

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge

SARA HODSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001334

APPENDIX

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State of South Carolina
County of Lexington

Court of General Sessions

State

v.

Sara Hodson

Defendant.

)
)
) Transcript of Record
) 2015-GS-32-2368
) 2013-GS-32-3004
)
)
)

November 3, 2015
Lexington, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

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Deon O'Neil, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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WITNESS

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1 (The following proceedings were held November
2 3, 2015.)

3 THE CLERK: Indictment 2013-GS-32-03004, State
4 vs. Sara Elizabeth Hodson, indicted for unlawful
5 conduct towards a child; Indictment
6 2015-GS-32-02368, the State vs. Sara Elizabeth
7 Hodson, indicted for aiding and abetting homicide by
8 child abuse. She's pleading as charged on both
9 counts under North Carolina vs. Alford. She is
10 represented by Mr. O'Neil, and Ms. Radlein for the
11 State.

12 MR. O'NEIL: Your Honor, may we approach?

13 THE COURT: Yes, sir.

14 (Sidebar conference.)

15 SARA HODSON

16 being first duly sworn, testified as follows:

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Mr. O'Neil, you represent Sara
19 Elizabeth Hodson. There are two indictments before
20 us today; Indictment 2013-GS-32-3004, an indictment
21 for unlawful conduct towards a child. Is that
22 correct?

23 MR. O'NEIL: Yes, Your Honor.

24 THE COURT: That has been true billed by the
25 Lexington County Grand Jury.

1 MR. O'NEIL: Yes, sir.

2 THE COURT: And the second indictment,
3 2015-GS-32-2368, that is an indictment for aiding
4 and abetting homicide by child abuse.

5 MR. O'NEIL: Yes, sir.

6 THE COURT: Which has been, likewise,
7 true-billed by the Lexington County Grand Jury.
8 Have you explained the charges in each indictment to
9 your client?

10 MR. O'NEIL: Yes, sir.

11 THE COURT: Have you explained to her the
12 possible sentences, i.e., up to ten years on the
13 unlawful conduct towards a child, and up to -- a
14 minimum of 10 years up to 20 years on the homicide
15 by -- aiding and abetting homicide by child abuse?

16 MR. O'NEIL: Yes, sir.

17 THE COURT: Have you further, on the homicide
18 by child abuse aiding and abetting, advised her that
19 this is classified as a violent offense --

20 MR. O'NEIL: Yes, sir.

21 THE COURT: -- and will have some effect on
22 where and how she's housed in the department of
23 corrections and on her eligibility for release?

24 MR. O'NEIL: Yes, sir.

25 THE COURT: Have you further advised her it's

1 classified as most serious?

2 MR. O'NEIL: Yes, sir.

3 THE COURT: Is this her first strike, ma'am?

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

5 THE COURT: Have you advised her under our two-
6 and three-strike and the effects of that?

7 MR. O'NEIL: Yes, sir.

8 THE COURT: Have you advised Ms. Hodson that
9 this is what we call an 85-percent, no-parole
10 sentence?

11 MR. O'NEIL: Yes, sir.

12 THE COURT: That she'll serve at least
13 85-percent of her sentence before she's released to
14 a community supervision program?

15 MR. O'NEIL: Yes, sir.

16 THE COURT: In your opinion, does she
17 understand the charges, the possible sentence,
18 classification of violent, and the classification of
19 most serious and what it means, and the fact that
20 this is an 85-percent, no-parole sentence?

21 MR. O'NEIL: In my opinion, she does, yes sir.

22 THE COURT: Have you explained to her her right
23 to trial by jury?

24 MR. O'NEIL: Yes, sir.

25 THE COURT: And it's my understanding that she

1 wishes to enter this plea under Alford vs. North
2 Carolina.

3 MR. O'NEIL: Yes, sir.

4 THE COURT: Have you advised her that the Court
5 treats that as a guilty plea, it goes on her record
6 as a guilty plea, and the department of corrections
7 treats it as a guilty plea?

8 MR. O'NEIL: Yes, sir.

9 THE COURT: What is the bargain that's been
10 offered by the State that she can accept the benefit
11 thereof?

12 MS. RADLEIN: Thank you, Your Honor. The
13 defendant and the co-defendant, Jordan Hodson has
14 pled. They were both indicted for homicide by child
15 abuse, aiding and abetting homicide by child abuse,
16 and unlawful conduct towards a child, as well as
17 possession of meth.

18 The State is dismissing those three companion
19 charges and allowing the defendant to plead to two
20 counts -- to two charges.

21 THE COURT: Have you explained that to your
22 client?

23 MR. O'NEIL: Yes, sir.

24 THE COURT: All right. Now, Mr. O'Neil, having
25 had an opportunity to review all of the evidence in

1 the case that's been given to you through discovery,
2 after your own investigation under the facts of the
3 case, and discussing the facts of the case with your
4 client, are you of the opinion that if this case
5 were tried before a jury, that it's a substantial
6 probability that the State could prove these
7 offenses beyond a reasonable doubt and that your
8 client, more likely than not, would be found guilty?

9 MR. O'NEIL: Yes, sir.

10 THE COURT: And you're advising her to take the
11 benefit of that bargain, i.e., nol-prossing three
12 indictments and proceeding on two?

13 MR. O'NEIL: Yes, sir.

14 THE COURT: Ms. Hodson, how are you this
15 afternoon?

16 THE DEFENDANT: Okay. Hungry.

17 THE COURT: Ma'am, before me, I have two
18 indictments; one is an indictment for unlawful
19 conduct towards a child, that is Indictment
20 2013-GS-32-3004, the second indictment is
21 2015-GS-32-2368, that is an indictment for aiding
22 and abetting homicide by child abuse. Do you
23 understand the two charges that you stand before me
24 on?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: On the unlawful conduct towards a
2 child, that carries up to ten years in the
3 department of corrections. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: On the aiding and abetting homicide
6 by child abuse, that carries a mandatory minimum of
7 10 years up to 20 years. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: As to the aiding and abetting
10 homicide by child abuse, that is classified as a
11 violent offense, so it will have some effect on
12 where and how you're housed in the department of
13 corrections and, perhaps, on your release date. You
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: It's classified as a most serious
17 offense, which means a number of things: First of
18 all, you now have one strike under South Carolina's
19 two- or three-strike law, which means if you become
20 involved in criminal activity classified as most
21 serious one more time, that would be two strikes
22 that way, or criminal activity classified as serious
23 two more times, that would be three strikes that
24 way.

25 Under each of those scenarios, if that became

1 the case, you'd be subjecting yourself to the
2 possibility of serving the rest of your life in
3 prison without the possibility of parole. Do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that under this
7 present statutory scheme of this particular offense,
8 that it is what we call a no-parole sentence, which
9 means that whatever sentence imposed upon you,
10 you'll have to serve 85-percent of it? Do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Once you're released, you're
14 released into a community supervision program. Do
15 you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions you want
18 to ask me about what you're charged with, the
19 possible sentence, the classifications of violent,
20 most serious, the no-parole aspect, the 85-percent
21 aspect? Any of that you wish to ask me about?

22 THE DEFENDANT: No, sir.

23 THE COURT: Understanding what you're charged
24 with, the possible sentences, the classification of
25 violent, most serious, as to Indictment -2368, it's

1 my understanding that you wish to enter a plea under
2 Alford vs. North Carolina. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Alford vs. North Carolina is a U.S.
5 Supreme Court case that says this: That you've
6 looked at all of the evidence in this case. There
7 are five indictments against you. The State is
8 offering to allow you -- by nol-prossing three of
9 those cases, that's a bargain they're giving you.
10 You wish to take the benefit of that bargain and
11 you've looked at the evidence and you're of the
12 opinion that if the case were tried, that the
13 evidence is strong enough that the State most
14 probably could prove your guilt to a jury beyond a
15 reasonable doubt; that you don't want to take that
16 chance, you want to take the benefit of the bargain,
17 have those three cases nol-prossed, proceed on two.
18 Is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: By doing that, I have to treat it
21 as a guilty plea, it goes on your record as a guilty
22 plea, and the state department of corrections treats
23 it as a guilty plea. Do you understand all of that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: By doing that, ma'am, you'll forego

1 your right to a jury trial. Obviously, if you ask
2 for a jury trial, the State would provide one for
3 you, like we're in the middle of one here today.
4 During that jury trial, you'd have to right to
5 confront and cross-examine everyone that testified
6 against you, you'd have the right to present your
7 defense, your side of the story, by calling
8 witnesses to testify on your behalf, introducing
9 relevant exhibits, and testifying in your own
10 defense.

11 If you exercise your constitutional right to
12 remain silent, then I would tell the jury that they
13 cannot hold the fact that you did not testify
14 against you in any manner whatsoever, and I would
15 instruct them that they could not even consider the
16 fact that you did not testify when they deliberated
17 your guilt or innocence.

18 You would be presumed innocent throughout the
19 trial and the State would have the burden of proving
20 you guilty beyond a reasonable doubt to a jury of 12
21 people. And in order for a jury to convict you, all
22 12 would have to unanimously agree that you were, in
23 fact, guilty. And even if you were convicted, you'd
24 still have the right to an appeal.

25 Do you understand your rights to trial by jury?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Understanding your rights to trial
3 by jury, do you still wish to enter a plea under
4 Alford vs. North Carolina and what that means?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anyone promised you anything,
7 held out any hope of reward, or threatened you in
8 any manner in order to make you enter this plea?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you satisfied with your lawyer
11 Mr. O'Neil?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In your opinion, has he had enough
14 time to spend with you, enough time to research the
15 law, and investigate the facts so that he could
16 properly defend you here today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything else you want him
19 to do for you today before we move forward other
20 than speak up on your behalf?

21 THE DEFENDANT: No, sir.

22 THE COURT: And I ask you again, are you
23 totally and completely satisfied with his legal
24 representation?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you today, ma'am, under the
2 influence of alcohol, drugs, or prescription
3 medication?

4 THE DEFENDANT: No, sir.

5 THE COURT: Ma'am, are you today aware of any
6 mental, nervous, or emotional conditions which would
7 keep you from understanding these proceedings?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you understood all of my
10 questions?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions you wish
13 to ask of me?

14 THE DEFENDANT: No, sir.

15 THE COURT: Ma'am, it's alleged in the
16 indictments that here in Lexington County between
17 October 1, 2012 and December 11, 2012 that you were
18 in charge or had custody of a -- several children,
19 right, three children?

20 MS. RADLEIN: That's correct, Your Honor.

21 THE COURT: Ma'am?

22 MS. RADLEIN: That's correct, Your Honor.

23 THE COURT: Three children, Minor 3 Minor 2
24 and Minor 1 whose dates of birth are ,
25 , , and . And while

1 having them in your custody or charge, you exposed
2 them to methamphetamine or used methamphetamine
3 by-products or had methamphetamine activity which
4 was harmful to their wellbeing.

5 It's further alleged in Indictment 2015-2368
6 that while in Lexington County between December 8
7 and December 11, 2012, you aided another person, one
8 Jordan Ray Hodson, to commit child abuse or neglect
9 which resulted in death of [Minor 1] whose date
10 of birth is [REDACTED], who died on December
11 11, 2012 because of child abuse.

12 I'm going to ask the solicitor to expand on the
13 facts so I can ask you if this is what you're
14 pleading to under North Carolina vs. Alford.

15 Ms. Radlein.

16 MS. RADLEIN: Thank you, Your Honor. This
17 case, as you elicited from the indictment, involves
18 the death of ten-week-old [Minor 1] who was
19 born on October 1st, 2012, and she did die on
20 December 11, 2012.

21 The defendant, Sara Hodson, was [Minor 1]
22 mother at the time. Her father, who I referenced
23 earlier, Jordan Hodson, pled guilty on October 23rd
24 before Judge Keesley --

25 THE COURT: Pled guilty?

1 MS. RADLEIN: He pled guilty under North
2 Carolina vs. Alford as well before Judge Keesley,
3 and we deferred sentencing until after Sara
4 Hodson -- her trial, which was scheduled for
5 November 16th.

6 The State extended the plea offer, to which she
7 has accepted, and it was scheduled to expire this
8 week. We're before you pleading to those two
9 indictments that are before you, Your Honor. In
10 exchange for the plea, as mentioned earlier, the
11 State is dismissing those companion charges.

12 On December 11th of 2012, Sara Hodson and
13 Jordan Hodson entered the Pelion Family Practice
14 around 1:30, and they were carrying [Minor 1] The
15 child at that time presented unresponsive and was
16 essentially near death. She later died that same
17 day at Palmetto Health Richland hospital.

18 The facts and circumstances involving the case,
19 Your Honor: Once she entered Pelion Family
20 Practice, the pediatrician there noted that there
21 was some obvious signs that she was concerned about,
22 and she called law enforcement. At that time, law
23 enforcement met with Jordan and Sara, I believe,
24 after going to Lexington Medical Center, and they
25 were taken into custody for the unlawful conduct

1 towards a child and not charged with homicide by
2 child abuse at that time because [Minor 1] was not
3 declared dead. Her -- I apologize, Your Honor.
4 On -- when [Minor 1] made it to Palmetto Health, they
5 attempted to -- they performed surgery in attempt to
6 save her life. And they, of course, were
7 unsuccessful.

8 The ultimate cause of her death was advanced
9 septic shock as a result of a stomach perforation
10 which caused an infectious contamination of her
11 body, Your Honor. The sepsis had spread from her
12 abdomen throughout her body system and ultimately
13 shut down her organs. Her lips were blue at the
14 point, and that's when her parents actually became
15 concerned and finally sought medical intervention.

16 In preparing for this case, Your Honor, there
17 was no evidence that from when [Minor 1] was born on
18 October 1st to her death on December 11th that
19 either parent took her to see the doctor. She
20 didn't have her followup or her monthly check-up at
21 that point --

22 THE COURT: What caused the stomach
23 perforation?

24 MS. RADLEIN: Your Honor, ultimately, that was
25 not -- that's not clear. We're not sure what

1 parent -- Dr. Luberoff, who would have testified in
2 this case, she's a forensic pediatrician, her belief
3 would have been that it would have had to have been
4 some type of blunt force trauma. The --

5 THE COURT: Neither parent admitted the blunt
6 force trauma?

7 MS. RADLEIN: Neither parent, Your Honor.

8 MR. O'NEIL: Your Honor, if I may, the father
9 admitted to law enforcement that he dropped the
10 child in the shower.

11 MS. RADLEIN: Your Honor, the -- when Jordan
12 Hodson was arrested, he admitted to -- and he
13 admitted immediately once he entered Pelion Family
14 Practice, as he was giving **Minor I** a bath and
15 dropped her, that she must have hit the lip of the
16 shower, her face. But that incident is not
17 consistent with the injuries.

18 What was visible, the symptoms that she
19 presented, her belly was distended and firm, her
20 body temperature when she arrived at LMC was 88.7
21 degrees, there was also blood noted in her rectum,
22 she had multiple body bruising, her -- in the
23 vaginal area, it was severely bruised. And
24 initially they thought it was some type of abrasion.

25 At autopsy, Your Honor, Dr. Spaulding was able

1 to confirm that there was a stomach perforation
2 resulting in the septic shock, essentially the
3 bacterial infection. There were some new rib
4 fractures as well as some old rib fractures that
5 were indicated, because there was some callus
6 formation that noted they were old injuries. And
7 keep in mind **Minor 1** was only ten weeks old. She
8 also had an old broken leg that had callus
9 formation.

10 The -- at autopsy, Dr. Spaulding sent some
11 samples, her brain and liver and, I believe, her
12 kidney, to SLED to toxicology to be tested. And
13 **Minor 1** came back -- I believe her brain and her
14 kidney tested positive for meth. The --

15 THE COURT: Any opinion as to how the
16 toxicology read meth?

17 MS. RADLEIN: The -- Dustin Smith at SLED, he
18 indicated that since this would have been
19 secondhand -- presumably secondhand ingested, it
20 would have been within hours before her death. And
21 that's the only indication we have in terms of that.

22 During a search of the home, Your Honor, there
23 were -- law enforcement found some items in the
24 drawer in the master bedroom which is where
25 **Minor 1** crib would have been where we presume the

1 baby would have slept. In the dresser drawer, there
2 was a -- what you would call a meth drawer. There
3 were 18 pieces of aluminum foil, which test ed
4 positive for meth; also in that drawer -- in one of
5 the drawers was a broken glass light bulb with --
6 what some people with the Lexington NET indicated
7 that that's what they use to smoke the meth. It had
8 some meth residue in it, as well as a broken glass
9 pipe.

10 Also in the drawer was a bottle with a cut --
11 like a Coke bottle with the bottom cut with a bag
12 taped on it which came back with Sara Hodson's
13 fingerprint on it, because initially she indicated
14 she was not a meth user.

15 Also notably what was important to us and the
16 State and what we'd present at trial was Jordan and
17 Sara's activity the day before. Prior to **Minor 1**
18 death, Jordan and Sara Hodson purchased
19 pseudoephedrine; Sara purchased in Batesburg at 4:28
20 PM, Jordan purchased here in town at 5:12 PM. And a
21 witness who was prepared to testify in the trial of
22 this case indicated to the Solicitor's Office and
23 law enforcement that both Sara and Jordan came to
24 his residence sometime after 6:00 on the night
25 **Minor 1** died, and they arrived with pseudoephedrine

1 and they left his residence with a quantity of meth.

2 Your Honor, it's the State's position that Sara
3 Hodson's essential lack of care for this child and
4 medical neglect led to [Minor 1] ultimate death.
5 Dr. Luberoff's opinion is that the stomach
6 perforation, if caught earlier, could have been
7 treated and [Minor 1] could still possibly be alive.
8 And it's her belief that if it timely appropriate
9 medical intervention had been pursued by her
10 caretakers, in this case, Jordan and Sara, that it
11 would have been treatable.

12 THE COURT: Thank you.

13 All right. Ms. Hodson, you've heard the
14 recitation of the facts by the State. And I ask
15 you, do you have the opinion that if this case were
16 tried, the State would be able to prove what they've
17 just recited to me to a jury and convince a jury and
18 prove that beyond a reasonable doubt, but you do not
19 want to take that chance of going to trial with five
20 indictments, you want to take the benefit of the
21 bargain, i.e., pleading guilty to the two
22 indictments currently before the Court?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Ma'am?

25 THE DEFENDANT: I -- yes, sir.

1 THE COURT: Pleading under North Carolina vs.
2 Alford?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you are in agreement of having
5 your sentence held in abeyance. I will not sentence
6 you today, but Judge Keesley will sentence you along
7 with the co-defendant sometime in the future since
8 he's already pled guilty as well?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. I find your decision to
11 plead under North Carolina vs. Alford to be freely,
12 voluntarily, and intelligently made. You've been
13 represented by Mr. O'Neil and you say you're
14 satisfied with his representation. And I'll accept
15 the plea. Sentencing will be held in abeyance.
16 Judge Keesley will impose sentence at some
17 appropriate time in the future. Good luck.

18 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 3rd of November, 2015.

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

March 14, 2016

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2015-GS-32-2368
	)	2013-GS-32-3004
Sara E. Hodson	)	
	)	
<u>Defendant.</u>	)	

March 14, 2016
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Suzanne Mayes, Assist. Solicitor
Attorney for the State

Deon O'Neil, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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1 (The following proceedings were held March 14,
2 2016.)

3 THE COURT: All right. We have a motion out of
4 Lexington County; is that correct?

5 MR. O'NEIL: Yes, Your Honor.

6 THE COURT: All right. Give us your full name
7 and the case caption for my court reporter.

8 MR. O'NEIL: Your Honor, this is South Carolina
9 vs. -- South Carolina, County of Lexington vs. Sara
10 Hodson.

11 THE COURT: Spell that last name, please.

12 MR. O'NEIL: Last name is H-O-D-S-O-N.

13 THE COURT: H-O-D-S-O-N?

14 MR. O'NEIL: Yes, Your Honor.

15 THE COURT: Ms. Hodson, you may be seated.

16 And it's your motion?

17 MR. O'NEIL: Yes, Your Honor.

18 THE COURT: You got a copy of your motion?

19 MR. O'NEIL: I do, Your Honor.

20 THE COURT: Hand it to me, please. Okay.

21 MR. O'NEIL: Yes, sir, Your Honor. May it
22 please the Court. I represent Sara Hodson. On
23 November 3rd, 2015, Ms. Hodson pled guilty under
24 Alford to aiding and abetting homicide by child
25 abuse and unlawful conduct towards a child. At that

1 time sentencing was held in abeyance, and she was to
2 be sentenced in front of Judge Keesley on March
3 21st, 2016.

4 THE COURT: That's correct.

5 MR. O'NEIL: Ms. Hodson was originally charged
6 with and indicted by the Lexington County Grand Jury
7 in September of 2015 for homicide by child abuse.
8 And that -- the fact that she was initially charged
9 with homicide by child abuse led to the negotiations
10 where Ms. Hodson plead guilty under Alford to aiding
11 and abetting homicide by child abuse and unlawful
12 conduct towards a child.

13 Your Honor, at this point Ms. Hodson would ask
14 of me to request of this Court to be allowed to
15 withdraw her guilty plea. One of the bases for her
16 asking to withdraw her guilty plea was because part
17 of the State's case as it relates to homicide by
18 child abuse was that Ms. Hodson along with the
19 children's father, on the night before the child was
20 deceased, were allegedly cooking methamphetamine in
21 the presence of the child which exposed the child to
22 methamphetamine; which then led to the child being
23 more susceptible to the injury that the child
24 suffered on the day of her demise. And there was
25 going to be testimony that the State was going to

1 elicit from a third-party witness as to the fact
2 that Ms. Hodson was cooking meth around the children
3 the day before the child's death.

4 Subsequent to Ms. Hodson's plea on November
5 3rd, 2015, she received correspondence from the
6 co-defendant, Mr. Jordan Hodson. She received that
7 correspondence in the form of letters on January
8 20th, 2016 and January 29th, 2016. And those
9 letters -- and I shared those letters with the State
10 here.

11 In those letters, her co-defendant, Mr. Jordan
12 Hodson, who would have been allegedly with her the
13 day before the child died, refuted the allegation in
14 the letters that he gave to Ms. Hodson. And in the
15 letters he gave to Ms. Hodson, he clearly indicated
16 that he was not present with Ms. Hodson on the day
17 before the children -- I'm sorry, the day before the
18 child died cooking methamphetamine. He indicated
19 that Ms. Hodson was not cooking methamphetamine in
20 the presence of the children on the day before the
21 child died.

22 That, in Ms. Hodson's mind, changed her
23 calibration as to whether or not she wanted to --
24 whether or not entering a guilty plea was in her
25 best interest. Ms. Hodson -- when I went to speak

1 with Ms. Hodson about these letters, she indicated
2 to me that the fact that the co-defendant was --
3 indicated to her through letters that he backed up
4 her version that she was not cooking methamphetamine
5 around the minor child the day before the child
6 died, that changed her determination as to whether
7 or not --

8 THE COURT: Changed her what?

9 MR. O'NEIL: Her determination about whether or
10 not she should plead guilty under Alford or not.

11 THE COURT: But she had already pled guilty.

12 MR. O'NEIL: Yes, Your Honor. But -- and what
13 she indicated to me was that had she known that the
14 co-defendant was going to support her in that
15 position, she would not have entered a plea under
16 Alford. She communicated to me -- to me -- to my
17 office of that decision, and then I in turn brought
18 a motion to withdraw the guilty plea.

19 I've read the State's response to my motion,
20 and they cite State vs. Rickard. And, Your Honor,
21 we're not arguing under Rickard that Ms. Hodson did
22 not have a factual understanding of the consequences
23 of the plea or that there was not a factual basis.
24 What we're arguing under Rickard is that the Court
25 has the discretion to allow the defendant to

1 withdraw the guilty plea.

2 We're asking the Court to rely upon that
3 discretion and allow Ms. Hodson to withdraw her
4 guilty plea and set her case for trial.

5 THE COURT: Ms. Mayes.

6 MS. MAYES: Yes, sir, Your Honor. I'll pass up
7 to the deputy the letter that Mr. O'Neil is
8 referring to and the small excerpt where the
9 co-defendant mentions that particular event
10 involving the meth cook. And, Your Honor, I believe
11 you've had a chance to review the State's
12 response in --

13 THE COURT: Hold on one second, ma'am. This is
14 a letter of 1/20/2016, and you've highlighted,
15 "Okay. So they say you was with me cooking meth at
16 somebody's that night. You weren't. You took the
17 kids Christmas shopping and then came back to get
18 me. I took you" -- I think that's -- "home after
19 that and left." Is that what you're referring to?

20 MS. MAYES: Yes, sir, Your Honor. And I
21 believe the State has -- or the Court has had an
22 opportunity to review the State's response where we
23 did lay out the factual scenario involving the death
24 of **Minor 1** who was ten weeks of age.

25 Your Honor, in the final 24 hours of her life,

1 in addition to pre-existing injuries, such as a
2 broken leg and rib fractures, in that final 24 hours
3 or approximately the final 48 hours of her life, she
4 had sustained a stomach perforation, and that
5 stomach perforation led to the poisoning of the
6 bloodstream with bacteria. And the way the
7 physicians have described it, that is a slow,
8 progressive onset of blood poisoning.

9 And the final stages of septic shock, she
10 became unconscious and unresponsive, and by the time
11 she arrived at the emergency room -- that both
12 Ms. Hodson and the co-defendant, Mr. Hodson, took
13 her to the emergency room, her lips were blue, her
14 abdomen was grossly distended because of the
15 internal swelling, and her body temperature was
16 below 93. So she was in the final stages of death.

17 This is a child that got no medical care or no
18 medical intervention at any point in her life
19 following her discharge from the hospital when she
20 was born. So in addition to those presentations and
21 finding at autopsy, she also tested positive for
22 ingestion of methamphetamine, which the toxicologist
23 at the State Law Enforcement Division tells us would
24 have occurred within the final hours of her life.

25 So that excerpt that Mr. O'Neil is referring to

1 has no real value in terms of her voluntariness for
2 entering this plea. He, the co-defendant,
3 acknowledges that she took him to the meth cook and
4 she picked him up from the meth cook. That meth
5 cook, his name is Ivan Bumgardner. He did provide a
6 statement to law enforcement. And in his statement
7 to law enforcement, he acknowledged that they were
8 both together, they arrived together, and they left
9 together. He recalled her being there for an
10 extensive period of time. But, regardless, by
11 everyone's acknowledgment of the facts, they arrived
12 together and then left together.

13 But just prior to going over to that meth
14 cook's house, we have the pseudoephedrine purchase
15 logs, which have both Ms. Hodson and Mr. Hodson
16 independently purchasing large quantities of
17 pseudoephedrine earlier that afternoon. I believe
18 her purchase was at 4:28 PM, they then go to a
19 different -- I believe it's going to be Walgreen's.
20 They then go to a different Walgreen's location and
21 he makes his purchase at 5:12 PM. We know they're
22 together because we have text messages that
23 corroborate that.

24 After they make that final pseudoephedrine
25 purchase at 5:12 PM, they then head to the meth

1 cook's house for the purpose of cooking up a
2 quantity of methamphetamine. Whether she stays
3 there throughout that time or picks him up once it's
4 ready, Mr. Bumgardner indicates to law enforcement
5 that they left with the baby and a large quantity of
6 methamphetamine.

7 She is then the primary caregiver for that
8 child throughout the night and up until around
9 7:00 AM the next morning. She leaves to cut hair at
10 a salon she was working at and is back home by noon,
11 and by 1:30 PM, the child is completely unresponsive
12 and is taken to the emergency room and cannot be
13 saved. It's also significant that the surgeon in
14 this case told us that this child could have been
15 saved if she had gotten prompt medical attention.

16 So, Your Honor, as to whether she stayed the
17 entire time while the meth cook was cooking meth or
18 just dropped him off there and then picked him up,
19 at the very least she knew that they were leaving
20 with meth, she knew what the purpose of that visit
21 was, she had participated in the purchase of the
22 pseudoephedrine, and that morning, for the three
23 hours or three and a half hours that she's gone, she
24 leaves the child in presence of someone she told law
25 enforcement was a known meth user. So I cannot

1 fathom how this statement impacts her voluntariness
2 of the plea, in entering the plea, or the factual
3 basis for the plea.

4 MR. O'NEIL: Your Honor, just briefly, if I
5 could. There's another letter that Ms. Hodson -- if
6 I can pass it up for Your Honor's consideration.
7 And the State has a copy of it.

8 THE COURT: This is an undated letter written
9 Dear Sara Elizabeth, signed by, I guess, Jordan.

10 MR. O'NEIL: Yes, Your Honor. And I have the
11 envelopes the letters came in that would provide
12 Your Honor an idea of when the letter was written.

13 THE COURT: So where do you want me to refer
14 to?

15 MR. O'NEIL: In the middle of the letter,
16 basically it talks about --

17 THE COURT: Well, there's two pages. Which
18 middle?

19 MR. O'NEIL: Middle of the first page, Your
20 Honor.

21 THE COURT: All right. Whereabouts in there?

22 MR. O'NEIL: About the third or fourth line
23 where Jordan basically indicates to my client that
24 there were no bruises on the child when he was in
25 contact with the child and the condition -- it talks

1 about the condition of the child when he received
2 the child the day the child died.

3 THE COURT: So how is that significant to her
4 voluntariness as to her plea under Alford?

5 MR. O'NEIL: Your Honor, because it's an Alford
6 plea, what the defendant has to do under an Alford
7 plea is have a belief that if the State proceeded
8 with the higher charge at trial, there'd be a strong
9 likelihood of conviction.

10 THE COURT: That's correct.

11 MR. O'NEIL: Your Honor, what my client tells
12 me is that if she would have known that the
13 co-defendant would testify that there were no
14 bruises on the child when she left the home that day
15 and that the co-defendant would testify that they
16 didn't -- quoting from the back of her statement,
17 that they didn't cook meth with the child the day
18 before, then she would not have entered the Alford
19 plea and she would instead have insisted on going to
20 trial on the charge of homicide by child abuse.

21 So she indicates to me that in her mind her
22 entry of a plea under Alford was not voluntary
23 because she didn't have this information that she
24 had on January 20th in the first letter and January
25 29th on the second letter at the time she entered

1 the Alford plea on November 3rd, 2015.

2 THE COURT: She was originally indicted for
3 what, Ms. Mayes?

4 MS. MAYES: Homicide by child abuse, Your
5 Honor, and also an additional count of unlawful
6 conduct towards a child. She also had a possession
7 of methamphetamine charge regarding some
8 methamphetamine that was recovered from her bedroom.

9 THE COURT: Homicide by child abuse carries up
10 to what?

11 MS. MAYES: Twenty to life, Your Honor. And
12 she was allowed to plead to aiding and
13 abetting homicide --

14 THE COURT: Which carries what?

15 MS. MAYES: Ten to 20.

16 THE COURT: And you've nol-prossed what else;
17 the meth -- possession of meth?

18 MS. MAYES: Possession of methamphetamine and
19 one --

20 THE COURT: Unlawful -- and unlawful conduct.

21 MS. MAYES: One count of unlawful conduct.

22 She did plead to an additional count of
23 unlawful conduct towards a child, Your Honor, that
24 involved the three siblings. That involved their
25 exposure to methamphetamine. I don't believe she's

1 challenging the plea that she entered in that case.

2 Is that correct, Mr. O'Neil?

3 MR. O'NEIL: She only entered two pleas. She
4 entered a plea to aiding and abetting homicide by
5 child abuse and unlawful conduct towards a child.

6 MS. MAYES: Is she --

7 MR. O'NEIL: Only two counts.

8 MS. MAYES: Is she contesting the unlawful
9 conduct towards a child plea that she entered?

10 MR. O'NEIL: Yes, because the unlawful conduct
11 towards a child plea was related to the death of the
12 minor child **Minor 1**

13 MS. MAYES: It was the other three children.

14 MR. O'NEIL: My understanding -- I have the
15 indictment in front of me. It is Indictment
16 2013-GS-32-3005A.

17 THE COURT: No. She pled to 3004.

18 MS. MAYES: Right.

19 THE COURT: Obviously she understands if I
20 grant her motion, she'll go to trial on homicide by
21 child abuse, and if she is convicted she'll receive
22 a minimum of 20 years and a possible life in prison
23 without parole.

24 MR. O'NEIL: Yes, sir. And, Your Honor, just
25 one point of clarity: She wasn't indicted for

1 homicide by child abuse until September 14th, 2015,
2 so about two months before her plea. The incident
3 occurred back on December 11th, 2012.

4 THE COURT: I understand that. Anything else?

5 MR. O'NEIL: One moment, Your Honor. I beg the
6 Court's indulgence one moment.

7 THE COURT: Ms. Hodson, do you understand that
8 if I grant your motion the plea will be thrown out
9 and you'll be facing the original charges --

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: -- and one of those is homicide,
12 which is the death of the child, by child
13 abuse; i.e. -- he was ten weeks old or ten months
14 old?

15 THE DEFENDANT: She --

16 MS. MAYES: Ten weeks.

17 THE COURT: Ten weeks old and died of a
18 perforated either abdomen or intestines that allowed
19 the poison from there to seep out into his body and
20 kill him or her. If a jury convicts you of that
21 charge, whoever tries the case, whatever judge, has
22 no discretion to sentence you to anything less than
23 20 years and has the discretion to sentence you to
24 the balance of your life in jail.

25 What you've pled under Alford, which is the

1 same as a guilty plea, you're facing a minimum of
2 ten years, maximum of 20 years. So it's a huge,
3 huge bargain that the State gave you in allowing you
4 to plead under Alford. Is this what you want to do?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Anything else?

7 MR. O'NEIL: No, Your Honor.

8 THE COURT: Obviously, in regarding whether or
9 not to allow a withdrawal of a guilty plea is within
10 the sound discretion of the trial judge, and if the
11 plea was voluntarily entered, obviously normally the
12 trial judge does not abuse his discretion.

13 In this case, I have reviewed the transcript
14 from the plea. In that transcript, Mr. O'Neil, I
15 asked you at that time did you represent Ms. Hodson
16 and had you advised her of the charges to which she
17 was pleading, i.e., unlawful conduct towards a child
18 and aiding and abetting, and you advised me that you
19 had advised her of the charges and the potential
20 sentence.

21 And you told me that you had advised her as to
22 the effect of an Alford plea, that the Court had to
23 treat it as a guilty plea, went on her record as a
24 guilty plea. I asked you, having advised her and
25 looking at all the evidence, did you agree with her

1 decision, and you told me that you did, and advised
2 me of what the bargain was.

3 So after having talked with you a little bit, I
4 then addressed my attention to your client, who is
5 before me this morning, and I asked her was she
6 aware of what she was indicted for, pleading guilty
7 to, and she told me that she was. I told her what
8 the possible sentences were, i.e., ten to 20 on the
9 unlawful conduct and aiding and abetting; I told her
10 that one of the offenses was classified as serious
11 and went over her strikes with her; I went over with
12 her the fact that it was an 85-percent, no-parole
13 sentence and she told me that she understood that; I
14 advised her that she'd be released to a community
15 supervision program and she advised that she knew
16 that.

17 I asked if she had any questions about what she
18 was charged with and the possible sentence, the
19 no-parole, the 85-percent aspect, and she said she
20 had no questions. I told her it was classified as
21 violent.

22 And then I asked her if she understood what
23 Alford vs. North Carolina was, and she said that she
24 did. And then I went on, even notwithstanding the
25 fact that she told me she did, I explained to her

1 that Alford was a United States Supreme Court case
2 which basically says that the State's offering you a
3 bargain, i.e., nol-prossing several of the cases and
4 allowing her to plead to the lesser included
5 offense.

6 I asked her did she want to take the benefit of
7 the bargain, and I asked her was she of the opinion
8 that the evidence was strong enough that the State
9 most probably could prove her guilt to a jury beyond
10 a reasonable doubt, and she didn't want to take that
11 chance and wanted to take the benefit of the
12 bargain, i.e., to have the other charges
13 nol-prossed, and she said yes.

14 And I told her by doing that, I had to treat
15 that Alford plea as a guilty plea, it would go on
16 her record as a guilty plea, and that the state
17 department of corrections would treat it as a guilty
18 plea, and she said she understood that and wanted to
19 do that.

20 I told her that by doing that she would forego
21 her right to a jury trial, and I explained to her
22 what the jury trial was and that she had the right
23 to confront witnesses and cross-examine witnesses,
24 she had the constitutional right to remain silent.
25 I told her that a jury of 12 people would be asked

1 to convict her if it was proven beyond a reasonable
2 doubt. She agreed to all that, knew what it was
3 about.

4 I told her about her rights to an appeal and
5 asked her, notwithstanding and understanding all
6 that, did she still wish to enter a plea under North
7 Carolina vs. Alford, and she told me that she did.
8 She said that she was not threatened in any manner
9 to make the plea.

10 She said she was satisfied with you, she
11 thought you had enough time to spend with her and
12 investigate the facts and research the law, and
13 there was nothing else she wanted you to do for her
14 other than speak up on her behalf and that she was
15 totally and completely satisfied with your
16 representation; that she was not under the influence
17 of alcohol or drugs, and she understood the
18 proceedings and understood all my questions. She
19 had no questions of me.

20 And at that time, after going through that
21 exercise, I asked the solicitor's office to give me
22 a factual basis for the plea. And the solicitor's
23 office went through, basically, the same factual
24 basis that they gave me today as is outlined in
25 their motion in opposition to your withdrawal of the

1 plea.

2 It's all set out in the transcript. I will not
3 read it verbatim, but it was four or five pages
4 talking about the stomach perforation, the child
5 dying. It goes on and on, a full, full recitation
6 of all the factual bases for pleading, probably as
7 long as I've seen one in a while.

8 And at the conclusion of that, I asked
9 Ms. Hodson -- I said, you've heard the recitation of
10 the facts by the State, and I asked you, do you have
11 the opinion, if this case were tried, the State
12 would be able to prove what they've just cited to me
13 and convince a jury beyond a reasonable doubt, and
14 you don't want to take that chance with a trial, the
15 five indictments, and you want to take the bargain,
16 which is entering a plea to the two indictments
17 currently before the Court?

18 She told me she did and she told me she was in
19 agreement to having her sentence held in abeyance,
20 that Judge Keesley will sentence her along with her
21 co-defendant, and I found, after having listened to
22 all of that and her decision to plead guilty under
23 North Carolina vs. Alford was freely, voluntarily,
24 and intelligently made, she was represented by you,
25 she was satisfied by you, and I accepted the plea.

1 I don't think that under all of the cases that
2 I've read that it requires anything more than what
3 we've talked about taking her plea. She understood
4 the charges, the maximum sentences, she knew what
5 Alford was, she was satisfied with you, and she has
6 pled guilty. And I, under my discretion,
7 respectfully deny the motion to withdraw the guilty
8 plea. Thank you.

9 Ms. Mayes, if you would, please prepare me an
10 order to that effect. I'll ask my court reporter to
11 please e-mail to both of you, for the purposes of
12 the hearing today, the rough draft of the realtime
13 transcript of the hearing. And I'll ask her to
14 please, within a short period of time, to supplement
15 that after she's had a chance to go through it and
16 whatever they do with realtime, edit it to get some
17 of the abbreviations out of it, and then we'll
18 attach that transcript to the order and make it a
19 part and parcel thereof. Thank you.

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

21 -- END OF TRANSCRIPT OF RECORD --
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 14th of March, 2016.

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

July 25, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State)

6)
7 v.)

Transcript of Record

13-GS-32-3000

13-GS-32-3004

8 Jordan Ray Hodson and)

15-GS-32-2368

9 Sara Elizabeth Hodson,)

15-GS-32-2371

10 Defendants.)

11 March 23, 2016

12 Lexington, South Carolina

13
14 B E F O R E:

15 The Honorable William P. Keesley, Judge.

16
17 A P P E A R A N C E S:

18 Laura Suzanne Mayes, Assist. Solicitor
Attorney for the State

19 Robert M. Madsen, Public Defender
Attorney for Defendant Jordan Hodson

20 Earnest Deon O'Neil, Esquire
21 Attorney for Defendant Sara Hodson

22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

I N D E X

1

2

WITNESSPAGE

3

4

5

6

7

(There were no witnesses.)

8

9

10

11

12

13

14

15

E X H I B I T S

16

NO.DESCRIPTIONID.EVD.

17

C-1

Letters

33

18

C-2

Notebook

53

19

20

21

22

23

24

25

1 (The following proceedings were held on
2 March 23, 2016.)

3 **THE CLERK:** Indictment 2013-GS-32-03000, the
4 State versus Jordan Hodson, indicted for unlawful
5 conduct toward a child, and indictment
6 2015-GS-32-02371, the State versus Jordan Ray
7 Hodson, indicted for aiding and abetting homicide by
8 child abuse. Defendant pled under North Carolina v.
9 Alford on October 23rd, 2015, before you, Your
10 Honor. This is for sentencing purposes.

11 Indictment 2013-GS-32-03004, State versus Sara
12 Elizabeth Hodson, indicted for unlawful conduct
13 towards a child, and indictment 2015-GS-32-02368,
14 the State versus Sara Elizabeth Hodson, indicted for
15 aiding and abetting homicide by child abuse.
16 Defendant pled on November 3rd, 2015, before the
17 Honorable Judge Early. The plea was accepted and
18 the sentence was deferred at that time.

19 **THE COURT:** She pled guilty under Alford or --

20 **THE CLERK:** Your Honor, I don't see a note as
21 to the fact of Alford.

22 **MR. O'NEIL:** If I may, Your Honor?

23 **THE COURT:** Yes.

24 **MR. O'NEIL:** She pled under North Carolina
25 versus Alford.

1 **THE COURT:** She pled under North Carolina
2 versus Alford?

3 **MR. O'NEIL:** Yes, sir.

4 **THE COURT:** All right. Thank you.

5 **MR. O'NEIL:** Your Honor, one more matter if I
6 could?

7 **THE COURT:** Yes, sir.

8 **MR. O'NEIL:** Just for the record, Ms. Hodson,
9 on February 5th of 2016, she did file a motion to
10 withdraw the guilty plea. We had a hearing heard in
11 front of the Honorable Judge Early on February --
12 I'm sorry -- on March 14th, 2016, in which he denied
13 that motion.

14 Out of an abundance of caution, for the record,
15 I would, at this point, still renew that motion to
16 withdraw the guilty plea. Just so that issue is
17 preserved at this time, I would renew that motion to
18 withdraw the guilty plea.

19 **MS. MAYES:** And if I may add, Your Honor, when
20 we had the hearing last week on March 14th before
21 Judge Early, he heard oral argument by counsel from
22 the State and from Mr. O'Neil. He also had a
23 transcript of the original plea proceeding, and he
24 had reviewed that transcript thoroughly and
25 subsequently denied the motion to withdraw the plea.

1 **THE COURT:** Under Rule 4 of the South Carolina
2 Rules of Criminal Procedure subsection (b), it
3 reads, If any motion be made to any judge and be
4 denied, in whole or in part, or be granted
5 conditionally, no subsequent motion upon the same
6 set of facts shall be made to any other judge in
7 that action. If upon such subsequent motion any
8 order be made, it shall be void.

9 In my view, I'm bound by what Judge Early has
10 decided under Rule 4(b) of the Rules of Criminal
11 Procedure, but I note your exception.

12 All right. Where are we in the case?

13 **MS. MAYES:** We're ready for sentencing, Your
14 Honor.

15 **THE COURT:** What's the State's position?

16 **MS. MAYES:** Yes, sir, Your Honor. We are ready
17 to present facts which relate to this particular
18 case.

19 **THE COURT:** Go ahead.

20 **MS. MAYES:** Your Honor, this is an extremely
21 tragic case involving the death of ten-week-old
22 **Minor 1**. The investigation into her death
23 has determined that **Minor 1** was a victim of chronic,
24 ongoing physical abuse and neglect.

25 Following her death on December 11th, 2012, the

1 findings at autopsy led the pathologist to determine
2 that the manner of death was homicide by neglect and
3 abuse. The cause of death was sepsis, also known as
4 septic shock poisoning, as a result of a stomach
5 perforation, which was consistent with the
6 infliction of blunt force trauma.

7 Regarding the history of physical abuse
8 committed against this ten-week-old infant, we know
9 that the stomach perforation was not an aberration
10 or an isolated event of abuse. At autopsy, the
11 pathologist, Dr. John Spalding, found broken ribs,
12 some with old callus formation which are believed to
13 be around two to four weeks old. **Minor 1** also had a
14 broken left leg, specifically the tibia, which is
15 the lower portion of the leg below the knee. The
16 broken leg also had callus formation, which is
17 diagnostic of an older injury which had started to
18 heal.

19 We know that at two and a half months of age,
20 **Minor 1** was nonmobile and completely dependent on
21 her caretakers. There's absolutely no explanation
22 for this injury and for the rib fractures outside of
23 physical abuse. Her parents are Jordan Hodson and
24 Sara Hodson, the defendants in this case. Sara
25 Hodson was her primary caregiver that she resided

1 with in the family home. However, based on
2 statements and the investigation, we know that
3 Jordan Hodson visited the children and had caretaker
4 responsibilities on nearly a daily basis.

5 Your Honor, we know that **Minor 1** suffered
6 severe sores of the groin and pubic region due to an
7 untreated skin infection which had abscessed. This
8 is consistent with an infant being severely
9 neglected.

10 Most significantly, the investigation revealed
11 that **Minor 1** suffered from complete medical neglect.
12 She had never seen -- been seen by a doctor or a
13 medical provider following her birth. This is
14 especially tragic knowing that she would have
15 received or at least been eligible for Medicaid
16 coverage due to income status.

17 The State's position is that if **Minor 1** had
18 received medical intervention in a timely manner
19 following the stomach perforation, it would have
20 potentially saved her life. This injury could have
21 been treated before the onset of sepsis. Even after
22 the early onset of sepsis, she still could have been
23 treated through surgery.

24 The surgeon in this case, Your Honor, Dr. Camps
25 of Palmetto Health Richland Hospital, heroically

1 attempted to save her life. He told us that he knew
2 by the time she reached him, she had almost no
3 chance of survival, but he did the surgery anyway.
4 He also gave us an example of an infant that he had
5 saved in a previous case with a very similar injury,
6 because in that situation, the child's caregivers
7 had sought medical treatment early.

8 Your Honor, the statute to which they have
9 pled, the unlawful conduct towards a child, deals
10 with methamphetamine exposure of the children in the
11 home, and I'll address that later.

12 But as to the homicide by child abuse, Your
13 Honor, both have pled to aiding and abetting
14 homicide by child abuse, which is defined under our
15 statute as child abuse or neglect. And child abuse
16 or neglect means an act or omission by a person
17 which causes harm to the child's physical health or
18 welfare, and that includes failure to supply the
19 child with adequate food, clothing, shelter or
20 health care, and the failure to do so causes
21 physical injury or a condition resulting in death.

22 The symptoms of sepsis include fever, high
23 fever, not feeding well and abdominal swelling; all
24 of which would have been ignored in this case by
25 **Minor 1**'s parents. They only sought treatment once

1 her lips turned blue and she was unresponsive,
2 unconscious and her body temperature was below 90
3 degrees. At this point, she was in the final stages
4 of death.

5 The abdominal swelling was immediately noted by
6 EMS workers when they arrived to provide assistance
7 by ambulance and take her to the emergency room.
8 The abdominal swelling was also noted by the
9 emergency room staff. This would have been
10 apparent.

11 The eventual sepsis or bacterial infection took
12 over her body, took over her bloodstream. A large
13 pocket of infection had developed in the abdomen
14 which Dr. Camps, the surgeon, removed during his
15 surgery. This is one of the reasons that he felt
16 the injury was not, quote, Fresh because of that
17 large pocket of puss that had formed. This is
18 indicative of an injury and infection that's older.

19 In speaking with Dr. Camps, Your Honor, his
20 opinion was that we're talking about 24 hours or
21 greater in terms of when this injury would have
22 occurred.

23 Sara Hodson reported in her statements that
24 **Minor 1** had excessive gastric symptoms during the
25 previous evening and night and into the early

1 morning hours on the day that she died. We believe
2 those gastric symptoms were the result of the injury
3 to the stomach and intestine.

4 One of the most disturbing aspects of the
5 autopsy was the finding that **Minor 1** tested positive
6 in her brain and in her liver for the ingestion of
7 methamphetamine. Because she was nonmobile, we know
8 that the methamphetamine was being consumed directly
9 in her presence to result in such a finding.

10 During a search of the residence, law
11 enforcement located a stash of multiple meth smoking
12 devices in the master bedroom. The master bedroom
13 is the same location where **Minor 1** slept. Her crib
14 and her Pack 'n Play were located in that bedroom
15 along with several baby bottles. Sara Hodson, as
16 her primary caregiver, would have used that bedroom
17 on a daily basis. On the day of her death,
18 according to the statement of Jordan Hodson, he was
19 also present in that bedroom with the child for
20 several hours.

21 In speaking, Your Honor, with the toxicologist
22 at the State Law Enforcement Division, Dustin Smith,
23 his opinion was that for this -- for this finding to
24 show up in her brain and liver knowing that it's
25 second-hand ingestion, for those positive findings,

1 he believes that we're talking about within 12
2 hours; most likely that methamphetamine was smoked
3 or used within 12 hours of her death to result in
4 those findings.

5 One of the findings at autopsy, Your Honor, is
6 believed to be directly related to **Minor 1**
7 methamphetamine exposure. Dr. Spalding noted in the
8 autopsy report what he called bowel ischemia. And
9 this is what he used to, a layman's term, in
10 defining it to us as what he called, quote, Dead
11 gut. This is a physiological change that occurs in
12 the bowel where the blood supply is disrupted or
13 decreased over the course of time making the bowel
14 more susceptible to injury or trauma. He could
15 visualize the changes in the bowel, the thinning of
16 the tissue, the ischemia as he performed the
17 autopsy.

18 His opinion in this case was that the bowel
19 ischemia that he observed in **Minor 1** was chronic
20 methamphetamine exposure. He noted in his autopsy
21 report that for these reasons, he determined that
22 the methamphetamine exposure was a contributing
23 factor in her death.

24 The investigation revealed that both parents
25 were meth users. And during the final 24 hours of

1 **Minor 1** life, their primary focus was the making
2 and consumption of methamphetamine.

3 And, Your Honor, I'm briefly going to go
4 through the timeline that we developed for those
5 final 24 hours of **Minor 1** life. As I stated
6 earlier, she was residing in the family home with
7 Sara Hodson, her mother. There were also three
8 older siblings in that home. Jordan Hodson was
9 separated from Sara Hodson, but he still visited the
10 home on a daily basis. Ms. Hodson had a job cutting
11 hair, which she would leave the residence for
12 several hours during the day and normally Mr. Hodson
13 would come in and care for the children if she left
14 to cut hair.

15 On the day before **Minor 1** death, Your Honor,
16 we have pseudoephedrine logs which show the purchase
17 of pseudoephedrine by Sara Hodson during the
18 afternoon. And I believe the exact time on that is
19 going to be 4:28 P.M.

20 And what's significant, Your Honor, is that
21 they were together. We know that from both their
22 statements and from text messages recovered in this
23 case. So Jordan Hodson, Sara Hodson, the baby,
24 **Minor 1** and the three children were all together on
25 a shopping venture.

1 At 4:28 P.M. on December 10th, the day before
2 **Minor 1** death, they go to a Walgreens located in
3 Batesburg. And Sara goes in and uses her ID to
4 purchase a 48 count of pseudoephedrine.

5 From what we've learned about this
6 investigation and the timing of the route, it's
7 almost immediately thereafter that a purchase is
8 made by Jordan Hodson. They travel from Batesburg
9 to Sunset Boulevard in Lexington and they hit a
10 Walgreens at Sunset Boulevard where Jordan Hodson
11 uses his driver's license, ID, to purchase
12 pseudoephedrine at 5:12 P.M., and that is also a 46
13 count of pseudoephedrine.

14 From there, Your Honor, we know that in that --
15 in the evening hours some time after 7:00 P.M., they
16 go to the home of a meth cook. His name is Ivan
17 Bumgarner. He acknowledged in an interview with us
18 that they did come to his residence together, that
19 they had **Minor 1** with them. He acknowledged, Your
20 Honor, that they came with pseudoephedrine and they
21 left with meth.

22 And from there, Your Honor, it gets a little
23 murky as to exactly who went where, but it is
24 believed that Sara went home with **Minor 1** She has
25 acknowledged that in a written statement that she

1 was with **Minor 1** all night long and Jordan, at some
2 point, is with them, but then breaks away to go stay
3 with someone else during the evening hours. Again,
4 Sara Hodson had reported that **Minor 1** was having
5 some gastric symptoms, which, by all accounts, were
6 ignored.

7 She reported that she had last changed her
8 diaper some time around 7:40'ish P.M., but then
9 never changed her diaper again. She also reported
10 that she left the child in her car seat all night
11 long.

12 Around 6:50 A.M., the mom reported that the
13 child was sleeping in her car seat, but still having
14 gastric symptoms and, quote, She smelled like poop.
15 She did not change the diaper.

16 The father arrived at the home some time around
17 6:30 A.M., and, at that point, the mother left the
18 home to take the children to school and Mr. Hodson
19 then attempted to clean the child of her dirty
20 diaper. He reported that he took her into the
21 shower located there in the family residence. His
22 initial statements to medical personnel and to law
23 enforcement was that she slipped from his hands
24 while in the shower, but she never hit the surface
25 and was not injured in any way.

1 At some point during a subsequent interview
2 with law enforcement, he gave a verbal statement
3 indicating that she had slipped and hit the surface
4 of the shower. However, Your Honor, that would have
5 been around 7:30 A.M. that morning, and based on
6 what we know about that -- about the case, it's
7 unlikely that, number one, that that would have been
8 the mechanism of injury in this case, and, number
9 two, that the timeline fits that she could have
10 already had progressive infection and sepsis onset
11 to be completely lifeless by 1:30 P.M.

12 So, Your Honor, after the mother briefly
13 returned home, she saw the child. She did not
14 report anything strange about the child, neither did
15 Mr. Hodson. Ms. Hodson then leaves in order to cut
16 hair. She reports that she left around 8:30 A.M.
17 and that she got to work around 9:23 A.M. She then
18 left work before noon and is back home again by
19 12:30 or 12:40 P.M.

20 That whole hour or so when she's back home and
21 Mr. Hodson's there and they're with the child, there
22 is not very much accounted for by the parents as to
23 exactly what's going on. They report that **Minor 1**
24 appears to be sleeping, but, at some point, it was
25 noted by the father that her, quote, Lips were blue.

1 She was reported to be unconscious and unresponsive.
2 And, at that point, they put her in the car and took
3 her to a local physician. The physician immediately
4 noted that the child needed an ambulance.

5 An ambulance arrived, Your Honor, by 1:30
6 P.M. -- I'm sorry -- 1:43 P.M. At 1:43 P.M., when
7 that EMS worker arrived, he immediately noted that
8 her belly was distended and firm. And from that
9 point, Your Honor --

10 **THE COURT:** Did you say firm or burned?

11 **MS. MAYES:** Firm.

12 From that point, she was treated briefly at
13 Lexington Medical Center, but they knew she needed
14 advanced life support and intervention. They
15 transferred her on to Palmetto Health Richland. And
16 as I stated previously, the surgeon did attempt to
17 save her life and just could not do it; the degree
18 of sepsis was too severe.

19 Your Honor, we will never know exactly how
20 **Minor 1** was injured or the exact mechanism of her
21 injury. We'll also never know exactly when she was
22 injured, but we do know that she was abused and
23 severely neglected and the complete lack of medical
24 intervention or treatment by parents is just as much
25 a factor in her death as the injury itself.

1 When we look at the overall presentation, Your
2 Honor, of the exposure to methamphetamine, as I
3 indicated before, both parents are known to be
4 methamphetamine users. Mr. Hodson admits that. And
5 Ms. Hodson, in her statement to law enforcement,
6 acknowledged that she knew that Mr. Hodson was a
7 meth user. Mr. Hodson, in his statement,
8 acknowledged that Ms. Hodson was a meth user.

9 In addition, Your Honor, during a search of the
10 home, law enforcement recovered from that bedroom,
11 as I noted before, multiple smoking devices,
12 specifically, Your Honor, they included a glass
13 pipe. There was also a broken light bulb that was
14 being used as a smoking device, and then there was
15 also a plastic bottle which had a bag attached. We
16 met with one of the NET team members to have him
17 explain to us exactly how that device is used and he
18 indicated that the bag is attached to accentuate the
19 high or accentuate the exposure to the
20 methamphetamine.

21 There were also multiple packets of tinfoil
22 located in that drawer where the smoking devices
23 were found. I believe there were 18 total -- 18
24 total tinfoil packets. Mike Merckle of the NET team
25 indicated to us that each one of those pieces of

1 tinfoil is normally used as a separate episode of
2 smoking. So what was stashed there in that drawer
3 in the master bedroom, which is also the room where
4 the child is normally sleeping, that seemed to be
5 the location where most of this meth use was going
6 on.

7 There was meth residue found on all of those
8 items, Your Honor. The glass pipe, the 18 pieces of
9 tinfoil were also positive for methamphetamine. The
10 glass light bulb was also positive for
11 methamphetamine. And then the plastic bottle that I
12 mentioned with the plastic bag attached, it was also
13 positive for methamphetamine residue. And then a
14 fingerprint identified as that of Sara Hodson was
15 found on the plastic baggy, which is attached to
16 that plastic bottle smoking device.

17 Your Honor, as part of this investigation, the
18 Department of Social Services was involved. They
19 removed the three older siblings. They are **Minor 4**
20 **Minor 4** she was five years old at the time of this
21 event; **Minor 3**, he was eight years old at the
22 time of this event; and **Minor 2**, who was
23 ten.

24 Once the children were removed, the Department
25 of Social Services requested hair samples from all

1 of the parties to have them tested. Your Honor, the
2 hair sample of Jordan Hodson was positive for
3 methamphetamine. The hair sample of Sara Hodson was
4 positive for methamphetamine. And the hair sample
5 of eight-year-old **Minor 3** was also positive
6 for methamphetamine.

7 The children, Your Honor, are currently
8 residing with Ms. Hodson's father. He is John
9 Pitman and he is present in the courtroom.

10 Your Honor, this case was investigated by the
11 Lexington County Sheriff's Department. We have
12 present Sergeant Robby Lint. I know, at some point,
13 he would like to address the Court to discuss the
14 aspect of sentencing, and also, Your Honor, the
15 prior record of the parties when Your Honor deems
16 appropriate.

17 **THE COURT:** I'll be happy to hear from anybody.

18 **MS. MAYES:** Your Honor, as to witness
19 statements in this case, I'll just briefly cover
20 some of the information that was recovered because
21 law enforcement did attempt to go back and find out
22 exactly what had been going on during the prior ten
23 weeks of **Minor 1** life and most specifically during
24 those final days.

25 Your Honor, I mentioned the purchase of the

1 pseudoephedrine by Sara Hodson on the day or evening
2 which preceded **Minor 1** death, but we also show
3 that she had pseudoephedrine purchases as recent as
4 September 30th, which would have been immediately
5 preceding **Minor 1** birth on October 1st. And then
6 there is a pseudoephedrine purchase less than a week
7 later following her birth.

8 There was a statement obtained by a person who
9 had been a roommate of Ms. Hodson's, and she
10 maintained that Ms. Hodson continued to use
11 methamphetamine following the birth of **Minor 1**

12 Also, as to Jordan Hodson, Your Honor, the same
13 findings. He had multiple purchases of
14 pseudoephedrine immediately or very close in time
15 before the child's birth and following the child's
16 birth which continued on through that ten-week
17 period.

18 Your Honor, the meth cook that I spoke of, his
19 name is Ivan Bumgarner. He's the one that they took
20 the pseudoephedrine to the night before **Minor 1**
21 died, and he is the one that was able to confirm
22 that **Minor 1** was present and with them that evening
23 as they left his residence with methamphetamine. He
24 noted that he had been at the Hodsons' residence
25 when meth was being smoked. He stated that when

1 meth was smoked at the Hodsons' residence, the
2 children had been present. Mr. Bumgarner stated
3 that meth had been smoked by Ms. Hodson when the
4 victim, referring to **Minor 1** was present.

5 He reviewed the photos of the tinfoil which had
6 been recovered during the search of the home. He
7 identified those images as how he had seen
8 Ms. Hodson smoke methamphetamine. He also confirmed
9 that he had last seen her smoke at that very
10 residence following the birth of **Minor 1**

11 Your Honor, there was a statement of a Steven
12 Prescott. He was a neighbor who also resided on
13 Bushberry Road nearby. He stated that Sara was,
14 quote, So frustrated with the baby, she wanted to
15 shake it and throw it against the wall, according to
16 her statement.

17 There's also a statement from an Alicia Cook.
18 She also resided on Bushberry Road and was a
19 neighbor. She said that she asked Sara if she was
20 okay, this would have been before this particular
21 incident date, but she asked Sara if she was okay
22 and she said, no, that her kids hated her and the
23 baby cried all night and she wanted to pick the baby
24 up and throw it against the wall, end of quote.

25 There was also a statement from a Diane Alston

1 also of Bushberry Road. She stated as far as Jordan
2 Hodson is concerned, quote, He does come every day
3 as far as I see, end of quote.

4 There's also a statement of Ariane {phonetic}
5 Kennedy who was a neighbor at the time and she
6 resided nearby. She reported that she had seen Sara
7 with the baby and the baby was being neglected and
8 had a dirty diaper that Sara would not change. She
9 also stated that Sara, on occasion, told Ariane that
10 she was, quote, Going to fling the baby up against
11 the wall because the baby would not stop crying.
12 She reported that the baby had a dirty diaper with
13 feces oozing from the edges. She reported that Sara
14 ignored her.

15 And, finally, there is a statement, as I
16 mentioned before, from a roommate -- a former
17 roommate of Ms. Hodson. Her name is Harley Langley.
18 She reported that she saw Sara smoking meth at least
19 three times in the days before the baby's birth.
20 She said that she wanted to kill the baby and talked
21 of throwing it against the wall. She kept saying
22 that Jordan needed to take care of the baby. Sara
23 would sometimes ignore the baby letting her cry for
24 hours.

25 And, Your Honor, this is Sergeant Lint from

1 Lexington County Sheriff's Department.

2 **THE COURT:** Spell your last name for me.

3 **SERGEANT LINT:** Yes, sir, L-i-n-t.

4 **THE COURT:** What's your first name?

5 **SERGEANT LINT:** Charles.

6 **THE COURT:** Bare with me one second. Let me
7 catch up with my notes.

8 **SERGEANT LINT:** Yes, sir.

9 (Pause.)

10 **THE COURT:** All right. Sergeant Lint, I'm
11 sorry. Go ahead, please.

12 **SERGEANT LINT:** Thank you, Your Honor.

13 Your Honor, I've been employed with the
14 sheriff's department in law enforcement for 18 plus
15 years, investigated multiple cases of every type. I
16 can honestly say, from a personal experience,
17 investigating a case of an infant child who was
18 abused and is now deceased is by far the worst case
19 I've ever had to investigate, and, unfortunately,
20 there have been multiples. And because of that, it
21 means you're too late. There's nothing you can do
22 to help this victim. There's nothing that we can do
23 to help **Minor 1** because she's no longer with us.

24 It's emotional. It's extremely emotional,
25 which makes it even harder when you're investigating

1 this type of case.

2 The bottom line is is Sara and Jordan Hodson
3 decided to bring a child in this life and then they
4 had no training, no emphasis on how to care for this
5 child. **Minor 1** only lived for ten weeks. In the
6 ten weeks that she was alive, she probably suffered
7 more than what a normal human being would endure in
8 a lifetime.

9 I just wanted to make the Court aware that, you
10 know, unfortunately, there was no one there to help
11 **Minor 1** By the time we were advised of what was
12 going on, **Minor 1** had already left this world and
13 this is why we're here today.

14 **THE COURT:** Thank you, sir.

15 **SERGEANT LINT:** Thank you, Your Honor.

16 **MS. MAYES:** And briefly, Your Honor, the older
17 siblings did receive forensic interviews to see if
18 they had any direct knowledge of what may have
19 happened to **Minor 1** The only thing that was noted
20 which may have related is that when the interviewer
21 questioned five-year-old **Minor 4** as to what her
22 father did, if he was mad at **Minor 1**, referring to
23 **Minor 1** the infant victim, she reported that he,
24 quote, Hurt her and that she saw it with her own
25 eyes in the living room of the kitchen.

1 Minor 4 stated that her father was laughing
2 when he hurt Minor 1 but that her mother was
3 sleeping. She reported that she had seen her father
4 hit Minor 1 in her back and in her head. He hit her
5 with his hand and Minor 1 quote, didn't like it.

6 Your Honor, we do not believe that was the
7 actual incident date, but it seemed to be a prior
8 event that the child was describing.

9 And, Your Honor, briefly from the autopsy, I
10 just want to address some findings there. As
11 previously stated, Dr. Spalding did note the change,
12 physiological change, in the bowel and that he
13 believes it's related to the methamphetamine
14 exposure.

15 He writes, There appears to be no explanation
16 for the fracture with callus formation other than
17 abuse of trauma. The main cause of the septic shock
18 and death appears to be related to the extensive
19 ischemic necrosis or death of the gastrointestinal
20 tract.

21 He writes, Methamphetamine effects include
22 marked decrease in gastrointestinal blood flow with
23 high potential for gastrointestinal injury,
24 including necrosis. Methamphetamine exposure very
25 certainly had adverse and at least contributing

1 effect as cause of death in this particular case.
2 The findings in this case would be more compatible
3 with a very sick child for at least several days
4 prior to its death.

5 And, Your Honor, the child was also seen by a
6 pediatrician, Susan Luberoff, that was at Palmetto
7 Health Richland. This was after the surgery, Your
8 Honor. And, again, at this point, it became
9 apparent that the child would not survive. She
10 noted that I was notified by Dr. Peck of an imminent
11 transfer of a possible nonaccidental trauma patient
12 from Lexington Emergency Room. After the baby
13 arrived, she went to the operating room. I examined
14 her in the pediatric intensive care unit. She had
15 expired while I was en route.

16 She writes, I talked to Dr. Camps, the
17 pediatric surgeon. He found a perforation in the
18 posterior wall of her stomach that did not appear
19 fresh. At this point, there has been -- there has
20 not been an explanation sufficient to explain the
21 severe blunt force abdominal trauma, extensive
22 perineal trauma and death of this infant. In my
23 opinion, the child has been the victim of physical
24 abuse.

25 And Dr. Luberoff is present in the courtroom as

1 well, Your Honor.

2 As for prior record, Mr. Hodson has a record
3 out of Arizona, 1998, driving under the influence.

4 **THE COURT:** Which one's record is this?

5 **MS. MAYES:** I'm sorry. This is Jordan Hodson,
6 Your Honor. I'm sorry, there's actually no
7 disposition on that one. He has a record out of
8 Arizona in 2001 for battery with bodily harm; 2002,
9 resisting a peace officer; 2000, false report to law
10 enforcement and disorderly conduct; and then 2006,
11 possession of drug paraphernalia.

12 As for Sara Hodson, Your Honor, she has a
13 record out of Illinois in 2002 for battery.

14 That is all from the State at this time, Your
15 Honor. We have passed up materials. The same
16 materials that we've passed up for the Court's
17 review were included in the original discovery, and
18 I've also given a duplicate copy of that packet to
19 defense counsel today, Your Honor.

20 **THE COURT:** Thank you.

21 All right. Which of you wishes to speak first?

22 **MR. O'NEIL:** I'll go first.

23 **THE COURT:** Yes, sir, Mr. O'Neil.

24 **MR. O'NEIL:** May it please the Court.

25 **THE COURT:** Yes, sir.

1 **MR. O'NEIL:** I represent Sara Hodson, Your
2 Honor. And as the State indicated, the cause of the
3 death of the minor child was septic shock due to
4 some sort of trauma to the intestinal area, Your
5 Honor. What becomes clear is that the only person
6 who admitted to any sort of action that could have
7 caused any injury to the child was the father in the
8 case not my client, Ms. Sara Hodson.

9 I think what was inciteful for me when I looked
10 at the discovery, when it comes to the incident
11 report done by the investigator, when they served
12 the warrant for homicide by child abuse on
13 Mr. Hodson, his words, according to the
14 investigator, was, Mr. Hodson stated, Put this on me
15 not on her, parentheses, that he pointed towards
16 Sara Hodson's cell; I did this not her.

17 I think that's indicative of Mr. Hodson's
18 version of what happened that day. Mr. Hodson told
19 law enforcement that he dropped the child in the
20 shower. And he indicated, of course, that
21 Ms. Hodson didn't have anything to do with that.

22 What's uncontroverted is that on the morning of
23 the death, the father, Mr. Hodson, was alone with
24 the child. Ms. Hodson, my client, Your Honor, had
25 went to work that morning at the salon that she

1 manages. She left earlier that morning, Your Honor,
2 and returned back around lunchtime here.

3 When she returned back at lunchtime, according
4 to her statement, Your Honor, that she gave freely
5 to law enforcement -- she gave several statements to
6 law enforcement freely. She cooperated with law
7 enforcement in that regard, in that incident, Your
8 Honor. She told law enforcement as soon as she
9 noticed something wrong with the child, she took the
10 child to the pediatrician that day.

11 In looking at the pediatrician's statement,
12 Your Honor, the pediatrician's statement indicates
13 that when she heard some commotion in the lobby of
14 her medical service area, that it was Ms. Hodson
15 that was pleading for help for her child asking
16 someone to help her child, somebody to give some
17 medical service toward her child. I think that
18 indicates Ms. Hodson was in the doctor's office
19 pleading for help, Your Honor, to me is indicative
20 not of someone who had caused any trauma to the
21 child or somebody who was neglectful when it comes
22 to trying to get the child some medical treatment.

23 The child was only ten weeks old. I think the
24 child had only missed one scheduled visit, which
25 would have been the six weeks visit that the child

1 would have been scheduled. I had asked Ms. Hodson
2 about that, why did she miss that visit. Ms. Hodson
3 indicated to me that there was some delay when it
4 comes to the child getting a WIC and/or Medicaid
5 card in and that's why she missed that six-week well
6 checkup, Your Honor.

7 I think what's most inciteful about this case
8 is that Ms. Hodson was not charged with homicide by
9 child abuse or aiding and abetting homicide by child
10 abuse until September 4th of 2015. This incident
11 occurred December 11th, 2012, but Ms. Hodson was not
12 charged with homicide by child abuse until September
13 4th of 2015. Prior to that, Ms. Hodson was on bond
14 because she was only charged with unlawful conduct
15 toward a child.

16 All of the statements that the State indicated
17 they got from the neighbors, they had all that
18 information during the pendency of this case, they
19 had all that information early on in this case.
20 These statements from these neighbors, Ms. Hodson
21 vehemently denies making any of these statements to
22 the neighbors about throwing the child -- wanting to
23 throw the child against the wall, wanting to harm
24 the child. Ms. Hodson says she doesn't even know
25 some of these people. And she vehemently denies

1 making those statements.

2 But regardless, Your Honor, the State had all
3 of the medical records that they cited to you, Your
4 Honor, just now, they had those early on in the
5 case, they had those statements from the neighbors
6 that they recited to Your Honor very early on in the
7 case, and it wasn't until two and a half years later
8 that they indicted my client or even charged my
9 client with homicide by child abuse or aiding and
10 abetting.

11 Before all of that, during the pendency --
12 prior to that, Your Honor, during the pendency of
13 the case, Ms. Hodson was only charged with unlawful
14 conduct toward a child. She was out on bond for
15 that, Your Honor, for about seven months. She had
16 made a 50,000 dollar bond. She was out on bond for
17 unlawful conduct toward a child. It wasn't until
18 that bond was recommitted that Ms. Hodson was
19 incarcerated on June 6th of 2013. At that time, she
20 still was not charged with homicide by child abuse
21 or aiding and abetting, that the aiding and abetting
22 and homicide by child abuse indictments were both
23 directly presented on Ms. Hodson on September 4th,
24 2015.

25 Your Honor, Ms. Hodson has no history of

1 violence. Ms. Hodson indicates to me that one
2 charge that she had on the prior record out of
3 Illinois, it's actually a disorderly conduct and not
4 any sort of assault charge. She is 35 years old,
5 and she would -- according to her, she only has that
6 one charge of disorderly conduct.

7 Your Honor, I think what's most important is
8 that Ms. Hodson has three other children, a 8 year
9 old, a 12 year old and a 13 year old. From my
10 conversation with Ms. Hodson's DSS family court
11 attorney, she had no prior history of DSS
12 involvement with those three other children. Those
13 children she was the primary caregiver for. They're
14 8 -- at this point, they're 8, 12 and 13. No
15 history of DSS problems with those kids, no
16 allegations of abuse with those kids. That to me is
17 indicative of a mother that knows how to take care
18 of a child and is not one who would harm a child by
19 inference by the fact that those children were in
20 her primary care for those amount of years and there
21 was no reports of DSS, no reports of abuse, no
22 criminal charges related to any of those children,
23 Your Honor.

24 What I would -- I do want to pass up some
25 things to Your Honor. I do have a letter that

1 Mr. Pitman -- he's in the courtroom today, Your
2 Honor. He is Ms. Hodson's father. He is the
3 caregiver now of the three other children. He wrote
4 a letter that he wanted the Court to consider.

5 And, actually, Ms. Hodson's three other
6 children wrote letters that they wanted the Court to
7 consider as well. I've given a copy of those
8 letters to the State, Your Honor. And I do have two
9 letters that the co-defendant, Mr. Hodson, wrote my
10 client, Ms. Hodson, as well. I would like to pass
11 those up to the Court at this moment, Your Honor.

12 **THE COURT:** Yes, sir. Thank you.

13 **MR. O'NEIL:** I can pause while you read those.

14 **THE COURT:** Just hold on a minute.

15 (Pause.)

16 (Court's Exhibit Number 1, letters, marked
17 for identification.)

18 **THE COURT:** All right. Go ahead, Mr. O'Neil.

19 **MR. O'NEIL:** Thank you, Your Honor. I think
20 what's clear from the letters, Your Honor,
21 especially the letters specifically from the
22 children, that Ms. Hodson's children love her and
23 they think the world of her.

24 I've spoken to Ms. Hodson's DSS attorney, I
25 have not seen the forensic interviews myself, but

1 according to his understanding of the forensic
2 interviews, there was no time in those forensic
3 interviews where the older children, the 8, the 12
4 and the 13 year old, saw any drug use in the home,
5 Your Honor.

6 Those kids are old enough to recognize those
7 things and to speak up about those things if they
8 were happening in the home. And the 8 year old and
9 12 year old and 13 year old, to my understanding,
10 never indicated to the forensic interviewers or
11 anybody that there was extensive drug use going on
12 in the presence of the children in the home.

13 From the letter of Ms. Hodson's father, I think
14 that's indicative that she has some family support.
15 Mr. Pitman is in the courtroom today. He does not
16 want to further address the Court, but I think his
17 letter kind of speaks to the fact that he does
18 support Sara. She has a support system when she
19 does get released from incarceration that can help
20 her stay on the straight and narrow, provide some
21 family support and provide some structure for her,
22 Your Honor.

23 And as it relates to the letters that I passed
24 up from Mr. Hodson, what I think is important about
25 those letters, on the letter dated January 20th of

1 this year, Your Honor, Mr. Hodson indicated to my
2 client that neither one of them, and specifically my
3 client, was not cooking meth the day before the
4 child was -- before the child deceased, Your Honor.

5 I think that's important because the State had
6 this testimony from this Ivan gentleman, I think it
7 was oral testimony when they actually went to go
8 interview him, that stated that my client was over
9 at his residence cooking meth on the night before.
10 My client vehemently denies that. And I think the
11 co-defendant's letter corroborates Ms. Hodson's
12 denial that she was not over at this Ivan
13 gentleman's house cooking meth on the night before
14 of this child's death, Your Honor.

15 And I think what's important about the letter
16 that's undated from the co-defendant is that he
17 indicated on the day -- in the morning of the
18 child's death, that he never saw any marks on the
19 child when Ms. Hodson left to go to work that
20 morning and that he had never saw my client,
21 Ms. Hodson, abuse the child -- children, Your Honor.

22 Despite what these so-called neighbors have
23 said, Your Honor, the person that was in the house,
24 Mr. Hodson, indicated he never saw Ms. Hodson abuse
25 any of the children. The actual children in the

1 house that are old enough to speak never indicated
2 they saw Ms. Hodson abuse any of the other children.

3 And like I said earlier, Your Honor, the State
4 had this information about these neighbors alleging
5 that Ms. Hodson did any sort of abuse, but they did
6 not charge Ms. Hodson with homicide by child abuse
7 when they had these statements. Like I said, they
8 only charged her September 4th of 2015 with homicide
9 by child abuse.

10 Ms. Hodson is 35 years old, Your Honor. She
11 went to two years of technical college school. She
12 also furthered her education in cosmetology school.
13 She's a licensed cosmetologist. She was actually
14 managing a salon there in the Lexington area. She
15 had been doing that for a while. She has employable
16 skills, Your Honor. It's clear that she has some
17 skills that she can put to work once she is released
18 from incarceration.

19 Like I say, Your Honor, she's been incarcerated
20 since June the 6th of 2013. What I'm asking for
21 this Court to do is to sentence Ms. Hodson to a
22 minimum of ten years on the aiding and abetting.
23 And for the unlawful conduct toward a child, I would
24 ask Your Honor to place a suspended sentence on
25 Ms. Hodson that would ensure that she stays on the

1 straight and narrow once she gets out of
2 incarceration and she has incentive -- incentive to
3 stay on that straight and narrow by having a
4 suspended sentence hanging over her head.

5 Your Honor, like I said, her father is here,
6 but he does not want to address the court. Ms.
7 Hodson does want to address the Court at the
8 appropriate time.

9 **THE COURT:** What would you like to say, ma'am?

10 **DEFENDANT S. HODSON:** Can I say it now?

11 **THE COURT:** Yes, ma'am.

12 **DEFENDANT S. HODSON:** Your Honor, thank you
13 first and foremost for giving me a moment to be
14 heard. I've waited three and a half years for this
15 moment. There's so much I want to say. I want you
16 to know I love each and every one of my babies, from
17 my oldest, **Minor 2** to my middle, **Minor 3** and **Minor 4**
18 and my baby **Minor 1** who's now with her Heavenly
19 Father.

20 I know when I look at the three oldest -- had I
21 known when I took the three oldest to school that
22 morning that my baby was going to be hurt, I would
23 have taken her with me. Had I been told in my brief
24 stop at the house after dropping the kids off and
25 before going to work that she was hurt, I would have

1 skipped work and gotten help for her, but I didn't.
2 The only mistake I made was leaving my baby with her
3 dad. He is the only other person beside me that
4 should have protected my baby above all else and he
5 failed that day. Because of his failure, my baby is
6 gone forever.

7 Every day I pray that I can go back, but I know
8 that is not possible. I pray that God protects my
9 children and watches over them. They have been
10 through so much. My heart hurts to know how much
11 they are hurting.

12 My only error was to trust my children's father
13 and leave **Minor 1** with him. I never knew she had been
14 hurt until it was too late. I'm being punished for
15 what he has done. My three oldest hurt every day
16 for his actions. And his carelessness has left a
17 hole in all of our hearts forever.

18 The day I signed the plea back in November, I
19 did it for one reason and that was because I didn't
20 want to put my children through anymore. Had I
21 known then that Jordan would write letters taking
22 responsibility for **Minor 1** death, I would have
23 fought with every ounce of me to be back at home
24 with my children and my dad. I just ask that you
25 please have mercy on me. Thank you.

1 **THE COURT:** All right. Anything else,
2 Mr. O'Neil?

3 **MR. O'NEIL:** No, Your Honor.

4 **THE COURT:** Mr. Madsen.

5 **MR. MADSEN:** Thank you, Your Honor.

6 Obviously, I represent Jordan Hodson. Jordan
7 is 36 years of age. He went to the ninth grade,
8 grew up in Illinois, that is where his father lived.
9 I've spoken with his father numerous times. His
10 father's a truck driver, but Jordan's stepmother has
11 COPD and unfortunately, according to the father, is
12 in very, very poor health and so they could not make
13 the trip here.

14 When Jordan was 22 years of age, he moved to
15 Arizona. He had family out in Arizona, including
16 his mother. And then he and Sara came to South
17 Carolina right around 2003 after Sarah's father had
18 had some strokes is my understanding.

19 Jordan had worked at U.S. Foods for about five
20 years. He was a selector, which was kind of an
21 order filler there, and a fork lift driver. He
22 eventually was terminated after a dispute with a
23 co-worker.

24 Just to kind of give you a timeline, **Minor 1**
25 was born on October 1st of 2012, that was their

1 fourth child. There was a lady who had lived in the
2 home by the name of Liz Trice. After she had lived
3 in the home for a period of time, her and Jordan had
4 developed feelings for one another.

5 Jordan tells me that he and Sara were
6 constantly arguing. So he ended up moving out of
7 the home on October 5th, so four days after **Minor 1**
8 was born. **Minor 1** as you heard, died on December
9 11th of 2012. Although, as you've heard also,
10 Jordan would come back when Sara was working and
11 help take care of the kids.

12 Jordan ended up pleading in front of Your Honor
13 on October 23rd of 2015. At that point in time, it
14 was our understanding that Ms. Hodson was going to
15 be our trial. I don't know if Your Honor recalls
16 this or not, but we had developed some information
17 through our investigation, which we had turned over
18 to the Solicitor's Office, to include a roommate
19 that had lived with Ms. Hodson that law enforcement
20 had not uncovered during their investigation.

21 You also heard that Ms. Hodson was initially
22 charged with unlawful conduct, was given a 50,000
23 dollar bond and bonded out. I believe that that
24 bond was posted by her father, Mr. Pitman.
25 Eventually, he moved for a recommitment on that.

1 It's my understanding that Ms. Hodson had
2 disappeared and that they alleged continued drug
3 use. And she has been incarcerated ever since. She
4 eventually pled guilty on November 3rd of 2015.

5 Your Honor, it's our position that these cases
6 are situated extremely differently. On one hand,
7 you have Jordan Hodson who had cooperated with law
8 enforcement, gave statements, pled first, authorized
9 me to turn over our investigation to law
10 enforcement, offered to meet with the Solicitor's
11 Office.

12 He was not living at home. And as you heard,
13 he was not the primary caregiver; although, he was
14 willing to come back and take care of the children.
15 He was someone who loved his children tremendously.
16 He also loved his wife, but he just couldn't take
17 the constant arguing. And like I said, he had left
18 to live with his girlfriend.

19 Just to kind of go over, and I think the
20 Solicitor touched on this, Your Honor, majority of
21 this came from law enforcement's investigation, some
22 of them we turned up ourself, but just to give you
23 kind of an idea, Linda Krätzenberg, who was the
24 property manager, said that she visited the home
25 daily. She said that, quote, After giving birth,

1 Sara had nothing to do with the baby. Sara's oldest
2 child fed, changed and held the baby. Linda never
3 saw Sara hold the baby, end quote.

4 Another quote, After the baby was born, Sara
5 seemed to disconnect from all the children. Sara
6 once told Linda that she did not care about the
7 baby. She said she had no feelings for the baby and
8 could not connect with her baby, end quote.

9 Donna Flowers was a neighbor that said, quote,
10 I have heard her saying she was going to throw the
11 baby across the room, end quote.

12 Ariane Kennedy was a neighbor, spoke to law
13 enforcement and said, quote, The mother told me she
14 was overwhelmed and she was going to throw the baby
15 up against the wall for her crying, end quote. The
16 Solicitor had mentioned that she had held the baby
17 once, that the diaper was soaked with urine and
18 feces oozing from the edges, that the baby was
19 crying and Sara ignored her. Ariane Kennedy also
20 said that the eldest daughter, **Minor 2** told
21 neighbors that the mother smoked something in
22 tinfoil.

23 Ivan Bumgarner, who my client was with that
24 day, Sara was with -- there, left and came back.
25 They did leave with methamphetamine, and Sara was

1 given that methamphetamine; said that the meth was
2 smoked by Sara when the victim was present.

3 Law enforcement recovered tinfoil. He had also
4 indicated in his meeting with the Solicitor's
5 Office, that's how he saw her smoking. As you
6 heard, they had recovered 18 of those tinfoils in
7 the master bedroom, and also fingerprints on a
8 smoking device came back to Ms. Hodson.

9 Steven Prescott, who was a neighbor, said that
10 Sara had come over to make a phone call from the
11 residence to Jordan and that he heard her say,
12 quote, You have to get these kids, Jordan; I'm sick
13 of them, end quote. After hanging up, they asked
14 her what was wrong and she said, quote, She was so
15 frustrated with the baby that she wanted to shake it
16 and throw it against the wall.

17 It appears to me that Eliza Cook or Alicia Cook
18 was his fiancée and said that she had asked Jordan
19 to come over, that the kids hated her, that the baby
20 was crying all night and she wanted to pick up the
21 baby and throw the baby against the wall.

22 Liz Trice, who was Jordan's paramour and lived
23 in the home for a period of time, said that she got
24 to witness Sara's parenting skills towards **Minor I** and
25 that she just seemed to be uncaring, no emotion

1 towards her.

2 One of the individuals that law enforcement did
3 not have that I thought was extremely important,
4 Your Honor, was Harley Langley. We did turn that
5 over to the Solicitor's Office.

6 She indicated that she helped Sara with the
7 children during the day and would go home at night,
8 but that she moved into the home in October of 2012
9 after **Minor 1** was born, that she saw Sara smoking
10 meth at least three times in days before the baby's
11 birth, that Sara was going crazy and stuff. It was
12 a daily occurrence for Sara to say that she did not
13 want **Minor 1**. She said that she wanted to kill the
14 baby and talked about throwing it against the wall.
15 She kept saying that Jordan needed to take care of
16 the baby. Whenever Sara would go crazy or would
17 have to work, Jordan would come care for the kids.
18 Harley said that he acted great with the kids. He
19 gave the baby a lot of attention.

20 Harley said that she ended up leaving the
21 residence on November 16th. And she, apparently,
22 had a meth habit herself and entered herself into
23 rehab. And when my investigator spoke with her, she
24 had indicated that she was still clean.

25 I will tell you in my discussions with Jordan,

1 you know, I don't think in a million years he ever
2 thought that he would be in this position. He loved

3 **Minor 1** He loved his children.

4 Since he's been in, he's had virtually no
5 contact with his children whatsoever. Initially,
6 when he got in there, he wrote them letters. Sara's
7 father who had custody at that point in time,
8 Mr. Pitman, told him not to write. At one point in
9 time, **Minor 2** the oldest daughter, was put in
10 foster care. He did get to have a phone
11 conversation with her when she was in foster care,
12 but has not gotten to speak or have any contact
13 whatsoever with the children.

14 I can tell you he did get one set of photos.
15 He did have some family visit. They did not have
16 any photos. He gave those photos.

17 There was some mention of letters. Sara had
18 sent him letters basically saying, Hey, if you send
19 me these letters, then I'll get you pictures of the
20 children. He never ended up getting the pictures,
21 Your Honor, but he sent those letters.

22 Now, saying this, I read you stuff that all the
23 neighbors had said. Jordan tells me that he never
24 heard Sara say any of those things. Those were
25 turned up from law enforcement's investigation or

1 our investigation, but he would not sit here and
2 tell you that he heard her say those things in his
3 presence, Your Honor.

4 I would tell you, you know, I think that the
5 letters that she had -- and in one of the letters
6 that he showed to me, she had indicated, Hey, you
7 sent me this first letter, I need you to send me
8 more in the second letter. I'm still working on
9 getting you those pictures.

10 I believe, Your Honor, that that just shows
11 that she's been trying to manipulate him, you know,
12 the entire time even while they've been
13 incarcerated.

14 I would tell you I have met with Jordan between
15 20 and 30 times since I've represented him. I
16 cannot tell you the number of times that he's cried
17 when talking with him. I know he misses his
18 children greatly. I know he loved his daughter.

19 Like I said, he cooperated with the State. He
20 was the first one to plead guilty and take
21 responsibility. We turned over information, Your
22 Honor.

23 He was not there that night. He was with Ivan.
24 He ended up dropping Sara off. He went to a friend
25 Chris' house and ended up staying with Liz Trice

1 that night, but he ended up coming back at 6:30,
2 because she had to work, to take care of the
3 children.

4 As you heard, he told the law enforcement, when
5 he gets there, the baby apparently had been in the
6 car seat the entire night. The baby was -- the
7 diaper was dirty and apparently had been in that for
8 a long period. She was obviously having trouble
9 with the children. She was upset that he had left
10 and was staying with his girlfriend and would just
11 kind of come in and help with the children, but he
12 wasn't the primary caregiver and that was, you know,
13 quite honestly, when he got there, he ended up
14 cleaning up the child because she had just left him.
15 And I think that that just kind of shows what she
16 was thinking at that point in time, Your Honor.

17 He ended up -- like I said, he ended up telling
18 law enforcement that he had cleaned the child off,
19 but as you heard, the injury was way before that. I
20 would tell you the expert that I've hired, the
21 surgeon that I spoke to, the pathologist all said
22 that what he had described, that there is no way
23 that that could have caused her injury, Your Honor.

24 He's regretful that he wasn't there more. I
25 can tell you that he feels bad about leaving the

1 home at that point in time, that he doesn't think
2 that any of these things would have happened had he
3 stayed. But, quite honestly, he just couldn't take
4 it at that point in time, and he had developed a
5 relationship with Liz and that is why he has left.

6 You've heard that he's had a minimal prior
7 record, Your Honor. As I said, he has basically
8 lost everything. He's not been able to see his
9 children. He's not been able to speak with them.
10 He hasn't been able to have any contact with them
11 whatsoever, and I know that that has greatly
12 disturbed him, Your Honor. I do believe that he
13 really loves his children, that he really loved his
14 daughter. And like I said, I don't think he ever
15 thought that he would be here in a million years.

16 We would ask Your Honor to consider a ten-year
17 sentence on him. If Your Honor feels that something
18 as far as some type of supervision is appropriate
19 afterwards, he would be willing to do that, but we
20 would ask Your Honor to consider that ten-year
21 minimum sentence on him. And I think he wanted to
22 address your -- or to address Your Honor.

23 **THE COURT:** Yes, sir.

24 **DEFENDANT J. HODSON:** Your Honor, I do want to
25 express my most sincere apologies. My heart hurts

1 today as it has since my baby's death. It is
2 something that I've got to leave with for the rest
3 of my life. The pain of losing a child is sometimes
4 unbearable. I'm going to miss and love her deeply
5 always. I failed as a father to protect her. I've
6 not only lost **Minor 1** but I've lost my other kids,
7 **Minor 2** **Minor 3** and **Minor 4**

8 I had a drug problem and it took everything I
9 love. Poison not only affected me, but it affected
10 my family as well. I'm living proof that it does
11 destroy families.

12 I never physically abused my baby, but being on
13 meth and having it around is just as bad. I can't
14 take back what I've done. I can only never forget.
15 I will use this time to heal and become a better
16 person on the inside and out. I just want to say
17 I'm sorry.

18 **THE COURT:** Anything else?

19 **MR. MADSEN:** And I will say, and Jordan tells
20 me, that when they left Ivan's that night, they did
21 have methamphetamine. When he left Sara, she did
22 have methamphetamine that night.

23 **THE COURT:** Yes, ma'am.

24 **MS. MAYES:** Yes, sir, Your Honor. We would
25 like to respond just by addressing the letters that

1 were presented by Mr. O'Neil that contains the
2 statements from Mr. Hodson where he addresses the
3 shower incident where he reported that he had
4 dropped the baby in the shower and then reported, I
5 didn't notice anything wrong with her. How the heck
6 are we to know she was hurt? She had no marks on
7 her before or after the shower, at least I didn't
8 see any.

9 Your Honor, we have consulted with Dr. Luberoff
10 on this case and she is familiar, as a forensic
11 pediatrician, with this type of injury and the type
12 of symptoms that would be involved and she would
13 like to address the Court on that matter.

14 **THE COURT:** Sure.

15 Spell your name for me, please.

16 **DR. LUBEROFF:** Susan Luberoff, L-u-b-e-r-o-f-f.

17 **THE COURT:** All right, Doctor, please go ahead.

18 **DR. LUBEROFF:** Your Honor, I'm a child abuse
19 pediatrician with the University of South Carolina
20 School of Medicine Department of Pediatrics. And I
21 had occasion to examine **Minor 1** in the PICU just
22 after she had expired. I also attended her autopsy.
23 I was able to speak directly with the surgeon, with
24 the investigator, and, of course, with the
25 pathologist that did the autopsy.

1 And I do want to emphasize to Your Honor that
2 **Minor 1** was ten weeks old. She was at an age where
3 developmentally she would have begun to smile, to
4 engage with other people, to coo, to do things
5 besides just simply laying there. There was no
6 evidence at her autopsy or on my examination of any
7 underlying medical conditions that would have made
8 her different than any other ten-week-old baby.

9 One thing that struck me about all the findings
10 on my exam and at the autopsy was the amount of
11 misery that **Minor 1** would have experienced over a
12 period of time. The five fractures that were
13 identified were in a healing stage. Four of them
14 that I could see at the autopsy were in the ribs and
15 they were most likely between two and four weeks
16 old. The leg fracture was seen on x-ray, I didn't
17 have occasion to see that x-ray, so I can't give you
18 an estimate of the date of that, but it would have
19 been painful.

20 None of those injuries, nor the presence of
21 methamphetamine in the child, nor the horrendous
22 diaper rash that the child experienced, which
23 essentially constituted a second-degree burn to her
24 diaper area, were things that **Minor 1** would have
25 contributed to or caused herself.

1 I'm also struck in listening to the information
2 today, it's brought back to me what I had forgotten,
3 that both of the caregivers were experienced
4 parents. This was not their first time caring for
5 an infant. And the stage at which **Minor 1** sepsis
6 and peritonitis were at the time that she died would
7 have been obvious to anyone giving routine care to
8 that child.

9 She would have been miserable. Her abdomen was
10 grossly distended at the time that EMS first saw
11 her. She could not have been acting normally,
12 eating normally, engaging normally, reacting
13 normally within 12 to 24 hours before she died. So
14 I did just want to make Your Honor aware of the
15 context for these injuries in this ten-week-old
16 child.

17 **THE COURT:** Thank you, Doctor.

18 Anything else from the State?

19 **MS. MAYES:** No, sir, Your Honor.

20 **THE COURT:** Anything else from the defense?

21 **MR. O'NEIL:** Beg the Court's indulgence, Your
22 Honor.

23 (Pause.)

24 **MR. MADSEN:** Nothing for Mr. Hodson.

25 (Pause.)

1 **THE COURT:** Anything else?

2 **MR. O'NEIL:** Yes, Your Honor. Just briefly,
3 Your Honor. I just spoke with my client, Ms.
4 Hodson, and she was wanting me to reiterate that on
5 the night before **Minor 1** passed away, that she was
6 -- it was during Christmas season and **Minor 1** in
7 Ms. Hodson's words, was looking at the Christmas
8 lights and she was smiling and cooing at that point.

9 And Ms. Hodson wanted me to indicate to the
10 Court here that she did not notice anything wrong
11 with the child. Had she noticed anything wrong with
12 the child, she would have took the child to the
13 hospital to try to get help for her.

14 And she wanted me to also reiterate that --
15 that she did not take any drugs from this Ivan
16 gentleman's home. If there were any drugs taken
17 from his home, it would be her belief that they were
18 sold by Mr. Jordan Hodson.

19 (Pause.)

20 **THE COURT:** Both counsel for the defense have
21 seen the contents of this notebook?

22 **MR. O'NEIL:** Yes, Your Honor.

23 **MR. MADSEN:** Yes, Your Honor.

24 **THE COURT:** Make this a Court's Exhibit.

25 (Court's Exhibit Number 2, notebook, marked

1 for identification.)

2 (Pause.)

3 **THE COURT:** All right. If there's nothing
4 further, I have reviewed the information supplied to
5 the Court. Anybody in my situation, my position,
6 would want to make comments, but I have found that
7 the better part of deference is to withhold any
8 comment.

9 On indictment 2013-GS-32-03004, the State
10 versus Sara Elizabeth Hodson, and on indictment
11 2013-GS-32-03000, the State versus Jordan R. Hodson,
12 the charge on 3004 being unlawful neglect of a
13 child, the charge on 3000 being unlawful conduct
14 towards a child, the sentence on each is that you be
15 committed respectively to the South Carolina
16 Department of Corrections for ten years, plus pay
17 costs and assessments, concurrent.

18 You're given credit for jail time under section
19 24-13-40 to be calculated and applied by the
20 department of corrections. Restitution is deferred.
21 Pay your court costs within one year of being
22 released from prison.

23 Before I announce the other sentence, I want
24 both of you to understand if you wish to appeal
25 anything from any of these proceedings, you have to

1 file a written notice of appeal. It has to be done
2 promptly. It's a very narrow timeframe for filing
3 an appeal. So if you want to file a notice of
4 appeal, you have to notify your attorney right away.
5 You understand that, Ms. Hodson?

6 **DEFENDANT S. HODSON:** Yes, sir.

7 **THE COURT:** Mr. Hodson?

8 **DEFENDANT J. HODSON:** Yes, sir.

9 **THE COURT:** On indictment 2015-GS-32-02371,
10 State versus Jordan R. Hodson, and on indictment
11 2015-GS-32-02368, the State versus Sara Elizabeth
12 Hodson, the sentence on each is that you be
13 committed to the South Carolina Department of
14 Corrections for 20 years, plus cost and assessments,
15 concurrent.

16 You're given credit for jail time under
17 24-13-40 to be calculated and applied by the
18 department of corrections. Both of you are placed
19 on the Central Registry of Child Abuse and Neglect.
20 Restitution is deferred. Pay your court costs
21 within one year of release from prison.

22 I've made findings on both of these that these
23 are violent felonies which trigger the law that
24 prohibits you from possessing any firearm or
25 ammunition in the future.

1 You understand all of that, Ms. Hodson?

2 **DEFENDANT S. HODSON:** (No response.)

3 **THE COURT:** Ms. Hodson, do you understand your
4 sentence?

5 **DEFENDANT S. HODSON:** Me?

6 **THE COURT:** Yes.

7 **DEFENDANT S. HODSON:** Yes.

8 **THE COURT:** Mr. Hodson?

9 **DEFENDANT J. HODSON:** Yes, sir.

10 **THE COURT:** Thank you.

11 **MS. MAYES:** Thank you, Your Honor.

12

13 END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 23rd of March, 2016.

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

July 1, 2016

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable William P. Keesley, Circuit Court Judge

THE STATE,

V.

SARA ELIZABETH HODSON,

APPELLANT

APPELLATE CASE NO 2016-000644

ANDERS BRIEF OF APPELLANT

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ORIGINAL

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JAN 24 2017

SC Court of Appeals
RESPONDENT,

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TABLE OF AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

The trial court abused its discretion in refusing to allow Appellant to withdraw her *Alford*¹ plea to unlawful conduct towards a child and to aiding and abetting homicide by child abuse where, after Appellant entered her plea, her co-defendant husband stated in letters written to her that he was prepared to testify that she was not present when Minor 1 ingested a fatal amount of methamphetamine.

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970).

STATEMENT OF THE CASE

On September 14, 2015, the Lexington County Grand Jury indicted Appellant Sara Hodson for two counts of unlawful conduct towards a child; one count of homicide by child abuse; and one count of possession of methamphetamine. R. 4, ll. 3-11; R. 113 - 116.

On November 3, 2015, Appellant entered an *Alford*² plea to one count of unlawful conduct towards a child and one count of aiding and abetting homicide by child abuse before the Honorable Doyet A. Early, III. R. 22, ll. 10-17. Deon O'Neil represented Appellant, and Assistant Solicitors Sutania Radlein and Suzanne Mayes represented the State.

On February 5, 2016, Appellant filed a motion to withdraw her guilty plea. R. 24 - 29. On March 14, 2016, Judge Early heard arguments on Appellant's motion. R. 32 - 54. Judge Early denied Appellant's motion to withdraw her guilty plea. R. 48, l. 18 - 52, l. 19.

On March 23, 2016, the Honorable William P. Keesley sentenced Appellant to twenty years of imprisonment. R. 108, l. 3 - 109, l. 6. Appellant's husband, Jordan Hodson, was also sentenced to twenty years. *Id.*

² *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970).

ARGUMENT

The trial court abused its discretion in refusing to allow Appellant to withdraw her an *Alford* plea to unlawful conduct towards a child and to aiding and abetting homicide by child abuse where, after Appellant entered her plea, her co-defendant husband stated in letters written to her that he was prepared to testify that she was not present when Minor 1 ingested a fatal amount of methamphetamine.

Relevant Facts

On December 11, 2012, Appellant and her husband, Jordan Hodson, took their youngest daughter, Minor 1, to a local physician. R. 70, l. 1-9. Upon examining the child, the physician called EMS. Minor 1, then two and half months old, was placed on life support as soon as she reached Lexington Medical Center. R. 16, l. 12 - 18, l. 24. She died of septic shock caused by the failure of her gastrointestinal tract. The State averred at Appellant's sentencing hearing that the gastrointestinal failure was likely caused or aggravated by exposure to methamphetamine. R. 25, ll. 6 - 25.

The State further stated that autopsy results showed that Minor 1 had a stomach perforation, broken ribs, a broken tibia, and an untreated skin infection in her groin. R. 6, l. 7 - 7, l. 9. Assistant Solicitor Mayes concluded that Minor 1 "suffered from complete medical neglect." *Id.* Appellant and Jordan Hobson were Minor 1's caretakers.

The Hobsons also had three older children. One of the older children, age 8, tested positive for methamphetamine as did both Jordan and Appellant. In the course of their investigation, police discovered that Appellant and Jordan Hodson both purchased large quantities of pseudoephedrine the day before Minor 1 died. R. 41, l. 13 - 43, l. 3.

In a written statement to police, Appellant admitted that, on the night before she died, Minor 1 was with the Hodsons when they visited a meth cook. R. 67, l. 1 - 70, l. 9. Appellant also admitted to giving the meth cook pseudoephedrine in exchange for methamphetamine. *Id.* When interrogated, the meth cook confirmed that the Hodsons visited him. *Id.*

Alford Plea Proceedings and Sentencings

On October 23, 2015, Jordan Hodson pled under *Alford* to aiding and abetting homicide by child abuse and unlawful conduct toward a child. R. 3, ll. 3-18. On November 3, 2015, Appellant entered an *Alford* plea to one count of aiding and abetting homicide by child abuse and one count of unlawful conduct towards a child. R. 4, l. 3 - 14, l. 14.

On January 20, 2016, Jordan wrote Appellant a letter stating that he knew Appellant was not "with me cooking meth [with the meth cook] that night! Your weren't!" R. 26 - 29. Based on this letter, Appellant moved to vacate her *Alford* plea. R. 24 - 25.

Judge Early convened a hearing on Appellant's motion. Defense counsel argued that Appellant should be allowed to withdraw her plea because her husband's letter constituted new discovered evidence that changed her calculation as to whether to admit that the State could likely prove her guilt beyond a reasonable doubt. R. 36, l. 5 - 39, l. 4.

In opposing the motion, the State averred that whether Appellant was with Jordan Hodson cooking methamphetamine on the night before their daughter died was not a material fact impacting guilt or innocence. The State contended that the degree of neglect, Appellant's role as Minor 1's caretaker, and Appellant's positive test for methamphetamine would establish - independently of her whereabouts on the night before Minor 1's death - that Appellant was responsible for aiding and abetting homicide by child abuse. R. 39, l. 20 - 43, l. 3.

Judge Early denied Appellant's motion to vacate her *Alford* plea. R. 48, l. 8 - 52, l. 19. In addition to the arguments at the hearing, the court referenced the colloquy it conducted with Appellant prior to accepting the *Alford* plea. *Id.* Specifically, the court stated that it had explained to Appellant that an *Alford* plea was - for all intents and purposes - a guilty plea and that Appellant had admitted to the charges and accepted the State's recitation of the facts under oath. *Id.* The court

concluded that there was no reason to allow Appellant to withdraw from the plea and denied Appellant's motion. *Id.*

Discussion

The South Carolina Supreme Court has held that the difference between a valid plea and an invalid guilty plea "lies in the knowing and voluntary nature of the plea." *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009); *see also Brady v. United States*, 397 U.S. 742, 758 (1970) (holding that "[g]uilty pleas are no more foolproof than full trials to the court or jury [w]e take great precautions against unsound results."

The withdrawal of a guilty plea is generally within the sound discretion of the trial judge. *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Lopez*, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct.App.2002).

In an *Alford* plea a defendant "voluntarily and knowingly [consents] to the imposition of a prison sentence even if he is unwilling or unable to admit he participated in the acts constituting the crime. *State v. Herdon*, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013) *citing United States v. Morrow*, 914 F.2d 608, 611 (4th. Cir. 1990). By contrast, a guilty plea is "a solemn, judicial admission of the truth of the charges against an individual." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874, (Ct. App. 2007) *citing Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621 (1977).

A guilty plea is a confession of guilt. An *Alford* plea is a concession that the State has evidence that would likely convince a jury of the defendant's guilt beyond a reasonable doubt. *Alford*, 400 U.S. at 37, 91 S.Ct. at 167 (finding no constitutional violation where defendant, represented and advised by competent counsel, intelligently concluded that he should plead guilty to second-degree murder because strong evidence of guilt negated his claim of innocence and provided

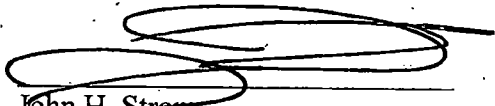
strong factual basis for pleading guilty.). An *Alford* plea is an admission to the strength of the State's case, not an admission to the truth of the underlying charges.

Here the plea court committed an abuse of discretion in denying Appellant's motion to withdraw her *Alford* plea. R. 48, 1. 8 - 53, 1. 19. In pleading pursuant to *Alford*, Appellant was admitting that the State had sufficient evidence against her to convict her. She was not admitting guilt.

Her husband came forward, stating that Appellant was not involved in cooking and consuming methamphetamine during the key period of time when Minor 1 ingested a fatal amount of methamphetamine. R. 26 - 29. Accordingly, Appellant should have been allowed to withdraw her *Alford* plea because the new evidence significantly changed the nature of the prosecution's evidence. Therefore, the trial court abused its discretion in refusing to allow Appellant to withdraw her *Alford* plea.

CONCLUSION

By reason of the foregoing argument, this Court should reverse Appellant's conviction and remand her case back to the Lexington County Court of General Sessions for a new trial.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of January, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SARA ELIZABETH HODSON,

APPELLANT

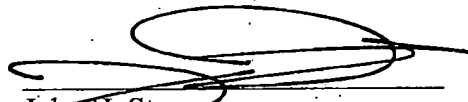
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sara E. Hodson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on March 14, 2016 (Hearing to withdraw guilty plea - Heard in Aiken County), and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. - He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Sara E. Hodson.

Respectfully Submitted,


John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

This 24th day of January, 2017.

RECEIVED

JAN 24 2017

SG Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 24, 2017.



John H. Strom
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
JAN 24 2017
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SARA ELIZABETH HODSON,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) *Alford* Plea Transcript (November 3, 2015);
- (3) Defendant's Motion to Withdraw Plea;
- (4) Letters from Jordan Hodson to Appellant;
- (5) State's Response to Motion to Withdraw Plea;
- (6) Hearing on Defendant's Motion to Withdraw Plea (March 14, 2016);
- (7) Sentencing Hearing (March 23, 2016); and
- (8) Statement of Basis for Appeal from Guilty Plea Pursuant to Rule.

RECEIVED

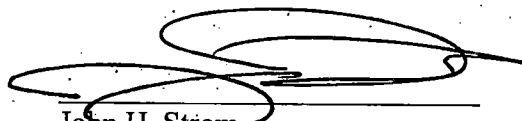
JAN 24 2017

SC Court of Appeals

(Certification Page Follows)

I certify that this designation contains no matter which is irrelevant to this appeal.

January 24, 2017



John H. Strom
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

**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.

Sara Elizabeth Hodson, Appellant.

Appellate Case No. 2016-000644

Appeal From Lexington County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2017-UP-371
Submitted September 1, 2017 – Filed October 11, 2017

APPEAL DISMISSED

Appellate Defender John Harrison Strom, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, of Columbia;
Matthew C. Buchanan, of the Department of Probation,
Pardon and Parole Services, of Columbia; and Assistant
Solicitor Laura Suzanne Mayes, of Lexington, all for
Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 30, 2017

The Honorable Lisa M. Comer
205 East Main Street
Suite 128
Lexington SC 29072

REMITTITUR

Re: The State v. Sara E. Hodson
Lower Court Case No. 2013GS3203004, 2015GS3202368
Appellate Case No. 2016-000644

Dear Clerk of Court:

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

Very truly yours,

Jay A. Kitchings
CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Laura Suzanne Mayes, Esquire
Matthew C. Buchanan, Esquire
Robert M. Pachak, Esquire

FORM 5

STATE OF SOUTH CAROLINA

County of

Lexington

Sara Elizabeth Hodson 367533

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Leath Correctional Institution
2809 Airport Rd Greenwood SC 29649
2. Name and location of Court which imposed sentence Lexington Co.
Judicial Center 205 East Main St. Suite 128 Lexington SC 29072
3. Name(s) of co-defendant(s) (if any) Jordan Ray Hodson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS3203004
 - (b) 2015GS3202368

A TRUE COPY

Lex. Co. C.C.O.P., G.S. & F.C.

LISA M. COLE
CLERK OF COURT
LEXINGTON

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- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 23, 2016
- (b) March 23, 2016
- (c) _____
6. 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 ☒ _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 11, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

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LISA M. COLLIER
CLERK OF COURT
LEXINGTON, SC

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I feel my attorney inadequately represented
- (b) Additional evidence was submitted after
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My attorney- Mr. O'Neil- did not interview
- (b) I received a letter from my co-defendant
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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LISA M. COOPER
CLERK OF COURT
LEXINGTON SC

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Lex. Ct. C.C.C.P., G.S. & F.C.

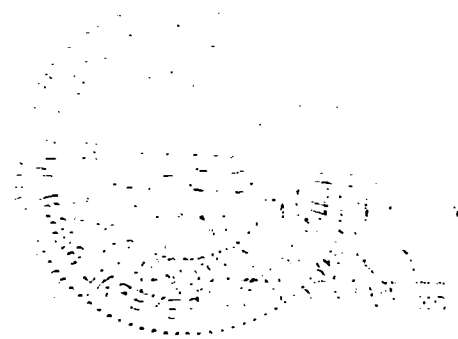
- 10) a- me a my best interest.
b- I accepted my plea.

- 11)^a anyone on my behalf- nor did he get a specialist to represent the defense in my case. He also I feel allowed the court to "rush" and pressure me into a decision which can be verified by reviewing the dates on my indictments and the date my plea was accepted. Mr. O'Neil also told me that I would likely not receive more than 15yrs. (likely only 10yrs.) which played heavily into my accepting the plea-agreement. And lastly Mr. O'Neil was negligent in informing me that I could immediately file for a sentence reduction.
- 11)^b after the plea acceptance stating that He was fully responsible for the injury and I was unaware of my daughter being hurt.

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LISA H. COMER
CLERK OF COURT
LEXINGTON SC



(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

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

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

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

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 LISA M. JONER
 CLERK OF COURT
 LEXINGTON, NC

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Lex. C5 C.C.C.P., G.S. & F.C.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Deon D'Neil Law Offices of Deon D'Neil
P.O. Box 7284 Columbia SC 29202
 - ii. John Harrison Strom
1330 Lady Street Columbia SC 29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. the plea and sentencing
 - ii. the appeal
 - iii. _____

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LISA M. COOPER
CLERK OF COURT
LEWISTON, SC

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19. State clearly the relief you seek in filing this application:

I am requesting a reconsideration
of my sentencing

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

No

STATE OF SOUTH CAROLINA

County of Lexington

VERIFICATION

I, Sara Elizabeth Jackson, 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.

[Signature]

SWORN to and subscribed before me this 15
day of August, 2018.

Sandra S. Dodson (L.S.)
Notary Public

My Commission Expires: 10-31-2019

FILED

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LISA M. COKER
CLERK OF COURT
LEXINGTON SC

Revised 3/2003

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[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

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

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

Sara Elizabeth Hodson
Applicant

SWORN or affirmed to and subscribed before me this

15 day of August, 2018.

Sandra S. Dodder
Notary Public

My Commission Expires: 10-30-2019

FILED

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LISA M. COMER
CLERK OF COURT
LEXINGTON, OH

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Sara Elizabeth Hodson, #367533)

Applicant,)

v.)

State of South Carolina.)

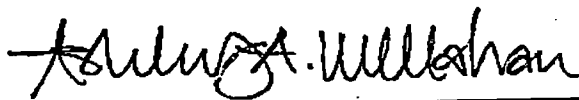
COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No.: 2018-CP-32-02878AMENDED POST-CONVICTION
RELIEF APPLICATION

The Applicant, by and through her undersigned attorney, hereby amends her PCR application filed on August 28, 2018, to add the following:

1. Ineffective Assistance of Counsel as to Deon O'Neil: Counsel failed to call mitigating witnesses that would have resulted in a lesser sentence for the Applicant.

Furthermore, the Applicant requests that she be permitted to amend her PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. McMAHAN, ESQUIRE

McMAHAN & TAYLOR, ATTORNEYS, PC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@macvance.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

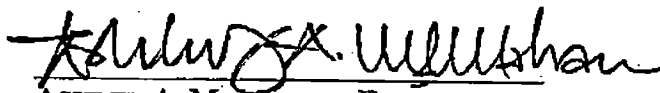
June 17, 2019

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Taylor Z. Smith
Assistant Attorney General
tsmith@scag.gov

This 17th Day of June, 2019.


ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

FILED
2019 JUN 19 AM 10:49
LISA M. COOPER
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Sara Elizabeth Hodson, #367533,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-32-02878

**RETURN AND PARTIAL MOTION
TO DISMISS**

Respondent, making its Return to the application for post-conviction relief filed on August 21, 2018, would respectfully show this Court:

I.

Sara Elizabeth Hodson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its October 2013 term, the Lexington County Grand Jury indicted Applicant for unlawful conduct towards a child (2013-GS-32-03004). Subsequently, during its September 2015 term, the Grand Jury indicted Applicant for aiding and abetting homicide by child abuse (2015-GS-32-02368). E. Deon O'Neil, Esquire, represented Applicant on these charges. Assistant Solicitor L. Suzanne Mayes, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On November 3, 2015, Applicant appeared before the Honorable Doyet A. Early and pled guilty as indicted to both charges pursuant to *North Carolina v. Alford*.¹ Judge Early accepted the plea and deferred sentencing. On February 5, 2016, through her plea counsel, Applicant moved to withdraw her guilty plea on the basis her "co-defendant [had] recently provided favorable information through letters." A hearing on that motion to withdraw was held before Judge Early on March 14, 2016. After hearing argument from both

Applicant and the State, Judge Early denied Applicant's motion to withdraw her plea.

Thereafter, Applicant appeared before the Honorable William P. Keesley for sentencing. Judge Keesley sentenced Applicant to a term of imprisonment of ten years for unlawful neglect of a child and twenty years for aiding and abetting homicide by child abuse. The sentences were to run concurrently.

Applicant filed a timely notice of appeal. On March 10, 2016, Applicant filed her *pro se* explanation showing there was an issue which could be reviewed on appeal, pursuant to Rule 203(d)(1)(B)(iv), SCACR. In this explanation, Applicant raised the following issues:

1. I put in for a withdraw of my plea;
2. I received new evidence following the signing of my plea;
3. The solicitors [sic] witness statements should not have been allowed b/c they did not directly relate to the said charges; [and]
4. My attorney did not investigation or interviews for [sic] my behalf.

The South Carolina Court of Appeals allowed Applicant to proceed with her appeal on June 17, 2016. Thereafter, Applicant's appellate counsel, John H. Strom, Esquire, filed an *Anders*² brief raising the following issue:

The trial court abused its discretion in refusing to allow [Applicant] to withdraw her *Alford* plea to unlawful conduct towards a child and to aiding and abetting homicide by child abuse where, after [Applicant] entered her plea, her co-defendant husband stated in letters written to her that he was prepared to testify that she was the not [sic] present when Minor 1 ingested a fatal amount of methamphetamine.

Following a review pursuant to *Anders*, the Court of Appeals dismissed Applicant's appeal and granted appellate counsel's request to withdraw. *State v. Hodson*, Op. No. 2017-UP-371 (S.C. Ct. App. filed October 11, 2017). The remittitur was issued on October 30, 2017.

¹ 400 U.S. 25 (1970).

II.

On December 10, 2012, at 4:28 in the afternoon, Applicant purchased pseudoephedrine in Bamberg, South Carolina. ROA 20. Later that same day, at 5:12 in the afternoon, Applicant's husband, Jordan Hodson, also purchased pseudoephedrine in Lexington. ROA 20. The two then brought the pseudoephedrine to an individual's house and left with a quantity of methamphetamine. ROA 20-21.

Later, on December 11, 2012, Applicant and Jordan Hodson entered Pelion Family Practice at approximately 1:30. ROA 16. They were carrying their ten-week-old daughter (Victim), who presented as unresponsive³. ROA 16. The pediatrician immediately called law enforcement and transported Victim to the hospital. ROA 16-17. At the hospital, Victim presented with a distended and firm stomach, body temperature of 88.7 degrees, blood in her rectum, and multiple bruises on her body, specifically around the vaginal area. ROA 18. Surgery was performed in an attempt to save Victim's life, which was unsuccessful. ROA 17.

The cause of death was advanced septic shock as a result of stomach perforation⁴, which caused an infectious contamination of Victim's body. ROA 17. Although it is unclear what exactly caused the stomach perforation, the forensic pediatrician opined it would have been caused by some type of blunt force trauma⁵. ROA 17-18. The autopsy also revealed both new and old rib fractures, as well as an old leg fracture. ROA 19. Brain, liver, and kidney samples were also sent to the South Carolina Law Enforcement Division (SLED) for toxicology tests. ROA 19. Both the brain and

² *Anders v. California*, 386 U.S. 738 (1967).

³ Victim's lips had turned blue, at which point Applicant and Jordan Hodson sought medical attention for Victim. ROA 17.

⁴ Had the stomach perforation been caught earlier, it could have been treated and Victim might still be alive. ROA 21.

⁵ Jordan Hodson admitted to dropping Victim in the shower when giving her a bath and stated Victim hit her face. Plea Tr. 18. However, that story was inconsistent with the injuries Victim suffered. ROA 18.

kidney samples were positive for methamphetamine. ROA 19. The toxicologist at SLED opined the methamphetamine would have been second-hand ingested within hours of Victim's death. ROA 19.

Law enforcement searched Applicant and Jordan Hodson's home. ROA 19. During the search, law enforcement found a "meth drawer" in the master bedroom, which is also where Victim's crib was located. ROA 19-20. In that drawer, law enforcement found eighteen pieces of aluminum foil, which tested positive for methamphetamine, a broken glass lightbulb, which contained some residue of methamphetamine, a broken pipe, and a Coke bottle with the bottom cut and a bag taped to it. ROA 20. Applicant's fingerprint was found on the Coke bottle. ROA 20.

III.

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on:

1. I feel my attorney inadequately represented me a [sic] my best interest; [and]
 - a. My attorney-Mr. O'Neil-did not interview anyone on my behalf nor did he get a specialist to represent the defense in my case. he also I feel allowed the court to "rush" and pressure me into a decision which can be verified by reviewing the dates on my indictments and the date my plea was accepted. Mr. O'Neil also told me that I would likely not receive more then [sic] 15 yrs. (likely only 10 yrs.) which played heavily [sic] into my accepting the plea agreement. And lastly, Mr. O'Neil was negligent in informing me that I could immediately file for a sentence reduction.
2. Additional evidence was submitted after I accepted my plea.
 - a. I received a letter from my co-defendant after the plea acceptance stating that he was fully responsible for the injury and I was unaware of my daughter being hurt.

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's sentencing proceeding,

Applicant's appellate records, the record on appeal, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRPC.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in her 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 "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624,

625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. 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. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Failure to interview witnesses

First, Applicant alleges plea counsel was ineffective for failing to interview witnesses and for failing to "get a specialist to represent the defense." "There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). "Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v.*

Ozmint, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Here, Applicant has wholly failed to identify what witnesses she wanted plea counsel to interview. Furthermore, Applicant has not specified what kind of “specialist” plea counsel should have hired and has failed to identify what benefit would have been realized from any information a “specialist” could have provided. Applicant also indicated at the plea counsel had enough time to research the law and investigate the facts in order to properly defend Applicant. ROA 13. In addition, there was nothing else she wanted plea counsel to do for her. ROA 13. Because counsel is presumed to have rendered adequate assistance and because Applicant has failed to identify any investigation in which she wanted plea counsel to partake, Respondent submits Applicant cannot establish any deficiency on the part of counsel.

Moreover, prejudice from counsel’s failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Bassette v. Thompson*, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). Applicant’s mere speculation as to what a witness’s testimony would have been cannot, by itself, satisfy his burden of showing prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). An applicant must

produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness's failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant has wholly failed to specifically identify any of these witnesses who would have been beneficial and any speculation on the part of Applicant as to what these witnesses would have said does not give rise to the level of proof required to establish her burden. Accordingly, Respondent submits Applicant cannot meet her burden.

Plea counsel's alleged promise regarding sentencing

Applicant further contends plea counsel ensured her she would not receive more than fifteen years imprisonment, but rather would likely receive a ten year sentence. Here, the record reflects plea counsel explained to Applicant the potential sentences for both offenses, specifically informing her she was facing up to ten years for unlawful conduct towards a child and ten to twenty years for aiding and abetting homicide by child abuse. ROA 5. Applicant further indicated she understood the potential sentences for each offense. ROA 9. Accordingly, Respondent submits Applicant cannot establish any deficiency.

A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976); *Clark v. State*, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. *Clark*, 259 S.C. 378, 192 S.E.2d 209; *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979). Here, Applicant was charged with unlawful conduct towards a child and aiding and abetting homicide by child abuse. A person who a person who is convicted of or pleads

guilty to unlawful neglect towards a child “must be fined in the discretion of the court or imprisoned not more than ten years, or both.” S.C. Code Ann. § 63-5-70(B). Applicant was sentenced to ten years imprisonment for unlawful neglect towards a child. Furthermore, a person who is convicted of or pleads guilty to aiding and abetting homicide by child abuse “must be imprisoned for a term not exceeding twenty years nor less than ten years” S.C. Code Ann. § 16-3-85(C)(2). For this offense, Applicant was sentenced to a term of imprisonment of twenty years. The sentences Applicant received were well within the statutorily prescribed sentencing limits. Accordingly, Respondent submits Applicant cannot meet her burden.

However, the allegations of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant further alleges plea counsel “allowed the court to ‘rush’ and pressure [Applicant] into a decision,” which Respondent interprets as an allegation her plea was not knowingly or intelligently entered. Respondent submits this allegation is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that her guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty

plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. Applicant indicated she understood the potential sentences of both offenses and also understood aiding and abetting homicide by child abuse was a violent and most serious offense. Plea Tr. 9. She further indicated she understood aiding and abetting homicide by child abuse was a no-parole offense. Plea Tr. 10. Applicant also told the court by entering an *Alford* plea, she was acknowledging the State most likely could prove her guilt to a jury beyond a reasonable doubt; and she further indicated she understood the court would treat the plea as a guilty plea. ROA 11. Applicant also understood her constitutional rights and understanding those rights, wished to enter the *Alford* plea. ROA 11-13. Applicant stated no one had promised her anything, held out any hope of reward, or threatened her in order to get her to enter the plea. ROA 13.

However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. *Sharper v. State*, 305 S.E.2d 247.

VI.

Applicant further alleges newly discovered evidence, in that she "received a letter from [her] co-defendant after the plea acceptance stating that he was fully responsible for the injury and [she] was unaware of [her] daughter being hurt." Respondent submits this allegation is without merit and should be summarily dismissed for failing to make a *prima facie* showing.

The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief

action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4).

If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant has wholly failed to allege facts sufficient to support her claim of newly discovered evidence. First, Applicant received this letter from her co-defendant on January 20, 2016, and she did not file this application until August 21, 2018, nearly **two-and-a-half years** after receiving this letter. *See* ROA 26. Moreover, Applicant brought this letter to the plea court’s attention in her motion to withdraw the plea and also brought this letter to the attention of the Court of Appeals in her Rule 203(d)(1)(B)(iv) explanation and her *Anders* brief. The alleged newly discovered evidence has been previously presented to both the circuit and appellate courts and Applicant has failed to make a *prima facie* showing she is entitled to relief based on the information. Accordingly, this allegation should be summarily dismissed with prejudice.

VII.

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

VIII.

WHEREFORE, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea. Respondent further requests Applicant's allegation of newly discovered evidence be summarily dismissed for failing to make a *prima facie* showing.

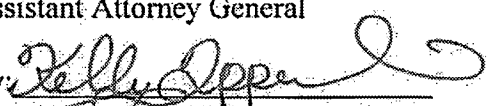
Respectfully submitted,

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October 31, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

SARA HODSON, #367533)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

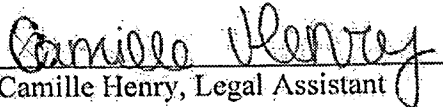
2018-CP-32-02878

CERTIFICATE OF SERVICE BY MAIL

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

Ashley A. McMahan, Esquire
 MAC | VANCE ATTORNEYS, LLC
 Post Office Box 5501
 West Columbia, South Carolina 29171

DATED this the 31st day of October, 2018.


 Camille Henry, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3 Sara Hodson,) Case No.: 2018-CP-32-02878
4 Applicant/Plaintiff,)
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent/Defendant.)
8 _____)
9

10 June 27, 2019

11 Lexington, South Carolina

12 BEFORE:

13 The Honorable Brooks P. Goldsmith, IV, Judge
14

15 APPEARANCES:

16
17 Ashley A. McMahan, Esquire
18 Attorney for the Applicant/Plaintiff

19 Taylor Z. Smith, Assistant Attorney General
20 Attorney for the Respondent/Defendant

21 ALSO PRESENT:

22 Sara Hodson
23
24
25

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1 Thereupon, the following proceedings were had,

2 MR. SMITH: May it please the Court. This is the
3 case of Sara Elizabeth Hodson v. State. Case number
4 2018-CP-32-02878. Ms. Hodson is presently confined in
5 SCDC pursuant to orders of committment of the Lexington
6 County Clerk of Court. During its October 2013 term the
7 Lexington County Grand Jury indicted her for unlawful
8 conduct towards a child. Then during its September 2015
9 term the grand jury indicted her for aiding and abetting
10 homicide by child abuse. Eventually she would also be
11 charged with homicide by child abuse. Mr. Deon O'Neil
12 represented her on these charges. Solicitor Suzanne
13 Mayes prosecuted the case.

14 On November 3rd, 2015, she appeared before the
15 Honorable Doyet A. Early and pleaded guilty as indicted
16 to aiding and abetting homicide by child abuse and
17 unlawful conduct, but she entered an Alford plea. Judge
18 Early accepted the plea and deferred sentencing. On
19 February 5th, 2016 she moved to withdraw her Alford plea
20 on the basis that a co-defendant who was her husband had
21 provided information through a letter that she believed
22 would have been favorable to her case. The hearing on
23 that motion was held before Judge Early in March of 2016.
24 After hearing argument from both applicant and the State,
25 Judge Early denied her motion to withdraw her plea. Then

1 she appeared before the Honorable William P. Keesley for
2 sentencing and Judge Keesley sentenced her to a term of
3 imprisonment of 10 years for unlawful neglect and 20
4 years for aiding and abetting homicide by child abuse
5 with the sentences running concurrent.

6 Ms. Hodson then filed an appeal. In March of 2016
7 she filed a pro-se explanation pursuant to Rule 203
8 raising the following issues; that she moved to withdraw
9 her plea because she had received new evidence following
10 the entry of her Alford plea; that the Solicitor's
11 witnesses' statements should not have been allowed
12 because they were irrelevant; and that her attorney
13 did not investigate or interview on her behalf.

14 The Court of Appeals then allowed her to proceed
15 with her appeal and appellate counsel John Strong filed
16 an Anders Brief on her behalf and raised the following
17 issue; that the trial court abused its discretion in
18 refusing to allow her to withdraw her Alford plea after
19 she entered it because her co-defendant husband stated in
20 letters written to her that he was prepared to testify
21 that she was not present when their child ingested a
22 fatal amount of meth amphetamine.

23 Following a review pursuant to Anders the Court of
24 Appeals dismissed the appeal and granted appellate
25 counsel's request to withdraw. Remittitur was issued in

1 October 2017. Ms. Hodson then filed this PCR application
2 in August of 2018 and in there she has raised the
3 following issues; that her attorney inadequately
4 represented her; that he did not interview anyone on her
5 behalf or get a specialist to represent the defense; he
6 allowed the Court to rush and pressure her into a
7 decision which can be verified by reviewing the dates on
8 the indictments and the plea; that her attorney told her
9 that she would probably not get more than 15 years,
10 likely only 10 which played heavily into her acceptance
11 of the - entered into her entry of the Alford plea; and
12 that Mr. O'Neil was negligent in informing her that she
13 could immediately file for a sentence reduction. And she
14 also raised an after discovered evidence claim referring
15 to the letters from her co-defendant husband. And since
16 that time through her attorney Ashley McMahan who is here
17 on her behalf today she has filed an amended application
18 raising one additional issue; that her counsel failed to
19 call mitigating witnesses that would have resulted in a
20 lesser sentence for the applicant.

21 Your Honor, before we go forward, we ask that she
22 just specify the issues she will go forward on today and
23 I may have a motion.

24 MS. MCMAHAN: Yes, Your Honor. I believe Mr. Smith
25 just read out all the issues we're going forward on

25 Q. Were you out on bond? Were you in the detention

1 center?

2 A. I was out on bond for six months.

3 Q. Okay. Do you recall what you guys talked about?

4 A. When we met?

5 Q. Mm-hmm.

6 A. Well, our first meetings I was asking when this
7 would go, and he said I don't know. Maybe six months. I have
8 to get back with the Solicitor, la-de-da. After that we
9 talked about the case.

10 Q. Okay. So you were asking him when your case would
11 go forward and he said he had to get back with the
12 Solicitor?

13 A. Yeah.

14 Q. Do you remember what he told you after that?

15 A. What do you mean?

16 Q. Like when your case would go?

17 A. I mean, every time I would meet with him originally
18 like, you know, it would be every six months or so that I
19 would meet with him and he would tell me, oh, it will be here
20 shortly and it never was.

21 Q. What did you guys talk about in regards to the
22 evidence and everything?

23 A. He said at first they didn't have anything but child
24 neglect on me.

25 Q. And then what else did you guys talk about?

1 A. And then as it proceeded, like it got closer, that's
2 when he said they were gonna indict me on other stuff.

3 Q. Did he tell you what the other stuff was?

4 A. Aiding and abetting homicide and the child
5 neglect.

6 Q. So the issue I guess kind of underlying yours is
7 that you and Mr. Hodson are married?

8 A. Mm-hmm.

9 Q. And you have children together?

10 A. Mm-hmm.

11 Q. And there were children that were living in the
12 home?

13 A. Yes, ma'am.

14 Q. And one of them passed away?

15 A. Yes, ma'am.

16 MS. McMAHAN: This sort of gets intertwined in with
17 the appeal issue, Your Honor.

18 BY MS. McMAHAN:

19 Q. Were you present at the home at the time that the
20 child passed away?

21 A. No. Well, I was present at the time when she went
22 into respiratory distress, but through the day when she was
23 hurt and stuff no. I was at work.

24 Q. And when your husband wrote the letter, that was the
25 issue that he was talking about in that letter?

1 A. Yeah. I wasn't there for anything that had
2 happened.

3 MS. McMAHAN: Your Honor, the letter is in the
4 record on appeal.

5 BY MS. McMAHAN:

6 Q. Do you recall when you got the letter from him?

7 A. In like December. November or December.

8 Q. There were two letters, right?

9 A. I don't know. He wrote me a lot.

10 Q. Okay. And so you pled in March?

11 A. Yeah.

12 Q. Did you get the letter before or after the plea?

13 A. No. I took my plea in October.

14 Q. Yes. Then the motion was done in March?

15 A. Yeah.

16 Q. So you got the letter after you pled?

17 A. Yes, ma'am.

18 Q. Okay. So you didn't get his letter about what was
19 stated in this, essentially that you didn't have anything to
20 do with it, that you weren't present, until after you had
21 already pled guilty and been sentenced?

22 A. Yes, ma'am. Well, I had not been sentenced yet, but
23 yes, ma'am.

24 Q. Yeah. And at that time what was the conversation
25 you had with Mr. O'Neil about withdrawing your plea?

1 A. Uhm, he said he would put in whatever they do.

2 Q. Did you show him the letter?

3 A. Yes, ma'am.

4 Q. Okay. Was it his suggestion to move to withdraw
5 their plea or did you?

6 A. I suggested it.

7 Q. Okay. At that point had your husband already pled
8 guilty?

9 A. Yep.

10 Q. What did you tell Mr. O'Neil about the contents of
11 that letter, were they true or not true?

12 A. They were true. I wasn't at home.

13 Q. So did Mr. O'Neil have your husband at the
14 sentencing to testify about the contents of the letter?

15 A. We both got sentenced together so he was there, but
16 he didn't speak on my behalf. No.

17 Q. Okay. Did he move the letter into evidence at that
18 time do you recall?

19 A. I don't remember.

20 Q. So what were the defenses that you and Mr. O'Neil
21 talked about that you might have had to this charge? Did
22 y'all talk about any defenses at all?

23 A. No.

24 Q. Did you go over the evidence with him?

25 A. Yeah. A little. I mean, yeah.

1 Q. What did y'all go over?

2 A. Uhm, just what the State had. Nothing, nobody that
3 he talked to for me.

4 Q. Did he ever tell you anybody that he spoke to?

5 A. No.

6 Q. Did you tell him anybody you wanted him to speak
7 to?

8 A. Yeah. Like Erin and Angel. You know, people that
9 were around.

10 Q. Okay. Do you know if he talked to anybody from DSS
11 or anything?

12 A. I don't know.

13 Q. Was DSS involved with you guys?

14 A. Yep.

15 Q. Did you go to Family Court on all that?

16 A. Yes, ma'am.

17 Q. What happened there?

18 A. Uhm, Jordan pled guilty in Family Court to
19 something. Uhm, he didn't see the kids after that. I was
20 allowed around the kids.

21 Q. Okay. So you had visitation with them while your
22 charges were pending?

23 A. Yeah. And at first it was only like once a month,
24 but then they lifted that and I could see them whenever.

25 Q. Where were the children while your charges were

1 pending?

2 A. They were with my dad.

3 Q. Okay. Does your dad live down here?

4 A. Yeah.

5 Q. So the additional evidence that you are discussing
6 in your application and the letter from the co-defendant, that
7 was all that we were alluding to earlier, that's the letter
8 from Jordan?

9 A. Yes, ma'am.

10 Q. And then you also talk about you felt like you were
11 rushed and pressured into a decision. Can you tell the Court
12 about that?

13 A. I mean, I sat in the county for like four years and
14 then all of a sudden overnight they decide they're gonna
15 indict me, and it was like within a month, month and a half
16 that I had to decide everything. I didn't know I was gonna be
17 indicted on anything more than child neglect.

18 Q. What was the decision that you had to make?

19 A. Uhm, whether I was gonna go to trial or take a
20 plea.

21 Q. What was the reason that you --

22 A. I didn't want my kids to go through anything else.

23 Q. Okay. So your kids were gonna have to testify?

24 A. Probably. My oldest asked me if it could not be
25 like the Casey Anthony trial.

1 Q. Okay. And that was the reason for you ultimately
2 deciding that you were gonna just go ahead and plead guilty to
3 this?

4 A. Yes, ma'am.

5 Q. Did they dismiss any charges in exchange for your
6 guilty plea that day?

7 A. I think they dismissed the possession charge.

8 Q. You got sentenced to the same thing that Jordan did,
9 did you not?

10 A. Yeah. We got the same exact sentence.

11 Q. Okay. So in a matter of a few weeks you were
12 indicted and you had to decide if you were gonna go sit
13 through a trial --

14 A. Yeah.

15 Q. -- or if you were gonna take this deal?

16 A. Yes, ma'am.

17 Q. What did Mr. O'Neil tell you that the deal was?

18 A. 20 years and then 10 years. I think that's how he
19 worded it, but he said most likely I won't get the full
20 time.

21 Q. What did he --

22 A. I mean, I believe I was only probably gonna get
23 about 15 years.

24 Q. Okay. Did he ever throw out a specific number or he
25 just said you probably wouldn't get the full 20 years?

1 A. Probably. He never threw out a specific number.

2 Q. Okay. Is there anything else you want the Court to
3 know today about this case?

4 A. I just want to be treated fair. I don't think it's
5 fair that we both got the same time and yet he did it. That's
6 all.

7 MS. McMAHAN: Answer any questions Mr. Smith has for
8 you, okay?

9 THE WITNESS: Okay.

10 THE COURT: Cross examination, Mr. Smith.

11 MR. SMITH: Okay.

12 CROSS EXAMINATION

13 BY MR. SMITH:

14 Q. Ms. Hodson, I'm gonna show you something.

15 MR. SMITH: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MR. SMITH:

18 Q. What I'm referring to here is something that I have
19 given to the Court and it is the record on appeal.

20 A. Mm-hmm.

21 Q. Will you confirm that that says record on appeal and
22 that's from your case?

23 A. Mm-hmm.

24 Q. And we're looking at page 26. Is this the letter
25 that you testified about that you got from your husband?

1 A. Yeah.

2 Q. Okay. What's the date on that letter?

3 A. 1/20.

4 Q. Can you make out the year?

5 A. No.

6 Q. Okay. But you did testify that you got this letter
7 after you had already entered your plea?

8 A. Yes, sir.

9 Q. So the earliest this could be would be 2016?

10 A. Yes.

11 Q. Okay. Let's look here. Show me the part where he
12 says that you weren't there when your daughter died. Just
13 tell me where that is at. I know it's a little hard to read
14 but...

15 A. I mean, I guess it doesn't exactly say that.

16 Q. Okay. Well, lets look at what it does say. I'm
17 looking a few lines in. Okay. There's a scribbled out part
18 in the middle and then we're looking at the line right under
19 that.

20 A. Mm-hmm.

21 Q. Start reading there, if you can.

22 A. So they say you was with me cooking meth and --

23 Q. Is that at Ivan's?

24 A. At Ivan's that night. You weren't. You took the
25 kids Christmas shopping and then came back and I took - to get

1 me. I took you home after that and left, of course. As you
2 can already see they are making it up as they go. They are
3 using you against me and me against you and that's what they
4 do, driving a, something, built on lies.

5 Q. All right. So there he's referring to you weren't
6 with him at Ivan's --

7 A. Yes, sir.

8 Q. -- that night. Did your daughter die -- She didn't
9 die at your home, did she?

10 A. No. She was in the hospital.

11 Q. Okay. And she died on a night other than the night
12 he's referring to in this letter?

13 A. The next morning.

14 Q. Okay.

15 A. The next afternoon.

16 Q. So it's not the same day that he's talking about
17 when you were, when he was allegedly at Ivan's?

18 A. Mmm-mmm.

19 Q. So this letter doesn't say that you weren't there
20 when your daughter died?

21 A. Right.

22 Q. Okay. And it doesn't say that your daughter died at
23 home, right?

24 A. Right.

25 Q. Okay. And so what the letter does say is that when

1 he was cooking at Ivan's, he's saying that you weren't there
2 cooking at Ivan's, right?

3 A. Right.

4 Q. What does he mean by cooking?

5 A. We was cooking dope.

6 Q. Okay. And but again, that was not when your
7 daughter died, right?

8 A. Right.

9 Q. Okay. Okay. So your testimony earlier was that he
10 sent you a letter saying that you weren't there when your
11 daughter died?

12 A. Yeah.

13 Q. But that's not what this letter says?

14 A. No.

15 Q. Okay. Let's talk about this. When you mentioned
16 you weren't there, you were at work?

17 A. Mm-hmm.

18 Q. But your daughter didn't die at home, right?

19 A. Right.

20 Q. Okay. So whether you were home when she died is
21 irrelevant because she didn't die at home?

22 A. Mm-hmm.

23 Q. Okay. So just walk us through that. The State's
24 case and the facts that they presented during your hearing
25 were that you came home from work?

1 A. Mm-hmm.

2 Q. And then sometime after that she was taken to --

3 A. Well, that morning apparently he dropped her in the
4 shower when I was gone taking the other kids to school. I
5 came home to get ready for work for a matter of maybe an hour
6 and left to go to work. While I was at work, she was hurt all
7 day and he did nothing to help her through the day. When I
8 got home, I had to give her CPR.

9 Q. That's not something that's in this letter, right?

10 A. Right. Not in that letter.

11 Q. All right. So let me ask you some other questions.
12 You say that you only met with your attorney a few times?

13 A. Over the course of four years?

14 Q. Yes.

15 A. Maybe ten.

16 Q. Okay. And he never told you about any outside
17 investigation he was doing?

18 A. He said he had a specialist but nothing ever came of
19 it.

20 Q. Okay. Did you ever get letters from your husband
21 before this one?

22 A. Yeah. He wrote me all the time to the county.

23 Q. Okay. Is this the only letter you're putting
24 forward as after discovered evidence because his previous
25 letters didn't say --

1 A. I mean, his previous letters talk about other stuff
2 and I don't really recall.

3 Q. Okay. All right. You mentioned witnesses that you
4 wanted to call. Was that you wanted them called at your trial
5 or at sentencing?

6 A. Sentencing.

7 Q. You said Angel?

8 A. Angel Blankenship, Erin. There was a couple others
9 that I think would have helped me because they were around.

10 Q. What was Erin's last name?

11 A. Erin -- If you wouldn't ask me, I would remember. I
12 can't -- Davis. Virginia Erin Davis is her legal name.

13 Q. Is that E-r or two A's?

14 A. E-r. She's a female.

15 Q. So you wanted her at your sentencing, but you're
16 having trouble remembering her name today?

17 A. I talk to her on the phone. I just can't remember
18 her last name.

19 Q. So you weren't, your relationship didn't extend to
20 last names. You were just a first name kind of friend?

21 A. We lived together but I guess...

22 Q. Okay. Let's talk about your plea hearing. You did
23 enter an Alford plea in front of Judge Early, didn't you?

24 A. Yes, sir.

25 Q. And when you did that, didn't he go over your trial

1 rights that you were waiving by entering that plea?

2 A. Yes, sir.

3 Q. He told you that you could call witnesses, right?

4 A. Yes, sir.

5 Q. Challenge the State's case?

6 A. Yes, sir.

7 Q. And he told you you would be giving that up if you
8 entered an Alford plea?

9 A. Yes, sir.

10 Q. And you would be treated just as if you pled
11 guilty?

12 A. Yes, sir.

13 Q. And you would be sentenced like you pled guilty?

14 A. Yes, sir.

15 Q. You told him that you wanted to enter an Alford plea
16 anyway?

17 A. Yes, sir.

18 Q. All right. And didn't you tell him you wanted to do
19 that because you believed the State could prove the case if it
20 were to go to trial?

21 A. Yes, sir.

22 Q. And you did that with the knowledge that you could
23 have called your husband as a witness at trial, right?

24 A. Yes, sir.

25 Q. So you waived the right to have him as a witness?

1 A. Yes, sir.

2 Q. All right. Your attorney never told you about any
3 interviews he did?

4 A. No, sir.

5 Q. Okay. You didn't tell Judge Early that you needed
6 more time --

7 A. I mean --

8 Q. -- at your hearing?

9 A. If I would have waited ten more days, they wanted me
10 to go to trial in ten days.

11 Q. You didn't want to go to trial?

12 A. I was nervous. I didn't know what I wanted to do
13 then. I had 30 days to decide.

14 Q. You were nervous, but you told him you wanted to
15 enter an Alford plea?

16 A. Yeah.

17 Q. And you were nervous that your children might have
18 to testify at trial?

19 A. Yes, sir.

20 Q. And that was because the State was alleging that one
21 of your children had perhaps witnessed something?

22 A. Yes, sir.

23 MR. SMITH: Okay. Your Honor, I have no more
24 questions. Thank you.

25 MS. McMAHAN: It appears I was not given the full

1 PCR application so I'm just trying to review something
2 real fast.

3 THE COURT: All right. We'll take a minute.

4 MS. McMAHAN: Do you mind if I take a break just to
5 review this real fast?

6 THE COURT: That's fine. We will be at ease for a
7 few minutes.

8 (Short break.)

9 THE COURT: Remain seated. Let's continue.

10 REDIRECT EXAMINATION

11 BY MS. McMAHAN:

12 Q. Okay. Just a few more questions.

13 A. Okay.

14 Q. So the day of the main incident where your daughter
15 was dropped in the shower allegedly --

16 A. Shower, yes.

17 Q. -- you had gotten up that morning and you had taken
18 the rest of the kids to school?

19 A. Yes, ma'am. And the neighbor. She needed to go
20 pick up her car.

21 Q. And then you came home?

22 A. Yep.

23 Q. Then what happened? You said you came home to go
24 back to work?

25 A. Yeah. I came home to get showered and go to work.

1 I had about an hour to do it all.

2 Q. Where were you working at the time?

3 A. Cross Cutters.

4 Q. What time did you get home?

5 A. Probably like 7ish.

6 Q. What time did you say you would have gotten there?

7 A. Around 7ish normally.

8 Q. So you worked like a 12 hour day?

9 A. No. I had a manager's meeting that morning. I had
10 a phone conference meeting that morning when I got to work
11 that I had to be there for.

12 Q. So you got home at seven. When did you find --

13 A. No. I didn't get home from work until about 1:00 in
14 the afternoon. I left at about eight and I got back at seven
15 - I mean at one.

16 Q. Okay. So when you got home, when did you find out
17 that your daughter had been dropped in the shower?

18 A. When Jordan had come out to feed her, I heard her
19 cry. I was on the phone in the living room and then he comes
20 running out with her again and she was blue and we rushed her
21 to the --

22 Q. Is that when you gave her CPR?

23 A. Yes, ma'am.

24 Q. And then you rushed her to the hospital after
25 that?

1 A. Well, we rushed her to the doctor's office, like the
2 closest place and it happened to be a doctor's office and then
3 after that is when he told me that he dropped her.

4 Q. So you had no idea until any of that that he had
5 dropped her?

6 A. Yeah.

7 Q. And then you said that you were there when she went
8 into respiratory distress. Is that what you were talking
9 about earlier?

10 A. Yeah.

11 Q. And so what happened after you were at the doctor's
12 office?

13 A. We went to get our other kids from school, and they
14 took her to the hospital.

15 Q. The doctor's office did?

16 A. Yeah. They rushed her by ambulance and we went to
17 pick up the other kids from school and met them at the
18 hospital.

19 Q. I got you. And then your daughter passed later the
20 next day?

21 A. Later that night about 9:00 p.m.

22 Q. Okay. And is ultimately your issue that, you know,
23 you felt trial counsel was ineffective because he led you to
24 believe that you were gonna get something less than what you
25 did?

1 A. Yes, ma'am.

2 Q. And you sat in the county for four years and you
3 said you met with him about ten times?

4 A. Yeah. Give or take, but yeah.

5 Q. Prior to the time where he came to meet you I guess
6 to talk about the fact that you had only a few weeks to
7 decide, had he ever indicated to you that the State was gonna
8 indict you for all these other charges?

9 A. No, ma'am.

10 MS. McMAHAN: I have no further questions, Your
11 Honor.

12 THE COURT: Additional cross examination?

13 RECROSS EXAMINATION

14 BY MR. SMITH:

15 Q. Ms. Hodson, at your hearing before Judge Early when
16 everything was just getting laid out for the Court, didn't
17 your attorney tell the Court what the plea deal was, that the
18 State would dismiss some charges if you would plead guilty to
19 these two?

20 A. (Witness nodding head.)

21 Q. Okay. And that's the Alford plea. And I'll direct
22 you here. All right. If we look at page 8 of that
23 transcript.

24 THE COURT: What page?

25 MR. SMITH: Your Honor, this is page 8 of the record

1 on appeal which is also page 8 of the plea hearing
2 transcript.

3 THE COURT: All right. Go ahead.

4 BY MR. SMITH:

5 Q. When it says the Court, that's what Judge Early was
6 saying, right?

7 A. Mm-hmm.

8 Q. And will you please read lines 10 through 12?

9 A. And you're advising her to take the benefit of the
10 bargain i.e., nolle processing three indictments and
11 proceeding on two. Mr. O'Neil: Yes, sir. The Court: Ms.
12 Hodson, how are you this afternoon?

13 Q. All right. And you agree -- I mean, that's why you
14 entered the Alford plea to get the benefit of the bargain?

15 A. Yes, sir.

16 Q. Okay. And I mean, at the time you did all of that
17 despite the fact that he said if you go to trial, you can call
18 witnesses, challenge the State's evidence, and you waived all
19 of that by entering an Alford plea?

20 A. Yes, sir.

21 Q. Okay. And your husband, he did the same thing, he
22 entered an Alford plea as well?

23 A. Yes, sir.

24 MR. SMITH: Thank you. No more questions, Your
25 Honor.

1 MS. McMAHAN: Just one short question.

2 REDIRECT EXAMINATION CONTINUED

3 BY MS. McMAHAN:

4 Q. Did Mr. O'Neil tell you that the minimum you were
5 facing was 10 years?

6 A. Yes, ma'am.

7 MS. McMAHAN: I have no further questions, Your
8 Honor.

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

10 MS. McMAHAN: Your Honor, at this time the applicant
11 calls Jordan Hodson to the stand.

12 THE COURT: All right.

13 Thereupon,

14 JORDAN HODSON

15 after having been first duly sworn, testified as follows,

16 DIRECT EXAMINATION

17 BY MS. McMAHAN:

18 Q. Do you mind stating your name for the record for me.

19 A. Jordan Hodson.

20 Q. Who is Sara Hodson?

21 A. She's my wife.

22 Q. You heard Sara's testimony about the day that your
23 daughter, I guess, falling in the shower. Was that testimony
24 correct?

25 A. That's correct.

1 Q. So she did not know until you came home?

2 A. Yeah. She didn't know.

3 Q. Was she present at the time any of this happened?

4 A. No. She wasn't.

5 Q. Okay. And in these letters that are already a part
6 of the record did you write these letters? Is that your
7 handwriting?

8 A. Yes, ma'am.

9 Q. While they don't allude to her not being present,
10 your testimony today is that she was not there at the time
11 that the daughter slipped and fell, or fell out of your hands
12 in the shower?

13 A. No. She was not there.

14 Q. Then what was the issue with you being at Ivan's?
15 Did she have any knowledge that you were really there that
16 day?

17 A. She didn't know what I was doing, you know. She
18 went Christmas shopping with the kids and I stayed at Ivan's
19 house and I was cooking meth --

20 Q. Okay.

21 A. -- which I brought home.

22 Q. Did she know that one of the children, I guess, had
23 ingested some of it?

24 A. Yes. That's what the toxicology report says.

25 **Minor 1** had tested positive for methamphetamine and that was

1 the reason why she died, most of it.

2 Q. But at the time when you guys were taking her to the
3 doctor, you thought it had something to do with her being
4 dropped in the shower?

5 A. Yes. That's correct.

6 Q. Is there anything else you want to tell the Court
7 today?

8 A. Yeah. I mean, Sara is a good mom. She's a good
9 person. She didn't have anything to do with nothing that went
10 on. I mean, I was the one that made the meth. I was the one
11 that brought it around my children. And I'm the one who
12 caused this accident. I mean, she was at work. She didn't
13 have nothing to do with it. Her lawyer put up a sorry defense
14 for her because he didn't even come ask me what was going
15 on.

16 Q. You had an attorney at the time?

17 A. Yeah. My attorney was Robert Madsen which he was
18 telling me not to say nothing to her or her lawyer which, you
19 know, I mean, he was just telling me to keep my mouth shut and
20 he was saying not to take it to trial because more or less
21 being the nature of the crime and an infant being involved we
22 were looking at a life sentence.

23 MS. McMAHAN: Okay. I have no further questions,
24 Your Honor. Answer anything that Mr. Smith has.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Cross examination.

2 MR. SMITH: Okay. Thank you. Permission to
3 approach, Your Honor?

4 THE COURT: Sure.

5 CROSS EXAMINATION

6 BY MR. SMITH:

7 Q. Okay. Mr. Hodson, I'm gonna show you something.
8 I'm referring to page 26 of the record on appeal. Will you
9 confirm that this is the letter you sent to your wife?

10 A. That's correct.

11 Q. All right. This is the one we have been talking
12 about dated January 20th, 2016; is that right?

13 A. Yeah.

14 Q. Okay. And let's just look in here at what it says.

15 A. 2016 I was already in McCormick or Kirkland so that
16 wouldn't have been the letter before that. That would have
17 been a letter before I got sentenced.

18 Q. But was that the date?

19 A. That's the date.

20 Q. Okay. Okay. It says she wasn't with you cooking
21 meth at Ivan's that night?

22 A. Yep.

23 Q. And then it says you, and you're referring to her
24 there, you took the kids Christmas shopping and then came back
25 to get me.

1 A. Mm-hmm.

2 Q. She came back to get you from Ivan's?

3 A. Yep.

4 Q. Okay. All right. And you entered an Alford plea,
5 too?

6 A. I entered an Alford plea, yes, because I was guilty,
7 you know. I'm guilty of this, what happened.

8 Q. Well, you didn't plead guilty. You entered an
9 Alford plea.

10 A. Well, the Alford plea was more or less the same
11 thing. I was being told that, you know, you're not guilty of
12 the crime, but due to them having evidence, they could convict
13 you and yes, my lawyer had represented a man before I went to
14 court named Filliberto Garcia which his infant had died
15 because of malnourishment and he said pretty much that if we
16 was to take it to trial, we was gonna get life sentences.

17 Q. So your Judge, when you were sentenced, didn't
18 explain that an Alford plea meant you were saying I didn't do
19 it?

20 A. Yeah. That's what it meant.

21 Q. Okay.

22 A. I mean, but you got to look at the situation.
23 You're either gonna be faced with a life sentence or an Alford
24 plea at 20 years. I mean, what would you do?

25 Q. You could have also pled guilty though. You're

1 telling us today you did it and you were guilty but you
2 wouldn't say it then?

3 A. No. He didn't ask me, okay?

4 Q. The Judge didn't ask you?

5 A. Yeah. Everything that was stated in that record is
6 true. I mean, if you look at it and read it, it says I did it
7 all. I'm the one that was making the meth. It was my meth
8 that ended up killing my daughter. It was me that dropped my
9 daughter in the shower. I mean, Sara was just living there.

10 Q. But you didn't plead guilty though, right?

11 A. I was doing what my lawyer was telling me to do.

12 Q. Okay. And just to confirm, this letter says that
13 she came back to pick you up?

14 A. Yeah.

15 MR. SMITH: Okay. No further questions, Your Honor.

16 MS. McMAHAN: I have nothing further, Your Honor.

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

18 MS. McMAHAN: May this witness be excused?

19 MR. SMITH: No objection.

20 THE COURT: The witness may be excused.

21 MS. McMAHAN: The applicant rests, Your Honor.

22 THE COURT: Applicant rests. Mr. Smith.

23 MR. SMITH: Yes, Your Honor. Just one moment
24 please. Your Honor, the State calls Mr. Deon O'Neil.

25 Thereupon, --

1 DEON O'NEIL
2 after having been first duly sworn, testified as follows,

3 DIRECT EXAMINATION

4 BY MR. SMITH:

5 Q. Okay. Mr. O'Neil, can you tell me where you
6 practice?

7 A. I'm currently in private practice in Richland
8 County.

9 Q. How long have you been practicing?

10 A. I've been practicing law since November 2006.

11 Q. Okay. And how much of your practice experience is
12 devoted to criminal law?

13 A. I spent my first four years at Richland County
14 Public Defender's Office. That was a hundred percent of that,
15 those four years. Been in private practice since 2010 and
16 still a good 40 percent of my practice is in criminal law at
17 this point.

18 Q. Okay. How did you come to be involved in Ms.
19 Hodson's case?

20 A. I received appointment for Ms. Hodson's case from
21 the Lexington County Public Defender's Office. Would have
22 been around December of 2012.

23 Q. Okay. And at that time had she been charged with
24 anything?

25 A. At that time if my memory serves me correctly she

1 was only charged with unlawful conduct towards a child.

2 Q. And at any point after that did she come to be
3 charged with other things?

4 A. Correct.

5 Q. What were they?

6 A. Eventually later in 2015 she was charged with the
7 homicide by child abuse both the aiding and abetting and the
8 actual substantive count of that, additional count of
9 possession of meth amphetamine and one additional charge that
10 escapes me at this point, and she still remained charged with
11 the underlying unlawful conduct toward a child as well.

12 Q. Okay. So that was, one, two, three, four charges
13 total?

14 A. She had a total of five. The last charge escapes me
15 at this point here, but she had a total of five.

16 Q. Were all of those charges related to one specific
17 set of facts or were they unrelated?

18 A. They were all unrelated.

19 Q. Tell us about the facts giving rise to those
20 charges.

21 A. Basically she was charged with homicide by child
22 abuse, but indicted for that later on because the homicide by
23 child abuse is so broadly defined, basically all it requires
24 is that you cause the death of a child by abuse or neglect.
25 In talking with the Solicitor in the case their theory of Ms.

1 Hodson's involvement was that either she used or exposed the
2 child to meth amphetamine or knew that Jordan her husband was
3 doing it and didn't do anything about it and based off of that
4 they felt as though the not doing anything about the child
5 being exposed to meth and being injured, that was, that
6 classified as an omission under the statute for child abuse
7 and neglect here and would make her guilty of the substantive
8 count of homicide by child abuse, but at the very least she
9 would have been guilty of aiding and abetting which is what
10 she wound up actually pleading guilty to.

11 Q. Did you move for discovery in this case?

12 A. I did..

13 Q. Did you receive discovery?

14 A. I did.

15 Q. Tell me what you got.

16 A. Oh, I got, I mean, her discovery was kind of
17 voluminous here and was kind of ongoing over the three year
18 process before she wound up being sentenced here, but there
19 were, of course, there were DSS records, there were medical
20 records, a voluminous amount of medical records, the autopsy
21 reports, witnesses' statements from some of the neighbors that
22 were around here. That was the gist of her discovery. Most
23 of it was in the form of medical records though.

24 Q. Okay. Tell me what kinds of things were in those
25 DSS records?

1 A. Just the, with the DSS records you get the orders
2 from the DSS case. I think we also got the dictations from
3 the case workers. The dictation is kind of like the case
4 workers' notes as to their involvement with the case. We also
5 got the guardian ad litem's report who was kind of like the
6 independent third party who was appointed by the Court to
7 speak for the children's best interests.

8 Q. Okay. Was DSS involved with the family before the
9 death of the daughter?

10 A. I do not recall. I know they got involved because
11 of that, but I don't know whether or not Ms. Hodson had any
12 prior history or not. I don't recall that.

13 Q. Okay. So tell me what happened to the child. So
14 what happened to the child?

15 A. According to, and I probably need to read, to be
16 more precise need to read the autopsy report, but the gist of
17 it was that the child suffered a injury to the abdomen area
18 and also had some old rib fractures and a tibular fracture, if
19 I remember correctly, that were healing and that the meth
20 amphetamine was an adverse ingredient in the child's death and
21 also kind of more importantly as relates to Ms. Hodson that
22 the condition that the child was in at death would have been
23 indicative of a child who was severely ill days prior to
24 presenting there at the hospital. That was the main part of
25 the autopsy report that was most damaging to Ms. Hodson.

1 Q. Okay. And that was in the autopsy report that you
2 received in discovery?

3 A. Correct.

4 Q. Okay. So the autopsy report, your understanding of
5 it, did it support an interpretation of events where the child
6 died suddenly?

7 A. No. The autopsy report would indicate that the
8 child, I guess more precisely the autopsy report indicated
9 that the child would have been showing signs of illness well
10 in advance of the day that she died.

11 Q. Do you remember what sort of signs?

12 A. I think I have it. I want to read it --

13 Q. Okay. Let's pull it out.

14 A. -- to be precise here. I want to use the precise
15 language that the report uses here. This is the autopsy
16 report I received in the discovery and under the final summary
17 part which I think is on page 2 of the report it says in the
18 final sentence in the final report in the first paragraph
19 says, the findings in this case will be more compatible with a
20 very sick child for at least several days prior to her death.
21 That was what I was referring to.

22 Q. Do you remember how old she was when she died?

23 A. She would have been ten weeks.

24 Q. Okay. And you mentioned earlier about bone
25 fractures. Can you tell me more about that?

1 A. It was numerous rib fractures with callous was one
2 of the diagnoses listed on the first page and also a fractured
3 left tibia with callous per imaging studies. My understanding
4 callous means what we call the fracture was trying to heal
5 itself.

6 Q: Okay. Did that support the conclusion that the
7 bones were fractured on the day of her death?

8 A. That would not be compatible. My conversation with
9 the forensic pathologist that I hired indicated that that
10 would not be consistent with an injury that occurred that day,
11 the day of the death here.

12 Q. Okay. And what did the autopsy reveal about the
13 meth amphetamine?

14 A. The autopsy report in correlation with the drug test
15 that came back, the child tested positive for meth amphetamine
16 here and as the autopsy report indicated it says, meth
17 amphetamine effects include marked decrease in
18 gastroenterological blood flow with high potential for injury
19 including necrosis. Meth amphetamine exposure very certainly
20 had an adverse and at least contributing effect as the cause
21 of death in this particular case.

22 Q. Okay. You also mentioned that when you got
23 discovery, there were some neighbor's statements in there?

24 A. That's correct.

25 Q. What did those indicate?

1 A. I can pull those up as well. When I received the
2 discovery, the investigators had spoken with some of the
3 neighbors initially here and then during the course of the
4 case Mr. Hodson's attorney had hired a investigator to speak
5 with the neighbors in a little more detail and that was
6 eventually provided to me as well and I went over that with
7 Ms. Hodson as well. But there was a neighbor Mr. Steven
8 Prescott, a neighbor Alicia Cook, a neighbor Daona Alston, a
9 neighbor Linda Kratzenberg, a neighbor Irene - not a neighbor
10 but an individual who knew the Hodsons, Irene Elizabeth Price.
11 And in a general sense one of the neighbors and some of these
12 lay witnesses would indicate that Ms. Hodson got frustrated
13 with the children and on one occasion wanted to shake the
14 child and throw it against the wall. This was about four to
15 six weeks before the baby died. I think Mr. Steven Prescott
16 indicated that.

17 Q. Okay. Did more than one witness make a statement
18 similar to that?

19 A. Correct.

20 Q. Okay. Did you have any reason to believe that these
21 people would be called as witnesses if the case were to go to
22 trial?

23 A. I would.

24 Q. Okay. What other things generally did you get in
25 discovery?

1 A. Uhm, we received phone records. We received jail
2 phone calls that all the parties had made. We received, there
3 was a statement from the Ivan individual that came real late
4 in the case, that Ivan individual with the allegation of the
5 cooking meth came from that Ms. Hodson was with her husband
6 Jordan at the time that meth was being cooked shortly before
7 the child's death. The State indicated that this Ivan
8 individual would testify at trial that contrary to what
9 Mr. Jordan Hodson said and contrary to what Sara had always
10 told me, this Ivan individual would testify that they both,
11 both Sara and Jordan was at his house at the time the meth was
12 being cooked. Sara always denied that and Jordan just denied
13 it now, but Sara always denied it, but the State indicated he
14 would say otherwise.

15 Q. Okay. So let's, speaking of Ivan, let's kind of
16 look at the chronology of this. His testimony would have been
17 that he was with them at what time compared to the death of
18 the child?

19 A. The night before.

20 Q. And what was the State's argument about what they
21 would prove that the parties were doing there?

22 A. The State's contention was that the parties were
23 cooking meth amphetamine the night before the child's death.

24 Q. And that Ms. Hodson was present?

25 A. That was the State's contention, yes.

1 Q. Okay. Were they arguing that the child was also
2 present?

3 A. Yes.

4 Q. Was there any evidence in the case about what the
5 Hodsons were doing immediately before beginning their cook?

6 A. I don't remember off the top of my head, no.

7 Q. Okay. And then walk us through the timeline of what
8 the State was trying to prove happened after the cooking of
9 the meth amphetamine.

10 A. Well, at that point I think factually the date of
11 the child's death I don't think the State ever disputed Ms.
12 Hodson's version that she went to work. I think we checked
13 and verified through her employer that she was at work and
14 dropping the children off that morning so I think factually
15 everybody almost has a similar version of what happened the
16 day the child died, that, in fact, Ms. Hodson was not there.
17 Jordan was there with the child. I do believe the State
18 didn't believe Jordan's story about the child really slipping
19 out of his hands. I don't think they believed that version of
20 it, but I don't think they ever believed that Sara was there
21 at the time that the child suffered whatever blunt force
22 trauma that the child suffered on the day before she died
23 here.

24 Q. Okay. So what was her version of the events? What
25 did she say?

1 A. She, her version of the events was consistent with
2 what she testified on direct, that she was not there the
3 morning that the child died; that she dropped other kids off
4 and preparing for work. Very similar to what she said in the
5 record what her version of the events has always been about
6 the case.

7 Q. Okay. Did the child die at the home?

8 A. No.

9 Q. Where?

10 A. My understanding is that the child was taken to the,
11 one of the pediatric centers there in Pelion if I remember
12 correctly here and then later expired at the hospital.

13 Q. Okay. Who took her to the hospital?

14 A. I think she was - I think both Sara and Jordan took
15 the child, if I remember correctly, took the child to the
16 pediatric center in Pelion and then from there the child went
17 from the hospital - from the pediatric center I think by
18 ambulance by medical personnel.

19 Q. Okay. Do you know what the condition of the child
20 would have been at the time that they transported her to
21 medical care?

22 A. I think expired probably is the best way to describe
23 it.

24 Q. But again, the autopsy didn't indicate that it was
25 something that happened suddenly?

1 A. No. The autopsy report did not limit the window as
2 relates to the cause of death. The autopsy report did not
3 limit the cause of death to a one time acute kind of recent
4 event.

5 Q. Okay. And was that something that you were worried
6 about in the case?

7 A. Yes. Especially in the way that -- It's not like a
8 murder case in the sense that the statute for homicide by
9 child abuse is written so broadly that all it requires is
10 abuse or neglect and further defined abuse or neglect it could
11 be either acts or omission to act so when the window is so
12 broad here, the State could always, and that's what me and Ms.
13 Hodson talked about, the State could argue basically that you
14 should have known something was going on with the child
15 because according to our medical expert, when I say our, the
16 State's medical expert, the child would have been exhibiting
17 symptoms for days and nobody did anything about it.

18 Q. And is that the case the State would have presented
19 at trial?

20 A. It is my belief that that's what they would have
21 presented at trial.

22 Q. Okay. So let's talk about just the Hodsons. Did
23 either of them use any drugs?

24 A. I think both admitted to using drugs.

25 Q. Were they tested at any point, if you remember

1 that?

2 A. They were and I think actually Sara might have
3 tested negative shortly after this incident because she didn't
4 stay incarcerated after this event. She was out on bond until
5 around July I think of 2013 here.

6 Q. Did you receive any information from the State
7 related to whether or not the Hodsons were buying
8 pseudoephedrine?

9 A. Yes. There was. They were buying pseudoephedrine.
10 One of the other issues that popped up real late before Sara's
11 trial was that they had fingerprint evidence from a bottle
12 kind of what they call like a shake and bake bottle of meth
13 amphetamine that the State indicated matched Sara's
14 fingerprint later. Probably this would have been two or three
15 weeks before we were scheduled to go to trial I got that piece
16 of discovery.

17 Q. Where was that bottle found?

18 A. I want to say in the apartment that the Hodsons
19 shared. One of the rooms of the apartment that the Hodsons
20 shared.

21 Q. Okay. Let's talk again about the timeline issue.
22 What was Ms. Hodson's story about what time she got home from
23 work on the day of her daughter's death?

24 A. It was consistent with what she testified earlier,
25 that she got -- I don't want to -- I can pull her statement up

1 that she gave to law enforcement, but it was consistent with
2 what she testified to on direct; that she got home after
3 dropping the other kids off and doing what she needed to do
4 that morning. Her story to me has always been consistent with
5 what she testified to on direct.

6 Q. Okay. And the night before her daughter's death,
7 was she with the children that night?

8 A. She indicated to me just like what she said on
9 direct, that she did not go there to Ivan's; that she was
10 Christmas shopping and not there at the house cooking or
11 smoking meth amphetamine.

12 Q. What about later that night, where did she sleep
13 that night? Where did the children sleep?

14 A. She slept at the home that night, if I remember
15 correctly. She indicated to me that actually Jordan at that
16 time had went over I think to his mistress' house the night
17 before and then came back in that morning here.

18 Q. Okay. How many times did you meet with her over the
19 course of the case?

20 A. I have to pull it up. I have it actually on my
21 phone here. I can pull it up here because back then we kept
22 time kind of to submit to the Court on an hourly basis here.

23 Q. Since you were appointed?

24 A. Yes. That's correct. It looks like I got appointed
25 to Ms. Hodson's case late December 2012. She came in to my

1 office looks like on January 31st, 2013. So that would have
2 been one time. I met with her again on March 22nd, 2013, she
3 had an appearance. Uhm, had a phone call with her dad looks
4 like May 24th, 2013. Had an office visit again with Ms.
5 Hodson June 6th, 2013. So that's one, two, three times I met
6 with her in the first six months here. I think after that a
7 meeting on June 6th, 2013, Ms. Hodson came. She wanted to
8 speak to Sergeant Ellis, Lexington County Sheriff's Department
9 so we set up a meeting with him on June 25th, 2013.

10 After that meeting I think Sara's dad was, if I'm
11 correct, was a signor on her bond and her dad decided to come
12 off her bond because I think he filed a missing person report
13 for her. The bond commitment was on July 11th, 2013. Her
14 bond was recommitted and revoked and she was then incarcerated
15 until she eventually pled guilty here. But when she was at
16 jail, I set up on my office phone, Sara had the ability for
17 her to call the office while she was down in the jail and Sara
18 probably called my office at least once a week here and she
19 would probably got me probably half the time that she would
20 call. The other half of the time she would call I would not
21 be in the office and she would get my paralegal here. So we
22 probably talked at least twice or three times a month on the
23 phone. Looks like the next time I visited her at the jail
24 would have been October 3rd, 2013. Visited her again in jail
25 on January 13th, 2014. She had a DSS hearing. I talked to

1 her on March 12th, 2014. April 4th, 2014 I spoke to the
2 guardian in her DSS case. August 4th, 2014 I met with her
3 again at a DSS hearing. September 24th, 2014 jail visit.

4 Q. Were you appointed to represent her on her DSS
5 case?

6 A. I was not.

7 Q. Did she pay you to go to that?

8 A. No. She had, Monty Caughman represented her if I
9 remember correctly in the DSS case, but I went there to talk
10 with her because she was at court and it would be a good
11 opportunity for me to talk to her then. The next time I would
12 have spoke to her at the jail would have been looks like March
13 11th, 2015. And then I spoke with the guardian again on the
14 DSS case looks like June 8th, 2015. Talked to her again, went
15 to do some trial prep with her looks like July 8th, 2015, so
16 at that point we must have knew that there was some sort of
17 trial kind of on the horizon. That was July 8th, 2015. Met
18 with her again at the jail for trial prep on September 17th,
19 2015. Another jail visit on October 16th, 2015. Another jail
20 visit on October 30th, 2015. Another jail visit on November
21 1st, 2015. Then she entered her guilty plea on November 3rd,
22 2015. Another jail visit looks like February 10th, 2016.

23 Q. And I will stop you there because I believe I trust
24 you met with her more and I was asking more about the issues
25 before her plea hearing, but if I were to ask you to go

1 through, are there plenty more times or how would you
2 characterize it?

3 A. Yes. I would not have noted the times we talked on
4 the phone so we would have talked on the phone at least
5 probably twice a month in those intervening times here.

6 Q. Okay. When you would meet with her, did you go over
7 the things like the elements, potential sentences for the
8 things she was charged with?

9 A. Yes. We went over her discovery early on when she
10 was actually out on bond. She came to my office and we sat
11 down and we went over her discovery. We talked extensively
12 about the elements of homicide by child abuse. It's difficult
13 for a lay person to really understand why in this scenario a
14 homicide by child abuse charge can be made by the State
15 because as Sara said and as the State even alleged, there was
16 never anything that she actually physically struck the child
17 or anything of that nature here. Their argument was that her
18 conduct constituted abuse and neglect and it was a manifest
19 and gross indifference to the child so I had to explain to her
20 what that meant and we did that.

21 Q. And you explained to her that you believed that it
22 was a broad offense?

23 A. Yes.

24 Q. Okay. Did you go - you said you went over discovery
25 with her. Did you go over the neighbors' statements and the

1 autopsy?

2 A. Yes. And actually when I looked at the
3 neighbors' statements, I actually see, if I remember correctly,
4 I think I gave Sara the neighbors' statements when I got them
5 from the investigator here and actually there are Sara's notes
6 on some of the neighbors' statements here. For instance --

7 Q. So she's marked them up?

8 A. -- when I look at Linda Kratzenberg's statement
9 here, it's marked up. It says never able to talk to her, and
10 that's not my handwriting. That's actually Sara's
11 handwriting. Or if I look at Irene's statement, it says, at
12 Jordan's house. Two days after I got home, he left. So it
13 talks about things like I was never around Ivan's. Yes. So
14 these are not my annotations here. These are Sara's
15 annotations.

16 Q. She wrote that on there while you were talking about
17 it with her?

18 A. Yes.

19 Q. Now, as you testified earlier, there were charges
20 that were added on throughout the course of your
21 representation. Whenever something new came down the line,
22 did you discuss the new offenses with her?

23 A. Yes.

24 Q. Did she ever express to you that she was frustrated
25 because it was taking so long?

1 A. She did. That was a regular refrain from her. She
2 was frustrated that it was taking so long.

3 Q. Okay. Did you go over potential sentences with
4 her?

5 A. I did.

6 Q. What did you tell her about that?

7 A. Actually, it's similar to what Mr. Hodson just
8 testified. I actually represented Fillipio Garcia what he's
9 talking about in Family Court. Around the same time here he
10 was charged with homicide by child abuse, a case here in
11 Lexington. He got a life sentence. So we used that kind of
12 as a reference point of what could possibly happen in her case
13 here. She was charged with the 20 to life sentence here and
14 that those types of charges were not looked upon kindly
15 here in Lexington County here and with what she was charged,
16 she could very well get a life sentence. It was not out of
17 the realm of possibility so we went over that extensively over
18 the time that we had her case here.

19 Q. Okay. Did she ever give you any indication that she
20 didn't understand what you were trying to explain to her when
21 you had these discussions about discovery and the elements and
22 defenses?

23 A. No.

24 Q. Okay. Did you do any independent investigation in
25 the case?

1 A. When I always get these, I have handled several kind
2 of homicide by child abuse cases, these cases are normally
3 gonna be medical records cases and medical expert cases so
4 when I got this case here in and when Sara got charged with
5 homicide by child abuse portion of the case here, we at that
6 point then retained Kim Collins out of Charleston here. She
7 was a forensic pathologist here. I coordinated with the
8 Solicitor's Office. I sent Ms. Collins down in Charleston, I
9 sent her the autopsy report. I sent her the discovery. Ms.
10 Collins did then inquire to me that she wanted to actually see
11 the slides from the autopsy to make a determination on her own
12 because when I hired Ms. Collins as an expert, I asked her a
13 couple of specific questions. One, did she feel as though the
14 determination of cause of death by the State's expert was
15 valid here, and whether or not the minor child would have been
16 exhibiting signs of illness well in advance of her demise
17 here.

18 So Ms. Collins actually reviewed the autopsy report,
19 she reviewed the autopsy slides and the blood tissue samples
20 and everything that the State had and I spoke with Ms. Collins
21 shortly before Ms. Hodson's plea and my expert Dr. Collins
22 indicated that she felt as though the evidence as relates to
23 the autopsy report and the physical evidence was consistent
24 with the State's pathologist's determination of cause of death
25 and the time window of death. Because of that determination

1 by my own expert I didn't have her write a report to
2 basically, that would have basically agreed with what the
3 evidence that I already received from the State's
4 pathologist.

5 Q. Is that because you -- Why were you worried about
6 having to turn that over?

7 A. Because if I had produced that report, the State
8 could then request that report here and potentially call my
9 expert as a witness to double verify what the State's already
10 cause of death was at that point.

11 Q. And that's because you were anticipating that you
12 may still go to trial on the case?

13 A. Yes, sir.

14 Q. So you did not interpret, the forensic pathologist
15 that you hired, you didn't interpret her findings as favorable
16 to the defense?

17 A. Correct.

18 Q. Okay. Did you go over the results from that with
19 Ms. Hodson?

20 A. Yes. I told her that. Yes. I told her that's why
21 we wouldn't be calling the expert as a witness.

22 Q. Okay. Did she give you any indication she didn't
23 understand that this was -- Did you tell her that this was
24 someone you had retained outside?

25 A. Yes.

1 Q. Okay. Other than that, did you do other types of
2 investigation?

3 A. No. Early on in the case and probably when Ms.
4 Hodson first got incarcerated, she did give me contact
5 information I think by letter because some of the discussion I
6 always have is do you have anybody you want to call as a
7 witness. Do you have anybody we need to talk to. She did
8 give me information for individuals that she felt would
9 support her as being a good mother. Basically character
10 witnesses. And we discussed that information, how we could
11 possibly use that at trial. I indicated to Ms. Hodson that
12 the State had these neighbors here who would try to bring up
13 bad character evidence. I told Ms. Hodson that I would move
14 to try to have that evidence suppressed meaning the neighbors'
15 statements about other bad acts and kind of her bad character
16 and that if I was successful with that, then we could not then
17 introduce evidence of good character because that would open
18 the door back up for the State to bring in all the testimony
19 from neighbors saying she wanted to throw the child against
20 the wall.

21 What happened was, that was very early on. That
22 probably was in early 2013 when Ms. Hodson gave me that
23 information here. If we fast forward to 2016 after Ms. Hodson
24 enters her plea and the motion to withdraw her plea is denied
25 by the Court here, she did once again ask me could I call

1 these individuals to her sentencing at that point. At that
2 point the contact information that Ms. Hodson had for these
3 individuals was no longer, I could no longer get in touch with
4 these people with the same contact information which Ms.
5 Hodson had because she had been locked up for three years at
6 that point.

7 Q. Her good friend and roommate Erin, did she know her
8 last name at that time?

9 A. I want to say yes, because she would have sent it to
10 me in a letter. But I think she knew the last name at that
11 point. When she first gave it to me, she knew the last name
12 at that point.

13 Q. Okay. Other than that, did she give you other
14 leads?

15 A. She did. The only other thing we worked on, she did
16 indicate that there was other well visits that the child would
17 have made here, so we subpoenaed at least two other pediatric
18 places to see whether or not there were well visits made
19 because that was important as relates to the healing fractures
20 because we wanted to know whether the child had been to like
21 the six weeks checkup prior, but we could not find any
22 information from any other providers that the child had been
23 to a previous checkup that we needed to get here.

24 Q. Did the State allege that she had not taken her
25 daughter to get medical care since her birth in those ten

1 weeks?

2 A. Correct.

3 Q. Did you find any independent evidence that she had
4 done that?

5 A. I have in my file, I want to pull it up here because
6 I did not find information that she had took the child to
7 anywhere so I want to make sure I'm correct as to where we
8 checked here.

9 Q. Okay.

10 A. Ms. Hodson had indicated to me that she may have
11 taken the child to Eau Claire Cooperative Health Centers. We
12 subpoenaed them and that would have been Batesburg/Leesville
13 Pediatric and we received back -- This would have been - we
14 subpoenaed them looks like on August 25th, 2015 and we
15 received back on August 28, 2015 that, it says, and the
16 patient's name is [REDACTED] Minor 1, date of birth August 2 - I'm
17 sorry. Not date of birth. Date August 20th, 2015. It says,
18 that after a search of our file we could not find any record
19 of the above mentioned patient had been seen or treated there
20 at Eau Claire Cooperative Health Centers. I think we might
21 have checked one other place just to make sure there was no
22 other well visits that the child made. I don't see that in my
23 file. I think there was one other place we checked to see
24 whether or not the child made a six weeks well visit.

25 Q. Okay. So that was how many visits?

1 A. Well, the child was, I think at the time the child
2 passed would have been only ten weeks old. I think the child
3 would have only had one well visit, if I remember correctly,
4 after being discharged from the hospital.

5 Q. Were you able to corroborate that one?

6 A. No. I was not able to find any evidence that the
7 child had been to any other well visit checkup.

8 Q. Did you personally meet with anybody to discuss the
9 case or did you have someone else do it on your behalf?

10 A. No. I didn't question anybody about it.

11 Q. Did you have anybody do it on your behalf?

12 A. No.

13 Q. Okay. Did you feel it was important to her case to
14 interview specific people?

15 A. The only people that probably could have been
16 interviewed were the neighbors that law enforcement had
17 already interviewed here. There was no indication that those
18 neighbors that law enforcement had already interviewed would
19 say anything different than what they initially said. I mean,
20 out of an abundance of caution you could always double check
21 with those witnesses to make sure they're not gonna change
22 their story, but there was no - especially when I got the
23 report from the investigator that the co-defendant had hired,
24 we followed up with those people and they said the same thing,
25 so there was no need to follow up with them a third time.

1 Q. Okay. Did you ever give her a specific number, a
2 sentence that she would get?

3 A. Never gave her a guarantee. By that time I had been
4 doing this for seven years. I know enough not to ever
5 guarantee what a judge is gonna do because you never know what
6 a judge is gonna do. My conversation to Sara would have been
7 something to the effect of she's charged with a charge that
8 carries 10 to 20 and an additional charge that carries up to
9 10 years. The judge could give them consecutive and give her
10 30, but that's not likely based on the fact that she's
11 pleading guilty and taking some responsibility of relieving
12 the State of the burden of having to try the case here. So my
13 conversation with her would have been something to the effect
14 that we can go in there, they're gonna ask for 20, I mean the
15 State's gonna ask for 20, we're gonna ask for 10 and hopefully
16 the judge meets somewhere in the middle.

17 Q. Right. Did you promise that?

18 A. Didn't promise that. No.

19 Q. All right. Did you explain to her that it would be
20 up to the judge though?

21 A. Yes.

22 Q. Okay. Did you tell her she could file for a
23 sentence reduction immediately?

24 A. No. And I'm not even sure what that is. My
25 conversation with her would have been that she could file of

1 course for an appeal or a PCR. That's my standard
2 conversation after any sort of plea. I would tell her, look,
3 if you're not satisfied with the result here, you have ten
4 days to file a notice of intent to appeal. Just let me
5 know.

6 Q. And she did appeal it, didn't she?

7 A. She did. And that you have a certain period of time
8 to file for a PCR as well. I would have told her that.

9 Q. Okay. Did you ever try to talk to Mr. Hodson in the
10 case?

11 A. I never talked to him personally as he said on
12 direct. I actually spoke with his attorney Mr. Madsen because
13 I know him personally here. Because he's a represented party
14 I can't talk to him directly. I can only talk to his
15 attorney. His attorney, as Mr. Hodson indicated, would not
16 allow me to talk to him. He told me that it was his legal
17 advice that his client not speak with me or be supportive in
18 his wife's case.

19 Q. Was that because they were co-defendants?

20 A. Yes.

21 Q. In your experience in criminal defense do you
22 typically run into issues of unwilling co-defendants?

23 A. Yes.

24 Q. Okay. So his answer to you was basically don't talk
25 to my client?

1 A. Yes. As he testified, I think Ms. Hodson might have
2 testified about this as well, Ms. Hodson gave me the letters
3 that he had wrote her in the previous two and a half years.
4 None of those letters indicated any sort of exculpatory
5 statements. He never said in those other letters that he sent
6 that, you know, what he said in the letter after he had
7 already been sentenced.

8 Q. All right. Based on -- Do you know how many letters
9 that might have been?

10 A. I have some of them and Sara I think might have, may
11 have not kept them all. What she's given me is, she's given
12 me 17 of them and like I said, I don't think she kept them
13 all, but she gave me 17 letters that Jordan wrote her while
14 she was incarcerated.

15 Q. Okay. Why did she give you those letters?

16 A. She just wanted me to have them here. She didn't
17 say specifically what -- Like she said in direct here, the
18 letters were just kind of this banter between those two,
19 nothing really - nothing that - no attempt to exonerate her
20 was made in any of those prior letters.

21 Q. And you made that determination based off of your
22 review of the letters?

23 A. Yes. And in talking with Sara about them. She read
24 them before giving them to me. She never said look, Mr.
25 O'Neil, there's some information in these letters that the

1 co-defendant said I didn't do this. She just kind of said
2 these are the letters he's been writing me.

3 Q. Okay. What was your position on going to trial and
4 calling Mr. Hodson as a witness?

5 A. At that point I didn't think it would be productive
6 to call him. Prior to him writing her the letter in January,
7 I had no indication that calling him as a witness would be
8 productive in her trial. It was my understanding from talking
9 with his attorney because he pled guilty before Sara pled
10 guilty, it was my understanding that he was doing that in an
11 attempt to cooperate with the State here by pleading guilty
12 first and then he pled guilty and Sara's case was still set
13 for trial, so it was my understanding at that point that he
14 would testify at her trial.

15 Q. Okay.

16 A. I say testify against her for the State at her
17 trial.

18 Q. Okay. So when you got this letter that we have
19 referenced here today from January 20th, 2016, did you receive
20 that letter or did Ms. Hodson?

21 A. I didn't receive the letter. Ms. Hodson received
22 the letter. I think she actually received two letters from
23 Jordan. If I remember, I think there were two envelopes that
24 were stapled together, but I only received one of the letters,
25 but it was after she pled guilty and when I was just going to

1 talk with her in the interim while we were waiting on
2 sentencing here and then she gave me the letter and at that
3 point we filed the motion to withdraw her plea at that
4 point.

5 Q. Okay. I'm gonna show you this and this is from the
6 record on appeal, page 26, and if you look at the center
7 portion, is this the letter that you're referring to from
8 January 20th, 2016?

9 A. Correct.

10 Q. This is the letter that both Mr. and Ms. Hodson
11 discussed today on the stand?

12 A. Correct.

13 Q. A portion of this letter that you thought -- Did you
14 believe that this letter was exculpatory?

15 A. I believe this letter was not totally exculpatory in
16 the sense that I believe that the theory of the State's case
17 was wider than what Mr. Hodson was trying to alleviate Sara's
18 responsibility for. This letter was attempting to say that
19 Sara was not there on the night that the meth was cooked in
20 front of the child. I think the State's theory was wider than
21 that; that the child had been harmed in a much longer window
22 than just that particular night.

23 Q. Okay. So the events he's referring to here occurred
24 the night before the child's death?

25 A. Correct.

1 Q. And you believe that -- How did you evaluate this
2 compared to the autopsy report from both your expert and the
3 State's?

4 A. Well, I believe, like I said, depending on how
5 narrowly or broadly a jury would interpret the substantive
6 homicide by child abuse statute, I believe a jury could read
7 that letter and/or hear Jordan testify and believe that Sara
8 was not there on the night before when the meth amphetamine
9 was cooked. But I also believe that the jury could still
10 convict her even if she was not there on the night that the
11 meth amphetamine was cooked. The jury could still convict her
12 of the 20 years to life portion of the homicide by child abuse
13 statute even if Mr. Hodson testified at her trial similar to
14 what that letter stated.

15 Q. Is that due to the fact that the autopsy reports
16 indicated that the child died over an extended period of
17 time?

18 A. Correct.

19 Q. Or suffered over an extended period of time?

20 A. Yes.

21 Q. Did you discuss this issue with Ms. Hodson?

22 A. I discussed it with her at that time and she still
23 wanted to withdraw her plea so that's what we did.

24 Q. Okay. And Judge Early denied that?

25 A. Yes.

1 Q. At the plea offer, can you go into that? What were
2 the terms of it?

3 A. Basically the terms of the plea was that they would
4 dismiss the homicide by child abuse substantive count that
5 carried 20 to life here and let them plea to the unlawful
6 conduct toward a child and then the 20 year aiding and
7 abetting charge.

8 Q. Okay.

9 A. And there was two other charges that were dismissed.
10 One was possession of meth, and I cannot remember what the
11 other charge was.

12 Q. Whose decision was it to plead guilty?

13 A. It's always the client's decision to plead guilty.
14 That would have been Sara's.

15 Q. If she had decided she wanted to go with a trial,
16 would you have done that?

17 A. Yes. I would have been ethically bound to do
18 that.

19 Q. Did you explain that to her?

20 A. Yes. My conversation, and I say this all the time
21 with every client I always have, I can't do a day of the time
22 for you. So you've got to make a decision whether or not,
23 what you're gonna do, whether or not you're gonna go to trial
24 or whether or not you're gonna plead. Ultimately you got to
25 live with the consequences. I can't. A lot of times clients

1 try to put it back on me as their attorney and say, Mr.
2 O'Neil, what should I do? And my answer is always I can't
3 tell you what you should do. I can tell you what's likely to
4 happen based on what you choose to do.

5 Q. Okay. And were you there when she waived her trial
6 rights during that hearing?

7 A. Yes.

8 Q. And the witnesses that she gave you that she wanted
9 you to call at her sentencing hearing, tell me again what you
10 did in trying to contact them?

11 A. If I remember correctly, she wrote me a letter with
12 those individuals' contact information on it early in the case
13 here and I think I attempted to call the number that was in
14 the letter and that number was either not working or not
15 receiving calls at that point.

16 MR. SMITH: All right. Thank you. No further
17 questions, Your Honor.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MS. McMAHAN:

21 Q. Did you have any conversations with the Solicitor
22 prior to the new charges being brought of her saying I'm gonna
23 bring these new charges?

24 A. She always talked about there was a possibility that
25 she would indict her on the new charges, but we didn't know

1 that for sure until September of 2015.

2 Q. So when you found out about the new charges, you
3 told her?

4 A. Yes. I don't think -- Sara wasn't indicted until
5 September 13th, 2015, and we were on the trial docket looks
6 like maybe around the middle of November so about two
7 months later.

8 Q. Did the Solicitor give you any heads-up that they
9 were gonna do that and put her on the trial docket?

10 A. Nobody told me they were putting her on the trial
11 docket until after she got indicted.

12 Q. Okay. So were you kind of like taken like aback a
13 little bit when it was on the trial docket or were you at that
14 point like let's - we've got to get this ready?

15 A. Well, we were already getting it ready. We started
16 getting it ready around in July because we had got some rumors
17 that they may do that here. If I look at my notes here we
18 started trial prep looks like around July of 2015.

19 Q. I believe you testified earlier that you had a
20 meeting with her in July and it said trial prep on it?

21 A. Yes.

22 Q. Did you ever give Ms. Hodson a copy of the
23 discovery?

24 A. I will tell you, my normal practice is no, but I
25 don't see any notes. Because especially in a file this large

1 here, my normal practice is no, because I don't want - it
2 could be used against her. I don't want to inform anybody
3 that could see it and decide that, you know, Sara had suddenly
4 confessed to her about it. So I don't recall one way or the
5 other but my normal practice is no, not to give a copy of it
6 to the client.

7 Q. But would you sit and go over all of it with her?

8 A. Yes. Because actually Sara was on bond for the
9 first six months so we would have went over some of the stuff
10 that we had while she was out on bond in August.

11 Q. At any point did Ms. Hodson ever tell you that she
12 thought her child had been sick for a few days or did she just
13 believe that her child was sick that one day when they took
14 her to the doctor?

15 A. I do not recall. I don't want to say one way or the
16 other because I don't recall off the top of my head.

17 Q. I think you might have testified to this earlier. I
18 apologize if it's a repeat. Did you discuss the elements of
19 the charges with her?

20 A. Yes.

21 Q. What was her biggest frustration with all of it
22 besides obviously the time period taking to get it --

23 A. Her biggest frustration was kind of what she alluded
24 to earlier, that she didn't feel like she did anything to the
25 child and she couldn't understand if she didn't do anything to

1 the child and nobody was saying that she harmed the child
2 physically, how could she be charged with homicide by child
3 abuse.

4 Q. So kind of back to that overbroad thing?

5 A. Yes.

6 Q. So the State's issue was not that she did anything
7 directly, but the fact that she didn't do something to
8 intervene was her issue?

9 A. Yes.

10 Q. Okay. And how come it ended up becoming an Alford
11 guilty plea and not something else?

12 A. Because I think she could never bring herself to
13 admit that she did anything wrong as it relates to the child.
14 And I told her if she pled guilty, she would have to say those
15 words, that she was guilty of that and she never wanted to say
16 those words or come to that conclusion.

17 Q. But she could admit that the State could prove her
18 guilty, but that she didn't want to admit that she did it?

19 A. Correct.

20 Q. And did you ever show Ms. Hodson exactly what the
21 autopsy report said? Like did you show her the actual report
22 or did you just have a discussion with her about what was in
23 it?

24 A. I know we had a discussion about what was in it. I
25 don't know for sure whether I actually showed - I read it -

1 showed her the report here. If I did, it would have been
2 before she got incarcerated in jail when she came out and was
3 out on bond.

4 Q. Did you ever tell her that you had hired Ms.
5 Collins?

6 A. I did. In fact, I think I have emails where Sara
7 would call my office checking on the status of the expert here
8 because there was some back and forth about getting the expert
9 hired here.

10 Q. Ultimately you said your expert, what your expert
11 found was kind of consistent with the State's theory --

12 A. Correct.

13 Q. -- more or less?

14 A. Yes.

15 Q. Did Ms. Hodson ever tell you about Sergeant Ellis
16 ever promising a certain amount of time or a charge or
17 anything?

18 A. I do remember her saying that.

19 Q. Was that the impetus for the meeting with him?

20 A. I think that and early on I think after the meeting
21 with Sergeant Ellis I sent an email to the Solicitor's Office
22 telling them this was my client's version of what happened
23 here. Basically her version of what happened was that Jordan
24 was abusive to her and somewhat to the kids as well.

25 Q. So would that have been your defense if you had to

1 have gone to trial?

2 A. It would have been.

3 Q. Were there any other defenses that you could have
4 thought of?

5 A. That would have been our main defense. The other
6 defense would have been, of course, that if we could have
7 found evidence that the child had been to a well visit checkup
8 and none of the medical experts had noticed anything wrong
9 with the child, then how could Sara as a non medical person
10 here have known that the child was in distress prior to taking
11 the child to the doctor on the day before she passed away.

12 Q. Okay. So that was what you were struggling with was
13 trying to find these doctors' visit records?

14 A. Yes.

15 Q. Did Ms. Hodson ever tell you like where she took the
16 child?

17 A. Yes. She said that Batesburg/Leesville Pediatrics.
18 That's where I got that from. She told me that. That's where
19 she thought the child had went to.

20 Q. Okay. Did you get like a HIPAA waiver to get all
21 those records if there were any?

22 A. I didn't get HIPAA. We subpoenaed
23 Batesburg/Leesville Pediatric and they sent us a report back
24 saying that the child was not a patient there.

25 Q. Were there any other pediatric doctors nearby that

1 maybe she could have gone to?

2 A. There was one other, but I cannot find where that -
3 I cannot find the -- My memory tells me there was one other
4 place we checked but didn't find anything. I cannot remember
5 what that place was.

6 Q. So without some sort of, I guess, narrowing down of
7 where this child could have gone, you didn't, I guess, want to
8 start like calling every pediatrician between here and Irmo.--

9 A. Yes.

10 Q. -- and wherever?

11 A. Yes.

12 Q. What did she tell you about Sergeant Ellis promising
13 her something, do you remember?

14 A. It's more of a general statement like that he would,
15 the sergeant would help her out, something to that effect. I
16 don't want to say the specifics of it because I don't know
17 what the specifics was, but it was a general statement to that
18 effect here.

19 Q. Do you remember what your meeting with him what
20 transpired then?

21 A. I think as it relates to my meeting with him, he
22 basically stated you need to talk with the Solicitor. Of
23 course, I don't have, I say I, the sergeant said that I don't
24 have the ability to kind of determine what happens with the
25 case. You needed to talk with Suzanne over in the Solicitor's

1 Office and kind of lay out for her what you laid out for me.

2 Q. That's why you sent the email?

3 A. Yes.

4 Q. You said that she had Monty Caughman for her DSS
5 attorney. Did you and Monty ever get together and discuss
6 kind of her DSS case or how that might relate to her?

7 A. Yes. And I talked to Lisa Hanson the guardian a
8 couple times.

9 Q. Did you believe that Lisa or the other friend Kim,
10 would they have been helpful at sentencing in sort of any type
11 of mitigation or did they even indicate that they wanted to be
12 there?

13 A. I actually -- Sara thought Lisa the guardian would
14 be helpful for her. I actually spoke with Lisa. At that
15 point she was not the guardian supervisor. Now she's the
16 guardian supervisor. But at that point I spoke with her to
17 ask her would she be willing to testify. She said in her role
18 she would not feel comfortable testifying at a criminal case
19 here.

20 Q. Do you mean like testifying at the guilty plea as
21 far as mitigation or like in a trial situation?

22 A. In a mitigation sense.

23 Q. And the other friend you said you attempted to call
24 but there was either like no voice mail set up or they weren't
25 taking calls or something?

1 A. Sara gave me probably two or three people like lay
2 people like friends and people who were in and out of the
3 house during that time here. So it would have been -- One
4 person that she said lived in and out of the house and two
5 other kind of people who were not in the house but kind of
6 friends and kind of knew her here and nobody in the contact
7 information that she gave me early on could I still get in
8 contact with later on in the case.

9 Q. So the information that Jordan gave today, would
10 that have been helpful to your case if you had been allowed to
11 talk to him back then?

12 A. The information about?

13 Q. That Jordan testified to today, would that have been
14 helpful to your case had you been allowed to talk to him, or
15 as far as like mitigation maybe?

16 A. In my conversations with Sara and kind of knowing
17 Sara, I think that, I personally think that it probably would
18 have changed her mind as relates to going to trial. Now, do I
19 personally think it may have changed the outcome? Maybe not,
20 but I think for her knowing Jordan would testify favorably to
21 her would have probably persuaded her to go to trial.

22 Q. Okay. So based on what Jordan said today, it's
23 something you could have cross examined him about at the trial
24 if you had known that that's what he would have testified
25 to?

1 A. Yes.

2 Q. Okay. And did you ever consider filing for a speedy
3 trial?

4 A. No.

5 Q. Why is that?

6 A. Because in these cases, in my opinion the case, the
7 longer the case is, it's not getting any better for the State
8 and at that point Sara was only charged with the 10 year
9 unlawful neglect of a child charge. We never discussed having
10 a speedy trial in that sense because I didn't see the benefit
11 for her. It wasn't like she wanted to get out. She just
12 wanted the thing resolved.

13 Q. So sort of a double edged sword I guess? Like you
14 could file for a motion, but you could end up with a worse
15 outcome?

16 A. In the sense that filing for a speedy trial would
17 not have made the case better for Sara at trial. It wouldn't
18 have made her trial any better.

19 Q. You said earlier that you would have discussed
20 filing a PCR appeal. Did you ever discuss filing a motion to
21 reconsider the sentence?

22 A. I don't think so.

23 Q. Would you have filed one -- Do you know what the
24 basis would have been for a new motion to reconsider the
25 sentence? Would there have been a basis?

1 A. I'm trying to think.

2 MR. SMITH: Objection, Your Honor. I believe that
3 that question is aimed at an allegation that's not been
4 raised today.

5 MS. McMAHAN: Well, she asked for a sentence
6 reduction which I believe that she meant a motion to
7 reconsider the sentence. She is obviously a lay person
8 so I believe I should be able to cross examine on that.

9 THE COURT: You may proceed. Overruled.

10 BY MS. McMAHAN:

11 Q. I'm sorry. Mr. O'Neil, could you continue?

12 A. Repeat the question for me.

13 Q. You said you didn't discuss filing a motion to
14 reconsider the sentence for her. I asked if you had that
15 discussion and you had filed it, were there any issues that
16 you could have brought up in a motion to reconsider that you
17 think would have made the motion valid?

18 A. I don't know off the top of my head because normally
19 if I make a motion to reconsider, it's because there was some
20 evidence that I have now that I didn't have at the time of the
21 sentencing and I think the letter that we had we had at the
22 time of the sentencing and we kind of addressed that then so I
23 don't know if I received any information after Sara was
24 sentenced that I didn't have that in my opinion warranted a
25 motion to reconsider.

1 Q. So versus the motion to withdraw which was before
2 she was sentenced but after she pled guilty?

3 A. Yes.

4 Q. Besides the two letters that are in the record on
5 appeal which there's one on page 26 and then the other one on
6 page 28, of all the letters that she sent you were these the
7 two that you felt were the most relevant in the motion to
8 withdraw?

9 A. Yes. Because the other letters were just kind of
10 banter back and forth between, you know, husband and wife and
11 none of them dealt with anything.

12 Q. So it was more like an inside look into their
13 relationship between each other via letter but then the other
14 letters were more relevant inasmuch as, you know, like the one
15 on page 28 I think there's something in there like I never saw
16 you abuse our children?

17 A. Yes.

18 Q. And then the one on 26 there was some reference you
19 didn't know what I was doing at Ivan's and that kind of
20 thing?

21 A. Yeah. I think the reason for keeping the other
22 letters was to show that if Jordan testified at her trial
23 adverse to her, that that wouldn't be consistent with him
24 communicating with her on a cordial basis the whole time they
25 were in jail. So we were planning on using those letters to

1 say, look, if Jordan is gonna come up here and testify against
2 you, why was he talking with you in these letters for the last
3 three years.

4 Q. And was that a strategy that you discussed with her
5 that if you go to trial, these are the strategies that we can
6 use?

7 A. Yeah. She asked me basically kind of what can we do
8 with the letters and that was kind of one of the things we
9 could do with the letters. That's why she gave them to me to
10 keep them.

11 Q. So kind of like the reverse of the neighbors'
12 letters where like these aren't really relevant to this
13 particular issue when your child died because they happened in
14 the past. These are issues related to if he testifies against
15 you, we can use it to be like, oh, but now you have a problem
16 with her, but here's these 17 letters that say otherwise?

17 A. Yes.

18 Q. Did you ever get ahold of the letters that she might
19 have written back to him?

20 A. I don't know. Of course, I asked her did she write
21 letters back. I don't - I can't remember if Sara told me she
22 didn't write him back. His attorney never gave me letters
23 that she wrote him so I don't know whether or not she wrote
24 him back at the same frequency he wrote her or even if he kept
25 them, but I never saw those letters that she wrote him.

1 MS. McMAHAN: Okay. Nothing further, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. SMITH:

5 Q. Mr. O'Neil, you heard Mr. Hodson's testimony
6 today?

7 A. Correct.

8 Q. I believe you testified a minute ago that you might
9 have considered using him as a witness at trial if you had
10 known he was going to say what he said today?

11 A. Yes.

12 Q. But you didn't know that then, right?

13 A. No.

14 MR. SMITH: Thank you. I have no more questions,
15 Your Honor.

16 THE COURT: Thank you, sir. You may step down.
17 Anything further from the State?

18 MR. SMITH: No, Your Honor. That's the State's
19 case.

20 MS. McMAHAN: Your Honor, may I have a minute just
21 for possible rebuttal?

22 THE COURT: Sure.

23 MS. McMAHAN: Your Honor, if we may recall Ms.
24 Hodson briefly just for brief reply.

25 THE COURT: You may. Sure. Ms. Hodson, you're

1 still under oath.

2 THE WITNESS: Yes, sir.

3 Thereupon,

4 SARA HODSON

5 after having been previously first duly sworn, testified
6 further as follows,

7 REBUTTAL EXAMINATION

8 BY MS. McMAHAN:

9 Q. What was the new information that you heard today
10 that you had never heard before?

11 A. That her autopsy that she would have been sick for
12 days.

13 Q. So this was the first time you have ever heard that
14 information about what the doctor from the autopsy had found
15 about her?

16 A. Yes, ma'am.

17 Q. When you would call up Mr. O'Neil's office, who
18 would you talk to most of the time?

19 A. His paralegal.

20 Q. So the majority of your information on your case
21 didn't necessarily come through Mr. O'Neil directly but
22 through the paralegal?

23 A. The paralegal.

24 MS. McMAHAN: I have nothing further, Your Honor.

25 MR. SMITH: Just one moment please, Your Honor.

1 THE COURT: All right.

2 MR. SMITH: Thank you. No more questions.

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

4 MS. McMAHAN: Nothing further from the applicant,
5 Your Honor.

6 MR. SMITH: Your Honor, I ask that my witness be
7 excused.

8 MS. McMAHAN: No objection.

9 THE COURT: Without objection you may be excused.

10 MS. McMAHAN: Your Honor, may we have a few minutes
11 before we do brief argument?

12 THE COURT: Sure. We'll take a five minute recess.

13 (Short break.)

14 THE COURT: Back on the record.

15 MS. McMAHAN: Your Honor, briefly, I have a case up
16 on my phone that I just wanted to bring up. So basically
17 there's some, you know, argument back and forth about
18 this after discovered evidence mostly regarding Jordan
19 Hodson's testimony that was given today. There is a case
20 Jamison v. State. It's 410 SC 456 basically says that
21 newly discovered evidence was discovered after entry of
22 the plea and in the exercise of reasonable diligence
23 could not have been discovered prior to the entry of the
24 plea. In this case you have Mr. O'Neil saying that Mr.
25 Madsen wouldn't have let him talk to him anyway which, I

1 mean, is normal practice when you have two co-defendants
2 and that, two, the evidence is of such weight and quality
3 that under the facts and circumstances of that particular
4 case the interest of justice requires that the plea be
5 vacated.

6 So in this situation we have Jordan who's come here
7 today, he's testified that, you know, Sara really didn't
8 have anything to do with the cooking of the meth or
9 exposing her children to any of that, and that, you know,
10 he would have basically testified to all of this had he
11 been called, and Mr. O'Neil who said, well, you know, I
12 wouldn't have known of any of this because Mr. Madsen
13 didn't give me any of this information. I didn't have
14 access to Jordan to know it. Knowing that I could have
15 called him as a witness at trial and it might have been
16 an impetus to change Mr. Hodson's mind so that it would
17 be a trial situation and no longer a plea because they
18 could have asked Jordan all this information had they
19 known about it at the time. So that's really kind of the
20 basis for us today.

21 Also, you know, it kind of ties into the amendment
22 with the mitigation and all of that that had they known
23 that they could have possibly used him at mitigation even
24 though they were both sentenced at the same time and
25 that's really kind of the basis for our whole PCR is

1 really that issue with Jordan.

2 THE COURT: All right.

3 MR. SMITH: Okay. Your Honor, just as an initial
4 matter, I will talk about the after discovered evidence
5 first which my understanding has been presented in the
6 form of this letter because this is the letter, this
7 letter was the basis of Ms. Hodson's motion to withdraw
8 her plea and when that was denied, it was also the basis
9 of her appeal and I'll point the Court to the fact that
10 the Court of Appeals allowed her to proceed with her
11 appeal and her issue on appeal in the brief submitted by
12 John Strong which is an Anders Brief argues that she
13 would not have entered her plea had she known about this
14 evidence and his conclusion is by reason of the foregoing
15 argument the Court should reverse and remand back for a
16 new trial and that appeal was dismissed. So as an
17 initial matter I would say that that should be dismissed
18 outright because the Court has already ruled on that.

19 Additionally, I would also draw the Court's
20 attention to the fact that the statute that deals with
21 after discovered evidence requires that the application
22 alleging after discovered evidence be filed within one
23 year of discovery or one year after the date on which it
24 could have been discovered due to reasonable diligence.

25 Your Honor, there was testimony that she received

1 this letter in 2016. That was also the date of the
2 letter. She is way past that deadline. I mean, I
3 understand since then maybe she had her appeal going, but
4 I think that the fact that we have this statute of
5 limitations on after discovered evidence and the fact
6 that the Court of Appeals has already affirmed the
7 decision by the Circuit Court to not allow her to
8 withdraw her guilty plea should bar her from being able
9 to pursue this further. But then getting to the merits
10 of it, I don't believe that this letter constitutes after
11 discovered evidence and I would point the Court to the
12 State's return to Ms. Hodson's application and there are
13 five things that the applicant must show to get a new
14 trial on after discovered evidence and the first is that
15 it would probably change the result if a new trial was
16 had.

17 On the merits of it I believe the testimony put
18 forth today is such that she can't prevail on that issue.
19 The State's case and the autopsy report from both the
20 State's expert and the private expert that Mr. O'Neil
21 hired showed that the child's death was due to a
22 combination of events and would have been over an
23 extended period of time. In other words, it's not just
24 that the child had just had meth and died or that the
25 child was dropped in the shower and died. It was

1 something that happened over a period of hours, possibly
2 days. So I don't see how this would change the result at
3 trial because the letter was dealing with an event that
4 happened the day before or maybe a few hours. I'm not
5 sure. But it was never part of the case that the fact of
6 whether or not she was present while meth was being
7 cooked was really a part of the State's case.

8 Your Honor, if you look at the evidence in the case,
9 it looks clear to me that she still likely would have
10 been convicted and the State argued that also in the
11 hearing on the motion to withdraw, that whether she was
12 present while the meth was being cooked was irrelevant
13 because the letter also pointed out that she still
14 returned and picked up Mr. Hodson and took him home.

15 So the basis of the case was never that she was
16 present there while the meth was being cooked. Perhaps
17 that was an aspect of it, but not an essential part of
18 the State's case. And Mr. O'Neil's testimony today about
19 his evaluation of the case and his discussions of it with
20 Ms. Hodson I believe confirms that they had serious
21 doubts that they would be able to prevail on this defense
22 at trial in light of the autopsy report showing the
23 duration of the suffering of the child. So I don't see
24 how it changes the result at trial.

25 This evidence, I guess it has, whether it's been

1 discovered since trial is element two. I submit that
2 this is not newly discovered evidence; that perhaps the
3 letter didn't exist until after trial, but Ms. Hodson
4 definitely could have called her husband as a witness at
5 trial and the fact of the matter is they weren't sure
6 what he would say because they couldn't talk to him
7 because he was a co-defendant. His own counsel advised
8 him not to talk to them. Their interests in this case
9 were not necessarily aligned at the time. He may be here
10 testifying to something different today, but at the time
11 there were sure concerns with his attorney and Mr. O'Neil
12 that they definitely did not have the same interest and
13 they could have called him as a witness at trial. They
14 didn't know what he would say.

15 So, Your Honor, to me that indicates that they did
16 know that his testimony would be evidence at trial if he
17 were called. The issue is they didn't know whether it
18 would be favorable evidence or evidence harmful to their
19 defense and that's not after discovered evidence. That's
20 a value judgment based on is it good or bad evidence and
21 that's a strategic decision and one that Ms. Hodson made
22 and ultimately she waived away her right to find out what
23 he would have said at trial when she entered a plea. And
24 I'll point out that I don't believe his testimony was
25 credible today because, Mr. Hodson's testimony because he

1 testified today that he took all the blame for it. It
2 was all on him, but he entered an Alford plea. He's
3 never taken responsibility for this.

4 So at the time even after he had entered his plea, I
5 don't see how they could have reasonably concluded that
6 he would have been a favorable witness because he was
7 still maintaining his own innocence. So that goes to
8 whether it was evidence discovered. I believe they knew
9 that there was evidence there, but there was a strategic
10 decision made there.

11 Also that goes to element three that for it to be
12 after discovered evidence it couldn't have been
13 discovered, with reasonable diligence could not have been
14 discovered before trial. I mean, obviously he was
15 present. They knew that he knew facts about the case.
16 Whether they knew what he would say, that doesn't go to
17 whether they knew that he had testimony he could present
18 about what happened. And I'll also offer the fact that
19 what he's written in this letter is not really material
20 to the issue of guilt or innocence and that was their own
21 determination of that because they didn't know, they
22 didn't believe that his testimony about whether she was
23 present when meth was being cooked would go to negating
24 elements of the statute because of the broadness of the
25 statute and the period of time in which the child would

1 have suffered leading up to death.

2 And there's a fifth element, merely cumulative or
3 impeaching. I'm not sure it's really relevant here. So
4 those are my arguments. I think she's barred from that
5 based on the law of the case and the statute on this and
6 to the merits of it. I think they fail on at least three
7 of the elements of after discovered. So that's the State
8 case on that.

9 As far as to her allegations of ineffective
10 assistant of counsel which I interpret as a different
11 claim than after discovered evidence, her allegations
12 that she didn't understand the sentencing or that he
13 didn't explain discovery to her, I believe his expansive
14 recall of information today is enough to show that he
15 thoroughly prepared her for trial on all facets of it.
16 It's true her case lasted a long time, but she was also
17 charged with serious offenses over a period of years
18 stemming out of an investigation dealing with a child's
19 death that had medical experts involved. It did take a
20 while, but I believe Mr. O'Neil's testimony today
21 confirms that he used the time wisely and continued the
22 investigation throughout building her case through the
23 use of experts and that he shared that information with
24 her and was preparing for trial, evaluating the case so
25 that they could build a defense and that ultimately they

1 decided it was probably to risky; that the State's case
2 would be too good; that the evidence wasn't necessarily
3 in her favor; and that the people she had put forth as
4 potential witnesses would not be helpful or either
5 couldn't be found whether in trial or mitigation. I
6 believe the Court has heard plenty of testimony on that
7 today.

8 So I think that's covering all the issues. That's
9 the State's case. Her allegations about not being
10 prepared are thoroughly refuted by the testimony today
11 and by the record for trial and then as far as the after
12 discovered evidence goes that she's barred from that and
13 loses on the merits anyway even should the Court get to
14 that. And on the issue of reconsidering the sentence, I
15 don't believe there's any professional obligation to file
16 one of those. And I also point out to the Court that he
17 did file a motion to withdraw and filed a notice of
18 appeal on her behalf. That indicates to me in the record
19 that she wanted an appeal and so I don't see any
20 prejudice there and so, Your Honor, the State's case is
21 the after discovered evidence claim should be dismissed
22 without consideration, but even then she should lose if
23 the Court reaches the merits. In all of the claims of
24 ineffective assistance of counsel she's failed to show
25 any prejudice and therefore she can't show any

1 deficiency. That's the State's case, Your Honor.

2 THE COURT: Thank you.

3 MS. McMAHAN: Your Honor, in regard to the statute
4 regarding the one year, number 1, you cannot have a
5 direct appeal and a PCR pending at the same time. So
6 while the appeal is pending related to the letters which
7 as you know issues on direct appeal are totally different
8 than issues in PCR because the issue in PCR is whether or
9 not you were ineffective or not. Direct appeal is a
10 legal issue. She couldn't have filed a PCR because the
11 direct appeal was still pending so once the appeal was
12 done, she did file a PCR application and it was alleged
13 in there.

14 In regards to whether the Haddon case should apply
15 which is from 1983 or the Jamison case that I cited from
16 2014, the Jamison case specifically says this is the rule
17 for after discovered evidence as it applies to guilty
18 pleas. Haddon applies strictly to trials. So we're not
19 talking about a trial situation here. We're talking
20 about a guilty plea situation and Jamison is the
21 controlling issue on that and those two factors are the
22 ones that should be taken into consideration, the two
23 that I read out earlier.

24 So I lost my train of thought on the other point.
25 Give me one second. I think that pretty much covers my

1 main arguments. Oh, that we wouldn't have known what
2 Jordan was gonna say until he came and said it today and
3 based on what Mr. O'Neil's testimony was regarding it,
4 that he wouldn't have been able to find out this
5 information because of Mr. Madsen obviously not allowing
6 him access to that person and his testimony not only just
7 corroborated what was in the letters but took it a step
8 further. So our point is that based on all of that,
9 based on the Jamison case the PCR should be granted.

10 THE COURT: All right. Let me go back to the
11 argument of the Attorney General and that is the issue of
12 after discovered evidence has already been ruled on.

13 MS. McMAHAN: In a direct appeal setting based on
14 those, but not based on the testimony from Jordan because
15 that's new. That's something that we got today.

16 MR. SMITH: Your Honor, may I address that point?

17 THE COURT: All right. Sure.

18 MR. SMITH: Okay. I would say despite I believe
19 lack of credibility to Mr. Hodson's testimony that he
20 accepts all guilt since he entered an Alford plea, he's
21 not a discovered witness. Mr. Hodson is not someone who
22 viewed an event from another building and his identity
23 was unknown until today. This was a co-defendant. He
24 can't be after discovered. He was a co-defendant. I
25 believe they were sentenced possibly at the same time and

1 there is one transcript. It was well known to them the
2 whole time that he could have been called as a witness.
3 It goes to a question of would he have been a good or bad
4 witness and they considered that.

5 MS. McMAHAN: Your Honor, that was my third point I
6 was gonna bring up. While Mr. Hodson testified yes, it
7 was an Alford plea, he also testified that he did what
8 his attorney told him to do which was to do an Alford
9 plea so he was doing what his attorney told him to do so
10 I think that goes to his credibility. Just because he
11 did an Alford plea doesn't mean that he wouldn't
12 eventually admit guilt, but that his attorney was like
13 let's do an Alford and that was his testimony. And also
14 you can't call your co-defendant as a mitigating witness
15 in your sentencing when you're both being sentenced at
16 the same time.

17 THE COURT: All right. After considering the
18 testimony and evidence presented as well as the
19 transcript and argument of counsel the Court finds among
20 other things that the testimony of trial counsel here
21 today was believable, was credible, and the Court accepts
22 the argument of the State on the issue of after
23 discovered evidence issue already being determined or
24 being the alternative the remaining arguments, but even
25 if it had not been, that what we heard is insufficient

1 and therefore the Court is compelled to find that the
2 applicant has failed to meet her burden of proof and the
3 application of PCR must be denied. Mr. Smith, will you
4 please prepare an order?

5 MR. SMITH: I will, Your Honor.

6 THE COURT: Court is adjourned until 9:30 tomorrow
7 morning.

8 MR. SMITH: Thank you, Your Honor.

9 WHEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 27th day of June, 2019.

11 I FURTHER CERTIFY that the forgoing 91 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 26th day of October, 2019.

17
18 By:s/Steven E. LeBlanc

19 Steven E. LeBlanc, Sr., R.P.R.
20 Eleventh Circuit Court Reporter
21 State of South Carolina.
22
23
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
2019 AUG -1 AM 10:03

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Sara Hodson, #367533,

Applicant,

v.

State of South Carolina,

Respondent.

Case No. 2018-CP-32-02878

ORDER OF DISMISSAL

This matter comes before this Court by way of an Application for Post-Conviction filed on August 21, 2018, by Sara Hodson (Applicant). The State (Respondent) filed its Return and Partial Motion to Dismiss on November 1, 2018. An evidentiary hearing in the matter was held before the undersigned on June 27, 2019, at the Lexington County Courthouse. Applicant was present and was represented by Ashley A. McMahan, Esquire. Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Jordan Hodson and Applicant testified on Applicant's behalf and E. Deon O'Neil, Esquire, (Counsel) testified on behalf of Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet her requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its October of 2013 term, the Lexington County Grand Jury indicted Applicant for unlawful conduct towards a child (2013-GS-32-03004). During its September of 2015 term, the Lexington County Grand Jury indicted Applicant for aiding and abetting homicide by child abuse (2015-GS-32-02368).

Counsel represented Applicant on these charges. Assistant Solicitor L. Suzanne Mayes of the Eleventh Circuit Solicitor's Office prosecuted the case on behalf of the State. On November 3, 2015, Applicant appeared before the Honorable Doyet A. Early and pleaded as indicted to both charges pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Judge Early accepted the Alford pleas and deferred sentencing. Thereafter, on February 5, 2016, Applicant moved to withdraw her pleas on the basis that her husband, who had been the codefendant in the case, had "recently provided favorable information through letters." After a hearing on the motion, Judge Early denied Applicant's motion to withdraw her plea. Thereafter, Applicant appeared before the Honorable William P. Keesley for sentencing. Judge Keesley sentenced Applicant to concurrent terms of imprisonment of ten years for unlawful neglect of a child and twenty years for aiding and abetting homicide by child abuse.

Applicant filed a timely notice of appeal. On March 10, 2016, pursuant to Rule 203(d)(1)(B)(iv), SCACR, Applicant filed her *pro se* explanation in which she argued that there was an issue that could be reviewed on appeal. In her explanation, Applicant raised the following issues:

1. I put in for a withdraw of my plea;
2. I received new evidence following the signing of my plea;
3. The solicitors [sic] witness statements should have not been allowed b/c they did not directly relate to the said charges; [and]
4. My attorney did not investigation or interviews for [sic] my behalf.

The South Carolina Court of Appeals allowed Applicant to proceed with her appeal on June 17, 2016. Thereafter, Applicant's appellate counsel, John H. Strom, Esquire, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), raising the following issue:

The trial court abused its discretion in refusing to allow [Applicant] to withdraw her Alford plea to unlawful conduct towards a child and to aiding and abetting homicide by child abuse where, after [Applicant] entered her plea, her co-defendant husband stated in letters written to her that he was prepared to testify

that she was not [sic] present when Minor 1 ingested a fatal amount of methamphetamine.

Following a review pursuant to Anders, the Court of Appeals dismissed Applicant's appeal and granted appellate counsel's motion to withdraw as counsel. State v. Hodson, Op. No. 2017-UP-371 (S.C. Ct. App. filed October 11, 2017). The Remittitur was issued on October 30, 2017.

CURRENT PROCEEDING

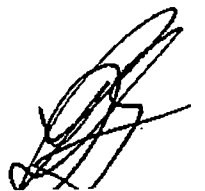
On August 21, 2018, Applicant filed an Application for Post-Conviction Relief, in which she made the following allegations:

1. Ineffective assistance of counsel;
 - a. I feel my attorney inadequately represented me a [sic] my best interest; and
 - b. My attorney Mr. O'Neil did not interview anyone on my behalf nor did he get a specialist to represent the defense in my case. He also I feel allowed the court to "rush" and pressure me into a decision which can be verified by reviewing the dates on my indictments and the date on my plea was accepted. Mr. O'Neil also told me that I would likely not receive more than 15 yrs (likely only 10 yrs) which played heavily into my accepting the plea agreement. And lastly Mr. O'Neil was negligent in informing me that I could immediately file for a sentence reduction.
2. Newly discovered evidence
 - a. I received a letter from my co-defendant after the plea acceptance stating he was fully responsible for the injury and I was unaware of my daughter being hurt.

On June 19, 2019, Applicant filed an Amended Post-Conviction Relief Application, in which she made the following additional allegations:

1. Ineffective assistance of counsel.
 - a. Counsel failed to call mitigating witnesses that would have resulted in a lesser sentence for the Applicant.

At the start of the evidentiary hearing, Respondent requested that Applicant specify for the record the grounds upon which Applicant would move forward at the hearing. Applicant



specified that she would be moving forward only upon the allegations specifically mentioned in the original and amended applications. Because those allegations are the only grounds upon which Applicant moved forward at the evidentiary hearing, all other grounds are deemed to be waived and will not be addressed in this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. See Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the

attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function

of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). “[W]hile most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty.” Alford, 400 U.S. at 37. Indeed, “[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.” Id. The Supreme Court in Alford noted:

That [the defendant] would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant’s advantage.

Id. at 30.

In essence, an Alford plea is a guilty plea, which carries the same penalties and punishments. State v. Herndon, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013). Furthermore, the entry of an Alford plea “has the same preclusive effect as a standard guilty plea.” Zurcher v. Bilton, 379

S.C. 132, 137, 666 S.E.2d 224, 227 (2008). Indeed, in South Carolina, "there is no significant distinction between a standard guilty plea and an Alford plea." Herndon, 403 S.C. at 93, 742 S.E.2d at 380.

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet her requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

Newly discovered evidence.

The Uniform Post-Conviction Procedure Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant seeking relief based on newly discovered evidence after he has pleaded guilty must show:

[T]hat (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilty encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Jordan Hodson testified that he is Applicant's husband and that he was her codefendant in the underlying criminal case. He testified that he wrote letters to Applicant in January of 2016, in which he took full responsibility for the fate of the deceased child. He testified that the letters

stated that he was entirely to blame and that Applicant was completely innocent of any crime. He testified that he alone is to blame for the fate of the infant child. On cross-examination, Hodson admitted that he had entered an Alford plea and was thereby maintaining his innocence when he did so. He also admitted, when confronted with the text of the letters, that the letters did not constitute an admission of guilt on his part and the statement that Applicant was innocent of any crime, but agreed that he had written in the letters that Applicant was not cooking methamphetamine with him at the home of another on the night before the child's death. He testified that he had been manufacturing meth at Ivan's home on that night. He testified that he had dropped the child in the shower.

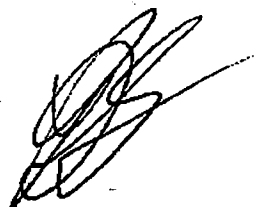
Applicant testified that she received the two letters from Mr. Hodson in January of 2016, shortly after entering her Alford plea. She testified that she was not present when Mr. Hodson was cooking methamphetamine at Ivan's house on the night before her child's death. She testified that the letters contained statements that were favorable to her and that she would not have entered an Alford plea had she known beforehand that Mr. Hodson would have provided favorable testimony for her at trial. She admitted that she had testified during her plea hearing that she understood her trial rights and that she would be waiving them by entering an Alford plea. She affirmed at the evidentiary hearing that she knew that she could have called Mr. Hodson as a witness at trial.

Counsel testified that Applicant had always maintained to him that she was not cooking methamphetamine with Mr. Hodson at Ivan's house on the night before the child's death. He testified that he had attempted to discuss the case with Mr. Hodson's defense attorney during his preparation of the case but was rebuffed since the parties were codefendants, and did not necessarily have identical interests, at the time. He testified that he and Applicant had discussed

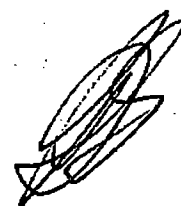


using Mr. Hodson as a witness at trial, but he was unsure whether Mr. Hodson's testimony would have been favorable or unfavorable to Applicant had they done so. He testified that he and Applicant had discussed making unpleasant accusations against Mr. Hodson at trial as a trial strategy. He testified that Applicant took the unpredictable nature of any testimony that could come from Mr. Hodson when she made her decision to enter an Alford plea. He testified that he moved to withdraw Applicant's Alford plea because she told him that she would not have entered the plea had she known that Mr. Hodson would have provided favorable testimony for her at trial.

This Court finds that Applicant's claim of newly discovered evidence has already been ruled upon. Applicant entered her Alford plea on November 3, 2015. Mr. Hodson wrote the two letters to Applicant in January of 2016. Counsel moved to withdraw Applicant's plea in a motion filed on February 8, 2016, on the ground that Applicant would not have entered an Alford plea had she known that Mr. Hodson's testimony would have been favorable to her defense strategy. Judge Early denied that motion on March 14, 2016, after hearing oral arguments from Applicant and the State, and after considering the content of the letters and the testimony provided by Applicant at her plea hearing. Applicant renewed the motion to withdraw her plea when appearing before Judge Keesley for sentencing on March 23, 2016, at which time Judge Keesley denied that motion on the ground that it had already been ruled upon by Judge Early. Applicant appealed, and argued that she would not have entered an Alford plea if she had been aware beforehand of the claims that Mr. Hodson made in his letter to Applicant in January of 2016. The Court of Appeals affirmed in State v. Hodson, Op. No. 2017-UP-371 (S.C. Ct. App. filed October 11, 2017).



Regardless, this Court finds that Applicant has failed to demonstrate that the letters from Mr. Hodson constitute newly discovered evidence. The letters did not yet exist at the time of Applicant's plea hearing, but the sentiments contained therein and the testimony of Mr. Hodson could have been discovered before Applicant entered an Alford plea. Counsel testified that Applicant had always maintained to him that she was not cooking methamphetamine with Mr. Hodson on the night before the child's death, and that she had merely been his ride to and from the cook site, with the child in tow. Applicant testified at the evidentiary hearing that she was not present while methamphetamine was being cooked on that night. Applicant therefore would have known that Mr. Hodson had personal knowledge of whether she was or was not present while methamphetamine was being cooked at the home of Ivan on the night before the child's death. During her plea hearing, Applicant affirmed to Judge Early that she understood that she had the right to demand a jury trial, and to confront and cross examine the State's witnesses and to call her own witnesses at a trial, but that she would be waiving those rights by entering an Alford plea. Applicant affirmed that she wished to waive those rights and enter an Alford plea. After listening to the solicitor's recitation of facts, Applicant affirmed that she believed that the State would have likely been able to prove its case beyond a reasonable doubt. Applicant could have proceeded to trial and called her husband as a witness in her defense, or cross-examined him if the State had presented him as a witness. However, since Applicant and her husband were codefendants, Counsel was unable to question Applicant's husband and, as a consequence, Applicant and Counsel were unable to determine whether any testimony provided by Applicant's husband at her trial would have been helpful to Applicant's defense. Applicant and Counsel considered proceeding to trial, and calling Applicant's husband as a witness, but Applicant decided to waive her trial rights and enter an Alford plea in light of the State's evidence against



her and in light of the unpredictability of any testimony that Applicant's husband might have provided at trial. The testimony of Applicant's husband would have been evidence if Applicant had proceeded to trial, but Applicant and Counsel did not know whether that evidence would have been beneficial or detrimental to Applicant's defense. The fact that Applicant decided to enter an Alford plea rather than relying upon unpredictable and potentially harmful testimony from her husband does not make his subsequent statements newly discovered evidence. Applicant testified at the evidentiary hearing that she would not have entered an Alford plea had she known at the time that her husband would have testified the way that he did at the evidentiary hearing; however, this does not change the fact that Applicant waived her right to elicit testimony from her husband in part as a strategic calculation of the risk that his testimony could pose to her. This Court finds that Applicant could have called her husband as a witness if she had proceeded to trial, that Applicant made the strategic choice not to do so when she waived her trial rights and entered an Alford plea. Applicant has therefore failed to satisfy the first element of newly discovered evidence.

This Court finds that the weight and quality of Mr. Hodson's testimony and the statements in his letters to Applicant are insufficient to require that her Alford plea be vacated. Mr. Hodson was adamant at the evidentiary hearing that the death of the Hodsons' baby was entirely the result of his own actions and that Applicant was entirely innocent of any wrongdoing; however, this Court finds that his testimony was not credible. Mr. Hodson entered an Alford plea in his criminal case, thereby refusing to admit his guilt. Mr. Hodson admitted at the evidentiary hearing that he knew that he was refusing to admit his guilt when he entered his Alford plea. This Court finds that Mr. Hodson's admission of guilt and protestation of Applicant's innocence, and the statements that he made in his letters to Applicant, contradict his



entering an Alford plea, and they therefore lack credibility. The statements to Applicant in Mr. Hodson's letters and his testimony at the evidentiary hearing appeared to be opportunistic attempts to throw a lifeline to Applicant once there was no longer any legal risk to himself. Furthermore, the substance of the statements in the letters and Mr. Hodson's testimony are not exculpatory for Applicant. Counsel's own medical expert, whom he hired in preparation of Applicant's defense, confirmed the conclusion of the State's expert that the deadly decline in the health of the child occurred over a period of time that could have extended for days, and would have been attended by physical manifestations of a problem. Police found evidence of drug use in the Hodsons' home, and in the bedroom of Applicant and Mr. Hodson. Ivan, at whose home Mr. Hodson was cooking methamphetamine, would have testified to the fact that the Hodsons came to his residence with pseudoephedrine and the now-deceased child in tow and left with methamphetamine. Sentencing Tr. 13. By Applicant's own admission, at the very least, she was transporting Mr. Hodson to and from a meth cook on the night before her child died from the ingestion of methamphetamine. Counsel's testimony was that all of these factors, combined with the broadness of the homicide by child abuse statute, made him conclude that Applicant would have likely been found guilty at trial, *even if* Applicant's assertion that she was not present while the methamphetamine was being manufactured were true. Counsel shared this opinion with Applicant and she made her decision to enter an Alford plea in this context. This Court finds that neither the statements in the two letters presented by Applicant nor in Mr. Hodson's testimony at the evidentiary hearing is exculpatory in light of the remaining evidence in the case. As such, Applicant's claim that the letters from Mr. Hodson constitute newly discovered evidence fails, and is therefore denied and dismissed with prejudice.



Counsel was constitutionally ineffective for failing to interview witnesses.

Applicant testified that Counsel never interviewed Mr. Hodson or other witnesses as a part of his investigation. She testified that she met with Counsel a "handful" of times during her case. She testified that Counsel did not discuss potential defenses with her, and she testified that he did review the evidence in the case with her to some extent.

Jordan Hodson testified that he is Applicant's husband and that he was her codefendant in the underlying criminal case. He testified that he alone is to blame for the fate of the Hodsons' infant child. He testified that Applicant was present or cooking methamphetamine at Ivan's house, but that she merely dropped him off and picked him up afterwards. He testified that he dropped their child in the shower and that is why the child died. He admitted when being cross-examined that he had entered an Alford plea and was thereby maintaining his innocence when he did so.

Counsel testified that he has been in private practice since November of 2006. He testified that he has handled multiple cases involving homicide by child abuse. He testified that he was appointed to represent Applicant in December of 2012. He testified that he kept a digital log of his meetings with Applicant because he was required to do so in order to be compensated in accordance with his appointment. He testified in great detail about his meetings with Applicant. He testified that he attempted to contact any potential witnesses whose names were given to him by Applicant. He testified that some of the potential witnesses mentioned by Applicant were not willing to testify on her behalf. He testified that he had attempted to discuss the case with Mr. Hodson's defense attorney during his preparation of the case but was rebuffed since the parties were codefendants and did not necessarily have identical interests at the time. He testified that he and Applicant had discussed using Mr. Hodson as a witness at trial but that



they did not know whether his testimony would have been favorable or unfavorable to her had they done so. He testified that there were not any witnesses who would have been helpful to Applicant's case at trial since there were not eyewitnesses in the case, except for the Hodsons' children and Ivan. He testified that there was a chance that the State would have used one of the Hodsons' children to testify against Applicant at trial due to the fact that the child may have witnessed drug use or some other similarly harmful behavior on the part of Applicant or Mr. Hodson before. He testified that the State intended to use Ivan as a witness at trial to testify that Applicant had been manufacturing methamphetamine at his home—with the deceased child present—on the night before the child's death.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions. . .” *Strickland*, 466 U.S. at 691. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” *Id.* at 690; *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). An “applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR

hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)). At the evidentiary hearing, Applicant failed to submit the testimony of any witness, save Mr. Hodson. Applicant failed to show that any witness would have provided favorable testimony for her at trial, but she merely speculated that witnesses exist who could have provided favorable testimony. Therefore, she has failed to demonstrate how any unused witness testimony would have been favorable, and how she was prejudiced by the lack of that testimony. This Court finds that Mr. Hodson's admission of guilt and protestation of Applicant's innocence contradicts his entering an Alford plea, and therefore lacks credibility and is without merit. Mr. Hodson's testimony at the evidentiary hearing appeared to be an opportunistic attempt to throw a lifeline to Applicant once there was no longer any legal risk to Mr. Hodson. Mr. Hodson's testimony about his dropping the child in the shower was not consistent with the conclusions reached by the experts in the criminal case. This Court finds that Mr. Hodson's testimony was not exculpatory for Applicant.

During her plea hearing, Applicant affirmed to Judge Early that she understood that she had the right to demand a jury trial, and to confront and cross examine the State's witnesses and to call her own witnesses at a trial, but that she would be waiving those rights by entering an Alford plea. Applicant affirmed that she wished to waive those rights and enter an Alford plea. After listening to the solicitor's recitation of facts, Applicant affirmed that she believed that the State would have likely been able to prove its case beyond a reasonable doubt. Applicant could have proceeded to trial and called witnesses in her defense or cross-examined them if they were put up by the State, but she waived those rights in order to plead and avail herself of the benefit of a plea bargain. This Court also finds that Counsel met with Applicant for a substantial number

of times, and that Applicant's testimony to the contract lacks credibility and is without merit. This Court finds that Counsel's testimony at the hearing was highly credible compared to testimony offered by Applicant or Mr. Hodson.

This Court finds that Counsel was not constitutionally ineffective for failing to interview witnesses since Applicant has failed to show any deficiency in Counsel's performance or resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for failing to get a specialist to represent Applicant.

Applicant alleges that Counsel was constitutionally ineffective for failing to hire an expert to conduct an evaluation of the cause of death of her deceased child. She testified that she met with Counsel a "handful" of times during her case. She testified that Counsel did not discuss potential defense with her, and she testified that he did review the evidence in the case with her to some extent. Counsel testified that he has been in private practice since November of 2006. He testified that he has handled multiple cases involving homicide by child abuse. He testified that he was appointed to represent Applicant in December of 2012. He testified that the State would periodically add new charges to Applicant's case stemming from the death of Applicant's child as more evidence came to light during the investigation. He testified that the State's expert concluded that the child died from methamphetamine ingestion after suffering for an extended period of time, which could have been as long as multiple days. He testified that he hired Kim Collins, a forensic pathologist, to conduct an independent examination of the child. He testified that the defense's expert concurred with the State's expert and concluded that the child would have displayed visible and obvious signs of deteriorating health for an extended period of time before death, which could have been as long as multiple days. He testified that he reviewed the conclusions of both the State's expert and the defense's expert with Applicant. He testified that



Applicant gave him no reason to think that she did not understand his explanation of that evidence. Applicant then testified in rebuttal that Counsel had never discussed these matters with her and that she was hearing them for the first time during her evidentiary hearing.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[C]ounsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions. . . .” *Strickland*, 466 U.S. at 691. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” *Id.* at 690; *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). This Court finds that Applicant’s allegations that Counsel never consulted with an expert and never reviewed those findings with her to be without merit and lack credibility. This Court finds that Counsel consulted with a forensic pathologist as part of his investigation in Applicant’s case, that those conclusions were not favorable to Applicant’s defense, and that he discussed the matter with Applicant. This Court finds that Counsel was not constitutionally ineffective for failing to hire an expert since Applicant has failed to show any deficiency in Counsel’s performance of resulting prejudice. As such, this allegation is denied and dismissed with prejudice.



Counsel was constitutionally ineffective for allowing the court to rush and pressure Applicant into a decision about whether to plead guilty to proceed to trial.

Applicant alleges that she was rushed to enter her Alford plea. Counsel testified that he was appointed to represent Applicant in December of 2012. He testified that the State would periodically add new charges to Applicant's case stemming from the death of Applicant's child as more evidence came to light during the investigation. He testified that he did not rush or pressure Applicant to enter a plea. He testified that he and Applicant discussed Applicant's options about pleading or going to trial on many occasions. He testified that it was ultimately Applicant's decision to plead guilty.

This Court finds that Counsel was not constitutionally ineffective for rushing or pressuring Applicant to enter an Alford plea. The testimony of Applicant that she was rushed or coerced is without merit and lacks credibility in light of Counsel's more credible testimony and Applicant's own testimony at her plea hearing before Judge Early. Applicant has presented not reason for this Court to disturb the finding of Judge Early that Applicant knowingly and voluntarily entered her plea. Applicant has failed to show any deficiency in Counsel's performance or resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for advising Applicant that she probably would not receive a sentence greater than fifteen years and likely only ten years.

Applicant alleges that Counsel advised her that she would not receive a sentence greater than fifteen years and that she would likely only be given a sentence of ten years. Counsel testified that he did not promise Applicant that she would receive any particular sentence. He testified that he was hoping for a lesser sentence than the one that Applicant received. He



testified that he reviewed with Applicant the potential sentences to which she could be exposed if she proceeded to trial and if she accepted the plea offer extended by the State. During Applicant's plea hearing, Counsel affirmed to Judge Early that he had explained the potential sentences that Applicant was facing and that, in his opinion, Applicant understood his explanation. Applicant affirmed to Judge Early that she understood the potential sentences to which she would be exposed by pleading guilty. She affirmed to Judge Early that she did not have any more questions for the plea court about the possible sentence. She affirmed to Judge Early that she wished to enter an Alford plea. She affirmed that no one had promised her anything in order to get to her enter the plea. She affirmed that she was satisfied with Counsel's services. This Court finds that Counsel did not advise Applicant that she would receive a specific sentence, and that any testimony by Applicant to the contrary is not credible and lacks merit. This Court finds that Counsel was not constitutionally ineffective for advising Applicant that she would receive a specific sentence since Applicant has failed to show that Counsel's performance was deficient or any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for advising Applicant that she would immediately be able to file for a sentence reduction after her sentencing.

Applicant alleged that Counsel advised her that she would be immediately able to file for a sentence reduction after her sentencing. Counsel testified that he reviewed with Applicant the potential sentences to which she could be exposed if she proceeded to trial and if she accepted the plea offer extended by the State. He testified that Applicant did not ask him to file for a sentence reduction. He testified that Applicant did request that he move to withdraw her guilty plea and that he did so. During Applicant's plea hearing, Counsel affirmed to Judge Early that he



had explained the potential sentences that Applicant was facing and that, in his opinion, Applicant understood his explanation. Applicant affirmed to Judge Early that she understood the potential sentences to which she would be exposed by pleading guilty. She affirmed to Judge Early that she did not have any more questions for the plea court about the possible sentence. She affirmed to Judge Early that she wished to enter an Alford plea. She affirmed that no one had promised her anything in order to get to her enter the plea. She affirmed that she was satisfied with Counsel's services. This Court finds that Applicant did not request that Counsel move for a sentence reduction, and that any testimony by Applicant to the contrary is not credible and lacks merit. This Court finds that Counsel was not constitutionally ineffective for failing to move for a sentence reduction since Applicant has failed to show that Counsel's performance was deficient or any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for failing to call mitigation witnesses at her sentencing who could have provided favorable testimony that would have resulted in a lesser sentence for Applicant.

Applicant testified that Mr. Hodson was present at her sentencing but that he did not speak on her behalf. She testified that she had suggested to Counsel that Erin Davis and Angel Blankenship be called as witnesses at trial. Counsel testified that he attempted to contact any potential witnesses whose names were given to him by Applicant. He testified that some of the potential witnesses mentioned by Applicant were not willing to testify on her behalf. He testified that he had attempted to discuss the case with Mr. Hodson's defense attorney during his preparation of the case but was rebuffed since the parties were codefendants and did not necessarily have identical interests at the time. He testified that he and Applicant had discussed using Mr. Hodson as a witness at trial but that they did not know whether his testimony would



have been favorable or unfavorable to her had they done so. He testified that he and Applicant had discussed making unpleasant accusations against Mr. Hodson at trial in Applicant's defense.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions..." Strickland, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)). Applicant did not have either Ms. Davis or Ms. Blankenship testify on her behalf at the PCR hearing, but merely speculated that they would have provided favorable testimony. Therefore, she has failed to demonstrate how any testimony from them would have been favorable during her sentencing hearing, and how she was prejudiced by the lack of their testimony.



Mr. Hodson entered an Alford plea in his criminal case, thereby refusing to admit his guilt. Mr. Hodson admitted at the evidentiary hearing that he knew that he was refusing to admit guilt when he entered his Alford plea. This Court finds that Mr. Hodson's admission of guilt and protestation of Applicant's innocence, and the statements that he made in his letters to Applicant, contradict his entering an Alford plea, and they therefore lack credibility and are without merit. This Court finds that Counsel conducted a reasonable investigation but that he was unable to secure favorable testimony from Mr. Hodson due to the potentially adversarial nature of their status as codefendants at the time of the case. During Applicant's sentencing hearing, after which time she had already received the two letters from Mr. Hodson, she made strong, critical statements with regards to Mr. Hodson. She testified that:

The only mistake I made was leaving my baby with her dad. He is the only other person beside me that should have protected my baby above all else and he failed that day.

Because of his failure, my baby is gone forever.

Sentencing Tr. 38.

Applicant also testified that she was "being punished for what [Mr. Hodson] has gone." Id. This testimony indicates that Applicant's posture towards Mr. Hodson was still adversarial at the time of her sentencing hearing, and belies her allegations that he would have been a favorable witness during her sentencing hearing.

This Court finds that Counsel was not constitutionally ineffective for failing to secure witnesses at Applicant's plea hearing since Applicant has failed to demonstrate deficiency in Counsel's performance or prejudice resulting therefrom. As such, these allegations are denied and dismissed with prejudice.



CONCLUSION

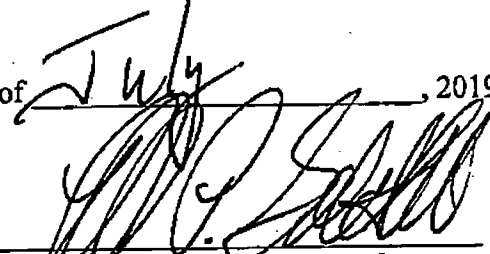
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of July, 2019.


 BROOKS P. GOLDSMITH, IV
 Presiding Judge
 Eleventh Judicial Circuit


 _____, South Carolina

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL
 SESSIONS)
 COUNTY OF LEXINGTON 2016 FEB - 8) PM 2:42)
 CIRCUIT)

The State of South Carolina,
 Plaintiff,

vs.

Sara Hodson,

Defendant.

MOTION TO WITHDRAWAL
 GUILTY PLEA

Ticket/Warrant No(s):

2015GS3202368, 2015A3210800250

NOW COMES THE DEFENDANT by and through her undersigned counsel of record and respectfully shows as follows:

1. The Defendant was arrested on December 12, 2012 for Unlawful Neglect of a child and Homicide by Child Abuse.
2. On November 3, 2015 plead guilty to murder/homicide by child abuse, aiding and abiding and unlawful neglect of child or helpless person.
3. Sentencing was held in abeyance.
4. Co-defendant recently provided favorable information through letters.
5. Defendant is scheduled to sentence before Judge Keesley on March 21, 2016.
6. At the time defendant has not been sentenced.
7. Defendant respectfully ask to withdrawal her guilty plea.
8. Defendant respectfully ask for a hearing date to be set to rule on these issues.

FILED

Respectfully Submitted,

2016 FEB -8 PM 2:42

BETSY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Deon O'Neil

Deon O'Neil
P.O Box 7284
Columbia, SC 29202
(803) 661-6758

This 5th day of February, 2016

WITNESSES

Lexington County Sheriffs Department

Stephen M. Collins

Law Enforcement Case #: 12022776

LSM

ARREST WARRANT NUMBER

15-STR-00188

(Referencing warrant 2012A3210201208)

ACTION OF GRAND JURY

TRUE BILL

Sandra Aden

Foreperson of Grand Jury

Date: *8/14/2015*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS3202368

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2015

THE STATE

vs.

Sara Elizabeth Hodson

CDR #: 2357

Indictment for

**Aiding and Abetting
Homicide By Child Abuse**

§ 16-03-0085(A)(2), (B)

DONALD V. MYERS, SOLICITOR

A TRUE COPY
[Signature]
J. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

) Aiding and Abetting Homicide By Child Abuse

COUNTY OF LEXINGTON)

) § 16-03-0085(A)(2), (B)

At a Court of General Sessions, convened on September 2015, the Grand Jurors of Lexington County present upon their oath:

That **Sara Elizabeth Hodson** did, willfully and unlawfully, in Lexington County, on or about December 8, 2012 through December 11, 2012, knowingly aid and abet another person, **Jordan Ray Hodson**, to commit child abuse or neglect, and the child abuse or neglect resulted in the death of a child under the age of eleven, to wit: **Minor 1**, date of birth [REDACTED] the aforesaid infant died on December 11, 2012 as a result of child abuse or neglect, whether by act or omission, and such child abuse or neglect caused harm to the child's physical health or welfare, in violation of Section 16-3-85 (A)(2) and (B), S.C. Code of Laws, 1976, as amended.

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

Suzanne Mayes
ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Michael S. Ellis

Law Enforcement Case #: 12022776

LSM

ARREST WARRANT NUMBER

2013A3210800250

ACTION OF GRAND JURY

TRUE BILL

Ron Brasington
Foreperson of Grand Jury
Date: 10-14-13

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS3203004

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2013

THE STATE
vs.

Sara Elizabeth Hodson

CDR #: 2481

Indictment for

Unlawful conduct towards a child

§ 63-05-0070

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Unlawful conduct towards a child

§ 63-05-0070

At a Court of General Sessions, convened on OCTOBER 2013, the Grand Jurors of Lexington County present upon their oath:

That **Sara E. Hodson** did in Lexington County, South Carolina, on or about October 1, 2012, through December 11, 2012, while having charge or custody of a child, or being the parent or guardian of a child, or being responsible for the welfare of the minor child, did unlawfully place a child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety, to wit: did allow to be exposed or expose a minor child to methamphetamine use or activity or methamphetamine byproducts, being **Minor 3**, **Minor 2**, and/or **Minor 4**, **Minor 4**, furthermore, methamphetamine being an illegal and/or harmful drug, in violation of Section 63-5-70, South Carolina Code of Laws, 1976, as amended.

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

Suzanne Mayes
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 265

COUNTY OF Lexington
STATE VS.

Sara Elizabeth Hodson

AKA:

Race: White Sex: F Age: 35

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Bushberry Road

City, State, Zip: Pelion, SC 29123

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Children / Legal custodian, unlawful neglect of child or helpless person

INDICTMENT/CASE#: 2013GS203004

A/W#: 2013A3210800250

Date of Offense: 12/1/2012

S.C. Code §: 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

101130
SC Bar#

Defendant

Attorney for Defendant

74814
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)		\$
TOTAL		\$130

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

pay court costs w/in 1 yr for release date from prison

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

SENTENCE JUDGE: William P. Karley

JUDGE CODE: 2050

DATE: MARCH 23, 2016

266
STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
Sara Elizabeth Hodson
AKA:
Race: White Sex: F Age: 35
DOB: [REDACTED] SS#: [REDACTED]
Address: Bushberry Road
City, State, Zip: Pelion, SC 29123
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Murder / Homicide by child abuse, aiding and abetting (10Y to 20Y)

in violation of § 16-03-0085(A)(2)(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2357
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 100730 [Signature] [Signature] 74814
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 130

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011) FINING OF RECORD: VIOLENT FROM

THIS PROHIBITS POSSESSION OF WEAPONS

10yrs to 20yrs
IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3202368
A/W#: 15-STR-00188
Date of Offense: 12/8/2012
S.C. Code § : 16-03-0085(A)(2)(B)(2)
CDR Code #: 2357

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

A TRUE COPY

_____ days/hours Public Service Employment
Obtain GED ☐ Lex. Co C.C.P., G.S. & F.C.
Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Pay court costs w/in 1yr. of

release from prison

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge [Signature]

Judge Code: 0130

Sentence Date: Nov 3, 2015

SENTENCING JUDGE: William P. Clardy

JUDGE CODE: 205P

SENTENCING DATE: MARCH 23 2016