 372). The trial judge noted earlier testimony established Applicant had been contacted by officers in another matter. (Tr. p. 373). The trial judge concluded that “[w]hile . . . it probably would have been best for the question and the answer not to have been given,” Applicant had not been prejudiced. (Tr. p. 373). The trial judge then prohibited any further discussion of the matter during trial and denied Applicant’s motion for a mistrial. Tr. p. 373).

In addition to the officers' testimony, the State presented testimony from several medical experts. (Tr. p. 340; p. 397; p. 423). First, Dr. Armstrong testified about his findings during his autopsy of Victim. (Tr. p. 342). Dr. Armstrong opined the cause of Victim's death was suffocation. (Tr. pp. 349-350). He testified it would have been unusual for Victim's mild case of pneumonia to be fatal. (Tr. p. 350). He noted the reported time line of Victim being well and then deceased within two and a half hours was too rapid of a time period for Victim to have died of pneumonia. (Tr. p. 351). He further noted his findings of brain swelling, blue coloration in Victim's fingernails and extremities, and redness in the lungs were consistent indicators of strangulation. (Tr. p. 347; pp. 351-353). When questioned about the lack of external signs of strangulation, he testified placing one's hand over a child victim's nose and mouth would hardly ever leave detectible marks. (Tr. p. 370). Based on his review of all available information, Dr. Armstrong concluded Victim was suffocated, and he testified he would have had this opinion in December of 1998 if all the available information would have been available at that time. (Tr. pp. 349-350; p. 353).

Dr. Clay Nichols, the chief medical examiner for Richland County and an expert in forensic pathology, testified he reviewed all the available information regarding Victim's death, including the autopsy report, the emergency room report, Applicant's statements, Victim's medical records, information from law enforcement, and tissue samples from Victim's lungs. (Tr. pp. 397-398; pp. 399-400). Based on his analysis, Dr. Nichols testified Victim died of asphyxiation due to suffocation. (Tr. p. 400). He opined Victim's mild case of pneumonia was insufficient to cause death. (Tr. pp. 400-401). He testified Victim's fine health two and a half hours prior to his death and the reported timeframe of his death were inconsistent with a death caused by pneumonia. (Tr. pp. 401-401). He noted Applicant's admission of responsibility for

Victim's death was consistent with his findings. (Tr. p. 421). Additionally, he noted it was quite common to find no marks present on the body of a suffocated child. (Tr. p. 403).

Finally, Dr. Gratin Smith, a pediatrician and an expert in the field of pediatrics, testified about his review of the records and information related to Victim's death. (Tr. pp. 423-424). Dr. Smith testified he found a small amount of pneumonia present in Victim's lungs, with the signs of pneumonia confined to only a portion of one of Victim's lungs. (Tr. p. 429). He stated an infant dying of pneumonia typically would exhibit obvious symptoms of fast breathing, increased exertion to expand the lungs, fatigue, and a struggle to breathe. (Tr. p. 430). Dr. Smith testified the obvious signs of critical illness and respiratory failure would have been noticeable several hours before the child's death, with a death from pneumonia taking days. (Tr. pp. 430-431). Based on his analysis and review, Dr. Smith concluded Victim did not die of pneumonia. (Tr. pp. 431-432).

Subsequently, the State rested, and Applicant moved for a directed verdict. (R. p. 295). Applicant asserted the State failed to prove the corpus delicti of the charged offense independent of her confession. (Tr. p. 449). After hearing argument from counsel, the trial judge determined there was sufficient evidence establishing the corpus delicti of the offense. (Tr. p. 456). Therefore, after viewing the evidence in a light most favorable to the State, the trial judge denied Applicant's motion. (Tr. pp. 457-458). Applicant then renewed her motion for a mistrial, and the trial judge again denied the motion after finding Applicant was not prejudiced. (Tr. pp. 458-459).

Applicant's husband, Rodney Person testified first on Applicant's behalf. (Tr. pp. 481-501). He testified that he met Applicant while both were students at the University of North Carolina at Chapel Hill (Tr. pp. 482-483). He testified that his entire family, including

Applicant, was very close with Victim and his family. (Tr. pp. 486-487). He testified that his wife ran a day care out of their home and she cared for Victim every day. (Tr. pp. 488). He testified that he went to the hospital on the day of Victim's death and Applicant was "extremely upset . . . crying, pacing." (Tr. p. 490). He testified that on April 17, 2007, he learned that Applicant was at the Richland County Sheriff's Department and he went to check on her. (Tr. p. 491). He testified that he spoke with Investigator Isenhoward, whom he had met previously and he described as "respectful," who asked Rodney if his wife had any history of mood swings. (Tr. pp. 492-494; p. 498). Rodney testified that his wife "can be naïve when it comes to dealing with people" and that "she is more trusting than most people." (Tr. p. 494).

Applicant testified next on her own behalf. She testified that she went to the University of North Carolina at Chapel Hill on a "full ride scholarship" and that she was only four credit hours short of graduating when she left school to get married. (Tr. pp. 503-504). She testified that she was very close with Gina, Victim's mother, and had cared for Victim's siblings in addition to Victim. (Tr. pp. 509-510). She testified that at the time of Victim's death, she had been running a day care out of her home for approximately five years. (Tr. pp. 506-507). She testified that she had cared for Victim since he was approximately six weeks old. (Tr. p. 511). She testified that on the day Victim passed away, he arrived at her home at 7:30 a.m. and was "fussy." (Tr. pp. 512-513). She testified that she rocked him in her arms in an attempt to make him comfortable and stop his crying. (Tr. p. 513). She testified that she fed him a bottle of milk, followed by a bottle of juice when he was still fussy. (Tr. p. 514). She testified that following this second bottle, she put Victim down for a nap, and after an unknown period of time, she found him face down in a pool of fluid. (Tr. p. 516-517). She testified that she took him into the living room, placed him on the floor, called 911, and began to perform C.P.R. (Tr. pp. 517-519).

She testified that she went to the hospital to check on Victim and was told that he had walking pneumonia and his lung had collapsed. (Tr. pp. 522-523).

Applicant testified that she was interviewed by Investigator Isenhoward on April 2, 2007 at her home. (Tr. p. 525). Thereafter, on April 11, 2007, she testified that she voluntarily went to the Richland County Sheriff's Department where she was interviewed by Investigator Isenhoward. (Tr. pp. 525-526). She testified that she was asked to return a few days later for another interview and she agreed. (Tr. p. 526). She testified that she voluntarily returned to the Sheriff's Department on April 17, 2007, where she was interviewed by several officers. Applicant disputed the officers' testimony and claimed the officers were aggressive, accusatory, forceful, threatening, and unwilling to accept her initial denial of responsibility. (Tr. pp. 530-531; p. 541). She testified the officers suggested scenarios about how Victim could have been killed before she eventually began to go along with their stories out of desperation to go home. (Tr. pp. 533-534; p. 539; p. 544). She attributed the inculpatory portions of her statements and apology letter to the officers and stated they were lying about the circumstances of the interview. (Tr. pp. 547-548; pp. 589-590). However, she admitted she was fully aware of her rights and knew she did not have to sign any statements and was allowed to leave at any time during the interview. (Tr. p. 543; pp. 568-569; p. 578). She offered no explanation as to why she did not leave the interview while armed with this knowledge. (Tr. p. 570).

Also testifying in Applicant's defense was Dr. Kim Collins, the former chief medical examiner of Charleston County and an expert in forensic pathology, who testified she reviewed all of the available information regarding Victim's death. (Tr. pp. 601-602; 605-606). Dr. Collins testified that excluding Applicant's statements and only considering the information available in 1998, she would have concurred in the original finding of pneumonia as the cause of

death. (Tr. p. 606; p. 608). She opined Victim's pneumonia, which she characterized as moderate, was significant enough to be the cause of death. (Tr. pp. 608-609; p. 618; pp. 621-622). Therefore, Dr. Collins testified there was not a sufficient basis in the autopsy information alone to change the diagnosis to one of asphyxiation. (Tr. p. 634). However, Dr. Collins conceded she had changed her opinion regarding a cause of death in the past after receiving additional information, and she acknowledged a forensic pathologist cannot exclude statements when determining the cause of death. (Tr. p. 641). Dr. Collins further acknowledged there were no signs of a serious case of pneumonia in the autopsy information. (Tr. p. 641). However, based solely on the autopsy findings, she testified she believed the cause of death to be pneumonia. (Tr. p. 652). However, based on her review of all the available information, Dr. Collins opined the cause of Victim's death was asphyxiation due to smothering based on Applicant's statements. (Tr. pp. 652-653).

After lengthy voir dire, both in camera and in front of the jury, and over objections from the State, Applicant presented testimony from Dr. Saul Kassin, a Distinguished Professor in Psychology at the John Jay College of Criminal Justice and a part time Professor of Psychology at Williams College. (Tr. pp. 812-812). He testified that he has focused his research and teachings on the field of false confessions and police interrogations. (Tr. 816-819). He testified as to what is a false confession and trademark characteristics of confessions that have been deemed "false." (Tr. p. 826-838; pp. 841-847). He testified of the importance of recordings of law enforcement interrogations when determining the likelihood of a confession being false, stating that it is sometimes "impossible" to determine whether a statement is credible without a recording⁴. (Tr. pp. 838-840). He testified regarding common police interrogation tactics and

⁴ It is undisputed that Applicant's interview with law enforcement was not recorded, as was the common practice of the Richland County Sheriff's Department at the time.

risk factors for false confessions. (p. 840-867). Finally, Dr. Kassin testified as to a three pronged approach for analyzing the reliability of confessions, including: 1) assessing the suspect, his vulnerabilities and the situation in which the suspect was placed; 2) whether the suspect gave a detailed narrative and whether the narrative was accurate; and 3) from where did the details of the narrative come. (Tr. pp. 868-871).

At the conclusion of the evidentiary phase of trial, Applicant renewed her motion for a directed verdict, and the motion was again denied. (Tr. pp. 875-876). At the conclusion of trial, the jury convicted Applicant of homicide by child abuse. (Tr. pp. 998-989). The trial court then sentenced Applicant to a term of imprisonment of twenty-two years. (Tr. p. 589).

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on her own behalf and presented testimony from Dr. Saul Kassin, Dr. Marc Harari, and trial counsel Douglas Strickler. Respondent presented testimony from trial counsel Elizabeth Fielding Pringle.

Dr. Saul Kassin (hereafter "Kassin") testified first for Applicant. He testified that he has been focusing his studies and research on the area of false confessions for the past twenty-five years and has authored or co-authored several books, chapter of books, and articles on the topic. He testified that the field of false confessions is a "very well developed field" with numerous published articles, books, chapters of books, and funded grants. Additionally, he testified that several amicus briefs on the topic have been submitted to the United States Supreme Court. He testified that he frequently presents at law schools, law groups, and conferences and has been admitted as an expert in both state and federal court. He testified that he has been admitted as an expert in South Carolina in four trials (including Applicant's trial), as well as one post-conviction relief action. Applicant offered Kassin as an expert in social psychology in the field

of false confessions. Kassin testified that he does not ever testify as to the ultimate conclusion and that he has no opinion as to whether Applicant's own confession is false. Following extensive voir dire and objection from the State⁵, this Court admitted Kassin as an expert, finding that as he was admitted as an expert at trial, he would therefore be allowed to testify as an expert during the post-conviction relief proceedings.

Kassin testified that there are three different types of false confessions: Voluntary, Compliant, and Internalized. He testified that Compliant and Internalized false confessions are both induced by coercion. He testified that he does not know the rate or scope of false confession, but could point to several prevalent examples in the American psyche, such as prisoners of war or the Salem Witch Trials. He testified that he thinks that Applicant's confession could possibly be a compliant false confession, where an innocent person knows they did not commit the alleged act, but becomes so "broken" that he or she confesses. He testified that it is always preferable to have a video recording of an interrogation when analyzing whether the confession could be false, but that an audio recording is also helpful. He acknowledged that Applicant's interview with law enforcement was not auditory or visually recorded, which makes it significantly harder – if not impossible – to determine if the confession could be false.

Kassin testified that there are common personality traits exhibited by those who are more likely to give false confession, including:

1. Age, with youths and juveniles being more likely to give false confessions;
2. Mental Acuity, with those who have a lower IQ being more likely to give a false confession;
3. Mental Illness, with those who suffer from more significant mental illness being more likely to give a false confession;
4. Anxiousness and/or Delusions; and.
5. Suggestibility or Compliance.

⁵ The State objected to Kassin being admitted as an expert, citing a lack of empirical study in his field, a lack of error rate, and the strong reliance of anecdotal evidence and ad hoc case studies.

He testified that being innocent is another risk factor, as it makes a suspect more likely to waive his rights and "believe in justice and that innocence will prevail." Additionally, he testified that those without prior run-ins with law enforcement and those that "haven't been through the system before" are also at an increased risk to give a false confession. Kassin also testified that "high stress, grief, food or sleep deprivation" are also more likely to produce a false confession.

Kassin testified that in the present case, if he was called during the Jackson v. Denno hearing, he would have been able to testify as to the risk factors of false confessions and how they related to Applicant's specific case. He acknowledged that he was able to inform the jury of these risk factors during his trial testimony, but testified that he was not able to discuss Applicant's polygraph test, the length of time that she was interviewed, or the significance of the two other deceased children while he was before the jury. Additionally, he testified that he would have been able to testify regarding dispositional risk factors, such as Applicant's personality traits and how those would make her more or less likely to provide a false confession, though he readily admitted that he has never met Applicant and did not do a personality or any other assessment on her. However, he acknowledged that Applicant does not meet many of his risk factors, as she is a middle-aged, highly educated woman with a background in psychology, who has run her own business for several years and has no history of mental illness. Kassin recognized that he would have needed an audio or video recording to best analyze Applicant's confession and would have been significantly hampered since no recording was available for his review. Kassin testified that he would not have testified to an ultimate conclusion at the Jackson v. Denno hearing, but would have merely provided factors to make one more susceptible to false confession to the court to aid in its decision naming. He testified that he would have never opined that Applicant's confession was false and that this is something that

needs to be determined by the trier of fact. He testified that he could not recall if he was contacted by Applicant's trial counsel regarding possibly testifying at her Jackson v. Denno hearing. However, he readily acknowledged that he did not take notes when he discussed Applicant's case with her trial counsel.

Next, Applicant presented testimony from Dr. Marc Harari (hereafter "Harari"), a clinical psychologist licensed in South Carolina. He testified that he received his Bachelors of Arts in Psychology from Rutgers University in May, 1994 and his Ph.D. in Counseling Psychology from the University of Akron in August, 2002. He testified that he has been working in the psychology field since 1994 and his primary focus has been in counseling. He testified that he has no previous training or education involving coercion or false confessions and that he has never reviewed any articles or other materials on the topic of false confessions or coercion. He testified that he has been qualified as an expert in South Carolina state courts over 45 times, with nearly all cases involving family court actions involving juveniles. He testified that he has never been found unqualified as an expert. Following voir dire, this Court admitted Harari as an expert in the general field of psychology.⁶

Harari testified that he was contacted by Applicant's counsel on September 23, 2013 and asked if he could perform expedited psychological testing in anticipation of Applicant's post-conviction relief hearing the following week. He testified that he informed Applicant's counsel that he could do a psychological evaluation on interpersonal characteristics of Applicant. He testified that Applicant's counsel provided him with his only collateral information, including: that Applicant was diabetic, that three children had died in Applicant's care in situations that Applicant's counsel characterized as "classic SIDS and overheating," that Applicant was put

⁶ Respondent had no objection to Harari's testimony as to the general field of psychology, but objected to any expert testimony regarding false confessions or coercion, as Harari himself testified during voir dire that he had absolutely no background whatsoever in the field.

through what Applicant's counsel described as a "lengthy interrogation" including a polygraph test, that Applicant was seeking to overturn her convictions on claims that she was coerced by law enforcement to make a false confession and that her trial counsel was ineffective for not having this testimony excluded from trial, and that Applicant had retained a false confession expert to testify at her post-conviction relief hearing and needed an expert to testify as to her susceptibility to coercion. He testified that he and Applicant's counsel "brainstormed" how to measure the likelihood of one being susceptible to coercion, as he has no background in the field. He testified that he and Applicant's counsel determined the Minnesota Multiphasic Personality Inventory - Two - Restructured form (MMPI-2-RF), the Paulhus Deception Survey (PDS), and the Personality Assessment Inventory (PAI) would be "good indicators" as to one's susceptibility to coercion. He testified that his hypothesis was that "individuals who tend to be overly passive or lack assertiveness may experience mistreatment or exploitation of others, or they may conform to others in an effort to avoid being the focus of attention." (Psychological Report of Applicant p. 9). He testified that although the only information he was provided came exclusively from Applicant's counsel, including the overall objective of his report, and that he was being paid by Applicant's counsel to generate such a report for use in this hearing, he tried to be "as objective as possible" and "not blindly biased." A copy of Harari's CV and of his report was introduced into evidence as Applicant's Exhibits #1 and #2.

Harari testified that he interviewed Applicant on September 25, 2013 at the Leath Correctional Institute. He testified that he did not interview or speak with any members of Applicant's family and his total time spent with Applicant was very brief, both of which limit the results of his findings. He testified that he administered three psychological tests: the MMPI-2-RF, the PDS, and the PAI. He testified that he selected the MMPI-2-RF and PMI because these

inventories are peer reviewed. He testified that he performed these tests with the specific focus of determining Applicant's susceptibility to coercion. He testified that these tests measure current personality characteristics and are not retroactive. He testified that there were no significant or moderate findings of deception or malingering for any of the three tests administered, which he believes indicates that he was able to collect accurate data from Applicant. He testified that based on his interview and testing, Applicant experiences situational distress directly related to her incarceration, including missing her family. He testified that he found no evidence that she suffers from any type of major clinical symptoms, sociopathic personality tendencies, or any personality disorders. He testified that the psychological testing data derived from the PAI and the MMPI-2-RF resulted in moderate elevation in scales pertaining to interpersonal passivity, conforming tendencies, and meek characteristics that may show Applicant has difficulty standing up for herself. Harari testified that based on his hypothesis that "individuals who tend to be overly passive and lack assertiveness may experiment mistreatment or exploitation by other, or may conform to others in an effort to avoid being the focus of attention," the results of his psychological testing show that Applicant's passive-submissive interpersonal tendencies may make her more susceptible in coercive situations. However, he acknowledged that this is only a hypothesis and he has no training or background on false confessions or coercion.

Following Harari, Applicant testified on her own behalf. She testified that she is currently forty-six years old; has been married to her husband Rodney for twenty-four years, and has two children that are both college students. She testified that she met Rodney while attending the University of North Carolina at Chapel Hill on a full scholarship. She testified that she had a history of performing well academically and was majoring in psychology. She

testified that she left college with only a few credit hours still needed for her psychology degree so that she could get married. She testified that she has no history of mental health concerns and her only significant physical health problem is diabetes, which she monitors daily. She testified that she has been fully employed since college, working at a telephone bank, nursing home, and then eventually running an in-home day care since 1992.

Applicant testified that while operating her day care, three small children died over a nine year period from 1998 to 2007. She testified that at the time of the final infant's death in 2007, she was operating her day care without a license in clear violation of the Department of Social Services (DSS) and with more children than allowed by DSS. She testified that after the third death in 2007, law enforcement visited her home and asked her to come to the Richland County Sheriff's Department for an interview. She testified that she voluntarily came to the sheriff's department on April 11, 2007 for an interview and was allowed to leave after a few hours. She testified that she was asked to return for a subsequent interview and polygraph examination a few days later and she again voluntarily agreed to return.

Applicant testified that she voluntarily returned to the sheriff's department on April 17, 2007 around noon for the subsequent interview and polygraph examination. She testified that she is diabetic and had taken her insulin on that morning, but not her pills; she could not recall if she had eaten anything that morning. She testified that she was under financial pressures due to her loss of her DSS licensure for day care, but acknowledged that she had been illegally operating her day care without a license for some time when the final child passed. She testified that she was also under stress from learning that her husband may have fathered a child with her best friend. She testified that she signed a Waiver of Rights form and that she fully understood those rights and the implications of waiving those rights, which she had also testified to at trial.

She testified that she voluntarily took a polygraph test because she wanted to help law enforcement. She testified that she thought the interviews and polygraph would only involve the last child's death and was surprised when she was asked about Victim's death. She testified that the polygraph lasted less than three hours and she was informed that she did not "clear" the polygraph test at its conclusion. She testified that she became stressed, desperate to go home, and was intimidated by law enforcement officers who demanded to know what had happened to Victim. She testified that she was also feeling the effects of low blood sugar, was irritated, and had a headache. She testified that it was at this time, approximately three hours after the interview first began, when she gave her first verbal statement regarding Victim's death. She testified that she then repeated her statement to at least two more law enforcement officers. She testified that she then used the restroom, but that she was escorted to and from the restroom, which she found to be threatening. However, she acknowledged that this was after she had given multiple statements implicating herself in Victim's death.

Applicant testified that she then signed an additional Waiver of Rights form, which she testified at trial was signed voluntarily and knowingly. She testified that following the signing of a second Waiver of Rights form, she gave a written statement implicating herself in Victim's death. She testified that she also gave statements implicating herself in the death of the second infant who died while under her care. She testified that she was arrested that evening.

Applicant testified that Douglas Strickler and Elizabeth Fielding Pringle were appointed to represent her shortly after her arrest. She testified that she was incarcerated for seventeen months before she was released on bond. She testified that she met with her attorneys frequently and that the meeting frequency increased as the trial drew closer. She testified that members of her family also met with her attorneys. She testified that she was involved with her case and

discussed possible defenses to put forth at trial, witnesses that could or should be used at trial, as well as expert witnesses. She could not recall if her attorneys consulted with any outside polygraph examiners or experts. She testified that she knew her attorneys intended to call Dr. Collins as a witness and that she knew that Dr. Collins would testify that the physical condition of Victim supported death due to pneumonia.

She testified that her confession was always a primary focus in her case and that she discussed using Kassin as an expert witness regarding false confessions and police interrogations. She testified that she informed her attorneys that the confession was her own words, but that it was false and the result of coercion. She testified that she could not recall they discussed the possibility of him testifying at a Jackson v. Denno hearing. She testified that she discussed whether she should testify at the hearing with her attorneys and that all ever in agreement that she should not testify at this hearing. She testified all were also in agreement that they would not call her husband as a witness.

Applicant testified that she was indicted for three counts of Homicide by Child Abuse, one count for each infant that died while under her care. She testified that the State intended to try all three cases together, but that her counsel moved to sever the cases. She testified that she discussed this decision with her attorneys and that all agreed it would be best for her to have three independent trials. She testified that she wanted the cases severed so that the jury would not hear about the deaths of all three babies. She testified that because of this, the jury would not be able to hear how long her interviews with law enforcement were, as large portions of the interviews dealt with the other two deceased infants. She testified that her severance motion was successful and the State only called Victim's case to trial.

Following Applicant's testimony, Respondent called Elizabeth Fielding Pringle, Esquire (hereafter "Pringle") to testify. She testified that she has been practicing law since 1996 and is the Chief Public Defender for Richland County. She testified that before joining the Richland County Public Defender's Office, she was a staff attorney at the South Carolina Supreme Court. She testified that Douglas Strickler (hereafter "Strickler"), the Chief Public Defender for the Fifth Judicial Circuit, was appointed to represent Applicant in April, 2007 and that she joined the case a co-counsel in May, 2007. She testified that she met with Applicant "too many times to count," as well as meetings with members of Applicant's family with regularity. She testified that she also spoke to Applicant and Applicant's family by phone regularly as well. She testified that this was a "very complex" and "different kind of" case because it involved the deaths of three infants over a ten year period. She testified that the case involved extensive investigation, man-hours, and preparation due to the complexity. She testified that Applicant was "very helpful" and "very informed," as well as played an active role in her defense. She testified that Applicant is very intelligent and well-educated and understood what was occurring with her case. She testified that she filed and renewed all appropriate discovery materials and reviewed all discovery materials with Applicant multiple times.

She testified that the State wanted to call all three cases to trial at once and her and co-counsel's goal was to have the cases severed. She testified that it was "completely improper" to have joined the cases, as they involved different victims who died in different manners over a ten year period. She testified that the inflammatory nature to a jury of three deceased babies would be impossible to get beyond and that severance was crucial. She testified that she discussed severance with Applicant, who was very agreeable. She testified that Judge Lee granted their severance motion and the State ultimately called Victim's case to trial.

Pringle testified that Applicant voluntarily came to the Richland County Sheriff's Department on April 17, 2007 to be interviewed and submit herself for a polygraph examination. She testified that this was six days after Applicant had previously been interviewed at the sheriff's department and was allowed to leave following the interview. She testified that Applicant gave her conflicting information as to whether or not she had taken her diabetes medication or insulin that morning, and also could not recall if she had eaten prior to arriving at the sheriff's department. She testified that Applicant's inability to clearly remember the events on April 17, 2007 was a continuing issue during her representation and gave her concern regarding Applicant's ability to testify at trial. She testified that Applicant voluntarily signed a Waiver of Rights form before the polygraph examination and Applicant told her she understood the rights she was waiving. She testified that Applicant was told that she "did not clear" the polygraph test and at this point gave her first verbal statement implicating herself in the death of Victim.

She testified that she sought funding in 2008 to have an independent evaluation of the polygraph test and report. She testified that she retained John Hartley and Tom Williams, both who have extensive background regarding polygraph testing. She testified that both experts reviewed the polygraph report and informed her that Applicant's second polygraph test was invalid. She testified that both informed her that the second polygraph was invalid because Applicant was asked about multiple victims, but that it showed "marked deception." She testified that both experts reported that the results clearly showed deception on Applicant's part in both the first and second set of tests. She testified that Tom Williams informed her that Applicant was "totally deceptive" during the polygraph examination. She testified that she did not want to bring up the polygraph tests at the Jackson v. Denno hearing based on what her two

independent experts each reported. She testified that she is sure she discussed this with Applicant and Kassin.

Pringle testified that Applicant informed her that her confession was voluntarily, but false. Pringle testified that Applicant informed her that she felt threatened because the officers thrust their fists, put their hands on the table, and ran their hands through their hair. She testified that Applicant gave her statement multiple times to multiple different officers before memorializing the statement in writing. She testified that Applicant gave these statements after signing multiple Waiver of Rights forms, and that these forms were comprehensive, Applicant understood these forms and what her rights were. Additionally, Pringle testified that Applicant was properly given Miranda warnings before she gave her statement. She testified that although Applicant was at the sheriff's department for a total of approximately seven-and-a-half hours before she was arrested, Applicant had only been at the sheriff's department for approximately three hours when she first gave her statement. She testified that the voluntariness of the statements was never at issue. She testified that after giving her statement regarding Victim, she also made statements that implicated her in the deaths of the other two children in some form.

She testified that based on her discussion with Applicant regarding the confession, her and co-counsel Strickler sought out Kassin as a potential expert witness regarding false confessions "early on" in their representation of Applicant." She testified that she had tried to use Kassin as an expert before, but that he is "very selective" in which cases he becomes involved with and had decline her prior request. She testified that Kassin agreed to become involved in Applicant's case and that she communicated with him by email and phone. She testified that Kassin never evaluated Applicant, which is his common practice. She testified that Kassin would testify regarding the particular characteristics and traits that make one more likely

to give a false confession, which are very much like the factors analyzed at a Jackson v. Denno hearing, as well as explain the phenomena of false confessions to the jury. She testified that she is certain that she discussed the possibility of Kassin testifying at a Jackson v. Denno hearing with Kassin and Applicant, and she has specific notes in her file indicating that she discussed this with Kassin in August, 2008. She testified that she has participated in "dozens and dozens" of Jackson v. Denno hearings and that she has never won one. She testified that as Applicant freely admitted her confession was voluntary, albeit false, there was no significant benefit in presenting witnesses or making an argument at the Jackson v. Denno hearing. She testified that any benefit was also significantly hampered by Applicant's own inability to remember key aspects of the day of the interview and the interview itself, including whether she had eaten, whether she had taken her medicine, and specific things the officers did to intimidate her. Additionally, she testified that while there were some risk factors that would make Applicant susceptible, they were minimal and not enough to convince the court that her will was overborne to the extent that the statement would be excluded. Pringle testified that Applicant had extreme anxiety about testifying and also did not want the State to know this before her testimony at trial. Pringle testified that after fully discussing the issue with Strickler and Applicant, all were in agreement to not present any witnesses at the Jackson v. Denno hearing, especially Kassin and Applicant, as they did not want to give the State a preview of the testimony that would be presented at trial.

Pringle testified that she and Strickler discussed the possibility of having Applicant evaluated by a psychologist prior to trial. Pringle testified that she discussed mental illness with Applicant, and Applicant revealed that she has no history of mental illness personally or within her family. Pringle testified that she consulted with Dr. Geoffrey McKee, a psychologist in Columbia that she has frequently consulted with and has a good working relationship, regarding

Applicant's case. Pringle testified that Dr. McKee recommended that Applicant not be tested for suggestibility, because the psychological testing available, such as the MMPI-2-RF, the PDS, and the PAI, are not "normed" for this type of situation where one is being interrogated by law enforcement. Pringle elaborated that Dr. McKee did not think these tests would be useful and could possibly be harmful for Applicant, as Applicant did not fit many of the trademark characteristics of one who would be easily coerced, such as age and intelligence. Pringle testified that the main characteristics the defense wanted to show the jury were that Applicant was very naïve, passive, and sheltered, which she was able to show the jury through Applicant's own testimony and the testimony of her husband. Pringle testified that she thinks these qualities were exemplified to the jury during both Applicant and her husband's testimony at trial.

Pringle testified that she and Strickler discussed the need for an independent pathologist to testify on Applicant's behalf at trial. She testified that she knew Dr. Collins through her reputation, which she described as "outstanding," "exemplary," and "best in the area regarding children." She testified that Dr. Collins is the medical examiner for Charleston County and is known to be a very "even handed expert." She testified that she and Strickler discussed Dr. Collins' findings with her before trial and expected her testimony to be that Applicant had a more severe case of pneumonia than the State's experts had concluded. She testified that at trial, Dr. Collins presented the strongest testimony regarding the physical evidence that Victim had significant pneumonia when he died. Additionally, she knew Dr. Collins' testimony would be that vomiting was not consistent with suffocation and that possible signs of suffocation were not present on Victim. She testified that Dr. Collins would also testify that the blue fingernails and penial gland found on Victim were indicative of pneumonia, not asphyxiation. She testified that she was aware that Dr. Collins would testify that if you include the confession, then smothering

would be the likely cause of death. However, she testified that Dr. Collins' testimony was needed to show that absent the confession from Applicant, which they asserted was coerced, the physical evidence showed that Victim died of pneumonia.

Following Pringle's testimony, Applicant called Strickler in reply. During Strickler's testimony, Applicant entered Applicant's Exhibits #3-8, all memoranda or notes Strickler prepared and from his file, without objection from Respondent. Strickler testified that he and Pringle had discussed the possibility of having Applicant evaluated and retaining a psychologist, but that they ultimately decided against it for the reasons already testified to by Pringle. He testified that he, Pringle, and Applicant discussed the possibility of calling Kassin and Applicant as witnesses at the Jackson v. Denno hearing, but ultimately made a strategic decision not to do so after considering all factors. He testified that he was aware Kassin was controversial and did not want the State to have a chance to preview his testimony before trial. He elaborated that he did not want reveal such significant portions of Applicant's case weeks before trial, especially when there was very, very little chance that her statement would be excluded. In regards to Dr. Collins, he testified that he knew Dr. Collins by her outstanding reputation and that she had testified in countless homicide cases involving children. Strickler testified that he met with Dr. Collins in Charleston, as well as discussed the case with her by phone. He testified that she would provide the strongest testimony possible that Victim had died from a significant case of pneumonia based on the physical evidence. He testified that he was aware that she would testify that once the statement was taken into account, Dr. Collins would agree with the findings of suffocation, as a confession is often one of the only ways to determine suffocation. However, he testified that as Applicant's argument was that her confession was false and made due to coercive interrogation tactics, he needed strong testimony that the physical evidence pointed to death due

to pneumonia, which only Dr. Collins could provide to the jury. Strickler testified that he highlighted this to the jury during his closing argument. See Tr. p. 913. He testified that although he knew that Dr. Collins would ultimately conclude that Victim died by asphyxiation if she considered the confession, he was surprised by the way she said it during cross-examination.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test 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, 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.

After careful review based on the standard discussed above, the Applicant has failed to carry her burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Ineffective Assistance of Counsel during the Jackson v. Denno Hearing

Applicant asserts that counsel was ineffective for during the Jackson v. Denno hearing, arguing that counsel failed to properly prepare for the hearing, failed to call witnesses or offer testimony at the hearing, failed to effectively cross-examine the State's witnesses, failed to make any sort of argument to the judge regarding the voluntariness of the statement, and failed to advise Applicant on the importance and implication of the hearing or her right to testify at it. This Court finds that Applicant has failed to meet her requisite burden of proof in regards to this allegation. First, the Court finds that Applicant has failed to establish any deficiencies in counsel's representation in regards to the Jackson v. Denno hearing. The uncontroverted testimony reveals that Applicant, Pringle, and Strickler discussed the Jackson v. Denno hearing numerous times and weighed benefits and risks of making an argument or calling witnesses at the hearing. Pringle and Strickler testified that they both had represented countless defendants in Jackson v. Denno hearings and that the success rate for exclusion of a statement was extremely

low, which they advised Applicant. Additionally, Pringle and Strickler testified that there was no valid ground on which to challenge the voluntariness of Applicant's statement, as Applicant readily admitted that she voluntarily and knowingly waived her rights multiple times and gave a voluntary statement which she insisted was false. Pringle and Strickler both testified that there was no reasonable chance of convincing the court that Applicant's will was so overborne that her statement should be excluded, especially when Applicant possessed so few of the risk factors that Kassin would testify regarding. Counsels testified that they considered calling Kassin as a witness at the hearing, and even discussed the matter with him, but ultimately decided it would be best to reserve his testimony for trial, as there was an extremely low likelihood that Applicant's statement would be suppressed and they did not want to give the State a preview of his controversial testimony weeks prior to trial. Additionally, Pringle testified that Applicant was extremely anxious and nervous about testifying and they also did not want the State to have notice of this before trial. Furthermore, counsels testified that they discussed having Applicant evaluated and consulted with a trusted psychologist, who advised against doing so as there was a significant likelihood it would not be in Applicant's best interest.

Based on the foregoing, this Court finds that counsel was well beyond prepared for the Jackson v. Denno hearing, had amply prepared Applicant for this hearing, and together, all three made a strategic decision that it was in Applicant's best interest not call witnesses or present an argument to avoid revealing their case to the State weeks before trial, particularly in light of Kassin's controversial and widely criticized methodology⁷. This Court finds that this strategy was valid and prudent based on all testimony presented, and therefore, counsels' performances were not deficient. See Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) ("[W]hen

⁷ This Court finds Kassin's methodology troubling but qualified him as an expert to align with Judge Lee's ruling at trial.

counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, we must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992)). This Court finds that counsels' performance went well beyond the standard of reasonableness according to professional norms, and therefore Applicant has failed to establish any deficiency regarding this allegation. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Counsel for calling Dr. Collins and/or properly preparing her

Applicant asserts that counsels were ineffective for calling Dr. Collins as an expert witness and/or for failing to properly prepare Dr. Collins for her trial testimony. This Court finds that Applicant has failed to carry her necessary burden of proof in regards to this allegation. First, the Court finds that Applicant has failed to establish any deficiencies in counsels' representation in regards to the decision to call or prepare Dr. Collins for trial. Counsels testified that Dr. Collins has an exemplary reputation for her expertise in child homicide cases and that she was known for her "even handed" expert opinions. Strickler testified that Dr. Collins, the medical examiner for Charleston County, testifies frequently and he was very pleased that she agreed to take on this case as an expert on Applicant's behalf. Strickler testified that met with Dr. Collins in Charleston to review Applicant's case, as well as discussed the case with her by phone multiple times. Both counsels testified that they knew Dr. Collins would provide the

strongest testimony regarding Victim's pneumonia being significant and in better alignment with the physical symptoms than smothering. Additionally, both counsels testified that they were aware that Dr. Collins would testify that if provided with Applicant's confession, the medical opinion would likely be asphyxiation by smothering. However, both counsels testified that they were surprised with the manner in which she said this, but not the underlying proposition. Strickler testified that regardless of this, Dr. Collins testimony was still necessary, as she was the only witness who could provide the jury with expert testimony that Victim's pneumonia was pervasive and significant enough to be fatal and that the physical symptoms better coincided with death by pneumonia than by smothering. Additionally, Strickler testified that as Applicant's underlying defense was that the confession was false, he wanted to highlight to the jury that the medical expertise showed pneumonia was the cause of death absent this false and coerced confession. In his closing argument, Strickler did highlight to the jury that it was solely their role to determine whether Applicant's confession was false, not Dr. Collins, who was strictly there to provide expert testimony on the medical evidence surrounding Victim's death. Based on the aforementioned, this Court finds that Applicant has failed to meet her burden of establishing deficiency of counsels' performance in regards to Dr. Collins' testimony. This Court finds that counsels' decision to call Dr. Collins as an expert was of sound and reasonable strategy. See Edwards, 392 S.C. at 456-57, 710 S.E.2d at 64. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his

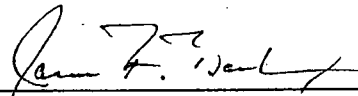
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 this 22 day of JANUARY, 20 14.



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Blenheim, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

FEB 20 2014

DW

S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

RECEIVED

FEB 27 2014

S.C. Supreme Court

Case No. 2012-CP-40-4268

Andrea Person, #00338104,.....Petitioner,

v.

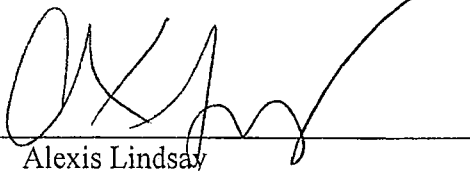
State of South Carolina.....Respondent.

NOTICE OF APPEAL

Pursuant to Rule 243, SCACR, Andrea Person, #00338104 ("Petitioner"), appeals the Order of Dismissal ("Order") of the Honorable James R. Barber, III denying Petitioner's Application for Post-Conviction Relief dated January 22, 2014 and filed, with Form 4, January 30, 2014. Counsel for the Petitioner received written notice of the Order on February 3, 2014. A copy of the Order is attached hereto.

[Signature page follows]

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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(803) 929-1400

Attorney for Petitioner

Columbia, South Carolina
February 27, 2014

Other Counsel of Record:

Megan Harrigan, Esquire
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Post Office Box 11549
Columbia, South Carolina 29211-1549

Attorney for Respondent

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4004268

Andrea #338104 Person

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☒ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPEAL TYPE): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (final order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 January 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Andrea #338104 Person

Alexis Kaylor Lindsay

Robert Danjel Corney

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

SCRPC Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Andrea Person, #00338104,

Case No. 2012-CP-40-4268

Applicant, C.C.P. & A.

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed June 19, 2012. Respondent made its Return on July 3, 2012, requesting an evidentiary hearing be held. Thereafter, Applicant, through her counsel, filed an Amended Application on September 25, 2013. An evidentiary hearing into the matter was convened October 2, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsels Alexis K. Lindsay, Esquire, and Thornwell F. Sowell, III, Esquire. Respondent was represented by Assistant Attorney Generals Megan E. Harrigan and Walt Whitmire of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the May 2007 term of the Richland County Grand Jury for Homicide by Child Abuse (2007-GS-40-3570). Douglas S. Strickler, Esquire, and Elizabeth Fielding Pringle, Esquire, represented Applicant. On November 16-20, 2009, Applicant proceeded to a jury trial before the Honorable Allison R. Lee, where she was convicted as indicted. Judge Lee sentenced Applicant to twenty-two years imprisonment.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentenced by unpublished opinion. State v. Person, 2012-UP-068 (S.C. Ct. App. filed February 8, 2012). The Remittitur was issued on March 5, 2012.

In her amended application for post-conviction relief, Applicant alleged the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of trial counsel at a critical stage of the case, the pre-trial Jackson v. Denno hearing, including the failure to properly prepare for the hearing, the failure to call witnesses or offer testimony at the hearing, the failure to effectively cross-examine the State's witnesses, the failure to make any sort of argument to the judge regarding the voluntariness of the statement, and failing to advise Applicant on the importance and implication of the hearing or her right to testify at it.
2. Ineffective assistance of trial counsel for calling Dr. Kimberly Collins as an expert witness and/or for failing to properly prepare the witness.

Applicant proceeded forward on these grounds as listed in her amended application at the evidentiary hearing.

SUMMARY OF FACTS ADDUCED AT TRIAL

On November 17, 1997, Gina Ulengehong ("Gina") gave birth to a baby boy, Zachary ("Victim"). (Tr. p. 110). Gina remained at home with Victim for approximately six weeks and then enrolled him in Applicant Andrea Person's home day care. (Tr. p. 111). Applicant took care of Victim at her home during the day on Mondays through Fridays. (Tr. p. 112). Typically, Gina dropped Victim off with Applicant at approximately 7:30 a.m. and picked him up by 6:00 p.m. (Tr. pp. 113-114).

In April of 1998, Victim was diagnosed with a slight case of pneumonia and received antibiotics as treatment. (Tr. p. 113). However, the treating physician took x-rays of Victim's chest after the diagnosis, and no signs of pneumonia were present in Victim's lungs. (Tr. pp.

440-441). Victim was sick for approximately one week, responded to the treatment, and got better. (Tr. p. 114). He never had any trouble breathing while ill. (Tr. p. 114). In October of 1998, Gina took Victim to the doctor to seek treatment for a stuffy nose. (Tr. pp. 114-115). Victim was again given antibiotics and recovered from his illness. (Tr. p. 115). His symptoms did not return. (Tr. p. 115).

On the evening of December 1, 1998, Victim appeared fine and slept through the night. (Tr. p. 116). On the following morning, Gina dropped Victim off at Applicant's day care around 7:30 a.m. to 7:45 a.m. (Tr. p. 117). Victim was not ill at the time, was laughing, seemed fine, and did not have a stuffy nose or fever.¹ (Tr. p. 117).

Later that morning, Mandy Fortson, a certified emergency medical technician and volunteer with the Sandhill Fire Department, was dispatched to Applicant's home in response to a report of an infant male not breathing. (Tr. pp. 144-145; p. 147; p. 149). She arrived on the scene within two to four minutes and entered the residence. (Tr. p. 149; p. 151). Upon entry, Fortson observed Applicant, who appeared nervous and tearful, pacing back and forth while using the phone. (Tr. p. 151; p. 155). Victim was lying on his back on the middle of Applicant's living room floor. (Tr. p. 152; p. 154).

Fortson asked Applicant about Victim's medical history and condition, and Applicant informed her Victim had pneumonia two weeks earlier but was off his medication and was better as far as Applicant was aware. (Tr. pp. 52-53). Applicant told Fortson she fed Victim before his nap, laid him down in a collapsible crib, found him unresponsive twenty to forty minutes later, and attempted to revive him. (R. pp. 156-157; p. 161). Fortson observed a small trickle of

¹ During trial, Applicant testified on cross-examination she told Gina that Victim needed to be taken to the doctor at the time he was dropped off. (R. p. 364). However, in rebuttal, Gina testified Applicant never told her Victim was sick and needed to be taken to the doctor when she dropped him off at Applicant's day care on the morning of his death. (R. p. 516).

formula coming out of the corner of Victim's mouth. (Tr. p. 157). She then began to perform C.P.R. on Victim, and one and a half to two ounces of milk came out of Victim's mouth and nose. (Tr. p. 159). Victim's skin was cold when Fortson began compressions.² (Tr. p. 168). Subsequently, paramedic Andrew Stewart arrived on the scene and assisted Fortson in the resuscitation efforts. (Tr. p. 162). Together, Stewart and Fortson performed C.P.R. on Victim for eight to ten minutes prior to the ambulance's arrival. (Tr. pp. 164-165). Once the ambulance arrived, Victim was rapidly transported from the scene. (Tr. p. 165).

Fortson remained at the day care for several hours to provide assistance to Applicant. (Tr. pp. 166-167; p. 174). She attempted to get in touch with Victim's parents and advise them of the situation. (Tr. p. 167). She also examined Victim's crib and found a bottle containing eight to ten ounces of formula that was "ice cold." (Tr. pp. 171-172). The crib had a large pool of liquid on the mattress at the bottom, and the liquid was already soaked in and absorbed into the mattress. (Tr. pp. 171-172). Additionally, Fortson spoke with Applicant, who repeatedly expressed concern for herself and what was going to happen. (Tr. pp. 172-173). However, Applicant never inquired about Victim's condition. (Tr. p. 173).

Meanwhile, while at work, Gina received word to call her babysitter around 10:30 a.m. (Tr. p. 118). She quickly called Applicant's home, and a paramedic answered the phone and told her Victim had been taken to the hospital. (Tr. p. 118). Gina went to the hospital and left a message for her husband. (Tr. p. 118). Her husband joined her at the hospital, and they were informed Victim had died. (Tr. pp. 119-120).

Later that day, Deputy Coroner Eric McFarland spoke with both Gina and Applicant and went to Applicant's residence in response to Victim's death. (Tr. pp. 182-183; p. 184).

² Fortson believed Victim's skin was colder than it should have been based on the time frame reported by Applicant, and she concluded Victim was deceased at the time she began performing resuscitation efforts. (R. pp. 64-65).

Applicant informed McFarland she put Victim in his crib and found him blue in color when she checked on him approximately thirty minutes later. (Tr. p. 187). McFarland asked Applicant if Victim had been ill, and Applicant did not report anything significant. (Tr. pp. 187-188). McFarland then relayed the information he collected to a pathologist, and an autopsy was conducted. (Tr. pp. 188-189).

Dr. William Armstrong, a pathologist and expert in forensic pathology, performed the autopsy of Victim on December 2, 1998. (Tr. pp. 340-342). During his examination, Dr. Armstrong discovered no signs of external injuries but found that Victim had a mild case of pneumonia. (Tr. pp. 344-345). Tissue samples were collected for analysis. (Tr. p. 189). Additionally, Dr. Armstrong noted Victim had swelling of the brain, acute hemorrhagic edema in his lungs, and blue fingernails and extremities. (Tr. p. 346; p. 347; pp. 352-353). Based on the autopsy results, Dr. Armstrong concluded Victim died from pneumonia based on the lack of any other specific findings. (Tr. p. 347). However, he did not have Victim's medical records or a specific time line of the day of Victim's death at the time he made his initial findings. (Tr. p. 348). Subsequently, the preliminary report prepared by the Coroner's Office left the cause and manner of Victim's death open for continuing investigation. (Tr. p. 190; p. 195). However, the coroner signed a certificate of death for Victim on February 22, 1999, which listed the cause of death as lobular pneumonia and the manner of death as natural. (Tr. p. 195).

Several years later, on April 2, 2007, Sergeant Kevin Isenhoward, an investigator with the Richland County Sheriff's Office, responded to Applicant's home day care to investigate the death of another child in Applicant's care³. (Tr. pp. 248-249). Through his investigation into the incident, Sergeant Isenhoward learned about the death of Victim in 1998. (Tr., p. 249).

³ Another infant child died in Applicant's home on April 2, 2007; this was the third child to die while under Applicant's direct care and supervision. (Jackson v. Denno Tr. p. 75-76).

However, Applicant failed to reveal anything about Victim's death when Sergeant Isenhoward spoke with her that day. (Tr. p. 249).

On April 10, 2007, Sergeant Isenhoward spoke with Victim's mother about Victim's health before he died. (Tr. pp. 249-250). He then contacted Applicant and spoke with her the next day at the sheriff's department. (Tr. p. 250). During their meeting, Applicant was advised of her rights, signed a waiver of rights form, voluntarily agreed to speak with the officer, and informed him she did not reveal Victim's death during their April 2, 2007 encounter because she did not want to look bad. (Tr. p. 251). She then left the sheriff's department after their meeting. (Tr. p. 251).

Subsequently, Sergeant Isenhoward arranged another meeting with Applicant, and she voluntarily returned to the sheriff's department around 1:00 p.m. on April 17, 2007. (Tr. p. 251). Sergeant Isenhoward met Applicant in the lobby and noticed her appearance and personal hygiene had gradually deteriorated with each of their meetings. (Tr. pp. 252-253). He then took her to an interview room to meet with Lieutenant James White, with the interview beginning at approximately 1:05 p.m. (Tr. p. 216; p. 251). At the outset, Lieutenant White informed Applicant of her rights, and she again signed a waiver of rights form. (Tr. p. 216; p. 219; p. 221). They progressed with the interview, including a polygraph examination, and Applicant initially denied injuring Victim. (Tr. p. 230; p. 242). However, Lieutenant White advised Applicant he did not believe she was being truthful with her statements about Victim's death. (Tr. p. 230). Applicant then confessed to placing her hand over Victim's face and mouth for approximately fifteen seconds after she could not get Victim to stop crying. (Tr. p. 231). Applicant stated Victim became motionless and quiet so she returned him to his crib. (Tr. p. 232). Applicant indicated she panicked, left Victim in the crib, and returned fifteen minutes later to find Victim

lifeless. (Tr. p. 232). Applicant informed the officer she then called emergency services and falsely reported how Victim died. (Tr. p. 233). She expressed remorse and stated she was untruthful because she was afraid she would go to jail. (Tr. p. 232; p. 233).

Following her statements, Lieutenant White contacted Sergeant Isenhoward and informed him Applicant admitted to suffocating Victim. (Tr. p. 234; pp. 253-254). Sergeant Isenhoward entered the interview room, knelt beside Applicant, and asked her what happened. (Tr. p. 254). With Lieutenant White present in the room, Applicant repeated her statements to Sergeant Isenhoward. (Tr. p. 234; pp. 254-255). Applicant stated she placed her hand over Victim's mouth for fifteen to twenty seconds until he went limp, left him for fifteen minutes, discovered him lifeless, called 911, and repeatedly lied to everyone about his death from that point forward. (Tr. p. 234; pp. 254-255). She said she did it because Victim was fussy, irritable, and crying. (Tr. p. 255).

Afterwards, Applicant used the bathroom and drank some water; she was offered something to eat but declined any food (Tr. p. 256). Sergeant Isenhoward then brought Applicant to Deputy Chief David Wilson's office, and she again revealed the circumstances of Victim's death. (Tr. p. 256; p. 258; p. 320). Applicant told the officers Victim was fussy when he arrived and would not take a pacifier. (Tr. p. 259; p. 321). She indicated he was uncooperative and she was afraid he was going to wake the other children. (Tr. p. 259). Applicant stated she held Victim, and, when he continued to cry, she put her hand over his nose and mouth for fifteen to twenty seconds until he stopped crying in order to quiet him. (Tr. p. 140; pp. 197-199). Chief Wilson asked Applicant to demonstrate how much pressure she applied to Victim's face, and Applicant demonstrated a firm grip on Chief Wilson's hand. (Tr. p. 259; p. 323). Applicant stated Victim then gasped for air, stopped crying, and she put him in his crib.

(Tr. p. 259; p. 323). She informed the officers she later discovered he was lifeless and gave a false report of his death to the 911 operator. (Tr. pp. 259-260). Applicant indicated she had a hysterectomy around the time of Victim's death and believed it might have been affecting her behavior. (Tr. p. 264; p. 324).

Next, Sergeant Isenhoward took Applicant to his cubicle in order to take a written statement from her. (Tr. p. 264). Sergeant Isenhoward recorded Applicant's written statement at 3:56 p.m. after informing her of her rights. (Tr. p. 267; p. 270). In the statement, Applicant admitted the following about Victim's death:

On that day [Victim]'s mother dropped him off at my house at [my address]. He arrived there at around 8am. He was sick with a cold and was very fussy. I fed him when he arrived that morning and laid him down for a nap. I got him up at around 9:00-9:30 am and changed his diaper. I fed him his second bottle at around 10am. He was still fussy and I couldn't pacify him. He was sick and full of cold. I went on about dealing with all of the other children and he was crying the whole time. It was naptime and I still couldn't pacify him. I picked him up and held him in my arms. I tried to pacify him and rock him to sleep. He was not responding to it. He was still crying very loudly. He was whining and I didn't want the other children to wake up. I put my hand over his nose and mouth and held it there for 15-20 seconds. [Victim] got quiet. When I took my hand off he took a deep breath and it appeared to me that he fell asleep. He wasn't moving and I carried him into the daycare room. I put him in his crib. I went and cleaned up the house and straightened up the kitchen and living room. That took about 15-20 minutes. I got worried because he had been crying all day and now he wasn't crying anymore. I went into the daycare room and checked on [Victim]. I picked him up and he wasn't breathing. I immediately tried to give him mouth-to-mouth resuscitation. He wasn't responding to it. I called 911. A short while after that the ambulance arrived and took him to the hospital.

(Tr. pp. 273-274; State's Ex. #9 at Tr.). Applicant indicated she felt her actions were responsible for Victim's death, stating: "Yes. I should have chosen a different way to handle him. I should not have put my hand over his face. It was not my intent to kill him. I just wanted him to go to

sleep. I am so sorry." (Tr. pp. 278-279; State's Ex. #9 at Tr.). Applicant concluded the statement by stating:

I cannot convey how sorry I am. I should have taken a step back. If I could change things I would. I'm tired of holding on to this. It feels good to say it to someone. I know this is going to change things in my life with my friends but it is the right thing to do. I was wrong for what I did. I want to ask for forgiveness and move on in my life.

(Tr. p. 280; State's Ex. #9 at Tr.). After the statement was prepared, Applicant reviewed each page and signed it multiple times. (Tr. pp. 280-283). In addition to Sergeant Isenhoward, Chief Wilson witnessed Applicant sign the statement. (Tr. pp. 275-276).

After making the statement, Applicant alerted Sergeant Isenhoward she wanted to apologize to Victim's parents. (Tr. pp. 283-284). He offered her a blank piece of paper to write a letter to Victim's family, and Applicant wrote an apology. (Tr. pp. 284-285). In the apology letter, Applicant stated: "Please forgive me and know it was not my intention to cause you such loss. I didn't want to hurt him. But I did. I should have stopped & walked away. What I did was wrong and I'm so sorry." (Tr. p. 286).

Subsequently, Applicant was arrested and indicted for homicide by child abuse. After a renewed investigation into Victim's death, the coroner's report was amended on April 18, 2008, to reflect a cause of death of cardiac arrest due to asphyxiation due to hand over mouth, and the manner of death was ruled a homicide. (Tr. p. 189). Applicant was also indicted for two additional counts of Homicide by Child Abuse for the deaths of two other infants who died while in Applicant's care. The State intended to call all three cases to trial together. (August 12, 2008 Motions Hearing Tr.). Upon motion of Applicant's trial counsel, the trial court ruled that the cases must be severed, making a specific finding that the charges could not be tried together because they did not arise out of a single chain of circumstances. (August 12, 2008 Motions

Hearing Tr.). The trial court also denied the State's motion to reconsider this ruling (August 28, 2008 Motions Hearing Tr.).

On October 30, 2009, Applicant, alongside her counsels Douglas Strickler and Fielding Pringle, appeared for a Jackson v. Denno hearing before Judge Lee to determine if Applicant's statements were admissible. At the hearing, the State called four witnesses: Captain James S. Smith of the Richland County Sheriff's Department; Lieutenant James E. White of the Richland County Sheriff's Department; Investigator Kevin Isenhoward of the Richland County Sheriff's Department; and Chief David Wilson of the Richland County Sheriff's Department. After examination and cross examination of all witness, the Court ruled that Applicant's statements were "made freely and voluntarily and without coercion or threats or promises" and were admissible. (Jackson v. Denno Hearing Tr.)

Applicant then proceeded to trial. During trial, Victim's mother and Fortson testified about their experiences on the day of Victim's death. (Tr. pp. 116-117; pp. 152-157). Additionally, the investigating officers testified about the circumstances surrounding Applicant's statements to law enforcement. (Tr. p. 215; pp. 255-256; p. 321). The officers confirmed no threats, force, coercion, or interrogation techniques were employed to elicit Applicant's statements. (Tr. p. 223; p. 231; p. 245; p. 261; p. 308; p. 334; pp. 338-339). They further testified Applicant was cooperative, remorseful, relieved, and volunteering of her statements. (Tr. pp. 245-246; p. 260; p. 309; pp. 335-336; p. 339). The officers denied suggesting any details or information to Applicant during the interviews. (Tr. p. 245; pp. 298-299; p. 308; p. 322).

During Chief Wilson's testimony, the following exchange occurred while the solicitor was questioning the witness:

[Solicitor]: Once she had made that statement, the written statement, did you have any contact with her that day?

[Witness]: I did.

[Solicitor]: And not on this case --

[Witness]: No.

[Solicitor]: Not on any matter --

[Witness]: No.

[Solicitor]: -- concerning this event?

[Witness]: No, sir.

[Defense Counsel]: Objection, Your Honor. I have a matter of law to take up.

[Trial Judge]: Yes, sir. You can approach.

(Tr. p. 329). The trial judge then conducted a bench conference with counsel, noted an objection for the record, and allowed questioning to continue. (Tr. p. 330). Following the bench conference, the solicitor did not ask any additional questions regarding the objected-to line of questioning. (Tr. p. 330).

Subsequently, outside the presence of the jury, the trial judge acknowledged Applicant made a mistrial motion based on an allegedly improper question asked to Chief Wilson. (Tr. pp. 371-372). Applicant asserted the reference to law enforcement contact with Applicant related to another matter or charge "raised the speculum of additional charges" and warranted the grant of a mistrial. (Tr. p. 372). The trial judge noted earlier testimony established Applicant had been contacted by officers in another matter. (Tr. p. 373). The trial judge concluded that "[w]hile . . . it probably would have been best for the question and the answer not to have been given," Applicant had not been prejudiced. (Tr. p. 373). The trial judge then prohibited any further discussion of the matter during trial and denied Applicant's motion for a mistrial. Tr. p. 373).

In addition to the officers' testimony, the State presented testimony from several medical experts. (Tr. p. 340; p. 397; p. 423). First, Dr. Armstrong testified about his findings during his autopsy of Victim. (Tr. p. 342). Dr. Armstrong opined the cause of Victim's death was suffocation. (Tr. pp. 349-350). He testified it would have been unusual for Victim's mild case of pneumonia to be fatal. (Tr. p. 350). He noted the reported time line of Victim being well and then deceased within two and a half hours was too rapid of a time period for Victim to have died of pneumonia. (Tr. p. 351). He further noted his findings of brain swelling, blue coloration in Victim's fingernails and extremities, and redness in the lungs were consistent indicators of strangulation. (Tr. p. 347; pp. 351-353). When questioned about the lack of external signs of strangulation, he testified placing one's hand over a child victim's nose and mouth would hardly ever leave detectible marks. (Tr. p. 370). Based on his review of all available information, Dr. Armstrong concluded Victim was suffocated, and he testified he would have had this opinion in December of 1998 if all the available information would have been available at that time. (Tr. pp. 349-350; p. 353).

Dr. Clay Nichols, the chief medical examiner for Richland County and an expert in forensic pathology, testified he reviewed all the available information regarding Victim's death, including the autopsy report, the emergency room report, Applicant's statements, Victim's medical records, information from law enforcement, and tissue samples from Victim's lungs. (Tr. pp. 397-398; pp. 399-400). Based on his analysis, Dr. Nichols testified Victim died of asphyxiation due to suffocation. (Tr. p. 400). He opined Victim's mild case of pneumonia was insufficient to cause death. (Tr. pp. 400-401). He testified Victim's fine health two and a half hours prior to his death and the reported timeframe of his death were inconsistent with a death caused by pneumonia. (Tr. pp. 401-401). He noted Applicant's admission of responsibility for

Victim's death was consistent with his findings. (Tr. p. 421). Additionally, he noted it was quite common to find no marks present on the body of a suffocated child. (Tr. p. 403).

Finally, Dr. Gratin Smith, a pediatrician and an expert in the field of pediatrics, testified about his review of the records and information related to Victim's death. (Tr. pp. 423-424). Dr. Smith testified he found a small amount of pneumonia present in Victim's lungs, with the signs of pneumonia confined to only a portion of one of Victim's lungs. (Tr. p. 429). He stated an infant dying of pneumonia typically would exhibit obvious symptoms of fast breathing, increased exertion to expand the lungs, fatigue, and a struggle to breathe. (Tr. p. 430). Dr. Smith testified the obvious signs of critical illness and respiratory failure would have been noticeable several hours before the child's death, with a death from pneumonia taking days. (Tr. pp. 430-431). Based on his analysis and review, Dr. Smith concluded Victim did not die of pneumonia. (Tr. pp. 431-432).

Subsequently, the State rested, and Applicant moved for a directed verdict. (R. p. 295). Applicant asserted the State failed to prove the corpus delicti of the charged offense independent of her confession. (Tr. p. 449). After hearing argument from counsel, the trial judge determined there was sufficient evidence establishing the corpus delicti of the offense. (Tr. p. 456). Therefore, after viewing the evidence in a light most favorable to the State, the trial judge denied Applicant's motion. (Tr. pp. 457-458). Applicant then renewed her motion for a mistrial, and the trial judge again denied the motion after finding Applicant was not prejudiced. (Tr. pp. 458-459).

Applicant's husband, Rodney Person testified first on Applicant's behalf. (Tr. pp. 481-501). He testified that he met Applicant while both were students at the University of North Carolina at Chapel Hill (Tr. pp. 482-483). He testified that his entire family, including

Applicant, was very close with Victim and his family. (Tr. pp. 486-487). He testified that his wife ran a day care out of their home and she cared for Victim every day. (Tr. pp. 488). He testified that he went to the hospital on the day of Victim's death and Applicant was "extremely upset . . . crying, pacing." (Tr. p. 490). He testified that on April 17, 2007, he learned that Applicant was at the Richland County Sheriff's Department and he went to check on her. (Tr. p. 491). He testified that he spoke with Investigator Isenhoward, whom he had met previously and he described as "respectful," who asked Rodney if his wife had any history of mood swings. (Tr. pp. 492-494; p. 498). Rodney testified that his wife "can be naïve when it comes to dealing with people" and that "she is more trusting than most people." (Tr. p. 494).

Applicant testified next on her own behalf. She testified that she went to the University of North Carolina at Chapel Hill on a "full ride scholarship" and that she was only four credit hours short of graduating when she left school to get married. (Tr. pp. 503-504). She testified that she was very close with Gina, Victim's mother, and had cared for Victim's siblings in addition to Victim. (Tr. pp. 509-510). She testified that at the time of Victim's death, she had been running a day care out of her home for approximately five years. (Tr. pp. 506-507). She testified that she had cared for Victim since he was approximately six weeks old. (Tr. p. 511). She testified that on the day Victim passed away, he arrived at her home at 7:30 a.m. and was "fussy." (Tr. pp. 512-513). She testified that she rocked him in her arms in an attempt to make him comfortable and stop his crying. (Tr. p. 513). She testified that she fed him a bottle of milk, followed by a bottle of juice when he was still fussy. (Tr. p. 514). She testified that following this second bottle, she put Victim down for a nap, and after an unknown period of time, she found him face down in a pool of fluid. (Tr. p. 516-517). She testified that she took him into the living room, placed him on the floor, called 911, and began to perform C.P.R. (Tr. pp. 517-519).

She testified that she went to the hospital to check on Victim and was told that he had walking pneumonia and his lung had collapsed. (Tr. pp. 522-523).

Applicant testified that she was interviewed by Investigator Isenhoward on April 2, 2007 at her home. (Tr. p. 525). Thereafter, on April 11, 2007, she testified that she voluntarily went to the Richland County Sheriff's Department where she was interviewed by Investigator Isenhoward. (Tr. pp. 525-526). She testified that was asked to return a few days later for another interview and she agreed. (Tr. p. 526). She testified that she voluntarily returned to the Sheriff's Department on April 17, 2007, where she was interviewed by several officers. Applicant disputed the officers' testimony and claimed the officers were aggressive, accusatory, forceful, threatening, and unwilling to accept her initial denial of responsibility. (Tr. pp. 530-531; p. 541). She testified the officers suggested scenarios about how Victim could have been killed before she eventually began to go along with their stories out of desperation to go home. (Tr. pp. 533-534; p. 539; p. 544). She attributed the inculpatory portions of her statements and apology letter to the officers and stated they were lying about the circumstances of the interview. (Tr. pp. 547-548; pp. 589-590). However, she admitted she was fully aware of her rights and knew she did not have to sign any statements and was allowed to leave at any time during the interview. (Tr. p. 543; pp. 568-569; p. 578). She offered no explanation as to why she did not leave the interview while armed with this knowledge. (Tr. p. 570).

Also testifying in Applicant's defense was Dr. Kim Collins, the former chief medical examiner of Charleston County and an expert in forensic pathology, who testified she reviewed all of the available information regarding Victim's death. (Tr. pp. 601-602; 605-606). Dr. Collins testified that excluding Applicant's statements and only considering the information available in 1998, she would have concurred in the original finding of pneumonia as the cause of

death. (Tr. p. 606; p. 608). She opined Victim's pneumonia, which she characterized as moderate, was significant enough to be the cause of death. (Tr. pp. 608-609; p. 618; pp. 621-622). Therefore, Dr. Collins testified there was not a sufficient basis in the autopsy information alone to change the diagnosis to one of asphyxiation. (Tr. p. 634). However, Dr. Collins conceded she had changed her opinion regarding a cause of death in the past after receiving additional information, and she acknowledged a forensic pathologist cannot exclude statements when determining the cause of death. (Tr. p. 641). Dr. Collins further acknowledged there were no signs of a serious case of pneumonia in the autopsy information. (Tr. p. 641). However, based solely on the autopsy findings, she testified she believed the cause of death to be pneumonia. (Tr. p. 652). However, based on her review of all the available information, Dr. Collins opined the cause of Victim's death was asphyxiation due to smothering based on Applicant's statements. (Tr. pp. 652-653).

After lengthy voir dire, both in camera and in front of the jury, and over objections from the State, Applicant presented testimony from Dr. Saul Kassin, a Distinguished Professor in Psychology at the John Jay College of Criminal Justice and a part time Professor of Psychology at Williams College. (Tr. pp. 812-812). He testified that he has focused his research and teachings on the field of false confessions and police interrogations. (Tr. 816-819). He testified as to what is a false confession and trademark characteristics of confessions that have been deemed "false." (Tr. p. 826-838; pp. 841-847). He testified of the importance of recordings of law enforcement interrogations when determining the likelihood of a confession being false, stating that it is sometimes "impossible" to determine whether a statement is credible without a recording⁴. (Tr. pp. 838-840). He testified regarding common police interrogation tactics and

⁴ It is undisputed that Applicant's interview with law enforcement was not recorded, as was the common practice of the Richland County Sheriff's Department at the time.

risk factors for false confessions. (p. 840-867). Finally, Dr. Kassin testified as to a three pronged approach for analyzing the reliability of confessions, including: 1) assessing the suspect, his vulnerabilities and the situation in which the suspect was placed; 2) whether the suspect gave a detailed narrative and whether the narrative was accurate; and 3) from where did the details of the narrative come. (Tr. pp. 868-871).

At the conclusion of the evidentiary phase of trial, Applicant renewed her motion for a directed verdict, and the motion was again denied. (Tr. pp. 875-876). At the conclusion of trial, the jury convicted Applicant of homicide by child abuse. (Tr. pp. 998-989). The trial court then sentenced Applicant to a term of imprisonment of twenty-two years. (Tr. p. 589).

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on her own behalf and presented testimony from Dr. Saul Kassin, Dr. Marc Harari, and trial counsel Douglas Strickler. Respondent presented testimony from trial counsel Elizabeth Fielding Pringle.

Dr. Saul Kassin (hereafter "Kassin") testified first for Applicant. He testified that he has been focusing his studies and research on the area of false confessions for the past twenty-five years and has authored or co-authored several books, chapter of books, and articles on the topic. He testified that the field of false confessions is a "very well developed field" with numerous published articles, books, chapters of books, and funded grants. Additionally, he testified that several amicus briefs on the topic have been submitted to the United States Supreme Court. He testified that he frequently presents at law schools, law groups, and conferences and has been admitted as an expert in both state and federal court. He testified that he has been admitted as an expert in South Carolina in four trials (including Applicant's trial), as well as one post-conviction relief action. Applicant offered Kassin as an expert in social psychology in the field

of false confessions. Kassir testified that he does not ever testify as to the ultimate conclusion and that he has no opinion as to whether Applicant's own confession is false. Following extensive voir dire and objection from the State⁵, this Court admitted Kassir as an expert, finding that as he was admitted as an expert at trial, he would therefore be allowed to testify as an expert during the post-conviction relief proceedings.

Kassir testified that there are three different types of false confessions: Voluntary, Compliant, and Internalized. He testified that Compliant and Internalized false confessions are both induced by coercion. He testified that he does not know the rate or scope of false confession, but could point to several prevalent examples in the American psyche, such as prisoners of war or the Salem Witch Trials. He testified that he thinks that Applicant's confession could possibly be a compliant false confession, where an innocent person knows they did not commit the alleged act, but becomes so "broken" that he or she confesses. He testified that it is always preferable to have a video recording of an interrogation when analyzing whether the confession could be false, but that an audio recording is also helpful. He acknowledged that Applicant's interview with law enforcement was not auditory or visually recorded, which makes it significantly harder -- if not impossible -- to determine if the confession could be false.

Kassir testified that there are common personality traits exhibited by those who are more likely to give false confession, including:

1. Age, with youths and juveniles being more likely to give false confessions;
2. Mental Acuity, with those who have a lower IQ being more likely to give a false confession;
3. Mental Illness, with those who suffer from more significant mental illness being more likely to give a false confession;
4. Anxiousness and/or Delusions; and
5. Suggestibility or Compliance.

⁵ The State objected to Kassir being admitted as an expert, citing a lack of empirical study in his field, a lack of error rate, and the strong reliance of anecdotal evidence and ad hoc case studies.

He testified that being innocent is another risk factor, as it makes a suspect more likely to waive his rights and "believe in justice and that innocence will prevail." Additionally, he testified that those without prior run-ins with law enforcement and those that "haven't been through the system before" are also at an increased risk to give a false confession. Kassir also testified that "high stress, grief, food or sleep deprivation" are also more likely to produce a false confession.

Kassir testified that in the present case, if he was called during the Jackson v. Denno hearing, he would have been able to testify as to the risk factors of false confessions and how they related to Applicant's specific case. He acknowledged that he was able to inform the jury of these risk factors during his trial testimony, but testified that he was not able to discuss Applicant's polygraph test, the length of time that she was interviewed, or the significance of the two other deceased children while he was before the jury. Additionally, he testified that he would have been able to testify regarding dispositional risk factors, such as Applicant's personality traits and how those would make her more or less likely to provide a false confession, though he readily admitted that he has never met Applicant and did not do a personality or any other assessment on her. However, he acknowledged that Applicant does not meet many of his risk factors, as she is a middle-aged, highly educated woman with a background in psychology, who has run her own business for several years and has no history of mental illness. Kassir recognized that he would have needed an audio or video recording to best analyze Applicant's confession and would have been significantly hampered since no recording was available for his review. Kassir testified that he would not have testified to an ultimate conclusion at the Jackson v. Denno hearing, but would have merely provided factors to make one more susceptible to false confession to the court to aid in its decision making. He testified that he would have never opined that Applicant's confession was false and that this is something that

needs to be determined by the trier of fact. He testified that he could not recall if he was contacted by Applicant's trial counsel regarding possibly testifying at her Jackson v. Denno hearing. However, he readily acknowledged that he did not take notes when he discussed Applicant's case with her trial counsel.

Next, Applicant presented testimony from Dr. Marc Harari (hereafter "Harari"), a clinical psychologist licensed in South Carolina. He testified that he received his Bachelors of Arts in Psychology from Rutgers University in May, 1994 and his Ph.D. in Counseling Psychology from the University of Akron in August, 2002. He testified that he has been working in the psychology field since 1994 and his primary focus has been in counseling. He testified that he has no previous training or education involving coercion or false confessions and that he has never reviewed any articles or other materials on the topic of false confessions or coercion. He testified that he has been qualified as an expert in South Carolina state courts over 45 times, with nearly all cases involving family court actions involving juveniles. He testified that he has never been found unqualified as an expert. Following voir dire, this Court admitted Harari as an expert in the general field of psychology.⁶

Harari testified that he was contacted by Applicant's counsel on September 23, 2013 and asked if he could perform expedited psychological testing in anticipation of Applicant's post-conviction relief hearing the following week. He testified that he informed Applicant's counsel that he could do a psychological evaluation on interpersonal characteristics of Applicant. He testified that Applicant's counsel provided him with his only collateral information, including: that Applicant was diabetic, that three children had died in Applicant's care in situations that Applicant's counsel characterized as "classic SIDS and overheating," that Applicant was put

⁶ Respondent had no objection to Harari's testimony as to the general field of psychology, but objected to any expert testimony regarding false confessions or coercion, as Harari himself testified during voir dire that he had absolutely no background whatsoever in the field.

through what Applicant's counsel described as a "lengthy interrogation" including a polygraph test, that Applicant was seeking to overturn her convictions on claims that she was coerced by law enforcement to make a false confession and that her trial counsel was ineffective for not having this testimony excluded from trial, and that Applicant had retained a false confession expert to testify at her post-conviction relief hearing and needed an expert to testify as to her susceptibility to coercion. He testified that he and Applicant's counsel "brainstormed" how to measure the likelihood of one being susceptible to coercion, as he has no background in the field. He testified that he and Applicant's counsel determined the Minnesota Multiphasic Personality Inventory - Two - Restructured form (MMPI-2-RF), the Paulhus Deception Survey (PDS), and the Personality Assessment Inventory (PAI) would be "good indicators" as to one's susceptibility to coercion. He testified that his hypothesis was that "individuals who tend to be overly passive or lack assertiveness may experience mistreatment or exploitation of others, or they may conform to others in an effort to avoid being the focus of attention." (Psychological Report of Applicant p. 9). He testified that although the only information he was provided came exclusively from Applicant's counsel, including the overall objective of his report, and that he was being paid by Applicant's counsel to generate such a report for use in this hearing, he tried to be "as objective as possible" and "not blindly biased." A copy of Harari's CV and of his report was introduced into evidence as Applicant's Exhibits #1 and #2.

Harari testified that he interviewed Applicant on September 25, 2013 at the Leath Correctional Institute. He testified that he did not interview or speak with any members of Applicant's family and his total time spent with Applicant was very brief, both of which limit the results of his findings. He testified that he administered three psychological tests: the MMPI-2-RF, the PDS, and the PAI. He testified that he selected the MMPI-2-RF and PMI because these

inventories are peer reviewed. He testified that he performed these tests with the specific focus of determining Applicant's susceptibility to coercion. He testified that these tests measure current personality characteristics and are not retroactive. He testified that there were no significant or moderate findings of deception or malingering for any of the three tests administered, which he believes indicates that he was able to collect accurate data from Applicant. He testified that based on his interview and testing, Applicant experiences situational distress directly related to her incarceration, including missing her family. He testified that he found no evidence that she suffers from any type of major clinical symptoms, sociopathic personality tendencies, or any personality disorders. He testified that the psychological testing data derived from the PAI and the MMPI-2-RF resulted in moderate elevation in scales pertaining to interpersonal passivity, conforming tendencies, and meek characteristics that may show Applicant has difficulty standing up for herself. Harari testified that based on his hypothesis that "individuals who tend to be overly passive and lack assertiveness may experiment mistreatment or exploitation by other, or may conform to others in an effort to avoid being the focus of attention," the results of his psychological testing show that Applicant's passive-submissive interpersonal tendencies may make her more susceptible in coercive situations. However, he acknowledged that this is only a hypothesis and he has no training or background on false confessions or coercion.

Following Harari, Applicant testified on her own behalf. She testified that she is currently forty-six years old, has been married to her husband Rodney for twenty-four years, and has two children that are both college students. She testified that she met Rodney while attending the University of North Carolina at Chapel Hill on a full scholarship. She testified that she had a history of performing well academically and was majoring in psychology. She

testified that she left college with only a few credit hours still needed for her psychology degree so that she could get married. She testified that she has no history of mental health concerns and her only significant physical health problem is diabetes, which she monitors daily. She testified that she has been fully employed since college, working at a telephone bank, nursing home, and then eventually running an in-home day care since 1992.

Applicant testified that while operating her day care, three small children died over a nine year period from 1998 to 2007. She testified that at the time of the final infant's death in 2007, she was operating her day care without a license in clear violation of the Department of Social Services (DSS) and with more children than allowed by DSS. She testified that after the third death in 2007, law enforcement visited her home and asked her to come to the Richland County Sheriff's Department for an interview. She testified that she voluntarily came to the sheriff's department on April 11, 2007 for an interview and was allowed to leave after a few hours. She testified that she was asked to return for a subsequent interview and polygraph examination a few days later and she again voluntarily agreed to return.

Applicant testified that she voluntarily returned to the sheriff's department on April 17, 2007 around noon for the subsequent interview and polygraph examination. She testified that she is diabetic and had taken her insulin on that morning, but not her pills; she could not recall if she had eaten anything that morning. She testified that she was under financial pressures due to her loss of her DSS licensure for day care, but acknowledged that she had been illegally operating her day care without a license for some time when the final child passed. She testified that she was also under stress from learning that her husband may have fathered a child with her best friend. She testified that she signed a Waiver of Rights form and that she fully understood those rights and the implications of waiving those rights, which she had also testified to at trial.

She testified that she voluntarily took a polygraph test because she wanted to help law enforcement. She testified that she thought the interviews and polygraph would only involve the last child's death and was surprised when she was asked about Victim's death. She testified that the polygraph lasted less than three hours and she was informed that she did not "clear" the polygraph test at its conclusion. She testified that she became stressed, desperate to go home, and was intimidated by law enforcement officers who demanded to know what had happened to Victim. She testified that she was also feeling the effects of low blood sugar, was irritated, and had a headache. She testified that it was at this time, approximately three hours after the interview first began, when she gave her first verbal statement regarding Victim's death. She testified that she then repeated her statement to at least two more law enforcement officers. She testified that she then used the restroom, but that she was escorted to and from the restroom, which she found to be threatening. However, she acknowledged that this was after she had given multiple statements implicating herself in Victim's death.

Applicant testified that she then signed an additional Waiver of Rights form, which she testified at trial was signed voluntarily and knowingly. She testified that following the signing of a second Waiver of Rights form, she gave a written statement implicating herself in Victim's death. She testified that she also gave statements implicating herself in the death of the second infant who died while under her care. She testified that she was arrested that evening.

Applicant testified that Douglas Strickler and Elizabeth Fielding Pringle were appointed to represent her shortly after her arrest. She testified that she was incarcerated for seventeen months before she was released on bond. She testified that she met with her attorneys frequently and that the meeting frequency increased as the trial drew closer. She testified that members of her family also met with her attorneys. She testified that she was involved with her case and

discussed possible defenses to put forth at trial, witnesses that could or should be used at trial, as well as expert witnesses. She could not recall if her attorneys consulted with any outside polygraph examiners or experts. She testified that she knew her attorneys intended to call Dr. Collins as a witness and that she knew that Dr. Collins would testify that the physical condition of Victim supported death due to pneumonia.

She testified that her confession was always a primary focus in her case and that she discussed using Kassin as an expert witness regarding false confessions and police interrogations. She testified that she informed her attorneys that the confession was her own words, but that it was false and the result of coercion. She testified that she could not recall they discussed the possibility of him testifying at a Jackson v. Denno hearing. She testified that she discussed whether she should testify at the hearing with her attorneys and that all ever in agreement that she should not testify at this hearing. She testified all were also in agreement that they would not call her husband as a witness.

Applicant testified that she was indicted for three counts of Homicide by Child Abuse, one count for each infant that died while under her care. She testified that the State intended to try all three cases together, but that her counsel moved to sever the cases. She testified that she discussed this decision with her attorneys and that all agreed it would be best for her to have three independent trials. She testified that she wanted the cases severed so that the jury would not hear about the deaths of all three babies. She testified that because of this, the jury would not be able to hear how long her interviews with law enforcement were, as large portions of the interviews dealt with the other two deceased infants. She testified that her severance motion was successful and the State only called Victim's case to trial.

Following Applicant's testimony, Respondent called Elizabeth Fielding Pringle, Esquire (hereafter "Pringle") to testify. She testified that she has been practicing law since 1996 and is the Chief Public Defender for Richland County. She testified that before joining the Richland County Public Defender's Office, she was a staff attorney at the South Carolina Supreme Court. She testified that Douglas Strickler (hereafter "Strickler"), the Chief Public Defender for the Fifth Judicial Circuit, was appointed to represent Applicant in April, 2007 and that she joined the case as co-counsel in May, 2007. She testified that she met with Applicant "too many times to count," as well as meetings with members of Applicant's family with regularity. She testified that she also spoke to Applicant and Applicant's family by phone regularly as well. She testified that this was a "very complex" and "different kind of" case because it involved the deaths of three infants over a ten year period. She testified that the case involved extensive investigation, man-hours, and preparation due to the complexity. She testified that Applicant was "very helpful" and "very informed," as well as played an active role in her defense. She testified that Applicant is very intelligent and well-educated and understood what was occurring with her case. She testified that she filed and renewed all appropriate discovery materials and reviewed all discovery materials with Applicant multiple times.

She testified that the State wanted to call all three cases to trial at once and her and co-counsel's goal was to have the cases severed. She testified that it was "completely improper" to have joined the cases, as they involved different victims who died in different manners over a ten year period. She testified that the inflammatory nature to a jury of three deceased babies would be impossible to get beyond and that severance was crucial. She testified that she discussed severance with Applicant, who was very agreeable. She testified that Judge Lee granted their severance motion and the State ultimately called Victim's case to trial.

Pringle testified that Applicant voluntarily came to the Richland County Sheriff's Department on April 17, 2007 to be interviewed and submit herself for a polygraph examination. She testified that this was six days after Applicant had previously been interviewed at the sheriff's department and was allowed to leave following the interview. She testified that Applicant gave her conflicting information as to whether or not she had taken her diabetes medication or insulin that morning, and also could not recall if she had eaten prior to arriving at the sheriff's department. She testified that Applicant's inability to clearly remember the events on April 17, 2007 was a continuing issue during her representation and gave her concern regarding Applicant's ability to testify at trial. She testified that Applicant voluntarily signed a Waiver of Rights form before the polygraph examination and Applicant told her she understood the rights she was waiving. She testified that Applicant was told that she "did not clear" the polygraph test and at this point gave her first verbal statement implicating herself in the death of Victim.

She testified that she sought funding in 2008 to have an independent evaluation of the polygraph test and report. She testified that she retained John Hartley and Tom Williams, both who have extensive background regarding polygraph testing. She testified that both experts reviewed the polygraph report and informed her that Applicant's second polygraph test was invalid. She testified that both informed her that the second polygraph was invalid because Applicant was asked about multiple victims, but that it showed "marked deception." She testified that both experts reported that the results clearly showed deception on Applicant's part in both the first and second set of tests. She testified that Tom Williams informed her that Applicant was "totally deceptive" during the polygraph examination. She testified that she did not want to bring up the polygraph tests at the Jackson v. Denno hearing based on what her two

independent experts each reported. She testified that she is sure she discussed this with Applicant and Kassin.

Pringle testified that Applicant informed her that her confession was voluntarily, but false. Pringle testified that Applicant informed her that she felt threatened because the officers thrust their fists, put their hands on the table, and ran their hands through their hair. She testified that Applicant gave her statement multiple times to multiple different officers before memorializing the statement in writing. She testified that Applicant gave these statements after signing multiple Waiver of Rights forms, and that these forms were comprehensive, Applicant understood these forms and what her rights were. Additionally, Pringle testified that Applicant was properly given Miranda warnings before she gave her statement. She testified that although Applicant was at the sheriff's department for a total of approximately seven-and-a-half hours before she was arrested, Applicant had only been at the sheriff's department for approximately three hours when she first gave her statement. She testified that the voluntariness of the statements was never at issue. She testified that after giving her statement regarding Victim, she also made statements that implicated her in the deaths of the other two children in some form.

She testified that based on her discussion with Applicant regarding the confession, her and co-counsel Strickler sought out Kassin as a potential expert witness regarding false confessions "early on" in their representation of Applicant." She testified that she had tried to use Kassin as an expert before, but that he is "very selective" in which cases he becomes involved with and had decline her prior request. She testified that Kassin agreed to become involved in Applicant's case and that she communicated with him by email and phone. She testified that Kassin never evaluated Applicant, which is his common practice. She testified that Kassin would testify regarding the particular characteristics and traits that make one more likely

to give a false confession, which are very much like the factors analyzed at a Jackson v. Denno hearing, as well as explain the phenomena of false confessions to the jury. She testified that she is certain that she discussed the possibility of Kassin testifying at a Jackson v. Denno hearing with Kassin and Applicant, and she has specific notes in her file indicating that she discussed this with Kassin in August, 2008. She testified that she has participated in "dozens and dozens" of Jackson v. Denno hearings and that she has never won one. She testified that as Applicant freely admitted her confession was voluntary, albeit false, there was no significant benefit in presenting witnesses or making an argument at the Jackson v. Denno hearing. She testified that any benefit was also significantly hampered by Applicant's own inability to remember key aspects of the day of the interview and the interview itself, including whether she had eaten, whether she had taken her medicine, and specific things the officers did to intimidate her. Additionally, she testified that while there were some risk factors that would make Applicant susceptible, they were minimal and not enough to convince the court that her will was overcome to the extent that the statement would be excluded. Pringle testified that Applicant had extreme anxiety about testifying and also did not want the State to know this before her testimony at trial. Pringle testified that after fully discussing the issue with Strickler and Applicant, all were in agreement to not present any witnesses at the Jackson v. Denno hearing, especially Kassin and Applicant, as they did not want to give the State a preview of the testimony that would be presented at trial.

Pringle testified that she and Strickler discussed the possibility of having Applicant evaluated by a psychologist prior to trial. Pringle testified that she discussed mental illness with Applicant, and Applicant revealed that she has no history of mental illness personally or within her family. Pringle testified that she consulted with Dr. Geoffrey McKee, a psychologist in Columbia that she has frequently consulted with and has a good working relationship, regarding

Applicant's case. Pringle testified that Dr. McKee recommended that Applicant not be tested for suggestibility, because the psychological testing available, such as the MMPI-2-RF, the PDS, and the PAI, are not "normed" for this type of situation where one is being interrogated by law enforcement. Pringle elaborated that Dr. McKee did not think these tests would be useful and could possibly be harmful for Applicant, as Applicant did not fit many of the trademark characteristics of one who would be easily coerced, such as age and intelligence. Pringle testified that the main characteristics the defense wanted to show the jury were that Applicant was very naïve, passive, and sheltered, which she was able to show the jury through Applicant's own testimony and the testimony of her husband. Pringle testified that she thinks these qualities were exemplified to the jury during both Applicant and her husband's testimony at trial.

Pringle testified that she and Strickler discussed the need for an independent pathologist to testify on Applicant's behalf at trial. She testified that she knew Dr. Collins through her reputation, which she described as "outstanding," "exemplary," and "best in the area regarding children." She testified that Dr. Collins is the medical examiner for Charleston County and is known to be a very "even handed expert." She testified that she and Strickler discussed Dr. Collins' findings with her before trial and expected her testimony to be that Applicant had a more severe case of pneumonia than the State's experts had concluded. She testified that at trial, Dr. Collins presented the strongest testimony regarding the physical evidence that Victim had significant pneumonia when he died. Additionally, she knew Dr. Collins' testimony would be that vomiting was not consistent with suffocation and that possible signs of suffocation were not present on Victim. She testified that Dr. Collins would also testify that the blue fingernails and penial gland found on Victim were indicative of pneumonia, not asphyxiation. She testified that she was aware that Dr. Collins would testify that if you include the confession, then smothering

would be the likely cause of death. However, she testified that Dr. Collins' testimony was needed to show that absent the confession from Applicant, which they asserted was coerced, the physical evidence showed that Victim died of pneumonia.

Following Pringle's testimony, Applicant called Strickler in reply. During Strickler's testimony, Applicant entered Applicant's Exhibits #3-8, all memoranda or notes Strickler prepared and from his file, without objection from Respondent. Strickler testified that he and Pringle had discussed the possibility of having Applicant evaluated and retaining a psychologist, but that they ultimately decided against it for the reasons already testified to by Pringle. He testified that he, Pringle, and Applicant discussed the possibility of calling Kassin and Applicant as witnesses at the Jackson v. Denno hearing, but ultimately made a strategic decision not to do so after considering all factors. He testified that he was aware Kassin was controversial and did not want the State to have a chance to preview his testimony before trial. He elaborated that he did not want reveal such significant portions of Applicant's case weeks before trial, especially when there was very, very little chance that her statement would be excluded. In regards to Dr. Collins, he testified that he knew Dr. Collins by her outstanding reputation and that she had testified in countless homicide cases involving children. Strickler testified that he met with Dr. Collins in Charleston, as well as discussed the case with her by phone. He testified that she would provide the strongest testimony possible that Victim had died from a significant case of pneumonia based on the physical evidence. He testified that he was aware that she would testify that once the statement was taken into account, Dr. Collins would agree with the findings of suffocation, as a confession is often one of the only ways to determine suffocation. However, he testified that as Applicant's argument was that her confession was false and made due to coercive interrogation tactics, he needed strong testimony that the physical evidence pointed to death due

to pneumonia, which only Dr. Collins could provide to the jury. Strickler testified that he highlighted this to the jury during his closing argument. See Tr. p. 913. He testified that although he knew that Dr. Collins would ultimately conclude that Victim died by asphyxiation if she considered the confession, he was surprised by the way she said it during cross-examination.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test 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, 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.

After careful review based on the standard discussed above, the Applicant has failed to carry her burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Ineffective Assistance of Counsel during the Jackson v. Denno Hearing

Applicant asserts that counsel was ineffective for during the Jackson v. Denno hearing, arguing that counsel failed to properly prepare for the hearing, failed to call witnesses or offer testimony at the hearing, failed to effectively cross-examine the State's witnesses, failed to make any sort of argument to the judge regarding the voluntariness of the statement, and failed to advise Applicant on the importance and implication of the hearing or her right to testify at it. This Court finds that Applicant has failed to meet her requisite burden of proof in regards to this allegation. First, the Court finds that Applicant has failed to establish any deficiencies in counsel's representation in regards to the Jackson v. Denno hearing. The uncontroverted testimony reveals that Applicant, Pringle, and Strickler discussed the Jackson v. Denno hearing numerous times and weighed benefits and risks of making an argument or calling witnesses at the hearing. Pringle and Strickler testified that they both had represented countless defendants in Jackson v. Denno hearings and that the success rate for exclusion of a statement was extremely

low, which they advised Applicant. Additionally, Pringle and Strickler testified that there was no valid ground on which to challenge the voluntariness of Applicant's statement, as Applicant readily admitted that she voluntarily and knowingly waived her rights multiple times and gave a voluntary statement which she insisted was false. Pringle and Strickler both testified that there was no reasonable chance of convincing the court that Applicant's will was so overborne that her statement should be excluded, especially when Applicant possessed so few of the risk factors that Kassin would testify regarding. Counsels testified that they considered calling Kassin as a witness at the hearing, and even discussed the matter with him, but ultimately decided it would be best to reserve his testimony for trial, as there was an extremely low likelihood that Applicant's statement would be suppressed and they did not want to give the State a preview of his controversial testimony weeks prior to trial. Additionally, Pringle testified that Applicant was extremely anxious and nervous about testifying and they also did not want the State to have notice of this before trial. Furthermore, counsels testified that they discussed having Applicant evaluated and consulted with a trusted psychologist, who advised against doing so as there was a significant likelihood it would not be in Applicant's best interest.

Based on the foregoing, this Court finds that counsel was well beyond prepared for the Jackson v. Denno hearing, had amply prepared Applicant for this hearing, and together, all three made a strategic decision that it was in Applicant's best interest not call witnesses or present an argument to avoid revealing their case to the State weeks before trial, particularly in light of Kassin's controversial and widely criticized methodology⁷. This Court finds that this strategy was valid and prudent based on all testimony presented, and therefore, counsels' performances were not deficient. See Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) ("[W]hen

⁷ This Court finds Kassin's methodology troubling but qualified him as an expert to align with Judge Lee's ruling at trial.

counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, we must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992)). This Court finds that counsels' performance went well beyond the standard of reasonableness according to professional norms, and therefore Applicant has failed to establish any deficiency regarding this allegation. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Counsel for calling Dr. Collins and/or properly preparing her

Applicant asserts that counsels were ineffective for calling Dr. Collins as an expert witness and/or for failing to properly prepare Dr. Collins for her trial testimony. This Court finds that Applicant has failed to carry her necessary burden of proof in regards to this allegation. First, the Court finds that Applicant has failed to establish any deficiencies in counsels' representation in regards to the decision to call or prepare Dr. Collins for trial. Counsels testified that Dr. Collins has an exemplary reputation for her expertise in child homicide cases and that she was known for her "even handed" expert opinions. Strickler testified that Dr. Collins, the medical examiner for Charleston County, testifies frequently and he was very pleased that she agreed to take on this case as an expert on Applicant's behalf. Strickler testified that met with Dr. Collins in Charleston to review Applicant's case, as well as discussed the case with her by phone multiple times. Both counsels testified that they knew Dr. Collins would provide the

strongest testimony regarding Victim's pneumonia being significant and in better alignment with the physical symptoms than smothering. Additionally, both counsels testified that they were aware that Dr. Collins would testify that if provided with Applicant's confession, the medical opinion would likely be asphyxiation by smothering. However, both counsels testified that they were surprised with the manner in which she said this, but not the underlying proposition. Strickler testified that regardless of this, Dr. Collins testimony was still necessary, as she was the only witness who could provide the jury with expert testimony that Victim's pneumonia was pervasive and significant enough to be fatal and that the physical symptoms better coincided with death by pneumonia than by smothering. Additionally, Strickler testified that as Applicant's underlying defense was that the confession was false, he wanted to highlight to the jury that the medical expertise showed pneumonia was the cause of death absent this false and coerced confession. In his closing argument, Strickler did highlight to the jury that it was solely their role to determine whether Applicant's confession was false, not Dr. Collins, who was strictly there to provide expert testimony on the medical evidence surrounding Victim's death. Based on the aforementioned, this Court finds that Applicant has failed to meet her burden of establishing deficiency of counsels' performance in regards to Dr. Collins' testimony. This Court finds that counsels' decision to call Dr. Collins as an expert was of sound and reasonable strategy. See Edwards, 392 S.C. at 456-57, 710 S.E.2d at 64. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his

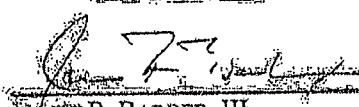
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 this 22 day of JANUARY, 20 14.


JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Blenheim, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

FEB 26 2014

S.C. Supreme Court

James R. Barber, III, Circuit Court Judge

Case No. 2012-CP-40-4268

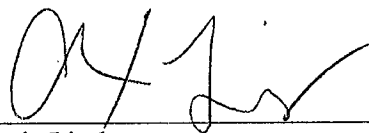
Andrea Person, #00338104,.....Petitioner,

v.

State of South Carolina.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2014, addressed to its attorney of record, Megan Harrigan, Esquire, Assistant Attorney General, Post Conviction Relief Section, S.C. Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211-1549.



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Attorney for Petitioner

February 27, 2014

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2012-CP-40-4268
Appellate Case No. 2014-000374

Andrea Person, #00338104,.....Petitioner,

v.

State of South Carolina.....Respondent.

MOTION FOR OUTSIDE COUNSEL

The undersigned respectfully moves this Court for the appointment of outside counsel for the petitioner, Andrea Person, #00338104 ("Petitioner"), in the above-referenced PCR appeal and further moves to associate the Division of Appellate Defense solely for the costs of printing. This motion is based on the following:

1. Petitioner was originally tried, convicted, and sentenced to incarceration for 22 years on November 20, 2009 for homicide by child abuse which occurred on or about December 2, 1998. Petitioner was represented at trial by attorneys Douglas S. Strickler and E. Fielding Pringle of the Fifth Circuit Public Defender's Office.
2. Petitioner appealed her sentence. She was represented on direct appeal by attorney Lanelle Cantey DuRant of the South Carolina Division of Appellate Defense.

This Court affirmed. *State v. Person*, 2012-UP-068 (S.C. Ct. App. filed February 8, 2012). The Remittitur was issued on March 5, 2012.

3. Petitioner filed a timely Application for Post-Conviction Relief. The undersigned attorney was appointed in July 2012 to represent the Petitioner on her Application for Post-Conviction Relief. Respondent made its Return requesting an evidentiary hearing. Thereafter, Petitioner, through the undersigned attorney, filed an Amended Application.

4. An evidentiary hearing was held on October 2, 2013 before the Honorable James R. Barber, III at the Richland County Courthouse. Petitioner was represented by the undersigned and Thornwell F. Sowell, III at the October 2, 2013 hearing. The PCR court entered an Order of Dismissal on January 20, 2014. The undersigned counsel, on behalf of Petitioner, timely filed a notice of appeal.

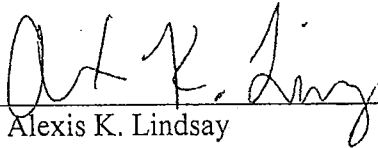
5. Undersigned counsel respectfully requests that she be appointed to represent petitioner in connection with this appeal. Outside counsel, specifically the undersigned, should be appointed because of her familiarity with and knowledge of the facts and circumstances surrounding the case, its procedural history, the parties and witnesses, and the testimony and evidence presented -- all gleaned from undersigned counsel's extensive preparation for and recent representation of petitioner at the October 2, 2013 evidentiary hearing. The appointment of the undersigned to represent the petitioner would be a more efficient use of judicial time and resources.

6. Should this Court decide to appoint outside counsel, outside counsel will be representing the Petitioner and handling the PCR appeal *pro bono*. Further, should the Court decide to appoint outside counsel, Thornwell F. Sowell, III, who also served as PCR counsel, has agreed to assist undersigned counsel in a *pro bono* capacity.

7. The undersigned further moves that this Court associate the Division of Appellate Defense solely for the cost of printing.

Respectfully, for the above reasons, undersigned counsel requests that this Court appoint her to represent Petitioner on appeal and to associate the Division of Appellate Defense solely for the cost of printing. Furthermore, counsel requests that time limits governing assembly of the appendix and filing of a petition for a *writ of certiorari* be tolled during the pendency of this motion.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 
Alexis K. Lindsay
alindsay@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorney for the Petitioner

March 4, 2014

Other Counsel of Record:

Megan Harrigan, Esquire
Assistant Attorney General
Post Conviction Relief Section
Office of the Attorney General of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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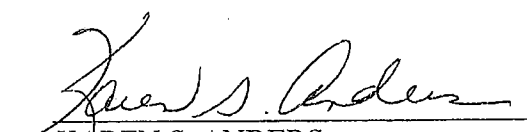
State of South Carolina.....Respondent.

PROOF OF SERVICE

I, Karen S. Anders, hereby certify that I have served upon the attorney for the Respondent one (1) copy of Petitioner's Motion for Outside Counsel in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

Megan Harrigan, Esquire
Assistant Attorney General
Post Conviction Relief Section
Office of the Attorney General of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549

This the 4th day of March, 2013, in Columbia, South Carolina.


KAREN S. ANDERS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2012-CP-40-4268
Appellate Case No. 2014-000374

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MAR 26 2014

S.C. Supreme Court

Andrea Person, #00338104,.....Petitioner,

v.

State of South Carolina.....Respondent.

AFFIDAVIT OF ALEXIS K. LINDSAY, ESQUIRE,
IN SUPPORT OF MOTION FOR OUTSIDE COUNSEL

Personally appeared the undersigned, who after being duly sworn stated as follows:

1. I am an Attorney licensed to practice law in the State of South Carolina and an Associate with the law firm of Sowell Gray Stepp & Laffitte, LLC.

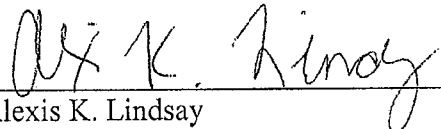
2. On March 4, 2014, I filed a Motion for Outside Counsel ("the Motion") requesting that the Court appoint me to represent the Petitioner Andrea Person ("Petitioner") on appeal and to associate the Division of Appellate Defense solely for the cost of printing.

3. The Motion for Outside Counsel remains pending.

4. I hereby certify that I consulted with the Petitioner prior to the filing of the Motion and that Petitioner consents to my appointment to represent her *pro bono* in the appeal.

5. Further, Petitioner consents to the association of the Division of Appellate Defense solely for the cost of printing and to the assistance of Thornwell F. Sowell, III, in a *pro bono* capacity as set forth in the Motion.

FURTHER AFFIANT SAYETH NOT.


Alexis K. Lindsay

Sworn to before this

26th day of March, 2014

Christine L. Skidmore (L.S.)

Notary Public for South Carolina

My Commission Expires: 4/25/2015

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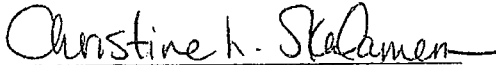
PROOF OF SERVICE

I, Christine L. Skalamera, hereby certify that I have served upon the attorney for the Respondent and upon the Petitioner one (1) copy of Affidavit of Alexis K. Lindsay, Esquire, in Support of Motion for Outside Counsel in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

Megan Harrigan, Esquire
Assistant Attorney General
Post Conviction Relief Section
Office of the Attorney General of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549

Andrea Person, SCDIC ID: 338104
Leath Correctional Institution, M2-104
2809 Airport Road
Greenwood, South Carolina 29649

This the 26th day of March, 2014, in Columbia, South Carolina.


Christine L. Skalamera

The Supreme Court of South Carolina

Andrea Person, Petitioner,

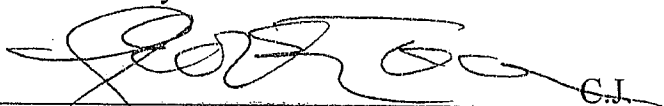
v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000374

ORDER

Alexis K. Lindsay, who represented petitioner before the circuit court in this matter, moves to be allowed to continue to represent petitioner on appeal in lieu of petitioner being appointed counsel from the Commission on Indigent Defense, Division of Appellate Defense. Ms. Lindsay states she will represent petitioner in a *pro bono* capacity, as will Thornwell F. Sowell, III, who served as co-counsel for petitioner before the circuit court in this matter. Neither the State nor the Division of Appellate Defense has filed a return to the motion. The motion is granted. Ms. Lindsay and Mr. Sowell are hereby appointed to continue as counsel for petitioner in this matter, in a *pro bono* capacity, with the Division of Appellate Defense being associated for the sole purpose of paying for any necessary transcript(s) and providing copies of the petition, appendix and any briefs.


C.J.
FOR THE COURT

Columbia, South Carolina

May 22, 2014

cc:

Alexis Kaylor Lindsay, Esquire

Megan E. Harrigan, Esquire