

Volume II of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

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S.C. SUPREME COURT

MARTINA R. PUTNAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212396

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Honorable George C. James, Circuit Court Judge

THE STATE,

Respondent,

vs.

MARTINA PLTNAM,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly admitted Appellant's statements made in the hospital waiting rooms because Appellant was not in custody when the statements were made. Regardless, any alleged error was harmless based on the cumulative nature of the challenged evidence.

STATEMENT OF THE CASE

In March of 2007, Appellant Martina Putnam was arrested following an investigation into the death of her thirteen-month-old son. In February of 2008, Appellant was indicted by the Sumter County grand jury for one count of homicide by child abuse. On April 20, 2009, a jury trial was commenced in the Sumter County court of general sessions with the Honorable George C. James, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Appellant was sentenced to a term of imprisonment of twenty-five (25) years. Appellant then moved for the sentence to be vacated and reconsidered. The trial judge denied the motions. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On the afternoon of March 10, 2007, Dr. Tracey Bailey, an emergency medicine physician, was working in the emergency department of Tuomey Regional Medical Center in Sumter when Appellant Martina Putnam and her husband brought the thirteen-month-old victim ("Victim") into the hospital. (R. p. 115; pp. 117-118). Dr. Bailey immediately began treating Victim, but Victim was unresponsive to stimuli and was not breathing. (R. p. 119). Victim was intubated to enable oxygen flow, and Dr. Bailey ordered a CT scan to be performed. (R. pp. 119-120; p. 124). During her physical examination of Victim, Dr. Bailey observed bruising on Victim's chest, back, forearm, thigh, and knee. (R. p. 123). Dr. Bailey then spoke with Appellant, and Appellant stated she fed Victim cereal mixed with baby formula and laid Victim on the bathroom floor. (R. p. 121). Appellant then indicated Victim fell over because he could not sit up. (R. p. 121). Appellant stated she then began preparing a bath, grabbed a towel, picked Victim up, and realized Victim was not breathing. (R. pp. 121-122). Based on her examination and the results of the CT Scan, Dr. Bailey concluded Victim had suffered a head injury. (R. p. 124). She then notified law enforcement to come to the hospital and arranged for Victim to be transported to the pediatric intensive care unit at Palmetto Richland Memorial Hospital. (R. p. 69; pp. 124-125). While Victim was at Tuomey Regional Medical Center, he never became responsive and never opened his eyes. (R. p. 121; p. 124).

Sergeant Robert Denison of the Sumter County Sheriff's Office responded to Tuomey Regional Medical Center around noon. (R. pp. 67-68). Upon arriving, he spoke with Dr. Bailey and then met with Appellant, her husband, and her two other sons in the

family waiting room. (R. pp. 68-69). Sergeant Denison, who was in uniform, spoke with the family to find out how the child was injured and what brought them to the hospital. (R. pp. 69-70; p. 75). He did not place Appellant in custody during their conversation. (R. p. 70). Appellant informed Sergeant Denison she fed Victim, laid him on the bed, went to run a bath, and returned to find Victim not breathing and unresponsive. (R. pp. 70-71). Appellant stated they then rushed Victim to the hospital. (R. pp. 71-72).

Shortly thereafter, Gwen Herod, a victim assistance officer at the Sumter County Sheriff's Office, responded to Tuomey Regional Medical Center after being notified of an unresponsive baby. (R. p. 79; pp. 80-81). When she arrived, she observed Appellant and Victim leaving the hospital in an ambulance. (R. p. 81; p. 83). Herod then spoke with Appellant's two boys in the waiting room and interviewed them at her office. (R. p. 81; p. 83). Following the interview, she went to Palmetto Richland Memorial Hospital with Lieutenant David Florence, an investigator at the Sumter County Sheriff's Office. (R. p. 85; p. 175; p. 178).

Meanwhile, Dr. Richard Cartie, an expert in pediatric intensive care, treated Victim when he arrived at Palmetto Richland Memorial Hospital. (R. p. 193; pp. 198-199). He concluded Victim suffered some type of head trauma based on the bleeding in Victim's brain and spoke with Appellant to obtain the necessary medical information about Victim. (R. p. 202; p. 206). Appellant informed him Victim's health was normal the day prior to and the day of Victim's hospitalization. (R. p. 207). Appellant stated she noticed Victim was not breathing when she was preparing to bathe him. (R. p. 207). Appellant did not report any accidental fall, injury, or blow to the head prior to Victim's stoppage of breathing. (R. pp. 210-211). Appellant also did not tell the doctor about any

unusual or abnormal behavior exhibited by Victim before the incident. (R. p. 211). After examining Victim, Dr. Cartie discovered a subdural hematoma, extensive retinal hemorrhages, and bruising inconsistent with Victim's reported developmental abilities. (R. p. 212; p. 215; pp. 223-225). Dr. Cartie determined the amount of force required for Victim's injuries was extensive.¹ (R. p. 226). He concluded Victim had suffered abusive head trauma and child abuse. (R. p. 220).

Upon arriving at Palmetto Richland Memorial Hospital, Herod and Florence headed to the pediatric intensive care unit. (R. p. 85). Herod went to the family waiting room, introduced herself to Appellant, and spoke with her. (R. pp. 85-86). During their conversation, Appellant was not placed in custody and was not restricted from freely coming and going. (R. p. 87). Appellant began their conversation by repeating what the doctors told her and indicating she had no idea how Victim was injured. (R. p. 89). Herod and Appellant then went through the events of the day in chronological order. (R. pp. 89-90). During the interview, Lieutenant Florence entered the waiting room and was introduced to Appellant. (R. p. 88). Lieutenant Florence was in and out of the room during the conversation and occasionally asked questions. (R. p. 96; p. 99). Medical personnel also came to the room to provide updated information on Victim's condition. (R. p. 99; p. 179).

While Appellant was speaking with Herod, nurses came to the room and indicated Victim was nearing death. (R. p. 16). Appellant then left the waiting room to be with Victim when he died. (R. p. 16). Appellant then returned to the waiting room, and a

¹Dr. Cartie noted Victim's injuries were consistent with a child being struck by a car, falling out a second-story window, or being involved in a car accident at speeds of forty to fifty miles per hour. (R. p. 226).

chaplain also came in. (R. p. 16). Herod and Lieutenant Florence briefly spoke with Appellant and left their contact information before leaving the hospital. (R. p. 16; p. 22; p. 104). Appellant remained at the hospital after the officers left. (R. p. 22).

Following Victim's death, an autopsy was performed by Dr. Joel Sexton, a forensic pathologist, on March 11, 2007. (R. p. 129; p. 131). Dr. Sexton noted minor bruising on Victim's arm, face, hip, and back. (R. p. 133). He discovered a subdural hematoma on the surface of Victim's brain, indicating severe trauma occurred to cause bleeding in that area. (R. pp. 136-137). He determined the injury was acute but potentially could have occurred up to minutes or hours before Victim's hospitalization and death. (R. pp. 138-139). Dr. Sexton also discovered retinal and optic nerve hemorrhages. (R. p. 142). Based on the extent of the injuries, he determined Victim's cause of death was abusive head trauma from either shaking or impact. (R. p. 140).

Dr. Clay Nichols, a pathologist and chief medical examiner for Richland County, reviewed the autopsy findings, autopsy photographs, medical treatment records, and prior medical records in Victim's case. (R. p. 160; pp. 163-164). He determined Victim died as a result of a subdural hematoma caused from shaking or an impact injury. (R. p. 164). Dr. Nichols concluded Victim would have been unable to exhibit a normal behavior pattern after the injury. (R. p. 169). He also determined the injuries could not have been caused by "normal playing" and were not associated with normal falling over or falling down. (R. pp. 170-171).

Subsequently, Appellant was arrested on March 13, 2007. (R. p. 22; p. 105). Prior to trial, Appellant sought the suppression of her statements made to law enforcement personnel, and a pre-trial hearing was conducted. (R. pp. 1-2). Herod

recounted the circumstances of Appellant's statements to her at the hospital. (R. p. 3). Herod indicated she went to Palmetto Richland Memorial Hospital and initially spoke with a nurse in the pediatric intensive care unit about the condition of Victim. (R. p. 8). She then went to a family room in the waiting area, and Appellant voluntarily started a conversation. (R. p. 8; p. 10). Appellant stated the doctor told her Victim sustained an injury that day causing him to stop breathing, and she did not know how this was possible because she was the only person with Victim all day. (R. p. 11). Appellant indicated Victim was very cranky and possibly teething. (R. p. 11). Appellant informed Herod she was awakened by Victim crying, and Victim always cried. (R. p. 11). Appellant stated she prepared baby cereal for Victim and sat him in the floor to feed him while her husband was in the kitchen and the boys were outside playing. (R. pp. 11-12). Appellant indicated Victim was very cranky and upset, but he eventually settled down and ate. (R. p. 12). During the meal, Victim became angry and threw himself down five or six times. (R. p. 12). Appellant stated she then took Victim to the bedroom and placed him in a car seat before taking him to the bathroom. (R. p. 12). Appellant indicated she started a bath, went to get a towel, and realized Victim was just staring at the light and not breathing. (R. p. 12). Appellant then stated they rushed Victim to the hospital. (R. p. 12). During the interview, Lieutenant Florence was in and out of the room and occasionally asked questions. (R. p. 10; p. 13; pp. 17-18). Nurses came to the room and summoned Appellant when Victim's condition deteriorated, and Appellant left the room to be with Victim. (R. p. 16). Appellant then returned to the room, a chaplain stopped by, and the officers briefly spoke with Appellant before leaving her at the hospital. (R. p. 16; p. 22). Herod testified Appellant was free to leave during the conversation and had

no reason to believe she was in custody. (R. p. 9; pp. 21-22). Herod further indicated Appellant initiated the conversation and voluntarily participated in the entire interview. (R. p. 28; p. 30). The interview lasted approximately twenty minutes before Appellant left the room to see Victim, and the entire conversation, including the time after Appellant returned, took twenty to thirty minutes in total. (R. p. 32).

Lieutenant Florence also testified regarding Appellant's statement. (R. p. 35). He indicated he entered the family room while the conversation was already in progress, and it appeared to be free and voluntary. (R. pp. 38-39). Lieutenant Florence testified Appellant was aware he was a law enforcement officer, and he occasionally asked questions. (R. pp. 39-40). He left the interview several times to speak with hospital staff. (R. p. 41). At one point, he asked Appellant who was in control of Victim, and she stated she was in control of Victim the entire day. (R. p. 41). Lieutenant Florence indicated Appellant left the hospital on her own and was free to go whenever she wanted. (R. p. 43). He further indicated he never intended to place Appellant in custody and never detained her. (R. p. 48).

Sergeant Denison also discussed his earlier interview with Appellant at Tuomey Regional Medical Center. (R. p. 51). He testified he spoke with Appellant, her husband, and her two boys in the waiting area of the hospital. (R. p. 53). He was uniformed, and Appellant understood he was an officer. (R. p. 53). He then discussed with Appellant what happened and why Appellant brought Victim to the hospital. (R. p. 53).

Appellant did not testify during the hearing and offered no evidence. (R. p. 59). Following argument from counsel, the trial judge concluded Appellant was not in custody

at the time the statements were made based on the totality of the circumstances. (R. p. 65). Therefore, the statements were admissible. (R. p. 65).

Subsequently, during trial, Herod, Licutenant Florence, and Sergeant Denison testified about Appellant's statements to them at the hospitals. (R. pp. 70-71; pp. 89-90; pp. 181-182). Following the conclusion of the State's case, Appellant elected to testify in her own defense. (R. p. 251). Offering an account of the incident substantially consistent with her earlier statements, Appellant testified she got Victim out of bed and fed him baby cereal in the living room floor. (R. pp. 252-253). Appellant indicated Victim fell over several times during the feeding, which was a game he played. (R. pp. 254-255). Appellant stated she grabbed a towel and diaper from the bedroom, placed Victim on the bathroom floor, returned to the bedroom for the towel she had forgotten, and noticed Victim was limp and not moving when she came back to the bathroom. (R. p. 255). Appellant testified she called for her husband, attempted to breathe for Victim, and took him to the hospital. (R. p. 256). Appellant indicated Herod's testimony accurately reflected their conversation except she did not remember saying anything about excessive crying. (R. p. 259). She further testified she did not remember speaking with Sergeant Denison and she was not really paying attention during the interview with Herod. (R. p. 264; p. 273). Subsequently, at the conclusion of trial, Appellant was convicted of homicide by child abuse and sentenced to a term of imprisonment of twenty-five years. (R. p. 290; pp. 292-293).

ARGUMENT

The trial judge properly admitted Appellant's statements made in the hospital waiting rooms because Appellant was not in custody when the statements were made. Regardless, any alleged error was harmless based on the cumulative nature of the challenged evidence.

Appellant contends the trial judge erred in admitting her statements to officers at the hospitals where Victim was treated. Appellant asserts her statements were made while she was in custody. To the contrary, Appellant's statements were made in the waiting rooms of public hospitals, and her freedom of action was not restrained in any significant way. Under the totality of the circumstances, a reasonable person in Appellant's position would have believed they were free to leave at any time. Therefore, Appellant was not in custody for Miranda purposes, and the officers were allowed to speak with her without informing her of her constitutional rights. The trial judge properly admitted Appellant's statements after ruling she was not in custody, and his decision is supported by the evidence. Furthermore, any alleged error was rendered harmless as the officers' testimony was cumulative to the testimony of the attending physicians and to Appellant's trial testimony. Appellant's conviction should be affirmed.

A. Admissibility of Appellant's Statements

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply

determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995); see also State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) (stating appellate courts must uphold the trial court's findings regarding whether a defendant was in custody when statements were made if the trial judge's ruling is supported by the record).

Under Miranda v. Arizona, 384 U.S. 436, 444 (1966), prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, and he has a right to an attorney. However, these requirements only apply to situations involving custodial interrogation and were not intended to interfere with the traditional function of law enforcement officers in investigating crimes. Id. at 477. The United States Supreme Court instructed:

Such investigations may include inquiry of persons **not under restraint**. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogations is not necessarily present.

Id. at 477-478 (emphasis added).

"Miranda warnings are required for official interrogations only when a suspect 'has been taken into custody or otherwise deprived of his freedom of action in any significant way.' " State v. Easler, 327 S.C. 121, 127, 489 S.E.2d 617, 621 (1997) (quoting Miranda, 384 U.S. at 444). Thus, custodial interrogations are made up of two key components – custody and interrogation. State v. Whitner, 380 S.C. 513, 518, 670 S.E.2d 655, 658 (Ct. App. 2008).

"Interrogation can be either express questioning or its functional equivalent and includes words or actions on the part of the police (other than those normally attendant to arrest and custody) the police should know are reasonably likely to elicit an incriminating response." Id.; see Rhode Island v. Innis, 446 U.S. 291, 301 (1980) ("[T]he term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response."). The requirement for Miranda warnings does not apply to voluntary statements which are not the product of interrogation. State v. Sprouse, 325 S.C. 275, 282, 478 S.E.2d 871, 875 (Ct. App. 1996). "Volunteered statements of any kind are not barred by the Fifth Amendment[.]" Miranda, 384 U.S. at 478.

"To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning." State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). The

appropriate inquiry involves objectively viewing the circumstances to determine whether a reasonable person in the suspect's position would have understood himself to be in custody. Easler, 327 S.C. at 128, 489 S.E.2d at 621.

In Oregon v. Mathiason, 429 U.S. 492, 495 (1977), the United States Supreme Court examined the limits of Miranda regarding whether police questioning is considered custodial interrogation:

[A] noncustodial situation is not converted to one in which Miranda applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a "coercive environment." Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." **It was that sort of coercive environment to which Miranda by its term was made applicable, and to which it is limited.**

(emphasis added). Thus, all police questioning or interrogation by law enforcement personnel is not custodial in nature. Id.

In the case sub judice, Appellant was not subjected to custodial interrogation during her conversations with law enforcement personnel at either Tuomey Regional Medical Center or Palmetto Richland Memorial Hospital. Regarding the first interview, Sergeant Denison approached Appellant and her immediate family in the public waiting room of Tuomey Regional Medical Center. He briefly spoke with her to determine the circumstances surrounding Victim's hospitalization in the presence of her family. There is no evidence suggesting Appellant's freedom of movement was restrained in any way,

and there is nothing to suggest she was subjected to a police-dominated coercive environment. Appellant was not prevented from ending the conversation and was not prevented from leaving the hospital or moving to a different area in the hospital. Sergeant Denison simply asked her for basic information to determine how Victim's injuries were sustained. Sergeant Denison was not required to inform Appellant of her constitutional rights before any questioning based on the circumstances of their interactions. Appellant was clearly not in custody for Miranda purposes, and the trial judge's ruling was supported by the evidence. The trial judge properly admitted Appellant's statements to Sergeant Denison because she was not in custody when they were voluntarily made.

Regarding the second interview at Palmetto Richland Memorial Hospital, Herod indicated Appellant initiated a conversation with her in a family room in the waiting area of the hospital. During the course of the interview, Lieutenant Florence came in and out of the room. Herod testified the interview was voluntary, and Appellant was not restrained or detained in any way. The officers were not precluded from asking Appellant questions because Appellant was clearly not in custody. The best evidence Appellant was not in custody during the interview is the fact Appellant freely left the family room when the nursing staff informed her of the deteriorating condition of Victim. Appellant left the room on her own accord and was not restrained, detained, or inhibited in any way by the officers. In fact, during the entirety of their conversations, Appellant was not placed under arrest and her freedom of action was not restricted. Furthermore, the interview was limited to general questioning about the circumstances of the day of Victim's hospitalization, and it only lasted approximately twenty minutes. Then, when Appellant

voluntarily returned to the room, after Victim's death, any further conversation lasted no more than ten minutes as the entire discussion in total was completed within twenty to thirty minutes. Further evidencing Appellant was not placed in custody, the officers left her in the waiting room at the conclusion of her interview and went home. Appellant was not arrested until several days later after an autopsy was performed and the officers completed their investigation. Clearly, based on the totality of the circumstances of the questioning of Appellant, she was not in custody for Miranda purposes. The trial judge properly found Appellant's statements were made in a non-custodial setting, and his ruling is supported by the evidence.

Appellant's statements to law enforcement were made in public hospital waiting rooms, not a police-dominated atmosphere. Appellant came to both hospital on her own accord. Officers never directed her to go to either location and never forced her to remain at any location. She was not subjected to a coercive environment.² Instead, she voluntarily spoke with law enforcement officers about the circumstances surrounding Victim's injuries. Her interactions with law enforcement were brief, and her freedom of movement was not restricted in any way.³ Appellant was clearly not placed in custody during her interviews in either hospital. Although not controlling, courts in numerous

² Although Appellant did not testify during the pre-trial hearing and offered no testimony to rebut the officers' testimony, her trial testimony clearly supported the trial judge's ruling and showed the interviews with the officers were not coercive or oppressive. Appellant testified she had no memory of ever speaking with Sergeant Denison. (R. p. 264). She further testified she "wasn't really paying attention" during her conversation with Herod. (R. p. 273).

³ On appeal, Appellant contends three officers "descended upon" her and "spent practically the whole day at the hospital with her." (App. Br. p. 10). This assertion is not supported by any evidence appearing in the record. Herod's unchallenged testimony established her conversation with Appellant lasted thirty minutes at the maximum. (R. p. 32). Likewise, Appellant's conversation with Sergeant Denison in the presence of her husband and children was apparently unintrusive enough that she had no memory of it whatsoever. (R. p. 264).

other jurisdictions have reached similar conclusions in cases where law enforcement officers interviewed individuals in a hospital setting. See State v. Sumler, 395 So. 2d 766, 768 (La. 1981) (finding Sumler's statements to law enforcement in a suspected case of child abuse at a hospital were admissible and were not custodial where the officer asked her to speak with him outside the emergency room in private, the questions were general, Sumler was not arrested, and no compulsory atmosphere existed); Griner v. State, 168 Md. App. 714, 733-734, 899 A.2d 189, 200 (Md. Ct. Spec. App. 2006) (finding Griner was not in custody for Miranda purposes where officers never told her she was not free to leave, never restrained her in any way, never arrested her, and never ordered her to go to the hospital and where Griner drove herself to and from the hospital, her home, and the police station); State v. Portiguc, 125 N.H. 352, 361-362, 481 A.2d 534, 540 (N.H. 1984) (finding Portiguc was not subjected to custodial interrogation during an interview with an officer in the hospital waiting room); State v. Rotko, 116 Wash. App. 230, 241, 67 P.3d 1098, 1103 (Wash. Ct. App. 2003) (finding no error in the trial judge's ruling the defendant was not in custody during an interview in a criminal mistreatment of a child case where the defendant was interviewed in a family quiet room at a hospital, was not handcuffed or restrained, and was not told he could not leave); see, e.g., Kimberly J. Winbush, Annotation, What Constitutes "Custodial Interrogation" at Hospital by Police Officer Within Rule of Miranda v. Arizona Requiring That Suspect Be Informed of His Federal Constitutional Rights Before Custodial Interrogation – Suspect Hospital Visitor, Not Patient, 31 A.L.R. 6th 465 (2008) (analyzing cases dealing with whether the questioning of a suspect visiting a hospital involved custodial interrogation).

Appellant primarily contends she was subjected to custodial interrogation because she was not going to leave the hospital while Victim was in intensive care and she was in a vulnerable state. Appellant primarily relies on State v. Evans and State v. Navy to illustrate how she was in custody. However, these cases are clearly distinguishable from the circumstances of Appellant's conversations with the officers. In Evans, 354 S.C. at 581-582, 582 S.E.2d at 408-409, Evans was questioned by multiple officers at a police station for several hours and was denied access to her family while being escorted to the bathroom during breaks. In Navy, 386 S.C. at 298-299, 688 S.E.2d at 839-840, Navy was interviewed at a police station for several hours before a visitation service for his deceased child and was escorted by law enforcement each time he left the interview room. In contrast, Appellant's freedom of movement was not restricted in any significant way, and the officers did not place her in a coercive environment. Appellant was questioned in a public hospital. The first interview took place with her family present, and she was not prevented from leaving the room unescorted at will during the second interview. Therefore, she was not in custody for Miranda purposes. The fact Appellant's child was hospitalized at the time of her statements did not convert the questioning to a custodial situation. See Portigue, 125 N.H. at 362, 481 A.2d at 540 ("The facts showing that the defendant's daughter had died, and that his remaining children were being examined at the hospital, admittedly were inducements for the defendant to remain at the hospital, but were not conditions created by the police to subject the defendant to continued questioning.").

Clearly, under the totality of the circumstances, Appellant was not placed in custody. The officers did nothing and said nothing that would lead a reasonable person in

Appellant's situation to believe he or she was not free to leave. Therefore, the officers were not required to inform Appellant of her constitutional rights before speaking with her. Otherwise, the ability of law enforcement officers to expeditiously and efficiently investigate potential criminal activity would be severely limited. See Mathiason, 429 U.S. at 495 ("[P]olice officers are not required to administer Miranda warnings to everyone whom they question."). The trial judge's ruling regarding Appellant's statements is supported by the evidence. The trial judge properly admitted the statements, and no abuse of discretion occurred. Appellant's conviction should be affirmed.

B. Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). An admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at bar, even assuming the trial judge erred in admitting Appellant's statements to the officers, any error was harmless in light of the cumulative nature of the evidence. In addition to the officers' testimony regarding Appellant's statements, both doctors from the hospitals testified about Appellant's statements to them regarding the events of the day of Victim's hospitalization. Dr. Bailey and Dr. Cartie testified Appellant informed them Victim stopped breathing while she was preparing to give him a bath. The doctors' testimony regarding Appellant's statements offered substantially consistent accounts of the day to the testimony of the officers. Therefore, the testimony of the officers was cumulative to the doctors' testimony, rendering any error in the admission of Appellant's statements to the officers harmless.

Furthermore, Appellant also testified at trial, offering testimony almost identical to the statements she made to the officers. Appellant's decision to testify was not dictated by the introduction of her statements to law enforcement. See State v. Newell, 303 S.C. 471, 478, 401 S.E.2d 420, 424 (Cl. App. 1991) ("In our view, the State's other evidence, outlined above, induced Newell's decision to take the witness stand. Her conviction for driving under the influence was virtually assured unless she produced some evidence that she was not influenced by the effects of alcohol when driving her automobile on the morning in question."); State v. Henderson, 286 S.C. 465, 471, 334 S.E.2d 519, 523 (Cl. App. 1985) ("We are satisfied, therefore, that neither the defendant's decision to testify nor the content of his testimony was dictated by the erroneous admission in evidence of his statements secured in violation of Edwards. Rather, they were prompted by the State's other evidence relating to the defendant's conduct."). Instead, it was prompted by the doctors' testimony regarding the fact Victim's injuries were caused by a recent

traumatic brain injury. Therefore, it was necessary for Appellant to establish she was not responsible for that injury to the jury. For this reason, Appellant's testimony can be considered cumulative to the officers' testimony regarding her statements for the purposes of a harmless error analysis. See Henderson, 286 S.C. at 471, 334 S.E.2d at 523 ("At trial, the defendant made virtually the same damaging admissions he made to Detective Henderson in his confession. . . . Consequently, the defendant's statement to the police was inerely cumulative.").

As the introduction of the officers' testimony regarding Appellant's statements was cumulative to the testimony of the doctors and Appellant's own trial testimony, any error in the admission of her statements to the officers was entirely harmless. See State v. Griffin, 339 S.C. 74, 77-78, 528 S.E.2d 668, 670 (2000) ("There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted."). Therefore, Appellant suffered no prejudice by the admission of the testimony, and there are no grounds upon which to reverse the conviction. Appellant's conviction should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

C. KELLY JACKSON
Solicitor, Third Judicial Circuit

BY:



MARK R. FARTHING

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 28, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Honorable George C. James, Circuit Court Judge

THE STATE,

Respondent,

vs.

MARTINA PUTNAM,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

C. KELLY JACKSON
Solicitor, Third Judicial Circuit

By:


MARK R. FARTHING

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
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ATTORNEYS FOR RESPONDENT

September 28, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Honorable George C. James, Circuit Court Judge

THE STATE,

Respondent,

vs.

MARTINA PUTNAM,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of September, 2010.



ELLEN R. DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Martina Putnam,

Appellant.

Appeal From Sumter County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-526
Submitted November 1, 2011 – Filed December 2, 2011

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Mark R. Farthing, all of

Columbia; and Solicitor Ernest A. Finney, III, of Sumter, for Respondent.

PER CURIAM: Martina Putnam appeals her conviction for homicide by child abuse, arguing the trial court erred in denying her motion to suppress statements she made to police officers without Miranda¹ warnings in the waiting rooms of two hospitals where her baby was receiving treatment. We affirm² pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003) ("Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial [court] is supported by the record."); State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) ("Whether a suspect is in custody is determined by an examination of the totality of the circumstances, such as the location, purpose, and length of interrogation, and whether the suspect was free to leave the place of questioning."); id. (stating the determination of custody is objective, namely "would a reasonable person have believed he was in custody"); State v. Easler, 327 S.C. 121, 128, 489 S.E.2d 617, 621 (1997) ("The initial determination of whether an individual was in custody depends on the objective circumstances of the interrogation, not the subjective views harbored by either the interrogating officers or the person being questioned.").

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

² We decide this case without oral argument pursuant to Rule 215, SCACR.



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DEC 28 2011

The South Carolina Court of Appeals *OFFICE mf file*

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December 22, 2011

REMITTITUR

SC Attorney General
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DEC 28 2011

The Honorable James C. Campbell
141 N. Main Street, Room 308
Sumter, SC 29150-4965

Referred to *James H. Carter*

Re: The State v. Putnam, Martina
2008-GS-43-00360

Answered _____

Dear Mr. Campbell:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/tf

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Mark Farthing

RECORDED

STATE OF SOUTH CAROLINA

2009 SEP -8 PM 1:48

County of

RichlandJAMES C. HUBBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

In the Court of Common Pleas

CERTIFIED TRUE COPY

OF ORIGINAL FILE

Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAMartina R. Putnam #334375

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Camille G. Graham Corr. Inst. - 4450 Broad River Rd.
Columbia, SC 29210

2. Name and location of Court which imposed sentence Sumter Co. Courthouse
141 N. Main St. Sumter, SC 29150

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 08-GS-43-360, Homocide by Child Abuse

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) April 22, 2009 - 25 years

(b) _____

(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ✓ _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. _____
 ii. N/A _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
 ii. N/A _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. N/A _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 ii. N/A _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) My current attorney applied for a motion to vacate and a motion
 (b) for reconsideration. He stated an appeal would not be entered
 (c) until those motions had been considered first.

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Counsel _____
 (b) _____
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) The state continuously stated the trial was based on circumstantial evidence,
 (b) my defense did not allow entry of pertinent information to defense of the
 (c) case as well as relying on my lack of legal knowledge to help guide
the trial; as well as no subpoenas were sent to any specialists, family,
ect. to aid in my defense and based his part solely on the testimony of
one pathologist involved in the trial.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
Yes, filed by attorney

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. Motion to vacate
 - ii. Motion to reconsider
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Sumter Co. Courthouse, 141 N. Main St., Sumter, SC 29150
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
- i. No determination has been made on either motion, to my
 - ii. knowledge, at the present date.
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
- i. _____
 - ii. N/A
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
 - ii. N/A
 - iii. _____
 - iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

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

- i. _____
- ii. N/A
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) N/A
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Jack D. Howle, Jr. - 3rd Circuit Public Defender
141 N. Main St. #104, Sumter, SC 29150
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. All proceedings were represented by Mr. Howle.
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

I seek for a new fair and impartial trial based on actual, not circumstantial evidence; and with an attorney who will use all available aids to my defense.

19. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA

County of

Richland

RECORDED

VERIFICATION

2009 SEP - 8 PM 1:48

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

Martina Putnam

SWORN to and subscribed before me this

4th

day of

September18, 2009Kathy R. Barner

(L.S.)

Notary Public

My Commission Expires August 12, 2015

My Commission Expires: _____

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

I, Martina R. Putnam, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Martina Putnam

Applicant

SWORN or affirmed to and subscribed before me this

4th

day of

September18, 2009Kathy R. Barner

Notary Public

My Commission Expires August 12, 2015

My Commission Expires: _____

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2009-CP-43-2055

Martina Putnam, #334375,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 8, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the February 2008 term of the Sumter County Grand Jury for Homicide by Child Abuse (2008-GS-43-0360). Applicant was represented by Jack D. Howle, Jr., Esquire. Applicant proceeded to a jury trial before the Honorable George C. James, Jr., and was found guilty. Applicant was sentenced to twenty-five (25) years incarceration. Applicant did not appeal her conviction and sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "The State continuously stated the trial was based on circumstantial evidence, my defense did not allow entry of pertinent information to defense of the case as well as relying on my lack of legal knowledge to help guide the trial; as well as no subpoenas were sent to any specialists, family, etc. to aid in my defense and based his part solely on the testimony of one pathologist involved in the trial."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel.¹ In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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

¹ In her application, Applicant states that she has post-trial motions pending in the General Sessions court. If so, the application should be dismissed without prejudice pending resolution of those matters. To the extent that Applicant alleges insufficient evidence, such claim should be summarily dismissed pursuant to S.C. Code §17-27-20.

just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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.

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

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

January 11, 2010.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

MARTINA PUTNAM, 334375

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

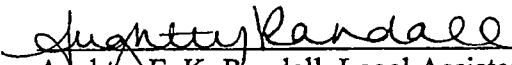
2009-CP-43-2055

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter SC 29150

DATED this 14th day of January, 2010.


 E. K. Randall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER) CASE NO.: 2009-CP-43-2055

MARTINA PUTMAN,)
)
 PLAINTIFF,)
)
VS.)
)
STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
_____)

PCR HEARING

held before the Honorable w. Jeffrey Young
Melissa Singletary, Circuit Court Reporter,
Mia Perron, Transcriptionist, 9th Judicial Circuit
in the Sumter County Courthouse
Sumter, South Carolina
on Thursday, March 22, 2012

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: Charles T. Brooks, III, Esquire
Attorney at Law
309 Broad Street
Sumter, South Carolina 29150

FOR THE STATE: Mary S. Williams, Esquire
SC Office of the Attorney General
Post Conviction Relief Section
Post Office Box 11549
Columbia, South Carolina 29211

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EXHIBITS

[None]

Martina Putman v. State of South Carolina
PCR Hearing
March 22, 2012

PROCEEDINGS

1
2 THE COURT: And this would be Martina Putnam; is
3 that correct?

4 MS. WILLIAMS: That's correct, Your Honor.

5 MR. BROOKS: That's correct.

6 MS. WILLIAMS: Ms. Putnam was convicted of
7 homicide by child abuse, and she was represented by
8 Mr. Howle, and that was a jury trial. She received a
9 sentence of twenty-five years.

10 And just as a note, in her return it says that
11 there wasn't an appeal -- the appeal was filed. There
12 was a motion to reconsider sentence and I guess the
13 PCR application was filed at the same time. So the
14 appeal has since been resolved and we don't have any
15 problems just going ahead and proceeding.

16 THE COURT: Okay. Thank you.

17 MR. BROOKS: We call Ms. Putnam to the stand.

18 [Whereupon, Ms. Putnam comes forward]

19 THE CLERK OF COURT: Place your left hand on the
20 Bible and raise your right hand. State your name,
21 please.

22 MS. PUTNAM: Martina Putnam.

23 [Whereupon, Ms. Putnam is duly sworn by the
24 clerk of court as follows: do you solemnly swear or
25 affirm the testimony to the Court shall be the truth,

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1 the whole truth, and nothing but the truth, so help
2 you God]

3 THE WITNESS: I do.

4 THE CLERK OF COURT: Thank you. Have a seat,
5 please.

6 [Whereupon, Ms. Putnam takes the witness stand]

7 THE CLERK OF COURT: Please state your full name
8 and spell your last name for the record.

9 THE WITNESS: Martina Putnam. P-U-T-N-A-M.

10 - - - - -

11 MARTINA PUTNAM,

12 Having Been First Duly Sworn,
13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q. Ms. Putnam, you are serving a twenty-five year
17 sentence for homicide by child abuse; is that correct?

18 A. Yes, sir.

19 Q. And that was the result of a trial; is that
20 right?

21 A. Yes, sir.

22 Q. And Mr. Howle was your public defender?

23 A. Yes, he was.

24 Q. Now, you filed this Post Conviction Relief in an
25 attempt to ask the Court to give you a new trial?

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1 A. Yes, sir.

2 Q. And that's what you want; is that correct?

3 A. Yes, sir.

4 Q. Okay. Now, what -- can you tell the Court what
5 Mr. Howle did wrong on your case?

6 A. Well, there were a number of things that were
7 left out, not done in completion, that could have aided in
8 my case and my defense, that may have actually helped the
9 jury to understand better what the situation was on my
10 side. And like I said, in aid in my defense, certain
11 things were not done or said that could have maybe changed
12 that, had it been done.

13 Q. Well, we're going to -- take your time. This is
14 your day to pare this out. Judge Young is here to hear
15 you. And I know you don't get to testify and talk in
16 court like we, as lawyers and judges, so take your time.

17 Let's go through those specifically. You had
18 told me some things about you had two older children; is
19 that correct?

20 A. Yes, sir.

21 Q. And those children are with an ex-husband; is
22 that right?

23 A. Right.

24 Q. The father of the children.

25 And did you say something about having those

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1 children testify?

2 A. They had actually been subpoenaed to testify but
3 that was actually during the trial, not before the trial,
4 and at that point it was pretty much -- it was too late to
5 do anything about it. My ex-husband didn't want to drive
6 500 miles [phonetic] to get here with the other children
7 so --

8 Q. Because they're in Tennessee?

9 A. Right.

10 Q. What part of Tennessee?

11 A. Blackstone [phonetic].

12 Q. Okay. And that's something -- you wanted
13 Mr. Howle to have your children here; is that right?

14 A. I think, honestly, that that may have been --
15 that may have helped in the situation, because they had
16 videotaped the questioning sessions that had been given to
17 them and that may have shown some sort of information that
18 may have helped in some way. The jury may have had more
19 of an idea of what was actually going on in the house at
20 the time.

21 There were -- like I said, there were things
22 that weren't shown that happened that day and things that
23 weren't said and things that had been changed around and
24 not made aware of.

25 Q. Well, now, let me ask you this. Did your child

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1 that unfortunately was -- that unfortunately died, that
2 child was a special needs child; right?

3 A. Absolutely.

4 Q. Can you tell the Court what the problems of that
5 child were -- was?

6 A. Well, Child was born at twenty-five weeks
7 premature. I had an emergency C-section done. He was
8 determined to be special needs from the date of his birth.
9 He had retinopathy [phonetic] and he had bleeding on his
10 optic nerves, which had actually been shown during the
11 pathology report. That history of -- there are certain
12 things that they don't -- they don't test for, check for,
13 at the hospital.

14 But we were told by his pediatrician at the
15 level four NICU that his viability rate was going to be
16 low, that there was a good possibility that he would not
17 survive past his first year and to be aware of this.

18 He had a blood transfusion in NICU, in level
19 four NICU, and had been -- just barely been transferred to
20 a level three. A level four is the highest care they can
21 possibly give to a premature infant. Most of those are
22 the very sickest of the babies born.

23 Child was just a little over a pound and a half
24 when he was born, so he had a lot of problems. We were
25 trying to work with him before he passed to the -- but he

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1 was, in fact, blind.

2 He had just learned how to roll over when he was
3 ten months old. He was having problems with learning how
4 to sit up completely on his own. He did fine as long as
5 he was propped up. But he was -- he was just delayed and
6 he was --

7 He was sick and he had issues. And a lot of
8 those things didn't come into play.

9 Q. Now, what else do you want to assert to the
10 Court was ineffective assistance of counsel?

11 A. Well, my biggest problem that I have is not only
12 with this missing information, but I'm not sure that I
13 understand the reason why -- with a situation this drastic
14 and this terrible, why anybody could fall back on the
15 testimony of one doctor to be complete and total reason
16 for defense.

17 Outside of this one pathologist, who was
18 actually brought in by the State, I had no defense. I was
19 my own defense and I felt like I had no choice but to go
20 up and say something because the information that was
21 being given wasn't accurate. So I felt like I had to do
22 something, I mean, because I had no choice.

23 Q. As a matter of fact, when you say you had to do
24 something: you testified in your trial; is that correct?

25 A. I did, yes.

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1 Q. Did you talk to Mr. Howle about testifying?
2 Prior to testifying.

3 A. Not really. I mean, we had a brief meeting that
4 lasted maybe five minutes prior to and I really don't
5 remember what exactly was exchanged at that time.

6 Q. Did you -- do you recall how long you were in
7 jail before going to trial?

8 A. The better part of two years.

9 Q. You had a significantly high bond that you
10 couldn't make; is that correct?

11 A. Yes. Outrageously high.

12 And in comparison with others with crimes that
13 are exactly the same, I had -- mine was posted at almost
14 \$100,000 [phonetic] higher than the rest. My bond was
15 supposed to be \$250,000 and the understanding that at the
16 time I was leasing Trentstone [phonetic] and was told that
17 I had to bring -- go forward to do that and it shouldn't
18 be a problem; even though I was a risk to society and I
19 wasn't a flight risk, I could afford this amount of money.
20 And needless to say, that was not the case.

21 Q. You didn't have any prior record before this; is
22 that right?

23 A. No.

24 Q. Do you recall how often and how many times you
25 talked with Mr. Howle in preparation for the trial?

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1 A. Over the period of the two years, maybe a
2 handful --

3 Q. I'm sorry?

4 A. Maybe a handful.

5 Q. Okay.

6 A. I -- I -- I'm not real certain. It wasn't very
7 many.

8 Q. Okay. Now, were there any specific people that
9 you wanted Mr. Howle to call to the stand?

10 A. Well, we had originally discussed having some
11 outside doctors or specialists come and speak on my behalf
12 to explain some of the medical jargon in situations that
13 happen with premature infants.

14 Hematomas: my mom, during that same time that
15 all this was going on, had found 250 different ways that a
16 premature infant can die from a hematoma that's absolutely
17 not related to child abuse.

18 Had he been able to secure these people, have
19 them to come, I do believe that could have greatly
20 impacted my case.

21 Q. Okay. Now, you said these people. These are
22 just other experts outside of the State?

23 A. Yes. I was under the understanding they would
24 be coming from somewhere other than -- other than South
25 Carolina.

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1 Q. All right. And of course other than yourself,
2 you didn't present any kind of defense other than you
3 testifying?

4 A. [Indicates negatively]

5 Q. Now, at one point, one of the -- one of the
6 detectives that testified, I believe Dennison, you had an
7 issue with?

8 A. Yes, sir.

9 Q. What was the issue there?

10 A. The problem that I had with Corporal Dennison is
11 I had never met this man up until the day of the trial.

12 I had specifically written on a notepad, that
13 Mr. Howle had given me, who is this man, I've never seen
14 him before, why is he here. Nothing was -- there was
15 nothing said about that, to my knowledge. At least not in
16 my presence.

17 He made statements to help the State by claiming
18 that I had spoken to him and made statements to him
19 specifically stating that the incident had taken place in
20 the master bedroom on my bed. However, the incident took
21 place at the completely opposite end of the house. And
22 that was not -- there was nothing said about that at all,
23 except for when I took the stand to say something about
24 it. That was it.

25 Q. All right. What about Lieutenant Florence?

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1 A. Mr. Florence and I had not had any conversations
2 with each other. The one or two times that we actually
3 spoke was when he was actually transferring me to my bond
4 hearing, my formal bond hearing. And they were of
5 absolutely no consequence. They were things such as we
6 were talking about my stepfather's past military history.
7 He never once spoke to me about anything.

8 Even when he took me to jail on the 12th of
9 March, 2007, he transported me straight there to my --

10 Q. Okay. Anything else you want to say about
11 Mr. Howle's representation?

12 A. I understand that I'm naive to the laws here,
13 and, you know, laws changing, but it is my understanding
14 that somebody who is supposed to be helping to aid in a
15 person's defense, especially in a situation that is -- a
16 matter as this that could carry into a life sentence,
17 should be taken personally and should be focused on in
18 such a way that you understand that this is not just
19 another number, not just another docket, it's somebody's
20 life, it's somebody's family.

21 This has completely destroyed everything I -- I
22 feel like if certain things were done, that I may have had
23 a better chance, especially in the understanding at the
24 end of the trial when the State offered up a plea. At
25 that point, that it was at the time to even think about

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1 what it was -- had the time to contemplate whatever
2 ramifications there may have been if I had accepted it,
3 which at one time I wasn't really sure I wanted to -- I
4 wanted people to understand that what had happened was
5 horrible, in and of itself, but what was being done was
6 even worse.

7 The fact of the matter was is that the State put
8 up claims that could have been disputed and should have
9 been disputed, that were almost -- that the incident
10 happened at one end of the house and they did not put into
11 evidence the pictures that they had of the actual place
12 where Child -- where Child was. That didn't come into
13 play until I took the stand to defend myself and only I
14 got to see that picture and the jury didn't. Something
15 should have been done about that.

16 Q. Okay. What do you think caused Child death?

17 A. Ultimately, I'm not sure how he came to have the
18 hematoma, but I know that when I was holding him in my
19 arms and I was giving him resuscitation breaths, he was
20 aspirating formula and cereal out of his nose. I know
21 that he drowned on that. The autopsy had showed that he
22 still had fluid in his lungs from that.

23 When we took -- when I carried him into the
24 hospital, he wasn't breathing, I told them this and he
25 told me that he was being treated for pneumonia. That

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1 never came into play, either.

2 I honestly believe that if the information from
3 Arizona had been allowed so that they had gotten a greater
4 picture of how Child really was: that he was not a
5 normal baby, that he did not have normal days, not
6 inasmuch as what a normal year-old baby has. He wasn't
7 walking, he wasn't talking, he couldn't see things --

8 He had multiple issues, and I was scared, and I
9 felt -- in retrospect, I felt like I was having to make --
10 in court during my trial that I should have never had to
11 make. I shouldn't have had to make the decision as to
12 whether or not certain things got let in or didn't.

13 I think that -- I guess that -- I'm not new to
14 this, but I think that if you're in trial with an attorney
15 with years of experience behind you, you should be fully
16 prepared to take up and stand up and say, hey, this is
17 what's really going on, this is the situation, and this is
18 what -- this is what we're doing, and show that and be
19 able to back it up. We had everything, as far as -- like
20 I said -- thinking everybody would just start calling the
21 doctor.

22 Q. Okay. Anything else you want to say?

23 A. Just that if I had the opportunity at first, and
24 the chance, that things could greatly impact on -- that
25 while -- nothing will ever make up for the loss of my

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1 child, and it never will.

2 This has done such emotional damage to everybody
3 in my family that if I had the opportunity to go back
4 again and be able to show people everything truly for what
5 it is, that even if my situation didn't change at least
6 somebody else's situation might. People would be more
7 aware that this thing is not something that happens to
8 just one person. This could happen to anybody. This
9 could have happened to anybody's child, anybody's
10 grandchild, and I don't ever want that to happen to
11 anyone. I don't wish this on my worst enemy.

12 MR. BROOKS: All right. Judge, no other
13 questions.

14 Answer any questions of Ms. Williams.

15 THE COURT: Ms. Williams.

16 MS. WILLIAMS: I don't have any questions,
17 Judge.

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

19 [Whereupon, Ms. Putnam is excused and exits the
20 witness stand]

21 MR. BROOKS: We will call Jack Howle.

22 THE COURT: Mr. Howle.

23 [Whereupon, Mr. Howle comes forward]

24 THE CLERK OF COURT: Place your left hand on the
25 Bible and raise your right hand.

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1 State your name, please.

2 MR. HOWLE: Jack Howle.

3 [Whereupon, Mr. Howle is duly sworn by the clerk
4 of court as follows: do you solemnly swear or affirm
5 the testimony to the Court shall be the truth, the
6 whole truth, and nothing but the truth, so help you
7 God]

8 THE WITNESS: I do.

9 THE CLERK OF COURT: Thank you, sir. Have a
10 seat, please.

11 [Whereupon, Mr. Howle takes the witness stand]

12 THE CLERK OF COURT: State your full name.

13 Spell your last name for the record.

14 THE WITNESS: Jack Delbert [phonetic] Howle, Jr.
15 H-O-W-L-E.

16 MR. BROOKS: Mr. Howle, how are you today?

17 MR. HOWLE: I'm doing fine --

18 - - - - -

19 JACK D. HOWLE,

20 Having Been First Duly Sworn,
21 was Examined and Testified as Follows:

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q. You represented Ms. Putnam?

25 A. I did.

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1 Q. Can you tell us: what was the State's evidence
2 against her?

3 A. The State's evidence -- and there's no question
4 it's a circumstantial evidence case.

5 The evidence, though, that came out was -- first
6 of all, it was a question about whether anyone else had
7 had contact with the child, other than Martina, during
8 that time frame.

9 Their expert, as it turned out when we went to
10 trial, wanted to say not on the type of injury, which
11 would not have been just falling over, there was more
12 blunt force -- if it had happened, the unresponsiveness of
13 the child would have been immediately. And there's no
14 question the jury heard that. That was one of the things
15 that concerned me the most in preparing for the case.

16 I'll tell you that I talked with Ms. Putnam
17 several times and as far as materials and everything else,
18 I've got two boxes that are this big on what we did in
19 this case and a fair amount of it was from things from
20 Arizona that had happened before they came to South
21 Carolina.

22 A big concern that we had was that Ms. Mayes,
23 who attended the case, was going to try and use some of
24 that stuff from Arizona, some DSS reports where the child
25 was actually taken out of the home for malnutrition and

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1 various things like that. There was a lot more in there
2 that hurt us than helped us. And we had had motions and
3 discussions for that prior to the trial and that was not
4 going to come in.

5 We certainly had plenty of information. And
6 Martina testified herself as to the problems that the
7 child had. Dr. Sexton, who's a pathologist, who I spoke
8 with several times before trial, he went into all of that.

9 One reason we did not go get an expert, per se,
10 was in my early discussions with Dr. Sexton, he made it
11 very clear that he had seen it many times, and felt it was
12 true in this case -- not just possible, but probable --
13 that there was some period of lucid time between whatever
14 the injury was that happened and before the child became
15 totally unconscious. And of course, like I say, their
16 expert was saying the opposite.

17 So the jury heard two different doctors taking
18 two different positions in that and there was no use for
19 us to get another expert to just say that, when I had the
20 man who did the autopsy saying that. And I thought that
21 was something that could establish and show. And, plus,
22 he also went into some information on what a child born
23 that early would be and the fact he couldn't sit up. So
24 we had that -- before Martina got on the stand and said it
25 herself as the mother -- that the doctor was telling the

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1 jury the problems the child had.

2 So one of the things that we knew that was
3 probably the strongest the State was going to try to show
4 was that no one else had access to the child but her, and
5 especially a child who died immediately from injury.

6 Now, I will tell you this. I had some concerns
7 about Mr. Putnam, based on what I had seen had happened in
8 Arizona. We tried to subpoena him and he was out of
9 state, working with a truck company, and as soon as he
10 found out we were trying to get him subpoenaed he took off
11 from -- and the trucking company couldn't tell me where he
12 was. He was out there somewhere. But shortly after all
13 of this happened, he was being interviewed by the police,
14 because they suspected him. He made threats to Hill, Lynn
15 Herod, and one of the detectives. They didn't charge him.
16 Don't know why. But I'm convinced that one reason he
17 didn't come back was because of his concern about whether
18 the charge with this was those possible charges. As a
19 matter of fact, when we said we were going to subpoena him
20 to try to get him back, the law enforcement told us that
21 they wanted to know when he was coming because they wanted
22 to be there.

23 So he was not there. We wanted to introduce in
24 trial those threats to show that Pat Putnam had -- that he
25 was in the house when the child -- the Court would not let

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1 it in. It was proffered. But those threats that he made
2 to show that violent nature would not come in.

3 A second thing we did -- and this came out in
4 trial -- that early that morning the oldest child -- she
5 has two children by a previous marriage -- the oldest
6 child actually went into the room and took Child out of
7 the crib. I couldn't say he dropped him, because he
8 wasn't there to testify that he did that.

9 Once Martina was arrested, they put those two
10 children in a foster home. Within just a few days, that
11 older child had an altercation with the other one, kicking
12 him so hard that you could see the shoe print on his chest
13 and he had to go to the hospital and everything else. We
14 wanted to introduce that, because that was to show the
15 propensity that child had the violent or -- the Court
16 would not let that come in. We proffered it, and it's on
17 -- of record that it's proffered testimony that didn't
18 come in.

19 We had the Starnes, who was the foster mother.
20 We had -- actually testified outside the presence of the
21 children and that was the proffered testimony with regard
22 to that.

23 So those two aspects that had been -- and Bart
24 Putnam, Mr. Pat Putnam not coming in -- was concerned
25 about third-party guilt, the way that would come in. But

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1 both of those had the most propensities for violence. We
2 thought it was important for the jury to hear.

3 Q. Mr. Putnam and the child?

4 A. And the child.

5 And both of them ended up being proffered but
6 the Court would not let it come in for the jury to hear.

7 Q. What happened when trying -- you were getting
8 ready to talk about trying to get the child?

9 A. All right. The two children were in Tennessee.
10 I watched the video. There were some things in the video
11 that would have probably helped us a little, but there
12 were some things in the video that didn't.

13 One of the children got -- one of the children
14 got to talking about ghosts and all kind of things that I
15 don't know what the jury would have thought about where he
16 was going and what he was saying.

17 The thing that probably helped us the most is
18 the way Ms. Herod [phonetic] was asking her questions.
19 She may be the victim advocate, but it appeared obvious
20 she was trying to get them to say something about Martina
21 being the person who did something. It wasn't just middle
22 of the road questions. They were definitely directed in
23 trying to get at that response.

24 Ms. Mayes and I went over that video and the
25 judge agreed that it'd come in as long as it met 17-23-

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1 750. But you have to have the children present so for
2 cross-examination they're available to be cross-examined
3 when you do that. Early on we thought that that was going
4 to happen, but the father said no. We did subpoena him --
5 or the children through him and he absolutely refused to
6 come to court. And the judge said, I -- that in pieces of
7 the video: there are some pieces you'd like to have;
8 there are pieces the State would have liked to have seen.
9 They said, no; you show it all or none, and if the
10 children aren't here, I don't think you can show anything.
11 So none of the video managed -- got in.

12 Q. Okay. The information from Arizona, that would
13 have been information showing that there was a prior
14 problem with the child?

15 A. There was a separate problem with the child.

16 But, also, like I said, DSS got involved and the
17 child was actually taken out of the home.

18 Q. In Arizona?

19 A. Yes, sir.

20 And, you know, you don't know how a jury --
21 women on the jury, who are mothers, are going to respond
22 to say, well, I don't know if she did this.

23 But if something happened out there and it was
24 bad enough that DSS had to take the child out of the home,
25 we were concerned about exactly where that was going to

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1 go.

2 I'll tell you something that was maybe not
3 stranger than that. Toby Putnam, who I think is a cousin
4 to Pat Putnam, came to the trial -- sat behind Ms. Mayes
5 the entire time. He didn't look over to me, never --
6 never smiled at Martina or me. I assumed that she had
7 been asked to come so that we did not put the character
8 witness and show Martina, because Martina had gotten
9 custody of the children when she got divorced. She had no
10 criminal record. We knew we could say some good things
11 about her but when we put the character out, we assumed
12 that this lady had come from Arizona to testify adversely
13 to that and we might open the door to go into whatever was
14 in the Arizona records that we didn't want to have come
15 in.

16 When the trial was over and the jury verdict had
17 come back, Martina had been sentenced, this lady then
18 calls my office and wants to talk to me. And she comes in
19 and says, basically, I think dad did it. And I had no --
20 he hadn't said anything. Just knowing his nature, I
21 guess. And I said, well, I wish you had contacted me to
22 talk and we could have found out something. I said, but I
23 can't just put you on the stand and you say you think Pat
24 did it. That's -- that's just can't -- not going to go
25 anywhere. And that's about all she could really tell me

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1 in regard to what she personally thought: if something
2 happened, that he would have done it rather than Martina.
3 But like I say, she didn't even come talk to me until the
4 trial was over.

5 We did file a motion for reconsideration asking
6 for a new trial.

7 But, also, while the jury was out, Ms. Mayes
8 come and made us another offer for a lesser included
9 offense that went from zero to twenty. And there's no
10 question Martina did not have a lot of time to think about
11 that before the jury came back with a verdict. But when
12 she was sentenced, she put on the record that she was in
13 no way interested in that. I don't think she really had
14 time to think about it because later there was some
15 discussion about would we consider that. But certainly we
16 weren't prepared at this time.

17 But even on that motion for reconsideration,
18 they didn't grant a new trial. And the alternative to
19 consider letting us plea to that lower offense -- neglect
20 of child that ended up in death somehow. That was not
21 allowed in. And once that was turned down, that's when
22 the appeal process started. And it's gone through that
23 and now it's over.

24 MR. BROOKS: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

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1 MR. BROOKS: No other questions, Your Honor.

2 THE COURT: Ms. Williams.

3 CROSS-EXAMINATION.

4 BY MS. WILLIAMS:

5 Q. Mr. Howle, can you just tell me briefly about
6 your legal experience and your current position?

7 A. Well, graduated Boston in 1978. Practiced
8 primarily criminal defense law since then -- keep up --
9 within the third circuit I have four counties that I
10 oversee with regard to the public defender --

11 Q. Can you tell me your recollections about
12 how often and the amount of time you would spend with
13 Ms. Putnam in this matter?

14 A. I met with Ms. Putnam several times in -- in
15 going over the factual situations as she told me and spent
16 a long time reviewing discovery that came in in regard to
17 what officers said that -- had said, who they talked to,
18 and things of that nature.

19 I can't tell you exactly how many times I talked
20 to her. But once I was fully aware of what she said
21 happened didn't happen, then most of the rest of my time
22 was involved in pursuing, establishing, those things to
23 her benefit.

24 Q. And tell me just -- if you could summarize, what
25 was the overall theme or trial strategy and whether you

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1 discussed that with Ms. Putnam prior to the trial.

2 A. Well, one thing that I had kind of hoped we were
3 going to go into was the third-party guilt aspect of it
4 because as I talked with her and started reviewing and
5 looked at some of these other things, I was certainly
6 concerned about Pat Putnam's past experience and the fact
7 that he did have a violate nature. And the child, the
8 older child. And we could at least -- with him going in
9 the room and took the child out of the crib that morning.
10 Well, I say we tried to put both of those aspects of the
11 case into the record. The judge let us proffer it and he
12 heard it outside the -- outside the jury, but the jury did
13 not hear either -- the violent propensities of either one
14 of those two people.

15 But beyond that, it kind of got to the point of
16 putting Martina on the stand and for her to say what she
17 did that morning and that the child was responsive and
18 then she noticed it wasn't responsive and it was not as a
19 result -- matter of fact, even -- one thing that I was
20 concerned was going to hurt Martina -- she said this in
21 her testimony. But because the child was underdeveloped,
22 it was not unusual at all when she was talking to it or
23 feeding it that it just falls backwards and hit its head
24 on the floor. And she said that morning that the child
25 had done this four or five times.

Martina Putman v. State of South Carolina
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1 But their expert who got on the stand -- and
2 Dr. Sexton was ready to address that, but their own expert
3 said that the -- that what he saw in regard to the
4 swelling and everything else would not have been the
5 result of that, that it would have been substantially more
6 of a blow or violent shaking or something, that it
7 couldn't have been that. Because we were concerned with a
8 jury hearing that the mother was just watching the child
9 fall over and over and not putting a pillow behind it or
10 doing something else would just make them think that, you
11 know, she's just not very careful about the child's health
12 and maybe that was the result.

13 But their own expert said that could not, within
14 itself, have been the cause of the unconsciousness and of
15 the what led to the child's death.

16 Q. And had she mentioned this aspiration, this
17 drowning kind of theory, before?

18 A. We had been talking about the child having had
19 breakfast before, because there was a question about
20 whether Pat had even given him anything for breakfast when
21 he first got up because he was in the kitchen -- and she
22 was then bathing the child. Dr. Sexton had made some
23 comment with regard to the cereal but did not feel that in
24 any way the cereal was a result of either gagging or
25 whatever else was -- and in the lung itself, did not find

Martina Putman v. State of South Carolina
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1 anything that would show that he would choke to death, in
2 essence. But -- and, again, both doctors -- even if he
3 had choked to death, he would not have had -- and he had
4 fallen over, he would not have had the severity of the
5 head injury that they observed.

6 MS. WILLIAMS: I think that's all I have. Thank
7 you.

8 THE COURT: Mr. Brooks, any redirect?

9 MR. BROOKS: Nothing further, Judge.

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

11 [Whereupon, Mr. Howle is excused and exits the
12 witness stand]

13 MR. BROOKS: Judge, that's --

14 THE COURT: Ms. Williams, did you want to
15 present any additional testimony?

16 MS. WILLIAMS: Nothing further from the State,
17 Your Honor.

18 THE COURT: Thank you. I'll take this matter
19 under advisement while I make my ruling on it.

20 MR. BROOKS: Thank you, Judge.

21 [PCR CONCLUDES]

22

23

24

25

Martina Putman v. State of South Carolina
PCR Hearing
March 22, 2012

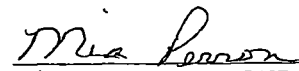
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that I transcribed, to the best of my ability, the foregoing as a true, accurate, and complete transcript of the hearing before the Honorable William Jeffrey Young, on March 22, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 24th day of September, 2012.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Martina Putnam, #334375,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED
2012 MAY 22 IN THE COURT OF COMMON PLEAS
JAMES CAMPBELL 2009-CP-43-2055
CLERK OF COURT
SUMTER COUNTY, S.C.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James H. Howle
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 8, 2009. An evidentiary hearing into the matter was convened on March 22, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Jack Howle, Esquire. This Court had before it the records of the Sumter County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant was indicted at the February 2008 term of the Sumter County Grand Jury for Homicide by Child Abuse (2008-GS-43-0360). Applicant was represented by Jack D. Howle, Jr., Esquire. Applicant proceeded to a jury trial before the Honorable George C. James, Jr., and was found guilty. Applicant was sentenced to twenty-five (25)

years incarceration. Applicant's motion for reconsideration of her sentence was heard on November 10, 2009. The motion was subsequently denied.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence were affirmed. State v. Putnam, Op. No. 2011-UP-526 (S.C. Ct. App. filed December 2, 2011). The Remittitur was sent on December 22, 2011.

In her application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

- a. "The State continuously stated the trial was based on circumstantial evidence, my defense did not allow entry of pertinent information to defense of the case as well as relying on my lack of legal knowledge to help guide the trial; as well as no subpoenas were sent to any specialists, family, etc. to aid in my defense and based his part solely on the testimony of one pathologist involved in the trial."

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.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Investigate / Call Witnesses

Applicant asserts that Counsel failed to adequately prepare the case and failed to call witnesses which would benefit the defense. Applicant asserts that Counsel's reliance on one doctor

was unreasonable in the circumstances of her case. Applicant also stated that her two other children, though subpoenaed unsuccessfully during trial, should have been subpoenaed ahead of time. Applicant testified that she spoke with Counsel a handful of times as she awaited trial. Applicant also testified that Counsel should have gotten information from Arizona which could show that the victim was not a normal child. Applicant also testified that the victim aspirated some of the cereal she fed him, and she felt this may have caused his problems. (See Tr. p. 370, lines 1-11.) Applicant testified, as she had at trial, that she did not speak with Officer Denison. (Tr. p. 376, line 9 – p. 377, line 9.)

Counsel testified that he met with Applicant several times and spent even more time with discovery. Counsel testified that he had two boxes of material in the case. A great deal of documentation was from Arizona. Counsel stated that the solicitor wanted to use the reports from Arizona's social services; Counsel felt that there was more harmful material than helpful material in the documents from Arizona. Counsel added that the State's experts would disagree on a key point – whether the child could have remained lucid for a time following the injury, casting doubt that Applicant was the only person who could have inflicted the injury. The State's expert Dr. Sexton, testified that the child could have been lucid for a period after the injury, and Counsel felt this was beneficial for the defense. Counsel stated that he had hoped to present evidence hinting that Applicant's husband or one of the children could have caused the injury, and he made a proffer of some testimony on this point. (See Tr. p. 183, line 1 – p. 191, line 4; p. 344, line 1 – p. 354, line 20.) Counsel attempted to bring Applicant's other children in to testify. He also considered presenting videotaped testimony from the children but felt that the videos could have both helped and hurt the

defense case. Counsel testified that he did look into whether the victim could have choked on the cereal he was given, but Dr. Sexton had reported nothing in the lungs indicating he choked and there was still the need to explain the head injury.

Under the circumstances of this case, I find Counsel's investigation was within reasonable professional norms. Further, Applicant has failed to demonstrate prejudice from any failure to present additional expert or lay witnesses. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result); Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 776 - 777 (2008) (where expert witnesses do not testify, it is merely speculative that these allegedly favorable expert witnesses would have aided defense).

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

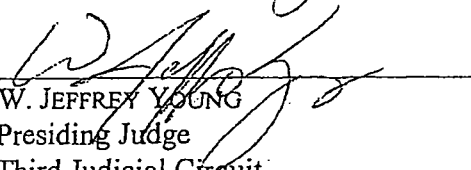
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been

timely filed.

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 16 day of May, 2012.


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina.

WITNESSES

SCSO

Florence

ARREST WARRANT NUMBER

J289224

D/A: 03/13/07

ACTION OF GRAND JURY

True Bill

William Dandrea
Foreperson of Grand Jury

Date: 2/21/08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-43- 360
The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

THE STATE
vs.

MARTINA PUTNAM

Indictment for

HOMICIDE BY CHILD ABUSE

C. KELLY JACKSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Brian Harper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

HOMICIDE BY CHILD ABUSE

CERTIFIED TRUE COPY
OF ORIGINAL FILEBarbara Thayer

DEPUTY CLERK OF COURT

SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on February 21, 2008, the Grand

Jurors of SUMTER County present upon their oath:

That Martina Putnam did in Sumter County, on or about March 10, 2007, willfully and unlawfully commit the offense of homicide by child abuse by causing the death of a child under the age of eleven while committing child abuse or neglect, and the death occurred under circumstances manifesting an extreme indifference to human life, to wit: Child date of birth [REDACTED], died as a result of injuries attributed to child abuse or neglect, in violation of Section 16-3-85 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

C. Kelly Jackson
SOLICITOR

COUNTY OF Sumter
STATE 580
VS. Martina Putnam
AKA: [REDACTED]
Race: [REDACTED] Sex: F Age: 34
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 08 -GS- 43 - 360
AW#: J - 289 224
Date of Offense: March 18, 2007
S.C. Code: 16-3-85
CDR Code #: 2356
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Homicide by Child Abuse
in violation of 16-3-85 of the S.C. Code of Laws, bearing CDR Code # 2356
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.90
§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00
TOTAL \$ 1339.00

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel, \$35.13 TP
☐ Requires \$500 be paid to Clerk during probation.

James C. Campbell
Clerk of Court/ Deputy Clerk

Court Reporter: M. Singletary

PRESIDING JUDGE [Signature]
Judge Code: 211413
Sentence Date: 4/22/09