No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

QINARD COLLINS,
Petitioner,

v.

MARK S. INCH,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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COUNSEL FOR THE PETITIONER

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13207-CC

QINARD LAMAR COLLINS,

Petitioner - Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JORDAN, NEWSOM and LUCK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13207
Non-Argument Calendar

D.C. Docket No. 3:14-cv-00047-TJC-PDB

QINARD LAMAR COLLINS,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(April 22, 2020)

Before JORDAN, NEWSOM, and LUCK, Circuit Judges.

Qinard Lamar Collins appeals the district court's denial of his 28 U.S.C. § 2254 petition. We (through a single judge) granted a certificate of appealability on three inter-related issues. First, whether Collins has made a sufficient showing of actual innocence to overcome any procedural bar to his § 2254 petition. Second, whether a freestanding claim of actual innocence is cognizable in a § 2254 proceeding. And third, whether Collins is entitled to relief on his claim of actual innocence or, alternatively, a remand to the district court for an evidentiary hearing. Because Collins only alleged a freestanding actual innocence claim, and because we've held that such a claim is not cognizable in a non-capital § 2254 petition, we answer "no" to the dispositive second question (relieving us of having to answer the other questions in the certificate of appealability) and affirm the denial of Collins's § 2254 petition.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In June 2000, Collins's son was born prematurely. So prematurely, in fact, that the newborn had to spend the first (and only) ten months of his life under intensive care and home supervision. Ten months later, Collins called emergency medical services to his home to report that he had found his son between the mattress and the crib gasping for air. Neither Collins nor the later-arrived paramedics could successfully resuscitate the child. The infant was immediately transported to the hospital but was pronounced dead shortly after. The autopsy report revealed

multiple bruises and hemorrhages and concluded that the cause of death was "abusive head injury" with a contributory cause of "battered child syndrome." The infant's mother, Collins's then girlfriend, told authorities that Collins had abused the infant, which included blows to the infant's head. As a result, Collins was charged with aggravated child abuse and first-degree murder. The state alleged that the cause of death was "shaken baby syndrome." Seeking a lesser sentence, and to avoid the death penalty, Collins pleaded no-contest to second-degree murder and was sentenced to thirty years' imprisonment.

After multiple failed attempts at relief in state court, Collins filed this § 2254 petition in the Middle District of Florida. Acknowledging that the statute of limitations for asserting § 2254 relief had lapsed, Collins maintained that his actual innocence excused the lapse. He alleged that he was actually innocent of the crimes because new evidence, research, and studies conducted since his conviction demonstrated that shaken baby syndrome is no longer a valid medical theory. To back his claim, Collins submitted detailed reports from four medical experts who examined the victim and found that he died from natural causes, not abuse.

The district court denied Collins's claim for relief. The district court agreed with Collins that "actual innocence, if proved, serves as a gateway through which a petitioner may pass [notwithstanding the] expiration of the state of limitations." DE 21 at 3 (quoting McQuiggin v. Perkins, 569 U.S. 383, 386 (2013)). Once the

petitioner gets through the actual innocence gateway, and overcomes the time bar, he then must allege a viable independent constitutional violation that occurred in the underlying state criminal proceeding. But as Collins conceded, he only alleged a freestanding actual innocence claim and did not allege that actual innocence was a gateway to an independent constitutional violation. Following our court's precedent, the district court concluded that Collins's freestanding actual innocence claim was not cognizable and denied his petition.

DISCUSSION

Collins contends that the district court erroneously denied his habeas petition. We review de novo the denial of a petition for a writ of habeas corpus. Raulerson v. Warden, 928 F.3d 987, 995 (11th Cir. 2019).

A state prisoner may pursue habeas relief in federal court "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). As he did before the district court, Collins argues that his sole claim—a freestanding actual innocence claim—is cognizable in a non-capital § 2254 petition (and enough to overcome the one-year statute of limitations). Collins concedes that the district court was bound by our precedent holding that a freestanding actual innocence claim in a non-capital § 2254 petition is not cognizable. So are we. "[O]ur precedent forecloses habeas relief based on a prisoner's assertion that he is actually innocent of the crime of conviction 'absent an

independent constitutional violation occurring in the underlying state criminal proceeding.'" Raulerson, 928 F.3d at 1004 (quoting Brownlee v. Haley, 306 F.3d 1043, 1065 (11th Cir. 2002)); see also Cunningham v. Dist. Attorney's Office for Escambia Cty., 592 F.3d 1237, 1272 (11th Cir. 2010) ("[T]his Court's own precedent does not allow habeas relief on a freestanding innocence claim in non-capital cases."); Jordan v. Sec'y, Dep't of Corrs., 485 F.3d 1351, 1356 (11th Cir. 2007) ("[O]ur precedent forbids granting habeas relief based upon a claim of actual innocence, anyway, at least in non-capital cases."). Because Collins did not allege an independent constitutional claim, his freestanding actual innocence claim is not cognizable and the district court properly denied it. And because this resolves the case, we should not, and do not, address the two other questions in the certificate of appealability.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13207-F

QINARD LAMAR COLLINS,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Qinard Lamar Collins, a person incarcerated in Florida, seeks a certificate of appealability ("COA") and leave to proceed in forma pauperis ("IFP") to appeal the District Court's dismissal of his 28 U.S.C. § 2254 habeas petition. This order GRANTS a COA on three issues as described at the close of the order, and it GRANTS Mr. Collins leave to proceed IFP.

In June 2000, Mr. Collins's son was born prematurely and remained hospitalized for the next eight months. On April 2, 2001, Mr. Collins called

emergency medical services to his home to report that he had found the infant face down between the mattress and the crib gasping for air. Mr. Collins promptly began CPR, which paramedics continued after their arrival. The infant was transported to the hospital, but was pronounced dead shortly thereafter. The autopsy report described multiple bruises and hemorrhages and listed the cause of death as "abusive head injury" with a contributory cause of "battered child syndrome." Mr. Collins was charged with aggravated child abuse and first-degree murder. The state alleged that the infant died because of "shaken baby syndrome" ("SBS") and filed a notice of intent to seek the death penalty. Advised by his counsel that there was no available defense, Mr. Collins pled no contest to second-degree murder and was sentenced to 30-years imprisonment.

His conviction and sentence were affirmed on appeal. Collins v. State, 873 So. 2d 442 (Fla. 5th DCA 2004). Mr. Collins then filed for state habeas relief, arguing that newly discovered evidence demonstrated his innocence. The state courts denied relief.

On January 13, 2014, Mr. Collins filed the counseled § 2254 petition underlying this motion. In it he argued he is actually innocent of the charges, and that new evidence, research, and studies conducted since the time of his conviction demonstrated that SBS is no longer a valid medical theory. In addition to extensive literature purportedly supporting his position, Mr. Collins submitted

detailed reports from four medical experts who examined the records in his case. The physicians concurred the infant died from natural causes, not abuse. In response, the State argued Mr. Collins's § 2254 petition should be dismissed as untimely. It also pointed to other evidence that would discredit Mr. Collins's actual-innocence claim.

The District Court conducted a non-evidentiary hearing "[b]ecause Petitioner's actual innocence claim appeared to have arguable substance, and to allow Petitioner to develop the record for appellate review." It did not conduct an evidentiary hearing, "[b]ecause [this Court's] precedent bars freestanding actual innocence claims." See Cunningham v. Dist. Attorney's Office for Escambia Cty., 592 F.3d 1237, 1272 (11th Cir. 2010). The District Court denied the petition as untimely, reasoning that Mr. Collins's showing of actual innocence was not sufficient to excuse the petition's untimeliness. See McQuiggin v. Perkins, 569 U.S. 383, 133 S. Ct. 1924 (2013); see also Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 851 (1995). The court denied a COA "based on [this Circuit's] existing precedent, but noted that this Court "has the power to grant [one]," and it denied leave to proceed IFP on appeal.

Mr. Collins now seeks a COA here. Mr. Collins has made a strong enough showing of actual innocence for reasonable jurists to debate whether the District Court's procedural ruling was correct. See Slack v. McDaniel, 529 U.S. 473, 484,

120 S. Ct. 1595, 1604 (2000). He has offered significant scientific evidence that strikes at the core of Florida's theory of the case against him. Even the District Court seemed to acknowledge as much.

The more difficult question is whether Mr. Collins has "state[d] a valid claim for the denial of a constitutional right" or whether the issue he's presented "deserve[s] encouragement to proceed further." Id. It is true, as Mr. Collins acknowledges, that this Circuit's precedent appears to foreclose the argument that a freestanding actual innocence claim is cognizable in § 2254 proceedings. See Cunningham, 592 F.3d at 1272. But this Court concludes that the question deserves encouragement to proceed further. For one, numerous other Circuits, rife with reasonable jurists, have not similarly foreclosed such claims. See, e.g., Arnold v. Dittmann, 901 F.3d 830, 842 (7th Cir. 2018); Wright v. Superintendent Somerset SCI, 601 F. App'x 115, 116–17 (3d Cir. 2015) (unpublished); Jones v. Taylor, 763 F.3d 1242, 1246 (9th Cir. 2014) ("We have not resolved whether a freestanding actual innocence claim is cognizable in a federal habeas corpus proceeding in the non-capital context, although we have assumed that such a claim is viable."). For two, Mr. Collins has presented significant evidence that might, ultimately, demonstrate his innocence. This means that, without our Court's intervention, there is a substantial risk that a man will be incarcerated for well over

another decade for a crime he did not commit. These issues, at the very least, deserve full adversarial testing before a merits panel.

Therefore, this order GRANTS a COA on the following issues:

1. Whether Mr. Collins has made a sufficient showing of actual innocence to overcome any procedural bar to his § 2254 petition, and, if so, whether this Court should remand for an evidentiary hearing or decide the question on the record as it stands.

2. Whether a freestanding claim of actual innocence is cognizable in a § 2254 proceeding.

3. Whether Mr. Collins is entitled to relief on his claim of actual innocence or, in the alternative, a remand to the District Court for an evidentiary hearing.

Mr. Collins's IFP motion is GRANTED.

Barbara B. Martin
UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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March 12, 2019

Michael Robert Ufferman
Michael Ufferman Law Firm, PA
2022-1 RAYMOND DIEHL RD
TALLAHASSEE, FL 32308-3844

Appeal Number: 17-13207-F
Case Style: Qinard Collins v. Secretary, Department of Corr., et al
District Court Docket No: 3:14-cv-00047-TJC-PDB

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Dionne S. Young, F
Phone #: (404) 335-6224

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

QINARD LAMAR COLLINS,

Petitioner,

v. Case No. 3:14-cv-47-J-32PDB

SECRETARY OF THE FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

ORDER

I. Status

Petitioner, an inmate of the Florida penal system, initiated this action by filing, through counsel, a Petition for Writ of Habeas Corpus by a Person in State Custody (Doc. 1) (Petition)[1] pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2003 state court (St. Johns County, Florida) judgment of conviction and sentence for second degree murder. Petitioner is serving a thirty-year prison sentence after pleading no contest. He challenges the judgment of conviction and sentence on a claim of actual innocence based on newly discovered evidence. Respondents filed their response arguing the Petition is untimely and without merit. See Response to Petition (Doc. 9) (Response).[2] Petitioner replied. See Petitioner Collins' Reply to the Respondents' "Response to Petition" (Doc. 12) (Reply).

[1] Citations to Petitioner's filings refer to the page numbers assigned by the Court's electronic case filing system.

[2] The Court refers to the exhibits attached to the Response as "Ex."

Because Petitioner's actual innocence claim appeared to have arguable substance, and to allow Petitioner to develop the record for appellate review, the Court conducted a non-evidentiary hearing on June 6, 2017 (Doc. 16). At the hearing, Petitioner's counsel clarified that Petitioner was asserting only a freestanding claim of actual innocence. Further, Petitioner's counsel conceded that the Petition was foreclosed by Eleventh Circuit precedent. Nevertheless, Petitioner seeks a certificate of appealability to the Eleventh Circuit.

II. Findings of Fact and Conclusions of Law

"A state prisoner's § 2254 habeas petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996" (AEDPA). Ledford v. Warden, Ga. Diagnostic & Classification Prison, 818 F.3d 600, 642 (11th Cir. 2016). The AEDPA amended 28 U.S.C. § 2244 by adding the following subsection:

> (d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--
>
> > (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
> >
> > (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
> >
> > (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). "The limitations period[, however,] can be tolled in two ways: through statutory tolling or equitable tolling." Brown v. Barrow, 512 F.3d 1304, 1307 (11th Cir. 2008). With regard to statutory tolling, 28 U.S.C. § 2244(d)(2) provides: "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C. § 2244(d)(2). For equitable tolling, a petitioner must show "'(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way' and prevented timely filing." Holland v. Florida, 560 U.S. 631, 649 (2010) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)); see Cadet v. Fla. Dep't of Corr., 742 F.3d 473, 477 (11th Cir. 2014) (recognizing that equitable tolling is an extraordinary remedy that is "limited to rare and exceptional circumstances and typically applied sparingly"); see also Brown, 512 F.3d at 1307 (noting that the Eleventh Circuit "has held that an inmate bears a strong burden to show specific facts to support his claim of extraordinary circumstances and due diligence."). Further, "actual innocence, if proved, serves as a gateway through which a petitioner may pass [notwithstanding the] expiration of the statute of limitations." McQuiggin v. Perkins, 133 S. Ct. 1924, 1928 (2013).

For challenges based on newly discovered evidence, such as the case here, the limitations period runs from the date "on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2244(d)(1)(D); see McQuiggin, 133 S. Ct. at 1929. Petitioner's claim relies on medical

reports written on August 15, 2009; August 27, 2009, August 30, 2009; December 7, 2009; and September 27, 2010. Ex. Z. Therefore, at the latest, Petitioner became aware of his claim on September 27, 2010.[3] As a result, Petitioner's limitations period commenced on September 28, 2010. Ninety-nine (99) days ran before Petitioner filed a state post-conviction motion on January 5, 2011. Ex. W. Assuming arguendo statutory tolling applies,[4] the post-conviction motion tolled the limitations period until March 8, 2013, when the Fifth District Court of Appeals issued its mandate affirming the state trial court's denial of the motion (Ex. II). See Nyland v. Moore, 216 F.3d 1264, 1267 (11th Cir. 2000) (holding that a Florida post-conviction motion remains pending until the appellate court's mandate issues). Thereafter, the limitations period ran from March 9, 2013 for two hundred and sixty-six (266) days until November 30, 2013, when the one year limitations period expired. Petitioner did not file his Petition until January 13, 2014. Therefore, the Petition is untimely unless some exception applies.[5]

As a way to avoid the limitations period and to have the Court grant him habeas relief, Petition makes a freestanding actual innocence claim. However, the United States Supreme Court has "not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence." McQuiggin, 133 S. Ct. at 1928. And,

[3] The Court notes that Petitioner acknowledges that the last report just "concurred in full" with the findings found in the other reports. (Doc. 2 at 4).

[4] On January 6, 2012, the state trial court denied the post-conviction motion as untimely and on the merits. Ex. BB. "[A] state post-conviction petition rejected by the state court as being untimely under state law is not 'properly filed' within the meaning of AEDPA's § 2244(d)(2)," and therefore, is not subject to statutory tolling. Sweet v. Sec'y, Dep't of Corr., 467 F.3d 1311, 1316 (11th Cir. 2006).

[5] Petitioner does not allege or seek to establish equitable tolling or the actual innocence exception to the limitations period.

as recognized by Petitioner's counsel, the Eleventh Circuit, which this Court must follow, does not allow habeas relief based on a freestanding claim of actual innocence in non-capital cases. See Cunningham v. Dist. Attorney's Office for Escambia Cty., 592 F.3d 1237, 1272 (11th Cir. 2010) ("this Court's own precedent does not allow habeas relief on a freestanding innocence claim in non-capital cases"); Jordan v. Sec'y, Dep't of Corr., 485 F.3d 1351, 1356 (11th Cir. 2007) ("our precedent forbids granting habeas relief based upon a claim of actual innocence, anyway, at least in non-capital cases"); see also Herrera v. Collins, 506 U.S. 390, 390–91 (1993) ("claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the course of the underlying state criminal proceedings").

But even assuming a freestanding claim of actual innocence is cognizable in a federal habeas proceeding, at minimum, to receive relief, Petitioner must meet the threshold requirement used to overcome the statute of limitations bar which is that "in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." Schlup v. Delo, 513 U.S. 298, 329 (1995); see McQuiggin, 133 S. Ct. at 1928. This demanding standard sets an extremely high bar for Petitioner. See McQuiggin, 133 S. Ct. at 1928 (recognizing "tenable actual-innocence gateway pleas are rare"); House v. Bell, 547 U.S. 518, 538 (2006) ("it bears repeating that the Schlup standard is demanding and permits review only in the 'extraordinary' case").

In 2001, Petitioner was charged with first degree murder and aggravated child abuse of his infant child based on the medical examiner's conclusion that the cause of the child's death was "due to abusive head injury with evidence of multiple abusive injuries

over varied periods in time which made a battered child syndrome as a contributory cause of death." See Exs. A, O. The State gave its notice of intent to seek the death penalty. Ex. B. On August 8, 2003, Petitioner, under a plea deal, entered a plea of nolo contendere to a lesser-included offense of second degree murder. Ex. I.

Now, Petitioner argues that based on newly discovered evidence, the medical examiner (ME), misdiagnosed the cause of his child's death as "shaken baby syndrome" (SBS). Petitioner presents reports from Dr. Harold Buttram,[6] Dr. Michael Innis, Dr. Robert Mendelsohn, and Dr. Peter Stephens ("Medical Doctors") who reviewed the ME's autopsy report and other relevant documents, and opined that the child's death was not the result of SBS or abusive head injuries. Ex. Z. They agreed that the child's injuries and death were the result of complications of the child's prematurity, including short bowel disease and a vitamin K deficiency.

Petitioner asserts that between the time of the child's autopsy in 2001 and the Medical Doctors' reports in 2009, the medical community "shifted" away from the school of thought that a child's symptoms of brain swelling and bleeding to the retina and surface of the brain, such as those exhibited in the case, was automatic evidence of SBS. Petitioner contends that now the medical community recognizes that there can be other causes or explanations for those symptoms unrelated to SBS.[7] In response, both in writing and at the hearing, the State says because Petitioner pleaded no contest, there was no trial and Petitioner cannot assert now that he is actually innocent. The State also

[6] During the hearing, the parties advised the Court that Dr. Buttram is now deceased.

[7] The Court acknowledges that federal courts are now being tasked with dealing with this issue. See Del Prete v. Thompson, 10 F. Supp. 3d 907 (N.D. Ill. 2014).

disputes the new medical reports, states it could provide medical testimony to validate the ME's conclusion, and cites other evidence it says supports the conviction. See Response at 9-10 (Doc. 9).[8] Thus, while there is arguable substance to Petitioner's actual innocence claim, it is not established that Petitioner could show that no juror, acting reasonably, would have voted to find Petitioner guilty beyond a reasonable doubt if the case had gone to trial.[9]

Petitioner takes the forthright position that he seeks to change the Eleventh Circuit precedent disallowing freestanding actual innocence claims. While the Eleventh Circuit has the power to grant Petitioner a certificate of appealability, this Court will deny a certificate of appealability based on the existing precedent.

III. Conclusion

After due consideration, it is

ORDERED:

1. The Petition (Doc. 1) is **DENIED**, and this case is **DISMISSED WITH PREJUDICE**.
2. The Clerk of the Court shall enter judgment dismissing this case with prejudice and close this case.

[8] In particular, the State intended to rely on evidence from the mother of the child that (1) on or about March 17, 2001, upon her return from the hospital she noticed injuries to the child that were inflicted by Petitioner; (2) on March 28, 2001 and March 29, 2001, Petitioner struck the child in the face; and (3) Petitioner struck a puppy with a hammer because the puppy was a "weakling." Notice of Intent to Rely on Collateral Crime Evidence; Ex. E.

[9] Because Eleventh Circuit precedent bars freestanding actual innocence claims, the Court did not take the additional step of conducting an evidentiary hearing.

3. If Petitioner appeals the denial of the Petition, the Court denies a certificate of appealability. Because this Court has determined that a certificate of appealability is not warranted, the Clerk of the Court shall terminate from the pending motions report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

DONE AND ORDERED at Jacksonville, Florida this 15th day of June, 2017.

TIMOTHY J. CORRIGAN
United States District Judge

sflc

c: Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

QINARD LAMAR COLLINS,

Petitioner,

v. **Case No: 3:14-cv-47-J-32PDB**

SECRETARY, DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to this Court's Order, entered on June 15, 2017, Judgment is hereby entered dismissing this case with prejudice.

Date: June 16, 2017.

ELIZABETH M. WARREN,
ACTING CLERK

s/T. Carcaba, Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders**: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

   (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291**: Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).

   (b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

   (c) **Appeals pursuant to 28 U.S.C. Section 1292(a)**: Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

   (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

   (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:

   (a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

   (b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

   (c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

   (d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

   (e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal**: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal**: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

QINARD LAMAR COLLINS,	Jacksonville, Florida
Petitioner,	Case No. 3:14-cv-47-J-32PDB
vs.	June 6, 2017
SECRETARY OF THE FLORIDA DEPARTMENT OF CORRECTIONS, et al.,	1:59 p.m.
	Courtroom No. 10D
Defendants.	

ORAL ARGUMENT
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography; transcript produced by computer.)

P R O C E E D I N G S

June 6, 2017 1:59 p.m.

- - -

COURT SECURITY OFFICER: All rise. The United States District Court in and for the Middle District of Florida is now in session. The Honorable Timothy J. Corrigan presiding. Please be seated.

THE COURT: Good afternoon.

MR. UFFERMAN: Good afternoon, Your Honor.

MS. COMPTON: Good afternoon.

THE COURT: Sorry to bring y'all over here on such a crummy day, but I didn't know it was going to rain when I set the hearing, so...

This is *Collins versus Secretary*. It's 3:14-cv-47. Is it Uf-ferman or U-fferman?

MR. UFFERMAN: Uf-ferman, Your Honor.

THE COURT: Uf-ferman. Mr. Ufferman represents the petitioner. Ms. Compton and Ms. Nielan represent the Secretary.

We're here today for oral argument in this case. There's a habeas petition that Mr. Collins has filed. The State says it's untimely, which it appears to be. But there's a question in the case as to whether any of the exceptions, statutory or equitable, apply to this case in order to make it timely.

I felt like -- unlike many of the cases that we get where persons allege newly discovered evidence or some fact that wasn't known at the time, this seemed to have a little more substance to it. And I thought we should talk about it.

This is a non-evidentiary hearing. I suppose one of the questions that we would be deciding today is whether an evidentiary hearing is indicated or not.

So I've reviewed the entirety of the file. And I've got it right here with me. And I have read the briefing. And I've also read some of the cases, the *Herrera* case again, then some of the Eleventh Circuit cases, and also the Supreme Court case *McQuiggin*. So, anyway, that's what I've done to get ready.

And, Mr. Ufferman, I'll hear from you, since you're the moving party, and then we'll see where we go.

MR. UFFERMAN: Thank you, Your Honor. Would you like me to stand at the podium, Your Honor?

THE COURT: Please.

MR. UFFERMAN: May it please the court. Michael Ufferman on behalf of the petitioner in this case, Mr. Collins. Your Honor, you've asked in your order to address two aspects of this case, the procedural issues as to whether or not Mr. Collins can move forward and have anything considered on the merits in federal court and the underlying merits of the claim. And I hope to address both of those. I think I'll

address both of those in that order.

I'll concede up front that right now, under Eleventh Circuit case law, a freestanding actual innocence claim is not permitted. And that's what Mr. Collins is presenting in this case.

So, yes, your hands are tied. Recently the State just cited, in a recent pleading, Judge Davis' California *Crawford* decision denying the 2254 and addressing an actual innocence claim.

I don't think the merits of that innocence claim are anywhere near what Mr. Collins is presenting, but he, nevertheless, cited to the *Jordan* case, which I think is the lead case from the Eleventh Circuit on this issue. And the Eleventh Circuit has said that we don't allow freestanding actual innocence claims.

Other --

THE COURT: So just so we're clear -- and you've actually gotten right to one of the questions I wanted to ask you -- this is not -- you're not trying to use the actual innocence claim as a gateway to get to some underlying constitutional claim. You are admittedly trying to raise a freestanding actual innocence claim?

MR. UFFERMAN: The answer is yes, Your Honor. I wish that wasn't the case. This was a plea, as Your Honor knows. It was not a trial. It's difficult in that context to raise

some ineffective assistance of counsel claims.

He could argue his plea was involuntarily. And, in essence, he's somewhat arguing that in this actual innocence claim, that he entered a plea based on mistaken information.

And we have cited to the *Boykin* case for the idea that every plea must be knowing, intelligent, and voluntary. But from an ineffectiveness standpoint, on the one hand -- you know, perhaps we could have pursued the idea that, yes, counsel was ineffective at the time because counsel failed to challenge the science behind the alleged shaken baby syndrome, but that's the whole idea of this being newly discovered evidence.

If that claim -- that claim was raised in one of his pro se post-conviction motions filed in state court. But the idea behind that is back in 2001, 2002, 2003, shaken baby syndrome was still accepted, not only in the scientific community, but in the legal community and in the courts.

THE COURT: I saw that -- in my review of the state court docket, I saw that Mr. Anthony, who I believe was trial counsel --

MR. UFFERMAN: Yes.

THE COURT: -- or plea counsel, I guess -- he requested and obtained permission to hire Dr. Siebel.

MR. UFFERMAN: Yes.

THE COURT: And it appeared that that doctor's specialty was something that would have met the idea of whether

this was shaken baby syndrome or whether some other explanation could have been put forward for the infant's death. But that's all I saw, was an order appointing him.

Is there anything in the record that you're aware of that that doctor ever came forward?

MR. UFFERMAN: I don't believe the record establishes that, Your Honor. You know --

THE COURT: Okay. And the other question I had, just from a record standpoint, is the medical examiner report anywhere in the record? Or is it just talk about it that's in the record?

MR. UFFERMAN: His excerpt of his deposition is in the record.

THE COURT: Right.

MR. UFFERMAN: I don't believe -- and we referred to it as an incomplete autopsy report. He apparently conducted the autopsy report the day after the child died, which I want to say was April 3rd --

THE COURT: 2001, right?

MR. UFFERMAN: -- 2001. But I do not believe that the autopsy report itself is in the record.

THE COURT: So how can you call it an incomplete report if we don't have the report? I couldn't quite figure out where you were getting that from.

MR. UFFERMAN: Well, obviously, I'm relying upon

things that have been alleged up until now. And I only became involved in this process when the 2254 was filed in this court.

Mr. Collins previously, in his pro se pleadings and then he had an attorney, I guess, on the appeal from the denial of the second 3.850, had referred to Dr. Steiner's autopsy report as an incomplete report.

I believe it's because apparently he did a partial autopsy on the day after the -- of the child's death, but he didn't complete that.

I don't know what significance that has. I'm not sure that it does. The bottom line is when you review his deposition, he specifically says -- I think the quote -- or near quote is the head injury and the eye injury are classic for shaken baby syndrome. So clearly he was asserting shaken baby syndrome as the cause of death.

They referred to some other things such as abusive head trauma. And I -- you know, the response to that is -- and, of course, we would love to have an evidentiary hearing, but I know we need to get over this procedural hurdle.

But the response to that is the reports that were submitted by Mr. Collins in his second 3.850 motion, which I give him credit as an attorney that only does post-conviction matters -- he, on his own, reached out to some of the leading experts in the country, if not the world, on this issue and asked for their pro bono assistance to review his file. And he

was able to get four of these experts, Buttram, Innis, Mendelsohn and Stephens, to write back and give him reports.

And based on what they said, all of the injuries in this case are explained by this child's very severe medical issues that the child had coming on to this earth.

I know the court is aware of the facts regarding that. But I think the record establishes that this child lived for 305 days. And 277 of those days were spent in the hospital.

This child was born extremely premature. The child had severe colitis, in addition to other major medical deficits. The child, when it -- when he was discharged from the hospital, still came home on an IV with antibiotics.

And I think, to sum up from the idea of how shaken baby syndrome has changed from 2001 to today, is that in 2001, when someone like Dr. Steiner would see the eye injury and the head injury that he observed in this case -- the science at the time said there's only one cause for death, only one explanation, and it must be shaken baby syndrome.

In a span of eight years the science completely changed. And in particular, in 2001 the American Academy of Pediatrics published an official paper stating that short falls do not cause these types of injuries, and other things do not cause these types of injuries, only shaking violently can cause this type of injury.

The 2009 paper put out by the American Academy of Pediatrics -- and, obviously, these are all things if we had an evidentiary hearing we would put on as evidence -- they receded from that completely. And now the American Academy of Pediatrics does acknowledge that there are many potential causes.

So it's -- on one hand, I would assert that shaken baby syndrome is no longer a valid theory, but at the very least I think the scientific community would agree with me that whereas at the time of this child's death doctors were lining up and saying this type of injury can only mean one thing, and that's SBS -- and within a span of eight years the scientific community changed and they -- even those that still believed in SBS would have to concede that there may be other possibilities that could cause these types of injuries that -- that someone might rely upon to say that it is shaken baby syndrome.

One of the main things you would look at is: Does the child have some type of medical issue? And this case presents a child who had extreme medical issues. And that's what the experts that did submit the reports that Mr. Collins attached to his second pro se 3.850 motion -- that's what they agreed to, so --

THE COURT: All right. Well, take a breath here so I can ask you a question. Okay?

MR. UFFERMAN: Yes.

THE COURT: So at least one of the doctors -- and I don't recall whether -- how many of them. I think one of them made a diagnosis, maybe others agreed with him.

But they were tending toward or believing that the cause of the bleeding and much of the head trauma was actually internal bleeding, and were caused by a clotting disorder, a vitamin K deficiency or -- and is that -- remind me of what the -- out of the four doctors that did -- how many of them opined as to an actual alternative cause, as opposed to just saying that shaken baby syndrome in and of itself didn't explain the death?

MR. UFFERMAN: Your Honor, I don't want to overstate it. I don't know if I can answer that question directly. I apologize. I know at least one, if not two, if not all four, reached the conclusion that the injuries in this case were not the result of any intentional act by Mr. Collins and/or shaken baby syndrome, but were instead the result of this child's medical issues.

THE COURT: And the other question I had for you is Judge Traynor, in the post-conviction order, said -- paraphrasing, Even if it wasn't shaken baby syndrome, the medical examiner alternatively found battered child syndrome, which would be -- at least the way Judge Traynor wrote the order, would be an alternative explanation for the baby's death, which would still be attributable to the defendant, to

the petitioner.

What's your -- first of all, do you think that's an accurate rendering of what Judge Traynor said? And if it is, what's your view of that?

MR. UFFERMAN: Correct. I do agree that that's what he said. But I disagree with the logic and/or potentially the medical science that would support that.

And I think if Mr. Collins were given an evidentiary hearing, his experts would come in and say, Those two terms are really the same thing, that we've talked about abusive head trauma, aggravated battery of the child.

And the basis for that would have been the injuries, any bruising to the child that were seen about the head or either -- other parts of the body.

And I think all of the experts have concluded that that's really the same idea here, that it's their opinion that all of that would be covered by this child's existing medical condition and none of that was caused by Mr. Collins.

I think another point I want to make that's important -- and this case is unique because he entered a plea. And the State's obviously focusing on that. And I understand why. And I think the courts have focused on that up until this point that have looked at Mr. Collins' case.

You know, some of them have focused on something that defense counsel said during the sentencing hearing. I don't

think that's necessarily fair.

He said something to the effect that, you know, he takes responsibility for some of the actions or things that occurred to this child, but they weren't intentional, or something along those lines. I don't think that's at all what Mr. Collins has ever said.

As Mr. Collins stated some things in his pro se pleadings, I think this is clear. One thing, when you look at this original sentencing hearing transcript, Mr. Collins -- obviously, as the court knows, he was charged in Count One with aggravated battery, Count Two, first degree murder. And the State was seeking the death penalty.

So Mr. Collins, facing the death penalty, having an attorney that he's relying upon as to what's the next step, his attorney comes to him and says, They're alleging this is shaken baby syndrome.

Obviously, as the court knows, the indictment alleges shaking as part of the language for Count Two. When the judge at the plea hearing asked for a factual basis, the State referred to shaking and/or hitting.

So this is clearly one of the State's main theories. And defense counsel is telling him, as it's been alleged, that you have no defense to this, but I can get you a plea to second degree murder and the sentencing range will be from 20 to 30 years. You have no defense, you should take this deal, and

it's your only option.

Now, Mr. Collins said all along that's what he'd been presented with and that's why he agreed to this, because he didn't know -- had no idea himself that he could challenge the -- and then, of course, Dr. Steiner is saying this in a depo. He had no idea that that was faulty science.

However, I think one thing that's very important is at the sentencing hearing, the defense put on Dr. Krop as a mitigation specialist, basically, to provide background into Mr. Collins' background and see if there's any mental health issues and/or mitigation issues.

And the State, in the cross-examination, specifically asked Dr. Krop, Well, did you ask him did he commit the acts that caused this child's death?

And Dr. Krop said, I did talk to him about that. And he denies any intentional act inflicting harm on this child. And that was clear.

Now, as this court well knows, usually when someone enters a plea and you're asking for the judge to give you 20 years, as opposed to 30 years, you would be throwing yourself at the mercy of the court, and your attorney might even advise you, Look, you need to accept -- take full responsibility for your actions, that's your best chance of convincing this judge to give you the lowest sentence possible.

I won a case in the Eleventh Circuit several years

back. It went back for resentencing in front of Judge Mickle and Judge Mickle specifically said to my client, I believe the first step towards rehabilitation is full acceptance of responsibility and I haven't heard that from you.

And fortunately my client did a 180 and got a reduced sentence because of that. But I believe that's a strategy that you would employ for a plea, and yet in this case -- anything that Mr. Collins said himself -- the affidavit statement said, I committed no intentional acts, I in no way intended to kill this child, my child, and Dr. Krop said that as well. So I think he's been adamant from day one on his statement that he didn't do anything.

Now, the one thing he does acknowledge later in his pro se pleadings is there were some minor bite marks on this child's cheek. And he says a couple of days earlier he was engaging in some child -- playful nibbling.

THE COURT: Well, is it your -- is it your view that because there was -- apart from the head trauma and bleeding that, at least according to the medical examiner would have been the cause of death, there was -- the child did apparently display upon other parts of his body bruising, marks, as you say.

Are you -- there are two possibilities there, or at least two that I thought of. One is that all of that injury pattern was caused by whatever internal illness or disease,

whether it be a clotting disorder or otherwise.

The other would be that while Mr. Collins may have abused the child at earlier times, or may have been hands-on with the child at other times, he didn't kill him.

And so that -- the thought would be that, well, he could have been charged with child abuse or something like that, but he shouldn't have been charged with killing the child.

Which factual position is Mr. Collins taking?

MR. UFFERMAN: Certainly the former, Your Honor. And there may even be a third, which possibly is that when paramedics and other emergency response personnel came to the scene that in the midst of CPR and/or whatever else was done, that also could have caused some of the bruising to the chest area.

By Mr. Collins' statements throughout his pro se pleadings and any statements that he gave at the plea or sentencing hearing, his -- he only acknowledges to causing the little bite marks on the child's cheek, which he says, again, were the result of playfulness, nibbling on the child's cheek. The child in no way cried and, in fact, was enjoying that playfulness.

There's no reason for him to have acknowledged that he did that, but he's done that in his pro se pleadings. Again, I wasn't counsel for him at the time that he was writing

those pleadings.

But he's been adamant in everything that he said that --

THE COURT: Well, there was evidence, was there not -- and, again, I don't know how all this plays. But there was evidence that the State adduced either at the plea or at the sentencing -- I think maybe at the sentencing, of the mother of the child who attributed some fairly incriminating type statements from Mr. Collins, both in terms of a way he had treated a dog, I believe, or a puppy.

MR. UFFERMAN: Yes.

THE COURT: Also threatening -- it may have been threatening her, but also threatening the child at some point. And, I mean, I guess it would be fine if Mr. Collins wanted to deny all that. But that was evidence that at least was in the record at the time of the plea, which at least would potentially support the hypothesis that he had acted against the child; would it not?

MR. UFFERMAN: Certainly that evidence exists. The third thing that came out of that -- and I think defense counsel addressed this during the sentencing hearing is this idea that he did, in fact, have an IV when he was discharged from the hospital. And Mr. Collins took steps to try to make it so the child couldn't grab the IV and pull it out.

THE COURT: Well, that -- I mean, I don't know. That

didn't bother me as much. That seemed -- at least in its benign state, that would seem to be somebody that just doesn't know how to stop an infant from pulling out an IV.

MR. UFFERMAN: I agree.

THE COURT: And so while it might not be according to -- to the way you're supposed to do it, I'm not sure it would be considered abuse. Maybe it is. I don't know. But --

MR. UFFERMAN: I --

THE COURT: -- certainly the other statements attributable to Mr. Collins portrayed him as a violent person who had been violent against an animal, who had threatened the mother, and who had actually threatened the child. And it didn't -- it made him sound like kind of an ugly guy.

MR. UFFERMAN: Two responses to that, Your Honor. First, one, if she had said, I actually observed him be physically abusive toward the child in the past, I'd have a hard time making an argument in front of you today, because that would be direct evidence of him physically abusing the child.

Making statements that -- those are ill-advised statements. But we have -- certainly in our culture today, many people perhaps make ill-advised statements. It doesn't mean they follow through on those statements.

We also have someone that maybe had a motive to be pretty upset with Mr. Collins if she also believed that he was

the cause of her child's death.

THE COURT: She was not -- she was not present at the time of the 911 call?

MR. UFFERMAN: To my knowledge, she's not. I'm not aware of that.

THE COURT: Is there any tape of the 911 call? Have you ever heard it?

MR. UFFERMAN: I have not.

THE COURT: Because he tried to call 911.

MR. UFFERMAN: He did call 911. That's the reason that the EMS people responded to the child and brought the child to the hospital was because he called 911 and said he was engaging in CPR when he found the child nonresponsive in the crib. So I don't think that -- so to --

THE COURT: So let me -- I appreciate that. Let me ask you this. Here's what I -- I've been trying to think of this in terms of actual innocence. And this is apart from any procedural or other issues. It's just trying to think of it in terms of actual innocence.

So, you know, we don't -- we have all heard of -- and I never had one myself. But we have heard of cases in which a person's innocence is demonstrated to a near certainty. For example --

MR. UFFERMAN: DNA.

THE COURT: -- DNA shows that he didn't do it.

MR. UFFERMAN: Correct.

THE COURT: Or, you know, I guess in another case the victim comes forward and said, I lied, it wasn't him, or whatever --

MR. UFFERMAN: Yes.

THE COURT: -- something like that.

MR. UFFERMAN: Yes.

THE COURT: This isn't exactly that. This is -- this is a medical examiner, although I'm -- I don't really know what exactly all he said, because we don't have the report. But we kind of know what he said.

We know what he said from the State's recitation at the sentencing. And we know -- we have a little snippet of his deposition in the record there that --

MR. UFFERMAN: Yes.

THE COURT: So we kind of know what he says. And then we have now medical evidence from medical professionals who, while they may be very credible, obviously also have a point of view about this.

This is a -- this is kind of like -- in another area of law, this is kind of like the -- maybe the evolving thinking about eyewitness testimony. We used to think we knew something and now maybe we're not sure anymore.

So this is -- these are these doctors saying, What we used to think, we don't think anymore. I did see, I think --

and you can correct me -- or verify it.

I did think that I saw you reference somewhere that -- whatever the medical examiner union is now, they don't -- they wouldn't probably give the same opinion that they did before. At least that was the intimation.

But the point of the matter is, is this really an actual innocence claim, or is this just -- in other words, could the State -- if they had to, could they come in with four doctors that said, No, this is still what happened?

And so now all we have is just a battle of doctors as to whether something is something or it isn't something. And if that's all we have, it makes actual innocence a tougher thing to understand.

MR. UFFERMAN: And so putting that -- I want to cite to *Del Prete*, which obviously I cited in my reply. *Del Prete* is a true *McQuiggin* case, because it's a gateway to other constitutional claims.

But I think *Del Prete* is the best thing I can rely upon from another federal court sitting in the same seat that you're sitting in, can only get to those other constitutional claims if you meet the standard under actual innocence, which is no juror acting reasonably would have voted to find him guilty beyond a reasonable doubt -- now, this is a case we didn't have a jury, but, nevertheless, that that still is the standard that applies from *McQuiggin*, I'd suggest that in light

of -- at least the evidence that was presented and recited in the *Del Prete* order -- you know, I don't doubt that the State, if there was another trial in this case, would perhaps try to put on an expert to say that my client still caused the injuries.

I would hope that my client's experts would be more convincing and no reasonable jury would have voted to find him guilty with whatever the evidence is.

But the State's theory at the time was clearly based on shaken baby syndrome. And I think we know -- and these other umbrella things that they also tried to say, aggravated battery and/or some type of other head injuries that BCS, battered child syndrome -- the doctors for Mr. Collins have said it all falls under the umbrella of the now debunked shaken baby syndrome.

And I believe that science has moved to at least acknowledge if shaken baby syndrome hasn't been debunked completely, they -- where they were in 2001 is very different from where they are today.

And I said this earlier -- I apologize for repeating it. But in 2001, the science community, based on this American Academy of Pediatrics, said that when you see these types of injuries, it's only one possibility. And that's shaken baby syndrome.

And now the science community has moved completely to

the other side and at the very least acknowledged that these types of injuries can be caused by a number of things, falling out of a shopping cart innocently, and, most importantly, preexisting the medical issues.

And maybe they also still could be the result of some type of violent shaking or aggravated battery to the child, but we can't say for certain when we see this type of eye injury and head injury that it can only be one thing. But that's what they were saying back in 2001.

So -- and so the judge in the *Del Prete* case --

THE COURT: Well, we also have in this case, do we not -- and that's what I'm trying to -- I'm trying to think through whether --

MR. UFFERMAN: You asked a question that I was going to get to. If he's guilty of aggravated battery but not guilty of murder, is he actually innocent? I don't know the answer to that question.

THE COURT: Well, not so much that. I'm really thinking about -- I'm thinking about an actual innocence claim where if -- if we find out ten years later that DNA shows that he couldn't have done it -- and I don't mean this case, but I mean a hypothetical case -- well, there's not going to be another doctor who's going to come in and say either I don't care what the DNA says or I'm reading the DNA differently, I don't -- you know, that doesn't usually happen.

But in this case, what we might end up with is just a battle of experts. And a battle of experts doesn't sound like actual innocence.

MR. UFFERMAN: I agree. I would think the same issue was presented in *Del Prete* as well. I think the State, as well as the defense in these types of cases, can generally always put their hands on an expert who is either going to say they did or did not cause the accident that resulted in death in a DUI manslaughter case or they did or did not do this.

I mean, but both parties are going to have their experts -- and I can't tell you this is as conclusive as DNA that shows that there's only one perpetrator and it's not my client. It's not that.

I would assume in *Del Prete* that the State would be ready to line up again and put on an expert and potentially try to say the defendant's guilty.

THE COURT: So you've got -- I mean, as you know -- and you do this all the time. You know, in order to get to the finish line in one of these cases, it's pretty darn hard. And you've got the added problems here there wasn't a trial, he pled guilty, we may not have a classic actual innocence type scenario that you're talking about.

One other question I wanted to ask you about timeliness. What is the case -- let me make sure I'm understanding. So you're telling me that you are -- you are,

in fact, because you don't have any other choice -- you are, in fact, asserting a freestanding actual innocence claim, acknowledging that I would be bound by the Eleventh Circuit authority not to be able to countenance it.

I assume then what you're trying to do is to get me to at least acknowledge that you got something and to maybe give you a certificate of appealability and try to go talk to the Eleventh Circuit. Is that what you're trying --

MR. UFFERMAN: I would have concluded and asked for that exact thing, Your Honor. I would have said, Your hands are tied, but I -- I believe that we're here because you -- you -- and especially with *Del Prete* being in the background, as well, that the law is recognizing that the law has changed -- the science has changed regarding SBS.

THE COURT: So tell me what the case, though -- is *McQuiggin* the case that I would use to -- what do I -- or is *McQuiggin* not even relevant to a freestanding issue?

And the reason I'm asking is this, so I'm not beating around the bush here. If I read *McQuiggin*, it says not only when we're looking at an untimely petition, which -- not only are you looking at the actual innocence component of it, but you still have to look at why it's untimely and what the -- what went into it.

And in this case -- you correct me if I'm wrong. But in this case, September 27th, 2010 -- let me make sure I've got

the right date. That was the date of the last report that arguably gave rise to this contention.

Do I have the right date? Are you -- are you looking at that?

MR. UFFERMAN: I believe that's correct.

THE COURT: Okay.

MR. UFFERMAN: He, of course, turned right around and filed --

THE COURT: But listen to me a second.

MR. UFFERMAN: Okay.

THE COURT: All right. So September -- let's say September 27, 2010, and the State says it would have been a whole lot better if you had filed it by a year from then. We might have something more to talk about. But look what happened.

And this is just the way that you count under the federal law, for better or for worse. So from September 27, 2010, to January 5th of 2011, when Mr. --

MR. UFFERMAN: Collins.

THE COURT: Yeah. When your client filed his second 3.850 -- let me look at my draft here, because we have these numbers in the -- in the draft that I was working with. I believe it was 99 days, and -- let me get it right here.

So the premise of my question is: Even giving Mr. Collins every kind of benefit of the timing doubt, by

September 27, 2010, he had enough information in hand to try to start to assert this newly discovered evidence-type situation. All right?

And on that -- so as of that date he had the information. Then he -- so that would mean, just under this hypothetical, the clock starts running on -- the federal clock starts running on September 28, 2010, 99 days ran. Then he files his state -- his second state petition on January 5th, 2011.

Putting aside the fact that the state court found that was untimely, which probably means under the federal law that it's not tolled, but just giving him the benefit of the doubt -- it's tolled between January 5th, 2011, and March 8th of 2013, when the mandate issues from the Fifth District Court of Appeal. He then did not file his federal petition until January 13th, 2014, which is more than a year.

So if you add the 99 days plus the 266 days left to make 365 days, you only get to November 30th, 2013. He didn't file his petition until January 13th, 2014, about two-and-a-half months later.

So one thing that concerns me about the case is even if I was willing to give him every benefit of every timing doubt there was, he still is probably over the year. And so tell me about that.

MR. UFFERMAN: Your Honor, I think he would rely upon

McQuiggin itself, which came out in May of 2013 and filed within one year of that date, that -- that didn't go as far as he would want him to to recognize a freestanding claim of actual innocence, although they've at least acknowledged that that's an open issue in that case. But prior to that, there really was not hope to even put this issue forward. So I think that would be his assertion.

THE COURT: So that is he -- you're saying that until *McQuiggin* was decided he didn't have anything?

MR. UFFERMAN: I think that's right.

THE COURT: Okay. I don't know about that. But in any event, what is the -- if you're really just making a freestanding claim, does the one-year rule apply at all?

MR. UFFERMAN: I would think not.

THE COURT: So as soon as -- or in any -- anytime that somebody realizes they're actually innocent, no matter when it is, they'd be able to file a federal habeas petition and the federal habeas court would adjudicate whether, in fact, they were actually innocent, and if they were they would get habeas relief, and if they were not they wouldn't?

MR. UFFERMAN: And I would say yes to that. I would say that for -- we know that the U.S. Supreme Court seems to have acknowledged that there can be freestanding actual innocence claims in capital cases. They've left open the idea as to whether or not those types of claims can be raised in

non-capital cases.

The Eleventh Circuit forecloses those. The Ninth Circuit, in a case called *Baker v Yates* -- the cite is 339 Fed.Appx. 690. It's a 2009 case from the Ninth Circuit. They specifically said we have assumed that freestanding innocence claims are cognizable in a 2254 petition.

So to take the extreme scenario if you -- the idea -- if you allow for a freestanding actual innocence claim separate from any type of constitutional claim, you have that defendant that, for whatever reason, was told DNA exonerates you, and on the one-year-and-two-day mark that guy, for whatever reason, maybe didn't get relief in state court, but now tries to go to federal court and says, I've got the DNA test attached that shows one perpetrator in the sexual battery and it's not me, DNA says 100 percent, I think that would be the classic example of the district court saying, This is where we have to step up and acknowledge that there is a freestanding actual innocence claim and we're not going to let timeliness prohibit this otherwise innocent person from getting relief.

THE COURT: What's the Eleventh Circuit case or cases that -- and I think -- I looked at some before the hearing. But what is the case -- okay. So is *Jordan* the case?

MR. UFFERMAN: Yes, Your Honor.

THE COURT: For what it is worth, our precedent forbids granting habeas relief based upon a claim of actual

innocence, anyway, at least in non-capital cases, citing the *Brownlee v Haley* --

MR. UFFERMAN: Yes.

THE COURT: -- and other things. And that *Jordan* case is still the law of the circuit, as far as you know?

MR. UFFERMAN: It is, Your Honor.

THE COURT: Okay. So what you're looking -- what you're looking for from me is to acknowledge that you're trying to raise a freestanding actual innocence claim, acknowledge that circuit precedent forbids me from considering that. And that would be true whether or not it was timely or not?

MR. UFFERMAN: Correct.

THE COURT: Okay. So even if you filed it within the year, circuit precedent would say it doesn't matter, right?

MR. UFFERMAN: Correct.

THE COURT: Okay. So we're really not talking about a timeliness issue. We're really just talking about a freestanding, whether --

MR. UFFERMAN: Yes, Your Honor.

THE COURT: Okay. So you want me to say that's what you're doing, acknowledge that circuit precedent forbids it. In the best-case scenario, you'd want me to talk a little bit about it, to say, Looks like maybe they've got a little something going here, I can't really tell, but since I can't consider it, I'm not going to go much farther than that, and

give you a certificate of appealability?

MR. UFFERMAN: That's exactly right, Your Honor. And then it's my goal to either try to get the Eleventh Circuit to recede en banc from *Jordan* or go up to the U.S. Supreme Court.

THE COURT: Okay.

MR. UFFERMAN: And the only -- again, I would just -- you know this, but I'll quote from it just briefly. In the *Herrera* case, the United States Supreme Court, that's where they assumed without deciding that there would be a freestanding innocence claim in a capital case.

And then there's a -- the Ninth Circuit has recognized that a reading of *Herrera* suggested at least a majority of the court might be willing to extend that to non-capital cases.

They haven't done it yet. They left open the possibility of *McQuiggin*. It's an open issue. It's one that I hope to be able to present to the Eleventh Circuit and/or the U.S. Supreme Court moving forward. But the only way that's really going to happen is if we at least get a certificate of appealability, Your Honor.

THE COURT: Thank you.

MR. UFFERMAN: Thank you, Your Honor.

MS. COMPTON: Good afternoon. May it please the court.

THE COURT: Yes, ma'am.

MS. COMPTON: Robin Compton, Assistant Attorney General, representing the Secretary, Department of Corrections. It seems like what we've got here are two different, but supported medical opinions as to the cause of death.

The doctor reports and all the articles that Mr. Collins has presented, they're not evidence of actual innocence, but they're evidence why the jury should believe his experts over our experts.

And it's not the same as evidence that would exclude him as a suspect or prove that the child did not die from injuries inflicted on him.

They're credibility and jury issues. They're not evidence of innocence. There's been no evidence the State's experts would agree with Collins' experts. And, in fact, I think you touched upon that earlier. That's exactly what it would come down to, is a battle of the experts.

THE COURT: Well, but it might be a little fairer fight than it was back in -- in 2002 or '03 when this happened, right?

I mean, it does appear that the medical community, including the medical examiner community, has really started to rethink how they looked at these cases.

Do you agree with that?

MS. COMPTON: No. No, I don't. Because everything you're seeing are all documents that they've submitted. And,

you know, I've spoken with -- I know I'm supposed to confine my argument to this record that's been submitted, but it's not called shaken baby syndrome anymore. It's abusive head trauma. And it's still very much alive and well. And the American Academy of Pediatrics vigorously defends their position on this.

And a major problem that we have in this case is the fact that he entered a plea. So we don't have all the evidence that would have been admitted if we had gone to trial.

He gave up his right to contest the evidence. And he avoided a death penalty and a mandatory life sentence in doing that. He had competent counsel that did a lot of work on this case, including consulting with the experts.

He had the Dr. Siebel that you had mentioned. He was the pathologist pediatric expert that had been the medical director of a child protection team since 1985 to the time of the case.

He had extensive training in child abuse and neglect and had given a lot of presentations on the issue and published material on it.

So he had also consulted with --

THE COURT: And are you taking -- by the fact that they didn't try to defend the case or they agreed to the nolo plea, that Dr. Siebel was not favorable, or are you just saying he had the benefit of good medical expert evaluation, or what?

MS. COMPTON: Kind of both. I mean, I don't know what -- what Dr. Siebel ended up telling him, but he had been appointed for a year. He got appointed a year before he entered the plea.

So I'm assuming he looked at a lot of -- a lot of the evidence and didn't give a favorable opinion. But he wasn't the only expert that was appointed.

There was also a Dr. Souviron that was the chief forensic odontologist -- I'm not sure if I'm pronouncing that correct -- for a medical examiner office -- not this medical examiner office in this record, but he was -- he was -- this guy was in charge of the ValuJet identifications. And he was consulted in this case.

THE COURT: How do you know that?

MS. COMPTON: Because I've looked at the direct appeal record. Which I didn't submit the whole entire direct appeal record because he entered a plea in this case. And I just submitted the documents that I thought were necessary to prove that it wasn't timely.

You know, no good deed goes unpunished. I was trying to lighten the load for -- you know, the judges that work in the federal courts, so they wouldn't have to wade through all the endless documents, but -- anyway, I won't make that mistake again.

He also had a toxicologist appointed. And I did have

to dig for the medical examiner's report. I do have it if -- and I made copies of it if you want it.

THE COURT: Okay. Yeah, I'd like to look at it. Thanks.

MS. COMPTON: Okay. And there were autopsy photos taken because defense counsel tried to move in limine to exclude the autopsy pictures. So --

THE COURT: And I think -- I think Judge Mathis was given some of the pictures at sentencing, if I recall correctly. I think --

MS. COMPTON: There was reference. But we don't know if it was autopsy pictures or pictures -- I don't know, because I -- I haven't seen any pictures myself.

But as you stated earlier, the abuse of head trauma wasn't the only cause of death. There was also the battered child syndrome and --

THE COURT: Well, it wasn't clear to me, though, if you -- if you assume that the head trauma was caused -- and this is just an assumption for purposes of discussion.

But if you assume that that was caused by the clotting disorders as the experts that -- that your opponent has gotten together said so -- it wasn't clear to me whether the battered child syndrome would have been an actual cause of death. Would it?

MS. COMPTON: Well, I think that -- the actual

autopsy report, I think, said it was a -- here's a copy of the report.

MR. UFFERMAN: Thank you.

MS. COMPTON: Cause of death, abusive head injury. Contributory cause was battered child syndrome.

THE COURT: Right.

MS. COMPTON: Manner of death, homicide.

THE COURT: Yeah.

MS. COMPTON: But we've got a lot of other evidence that, you know, I could put my hands on, but I know that it wasn't submitted as -- it never got into the court below because he pled.

You know, there was -- what we do have in this record is a notice of intent to rely on collateral crime evidence. And there was a lot of things that the mom could have testified about. And I went back and I read her deposition.

She did witness him actually punching the child in the head. So hopefully she would come in and testify to that if it -- if it got to that point.

What else? You know, she had previously had a restraining order against him. He had stabbed her before. And then we've got the -- the matter with the child -- with the puppy, that he beats the puppy, crushed the puppy's skull and killed it and said, quote, If your son didn't get strong and start acting right -- doesn't start acting right, I'm going to

kill his ass too.

So all of that is really, really damaging for him, which, you know, I think has to be considered why he entered this plea. He avoided a death penalty and he avoided a mandatory life sentence. He got 30 years. He's already halfway into that.

You know, what's our remedy going to be? We're going to go back and have a trial at this point and seek the death penalty again? He could end up with a life sentence if he goes back. Or, you know, does this court want to just find that he's actually innocent and, you know, let him go? I don't know.

But, you know, it's also our position that the evidence isn't reliable that he did submit. It's still a very viable and accepted diagnosis in the medical community. His experts -- Dr. Buttram is deceased, if I'm not mistaken. Is that correct?

MR. UFFERMAN: (Nods head affirmatively.)

MS. COMPTON: He's dead. This Dr. Holcomb, which he lists in his appendix as a doctor. And Mr. Holcomb is not a doctor. He's a paralegal. And he's currently in prison. He's been in prison since 1992 for kidnapping and sexual assault. So that's one of his experts. The State would have a field day with that. Not to mention, how is he even going to get to court to testify?

Dr. Stephens -- his report said the child was demonstrably malnourished. But the autopsy says that he's well-nourished, if you look at the autopsy report.

And, also, a really bad damaging factor for him, Dr. Stephens' report says, Does -- and I quote, Does not exclude the possibility of superimposed inflicted injury. So that's at the appendix A6 on page two.

Also, Dr. Stephens --

THE COURT: What does that mean?

MS. COMPTON: Does not exclude the possibility of superimposed inflicted injury -- that means even if he died from -- I mean, even if there were all these -- these bleeds that's going on, it doesn't rule out that he also could have been smacked around.

But the -- he also doubted in Dr. Stephens' report that the ME considered the medical history. Well, we know from the -- Dr. Steiner's deposition that he did consider the medical history.

One other thing about the timeliness is that -- and I know we were using the date September 27th, 2010. And that's being -- we're just really being generous giving that as the date.

But if you go back as far as his very first 3.850 that he filed, the attachment that he files to his 3.850 has -- it's an article by Dr. Buttram. And in that article he refers

to Dr. Innis' vitamin K deficiency. And he attaches the second attachment to that 3.850.

THE COURT: One of the things I was going to ask -- I guess your opponent, but I'll ask you. It appeared to me the first time that this issue of actual innocence came up, it was -- the theory seemed to be that a vaccine caused the deficiency that then led to the bleeding. And it seemed to me that later on that was not really what was being said.

Did you pick up on that? Or do you know -- can you help me with that at all?

MS. COMPTON: It just appears to me that it morphed from the -- the vaccine, and I guess into the -- that evidently wasn't a very good argument or not reliable or not solid. So they switched it to it's a vitamin K deficiency.

THE COURT: So your view of this is that if this case was brought today with the same evidence that the State would have the same position?

MS. COMPTON: Absolutely. We just don't call it shaken baby syndrome anymore. Now it's abusive head trauma, which that's what the medical examiner report calls it.

THE COURT: And do you know what the difference is? Or why is it -- why do they not call it -- what --

MS. COMPTON: I'm sure there's some medical reason for that, but I am no medical expert by any means. I mean, I know a lot more about this stuff than I did two weeks ago, but

not by choice.

So he relies on the *Del Prete* case also. And, you know, a major difference between that and this case is *Del Prete* had a trial. So all that evidence -- they had a lot of the evidence out there.

I think this is one of the major reasons why we're at this point now, is because he entered a plea and we don't have all of the evidence on the record, and the fact that both 3.850s were summarily denied.

So, you know, there was never an evidentiary hearing below on any of his issues either. And now he's just raising the freestanding actual innocence claim.

THE COURT: So is the -- just so I'm understanding, one of the things -- you know, if you were -- and this doesn't -- this really doesn't necessarily have to do with this case, but I don't get to talk to y'all too much, because we -- most of these, as you know, are handled on the papers. And so every once in a while we do get to talk.

And so one of the things -- if you were to ask somebody that wasn't a lawyer -- if it turns out that we were wrong and that the person is actually innocent of the crime that they're currently serving time for, is it the State of Florida's position or the Secretary's position that in the federal habeas context -- if that's all we know, that there's no underlying claim, that federal habeas relief isn't

available?

MS. COMPTON: That seems to be what the -- oh, you said not a lawyer.

THE COURT: I mean, if you were asking somebody, just -- I mean, I'm just trying to --

MS. COMPTON: Well, that doesn't make sense.

THE COURT: We all get so used to talking about this stuff, actual innocence is a gateway to something else, which has always seemed kind of interesting to me. Why would you need -- why would you need to prove you're actually innocent in order to actually assert something else? I never have quite understood that. But that's one thing that people talked about, gateway claims. Actual innocence is a gateway to allow you to raise ineffective assistance of counsel.

MS. COMPTON: Like it's not a constitutional violation.

THE COURT: But now we're talking about a, quote, freestanding actual innocence claim. What that really means is, I want to show you that I'm innocent and that it didn't happen. It absolutely didn't happen.

And I guess it just is an interesting thing to me that we don't -- that we are discussing whether or not that's something that we ought to be talking about.

And so if it -- so you've been doing this a long time. And I've seen your name on lots of things. So is -- how

does this normally work if you really find somebody that's actually innocent? Does the State of Florida go in and ask the charges to be dismissed? Or how does it -- how does it work?

MS. COMPTON: We're like one step removed from the State Attorney's Office. I mean, we do all the appeals, so -- and she's been doing this -- Ms. Nielan, she's been doing this a lot longer than me. She may have an answer for your question.

THE COURT: Well, I mean, you know, you hear on TV that the Innocence Project determined that somebody's DNA -- and then the state district attorney goes in and dismisses the charges, or whatever. And there's happy faces outside and all that.

MS. COMPTON: Yeah, yeah.

THE COURT: And, you know -- but what we're talking about here is the idea that -- and, again, I'm not really talking about this case. I'm just talking about generally. Because, as I said, I don't get to ask y'all these questions very often.

What does it mean to say that we, the State of Florida, will not countenance an actual innocence federal habeas petition because actual innocence is not a grounds for habeas relief?

MS. COMPTON: That doesn't make sense. And I understand exactly what you're saying. And, you know, that's

the perfect case for, like, when there's DNA.

And I think they do -- they do turn them loose then. And I think you -- they get to walk. I've had -- I've lost a federal habeas.

THE COURT: I think one answer to my -- Justice Scalia wrote a concurrence in the *Herrera* case. And he says -- he says that the reason that federal habeas relief -- and we're not -- because, in fairness to you, there may be processes in the State of Florida court system to address actual innocence. There may be.

In other words, it may -- I don't know what -- all the motions you can file in state court. But if you come up with -- even years later, if you come up with evidence that you're actually innocent, it may be that the state courts will entertain your case. I don't know.

MS. COMPTON: Based on newly discovered evidence.

THE COURT: Okay. Whatever. But what we're talking about here is the only thing I can talk about, which is federal habeas, because obviously I don't have anything to do with the state system.

I think one answer is that -- Justice Scalia would say that federal habeas only stands to correct constitutional error and doesn't stand to correct errors of fact. And he, I think, viewed actual innocence claims as being more factual issues than legal issues.

So I guess that's one way to look at it. Now, he was not in the majority in -- well, he was concurring, I guess, in *Herrera*. But it -- just sometimes it bothers me when I write an order and -- and this isn't really your problem, this is really my problem, but that I -- that I write an order that, of course, we don't countenance freestanding actual innocence claims. And I sometimes just wonder about that, but -- and I understand. I appreciate your being helpful in that.

MS. COMPTON: I don't think I was.

THE COURT: You would say -- you would say to me, it sounds like, Well, I don't know about that, but I can tell you in this case this is not a case of actual innocence anyway.

MS. COMPTON: That's exactly right. And that's our position.

THE COURT: And you've now recited to me a number of other facts, some of which I knew, some of which I didn't, because you have the benefit of -- of the direct appeal record that I didn't have, that would make this a horse race, so to speak; that is, this would be a classic case where Mr. Collins would have his experts come in and say this -- there's no such thing as shaken baby syndrome, and this was more likely a clotting disorder, and the State would have a doctor that would say to the contrary, and then the State would also have the testimony of the mother and other things, and -- and a jury would have to decide it, but we -- we don't get anywhere close

to the standard of -- that no reasonable juror could conclude beyond a reasonable doubt that he did this, which is really what you have to find, right?

MS. COMPTON: Correct. And it certainly doesn't rise to the level that you would grant a certificate of appealability on this issue.

THE COURT: Yeah. Okay.

MS. COMPTON: Would you like the ME report?

THE COURT: Sure. That would be great. Thank you.

Anything else you want to say?

MS. COMPTON: I don't think so.

THE COURT: Thanks.

MS. COMPTON: Thank you.

THE COURT: All right. Rebuttal.

MR. UFFERMAN: I'll be brief, Your Honor. I just want to address first the -- the idea this was a plea. We know of examples of people who have been exonerated who entered a plea -- I don't know what goes through someone's mind, but I would suggest that if there ever was a viable idea as to why someone who knows they're innocent would enter a plea, this would be a reasonable scenario. He's very young --

THE COURT: I don't doubt that. The problem is the whole *McQuiggin* -- everything about actual innocence is predicated on a trial record, right?

I mean, there's not been a case -- at least -- unless

you know of one -- where this type of issue is really fleshed out when somebody has pled -- and he didn't actually plead guilty. He pled nolo, which is kind of interesting.

MR. UFFERMAN: Sure.

THE COURT: Because in Florida -- unlike in federal court -- you know, in federal court we don't let you do that.

MR. UFFERMAN: Right.

THE COURT: In federal court you've got to say you did it --

MR. UFFERMAN: Yeah.

THE COURT: -- or else we don't let you plead. But in state court they let you say --

MR. UFFERMAN: Best interest.

THE COURT: -- it's in my best interest, because I'm trying to avoid the death penalty, or I'm -- whatever -- it's in my best interest to do so. And that's what this was, right?

MR. UFFERMAN: Exactly. And, Your Honor, that's a great example. I practice in front of Judge Hinkle and Judge Walker frequently, but I've reviewed many transcripts of Judge Hinkle that if Mr. Collins had said what he said at sentencing, about I didn't intentionally do anything, I certainly didn't intend to kill this child and didn't do any act to do that --

THE COURT: He would have sent him to trial.

MR. UFFERMAN: He would have said, Mr. Collins, we

have a real problem here, because you've entered a guilty plea. And what you're telling me is you're not guilty. And then I need you to go talk to your counsel and either you're going to come back and say something completely different or we're going to trial, so --

THE COURT: But it does complicate the case, because --

MR. UFFERMAN: It does.

THE COURT: -- you heard your opponent say, Well, if we got another crack at this, here's some other stuff that would come in. And so -- and, by the way, it's now called -- abusive head trauma? Is that what it is -- and we would have doctors that would support the State.

Now, you know, I mean, Ms. Compton is saying that and she -- I'm sure she believes it. And it -- but, as you probably know, it's not -- especially when you're talking about disputed areas of medicine, it's not altogether unheard of for doctors to disagree.

MR. UFFERMAN: Of course.

THE COURT: And so why is this the case that you want to take up to the Eleventh Circuit on a freestanding actual innocence claim?

MR. UFFERMAN: One, I do think -- I believe the case law shows -- I think the *Del Prete* case -- I think there's a *Bailey* case out of New York that does explain that -- that at

least from the publishing community of medical experts that -- where they were in 2001 was, when you see these injuries, that's the only explanation, and at least now the publishing community medical community -- although they still may say there's a criminal explanation, there are at least other possibilities, including this child's medical condition being the main other explanation.

So when you combine that with this child, I -- you know, having -- I don't mean to make this personal. But having a special needs child myself, it can be difficult. But we do have a case here where this child spent, you know, the vast majority of his ten months on this earth --

THE COURT: This is a premature baby who had a lot of medical problems and had spend two-thirds of his short life -- it was a male, right?

MR. UFFERMAN: Yes.

THE COURT: -- two-thirds of his short life in the hospital, and who obviously came home on -- with IV and all that. And I --

MR. UFFERMAN: Absent that -- if we had a completely healthy child, you'd laugh me out of this courtroom. But when you have a child with that medical background, that's -- I think many experts, at least -- and I don't doubt that the State would have an expert that would disagree.

But many experts would say this is the type of child

that you would see these types of symptoms, would have this type of clotting disorder, vitamin K disorder, whatever other disorders this child had, and it could have been misdiagnosed as some type of violent act when, in fact, it really is just this child's medical condition.

THE COURT: And what would have happened -- what would have been the state of medical play if Mr. Collins had said -- and I understand he would be running the risk of death penalty or life in prison.

But what if he had said, I didn't do this and let's go to trial? What would he have been able to muster at that point in time -- let's assume he could get good medical help.

And it sounded like from -- I mean, it sounded like the expert he had and the other expert that I didn't know anything about, but apparently was in the direct appeal file -- it sounded like he did have access to some medical --

MR. UFFERMAN: I can't refute that. Again, I think the issue is that the science changed.

THE COURT: So you're saying it wouldn't have done him any good at that point in time, it only had become knowable or accepted post-2010 --

MR. UFFERMAN: Yes.

THE COURT: -- that this is the way it is?

MR. UFFERMAN: That's exactly right, Your Honor. And, again -- he faces the death penalty now if he's

successful. I don't know the answer to that either.

And I think if he were to be granted relief, I -- I believe that may lead to a new trial, simply because -- even if you look at the *Del Prete* case, that the actual innocence is a gateway to the constitutional claims. If he wins on the constitutional claims, that results in a new trial on the ineffective assistance of counsel claim.

So he has a lot to risk even if he were to be successful if the State were to move forward and try to reprosecute him for first degree murder and seek the death penalty.

But, again, at the time, trying to explain why someone in his shoes, very young, going through this traumatic experience, would have entered a plea if they know they're actually innocent -- you know, when you're facing the death penalty and you're being told the science is against you, there's -- and we even have experts who agree that's what the science says, when you see this type of injury, the only explanation is shaken baby syndrome, it's a violent injury caused by you, you have no defense, but I can get you a deal that you might be able to get as low as 20, but the max you're looking at is 30 as opposed to either death or life.

THE COURT: Can you talk to me real briefly about this vaccination theory and what that was about and why that is not what's being talked about now?

MR. UFFERMAN: I think it's -- I think Mr. Collins' case kind of was riding the wave of change from 2001 to 2010. So he filed his initial 3.850 motion, I want to say, in 2006.

THE COURT: Yes. That's right.

MR. UFFERMAN: And at that time the wave was just starting. And one of the ideas was maybe this actually is the result of a vaccination. And that's one of the theories that's being put out by some of the doctors that were on the other side.

And by the time he lost that, and by the time he now gets more documents, and is able to actually send these documents out to get his own defense team, apparently pro bono, who would review this -- it's only at that point that the science had changed to the point that it did in 2010.

THE COURT: Is the theory here -- is the medical theory here that the antibiotic therapy that the baby was involved with because of his medical problems created the clotting disorder or the clotting -- is the theory different than that?

MR. UFFERMAN: I don't know if I know the answer to that, Your Honor. I think it was an issue -- I think clotting was an issue with prematurity that the baby had regardless. Whether the antibiotic added to that, I'm not sure.

THE COURT: So Ms. Compton isn't as impressed with your lineup of four medical providers.

MR. UFFERMAN: Certainly one of them.

THE COURT: And talk to me about that a minute.

MR. UFFERMAN: Well, one of them is dead. That's beyond our control, but I --

THE COURT: I agree with that.

MR. UFFERMAN: But I assume we'd be able to find someone who would take Dr. Buttram's case. I don't dispute her at all about the paralegal. To the extent I referred to that person as a doctor or professional in that regard, I apologize. I was not meaning to. But, nevertheless, I do think he has an impressive other lineup of doctors, putting that person aside.

But it's not beyond that. If I was coming to you with just that, that would be one thing. But when I come to you with the *Del Prete* case, the *Bailey* case, other cases around -- you know, I quoted Judge Posner in one of my pleadings as well.

I think the legal community is dealing with the effects of shaken baby syndrome prosecutions in the early 2000s that now we're causing to rethink those.

So it's not just this case. It's not just these experts. I think there's any number of experts. In preparing for this I actually -- I used to be on the board of the Innocence Project of Florida for a number of years. And I talked to someone in Wisconsin -- the Wisconsin Innocence Project. And her sole responsibility is handling these cases

around the country. So I think, you know, there is --

THE COURT: So this is a thing?

MR. UFFERMAN: I think it is a thing.

THE COURT: And is the *Del* -- what's the name?

MR. UFFERMAN: *Del Prete*.

THE COURT: Is that the only, like, written published case that talks about this? I know you quoted Judge Posner, but I did not get a chance to read that.

MR. UFFERMAN: Yeah.

THE COURT: What's that about?

MR. UFFERMAN: I apologize for not knowing the answer. But it's not obviously as good as *Del Prete* or I would have had it in my reply.

I think *Del Prete* is the lead case from the standpoint that here you have a judge in a similar context saying that actual innocence leads to the gateway, and the next words we get out of that judge's order are, So I'm going to schedule the evidentiary hearing on those constitutional claims that you now get to present, even though they were untimely.

That's a pretty astounding step in the wake of *McQuiggin*, and even allowing those types of untimely claims to be considered.

So I can't imagine there's too many *McQuiggin* cases where judges -- federal judges around the country have found that the actual innocence gateway has been met. And it was met

in a shaken baby syndrome case in *Del Prete*. And that's obviously why we're relying upon it.

THE COURT: Thank you.

MR. UFFERMAN: Thank you, Your Honor.

THE COURT: Ms. Compton, do you have anything else you wanted to say? Or did you get to say it all?

MS. COMPTON: The only other thing I would add, Judge, would be in that *Del Prete* case. I think one of the reasons why it got sent back for an evidentiary hearing was because experts on both sides of those cases, for the state and for the defendant, had agreed that there were old injuries.

THE COURT: Yeah.

MS. COMPTON: And that they -- the defendant could not have been alone.

THE COURT: I did notice there was more --

MS. COMPTON: Right.

THE COURT: -- uniformity of view about -- from both sides than -- than we have here, although we don't -- as you say -- and, you know, it's a fair point -- our record is not the kind of record you would normally try to make determinations from, because it's skewed by the fact there was a plea. And it just kind of stopped at that point.

MS. COMPTON: Uh-huh (affirmative).

THE COURT: So it's a fair point.

MS. COMPTON: And interestingly enough, in the -- in

the ME report, there's -- you'll never find -- see the words shaken baby syndrome. They're not in there. It's abusive head trauma.

THE COURT: Even in the -- this report?

MS. COMPTON: In that report, yeah. There's no shaken baby syndrome. He brings it up after being questioned about it at the depo, but not in that record.

THE COURT: It says, Cause of death, abusive head injury, is that what you're talking about?

MS. COMPTON: Right, right.

THE COURT: Okay. Thank you.

MS. COMPTON: Thank you.

THE COURT: All right. Well, thank you all for your time. You know, obviously, I guess even the petitioner knows the end result in this court is not -- you know, I'm not going to be able to grant relief.

And the only question is -- now that I know for sure -- I wasn't sure until you said so that you are just asserting a freestanding actual innocence claim. So I don't have to do the analysis of whether there's an underlying claim that we need to adjudicate.

So I -- but I'll think about -- I'll think about what you said. I'll think about whether I ought to write a little bit about it. I'll think about the certificate of appealability. I mean, ultimately this is going to be the

Eleventh Circuit's deal one way or the other.

I saw one of the cases the Eleventh Circuit was kind of fussing at the district judge for granting the certificate of appealability, although I noticed they did so after they had stayed -- stayed an execution and then they unstayed it. So at least somebody in the Eleventh Circuit thought that it was worth looking at.

All right. I'm going to look at it. I'll think about it. I will issue an opinion as soon as I can. And then the matter will go from there. I appreciate everybody's help.

MR. UFFERMAN: Thank you, Your Honor.

MS. COMPTON: Thank you.

THE COURT: All rise.

(The proceedings concluded at 3:13 p.m.)

- - -

CERTIFICATE

UNITED STATES DISTRICT COURT)
)
MIDDLE DISTRICT OF FLORIDA)

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated herein.

DATED this 8th day of December, 2017.

s/Shannon M. Bishop
Shannon M. Bishop, RDR, CRR

IN THE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

QINARD LAMAR COLLINS DOC# V18204, Petitioner, v. MICHAEL D. CREWS, as Secretary, Department of Corrections, State of Florida, Respondent.	Case No.

PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY

1. Name and location of court which entered the judgment of conviction under attack: Florida Seventh Judicial Circuit Court, St. Johns River County, Florida

2. Date of judgment of conviction: October 10, 2003

3. Length of sentence: thirty years' imprisonment

4. Nature of offenses involved (all counts): second-degree murder

5. What was your plea? (Check one)

   (a) Not guilty (__)
   (b) Guilty (__)
   (c) No contest (✓)

   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/A

6. Kind of trial: N/A

7. Did you testify at the trial? N/A

8. Did you appeal from the judgment of conviction?

Yes (✓) No (__)

9. If you did appeal, answer the following:

(a) Name of court: Florida Fifth District Court of Appeal

(b) Result: Conviction and sentence affirmed

(c) Date of result: May 14, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes (✓) No (__)

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court: Florida Seventh Judicial Circuit Court, St. Johns River County, Florida

(2) Nature of proceeding: Florida Rule of Criminal Procedure 3.850 motion

(3) Grounds raised: Ineffective assistance of trial counsel and new evidence

(4) Did you receive an evidentiary hearing on your petition, application or motion? No

(5) Result: Motion denied for facial insufficiency

(6) Date of result: May 25, 2006

(7) Did you appeal the result? Yes

i. Date of result: September 5, 2006

ii. Court: Florida Fifth District Court of Appeal

iii. Result: Denial of motion affirmed

(b) As to any second petition, application or motion give the same information:

(1) Name of court: Florida Seventh Judicial Circuit Court, St. Johns River County, Florida

(2) Nature of proceeding: Florida Rule of Criminal Procedure 3.850 motion

(3) Grounds raised: Newly discovered evidence

(4) Did you receive an evidentiary hearing on your petition, application or motion? No

(5) Result: Motion dismissed

(6) Date of result: January 6, 2012

(7) Did you appeal the result? Yes

i. Date of result: February 12, 2013

ii. Court: Florida Fifth District Court of Appeal

iii. Result: Dismissal of motion affirmed

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes

(2) Second petition, etc. Yes

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Claim 1: Petitioner Collins is "actually innocent" of the charge in this case and new evidence, research, and studies (conducted since the time of the trial) demonstrate that Shaken Baby Syndrome is no longer a valid or scientifically/medically accepted theory.

Supporting FACTS:

Shaken Baby Syndrome is no longer a valid or scientifically/medically accepted theory. Therefore, Petitioner Collins is actually innocent of the charge in this case. In *McQuiggin v. Perkins*, – U.S. –, 133 S. Ct. 1924 (2013), the Supreme Court recently recognized that a claim of "actual innocence" can overcome the 28 U.S.C. § 2254 statute of limitations. Petitioner Collins relies on the separately filed memorandum of law in support of this claim.

13. If any of the grounds listed in 12 were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

This ground was raised in state court proceedings.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes (__) No (✓)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing N/A

(b) At arraignment and plea Joseph Anthony, 820 North Orange Avenue, Green Cove Springs, Florida 32043

(c) At trial N/A

(d) At sentencing Mr. Anthony

(e) On appeal Public Defender's Office

(f) In any post-conviction proceeding *pro se*

(g) On appeal from any adverse ruling in a post-conviction proceeding Mary Elizabeth Fitzgibbons, 21 South Clyde Avenue, Suite 3, Kissimmee, Florida 34741

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes (_) No (✓)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes (_) No (✓)

Wherefore, Petitioner Collins prays that the Court will grant him relief to which he may be entitled in this proceeding.

Oath

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on:

1/10/14
Date

Michael Ufferman for Qinard Lamar Collins, Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Office of the Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32118

by U.S. mail this 10th day of January, 2014;

Michael D. Crews
Secretary
Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399-2500

by U.S. mail this 10th day of January, 2014.

Respectfully submitted,

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

Counsel for Petitioner **COLLINS**

xc: Qinard Lamar Collins

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
QINARD LAMAR COLLINS - DOC# v18204

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Michael Ufferman, Michael Ufferman Law Firm, P.A., 2022-1 Raymond Diehl Road, Tallahassee, FL 32308 - Telephone: 850-386-2345

DEFENDANTS
MICHAEL D. CREWS, as Sec'y, Fla. Dep't of Corrections

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Office of the Attorney General of Florida

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☒ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 J.S.C. Section 2254
Brief description of cause:
Petition for Writ of Habeas Corpus by Person in State Custody

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE _____ DOCKET NUMBER _____

DATE
01/03/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

A-89

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

QINARD LAMAR COLLINS,

Petitioner,

v. CASE NO. 3:14-cv-47-J-32PDB

SECRETARY, DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.
_____/

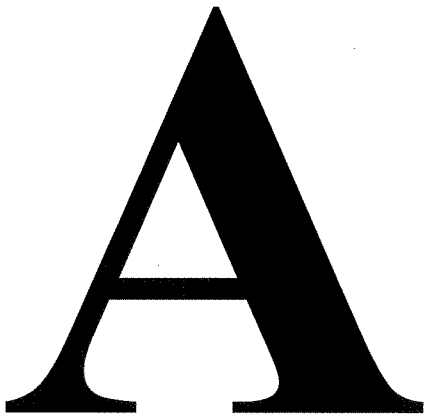
APPENDIX

PAMELA JO BONDI
ATTORNEY GENERAL

ROBIN A. COMPTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar #0846864
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
(386) 238-4990
FAX (386)238-4997
Robin.Compton@myfloridalegal.com

COUNSEL FOR RESPONDENTS

INDEX TO APPENDIX



IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA
CASE NO: CF01-1102
DIVISION: 56B
CLERK # 011011

STATE OF FLORIDA

VS.

QINARD LAMAR COLLINS
BLACK; MALE; DOB; 3/22/76
SS# 265-71-0713

INDICTMENT

The Fall Term Grand Jury, in and for St. Johns County, Florida, empanelled and sworn to inquire and true presentment make, hereby, in the name of and by the authority of the State of Florida, brings this prosecution and makes the following charge or charges in TWO count:

COUNT I

CHARGE: AGGRAVATED CHILD ABUSE, in violation of F.S. 827.03(2)

SPECIFICATION OF CHARGE: In that QINARD LAMAR COLLINS, on or between the 17th day of March, 2001, and to include the 1st day of April, 2001 , and on divers days inbetween, within St. Johns County, Florida, did then and there willfully torture, and/or maliciously punish, to wit: QINARD COLLINS JR., a child ten (10) months of age, by biting, striking, punching, pinching or battering.

COUNT II

CHARGE: FIRST DEGREE MURDER, in violation of F.S. 782.04(1)(a)2

SPECIFICATIONS OF CHARGE: In that QINARD LAMAR COLLINS, on or about the 2ND day of April, 2001, within St. Johns County, Florida, did then and there unlawfully, while engaged in the perpetration or attempted perpetration of the offense of AGGRAVATED CHILD ABUSE , kill and murder Qinard Collins Jr., a human being, by hitting and/or shaking and/or striking said child on or about his head causing abusive head injury.

A TRUE BILL
Debra Allen-Flaherty
FOREPERSON OF THE GRAND JURY

I, the undersigned State Attorney, as authorized and required by law, have advised the Grand Jury returning this Indictment.

John Tanner
JOHN TANNER
STATE ATTORNEY
Florida Bar Number 0106174

This Indictment presented by the aforesaid Grand Jury in open court, this 1st day of MAY, 2001, and on the 1st day of MAY, 2001, at the hour of 11:45am , was filed by me.

Christy J. Maker
CLERK OF THE COURT

Page No. 12 Case No. CF01-1102

B

IN THE CIRCUIT COURT IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO. CF01-1102

STATE OF FLORIDA

VS

QINARD COLLINS SR.
DEFENDANT
_____/

FILED
01 SEP 26 PM 1:56
CHERYL STRICKLAND
CLERK OF CIRCUIT COURT
ST JOHNS COUNTY, FL

NOTICE OF STATE=S INTENT
TO SEEK THE DEATH PENALTY

The State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Rule 3.202, Fla.R.Crim.Pro. hereby informs the Court that it will seek the death penalty if the Defendant is convicted of Murder in the First Degree in the above-styled case.

Respectfully submitted this 26 day of September, 2001.

Maureen Sullivan Christine
MAUREEN SULLIVAN CHRISTINE
Assistant State Attorney
Fla. Bar No. 0399213
4010 Lewis Speedway, Room 252
St. Augustine, Florida 32095

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand/u.s. mail to Joseph Anthony, Attorney for the Defendant, this 26 day of September, 2001.

Maureen Sullivan Christine
MAUREEN SULLLIVAN CHRISTINE
Assistant State Attorney
Fla. Bar No. 0399213

PAPER NO. 44 CASE NO. CF01-1102

7.3F.09

C

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO: CF01-1102
DIVISION: 56B

STATE OF FLORIDA

vs

QINARD COLLINS,

Defendant

MOTION FOR APPOINTMENT
OF PATHOLOGIST/PEDIATRICIAN EXPERT

The undersigned attorney, counsel for Defendant, QINARD COLLINS, pursuant to Rule 3.216(a), Florida Rules of Criminal Procedure, moves this Court to issue an order appointing one expert, Matthew A. Siebel, M.D., to examine Defendant in order to assist in the preparation of his defense, and further order such expert to report only to the attorney for the Defendant. As grounds for this motion the undersigned attorney states the following:

1. Defendant has been adjudged to be insolvent or partially insolvent.
2. Counsel believes that there is sufficient grounds to employ an expert to assist counsel in the preparation of the defense.

WHEREFORE, Defendant respectfully requests that this Court will grant this motion and appoint one expert to assist in the preparation of the defense.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER

BY: _____
JOSEPH D. ANTHONY III
Assistant Public Defender
FLORIDA BAR NUMBER: 0935440

BC0884

Paper No 84 Case No CF01-1102 74

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Motion for Appointment of Pathologist/Pediatrician Expert has been furnished to the Office of the State Attorney, St. Johns County, St. Augustine, Florida, by hand delivery,

this 14th day of May, 2002.

Attorney

VITAE

MATTHEW A. SEIBEL, M.D.
601 West Michigan St.
Orlando, Florida 32805
(407) 317-7430
85 West Miller St., STE 204
Orlando, FL. 32806
Business Phone: (407) 237-6326

EDUCATION

University of Florida, Gainesville, Florida
Senior Pediatric Resident, July 1983-June 1984

University of Colorado, Denver, Colorado
Junior Pediatric Resident, July 1982-June 1983

University of Colorado, Denver, Colorado
Pediatric Internship, July 1981-June 1982

Howard University College of Medicine, Washington, D.C.
Medical School, 1977-1981

University of Colorado, Boulder, Colorado
B.A.-Molecular, Cellualr Biology, 1973-1977

EMPLOYMENT

Medical Director
Child Protection Team, Arnold Palmer Hospital For Children & Women, 1414 South Kuhl Avenue, Orlando, Florida 32806
July 1988 - **Present.**

Medical Consultant
Child Protection Team, Arnold Palmer Hospital For Children & Women, January 1985 - **Present.**

Private Practice - General Pediatrics
Orlando Health Care Group (OHCG)
300 North Lake Destiny Road
Maitland, Florida 32751

Full-Time Pediatric Clinician - Primary Care pediatric practice. (June 1984 - September 1999)

Chief of Pediatrics - Include clinical and personnel management of full-time and part-time pediatricians. Program planning and development for all OHCG pediatric projects. (January 1987 - January 1991)

Board of Directors, Orlando Health Care Group - For Physician owned multi-specialty primary care group with 50,000 members HMO, with clinical and administrative responsibilities. (January 1987 - January 1991)

Clinical Affairs and Pediatric Administrator - Responsible for pediatric affairs, program development, and credentialing with Prudential PPO. (January 1987 - December 1994)

Chairman of Pharmacy and Therapeutic Committee - Responsible for Quality Assurance and HMO Pharmacy formulary. (1985 - 1997)

Vice Chairman; Department of Pediatrics - Arnold Palmer Hospital for Children and Women (July 1991 - June 1994)

Teaching Attending; Orlando Regional Healthcare System / **Arnold Palmer Hospital for Children and Women** - Supervision of Pediatric physicians on the wards and in the outpatient clinic / Lectures for teaching program. (1989 - **Present**)

Associate Director of Community Medicine - Arnold Palmer Hospital for Children and Women (July 1996 - September 1999)

Pediatric Hospitalist - Arnold Palmer Hospital for Children and Women - (October 1999 - Present)

Tests

Florida License	-	April 1987
American Board of Pediatrics	-	September 1984 (written)
(Board Certified)		June 1986 (oral)
National Board of Med. Ex.	-	1981 Part III
National Board of Med. Ex.	-	1979 Part II
National Board of Med. Ex.	-	1978 Part I

Field of Child Abuse and Neglect

- Training - Residency 1981/83 - Supervised by Dr. R. Krugman, M.D., Director - C. Henry Kemp Center, Denver, Colorado.

- Received over 100 continued education hours in the field of Child Abuse and Neglect from May 1985 thru January 1988.

- Regular training of residents from Pediatrics, Emergency Medicine and Family Practice.

Professional Organizations

Fellow - American Academy of Pediatrics
Member of the subsection for Child Abuse and Neglect

Central Florida Pediatric Society
Member in good standing
Vice president 7/01 - 7/02
President Elect for year 7/02 - 7/03

Publications

"Exchange Transfusion in the Neonate", Pediatric Transfusion Medicine, Kasprisin,D., Luban,N., pp 43-45, CRC Press, 1987.

"Pharmacokinetics of Chronic Oral Verapamil Therapy in Infants and Children with SVT"; Abstract, American Academy of Pediatrics, Fall Session, Washington, D.C., 1986.

"Mandatory Reporting of Child Abuse," Florida Department of Professional Regulation Journal, Fall, 1992.

"The Physician's Role in Confirming the Diagnosis", Munchausen By Proxy Syndrome, Parnell, T., Day, D., pp68-94, Sage Publications, 1998

Presentations

Pediatrics in an HMO Setting - Presented to the Florida Alumni Association, Howie In the Hills,Florida, May 1987.

Diagnosis of Child Abuse and Neglect - Third Annual Orlando Regional Medical Center Winter Conference, Breakenridge,Colorado, March 1988.

Diagnosis of Child Abuse and Neglect - Fourth Annual Orlando Regional Medical Center Winter Conference, Winter Park, Colorado, March 1989.

Radiologic Diagnosis of Child Abuse - National Association of Orthopedic Nurses, St. Petersburg, Florida, June 1990.

Radiologic Diagnosis of Child Abuse - Seventh Annual Child Abuse and Neglect Conference, State of Florida Department of Health and Rehabilitative Services, Kissimmee, Florida, September 1990.

Grand Rounds/Sexual Abuse - Arnold Palmer Hospital for Children and Women, Orlando, Florida, March 1991.

Grand Rounds/Munchausen Syndrome by Proxy - Arnold Palmer Hospital for Children and Women, Orlando, Florida, January 1992.

Munchausen Syndrome by Proxy - Sixth Annual Orlando Regional Medical Center Winter Conference, Keystone, Colorado, March 1992.

Current Issues in Child Abuse - Pediatric Critical Care Nursing Seminar, Orlando, Florida, September 1992.

Colposcopic Findings of Sexual Abuse - Child Protection Team Medical Directors and CPT Team Coordinators Conference, Orlando, Florida, October 1992.

Munchausen Syndrome by Proxy - Protocol for Intervention, Fourth Annual European Conference on Child Abuse, Padua, Italy, March 1993.

Physical Findings of Sexual Abuse - Florida Association of Criminal Defense Lawyers, Annual Meeting, June, 1993.

Munchausen Syndrome by Proxy - State CPT Medical Directors Meeting, Orlando, FL., September 1993.

Physical Findings of Sexual Abuse - National Association of Criminal Defense Lawyers, Washington, D.C., April 1994.

Munchausen Syndrome by Proxy Symposium - Identifying Cases by Reviewing Medical Records - American Psychiatric Association Convention, Los Angeles, California, August 1994.

Current Issues in Child Abuse - Wayne County Bar Association, Detroit, Michigan, September 1994

Pediatrics and the Law - Pediatric Grand Rounds, Arnold Palmer Hospital for Children and Women, Orlando, Florida, June 1995.

The Impact of Managed Care on the Risks of Pediatric Services - MMI Risk Management Resources, Inc. , Chicago, IL., May 1996

Clinical Update-Child Sexual Abuse, Hillsborough County Bar and Public Defenders Office, May 1997

Identifying Cases of Munchausen by Proxy Syndrome, The Orlando Model, Suncoast Child Protection Team, June 1997

Update of Risks Associated with Providing Pediatric Care Under Managed Care, MMI Risk Management Resources, Inc. , Chicago, IL., August 1997

Medical Diagnosis; Munchausen by Proxy Syndrome, National Association of School Psychologists 1998 Annual Meeting, Orlando, FL., April 1998

Update - Physical Finding / Child Sexual Abuse, Orlando Regional Medical Center; Pediatric and Emergency Medical Conference, Orlando, FL., June 1998

Risks Associated With Providing Pediatric Care in a Managed Care Setting, MMI Risk Management Resources, Inc. , Chicago, IL., August 1998

How To try A Child Molestation Case, Georgia Indigent Defense Council, Mableton, Georgia, May 1999

Orthopedic Findings in Child Abuse, Arnold Palmer Hospital Department of Pediatric Orthopedics, Grand Rounds, Orland, FL., October 1999

Child Abuse Update 2001- Current Literature, Arnold Palmer Children's Hospital Department of Pediatrics, Pediatric Grand Rounds, Orlando, FL., July 2001

Burns in Children, Child Protection Team Medical Director's Conference, Tampa, FL., November 2, 2001

D

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO: CF01-1102
DIVISION: 56B

CIR CT MINUTE 258 PAGE 836

STATE OF FLORIDA

vs

QINARD COLLINS,

Defendant

02 MAY 15 PM 3:12
CHERYL STRICKLAND
CLERK OF CIRCUIT COURT
ST JOHNS COUNTY FLA

FILED

ORDER GRANTING DEFENSE MOTION FOR COURT APPOINTED PATHOLOGIST/PEDIATRICIAN

THIS CAUSE, having come before this Court this date, and it appearing to the Court that it is necessary to appoint an expert Pathologist/Pediatrician to assist Defendant in preparing his defense, it is

ORDERED

Matthew A. Siebel, M.D., 601 West Michigan Street, Orlando, Florida 32805 (407) 317-7430, is hereby appointed to assist Defendant in the above styled cause.

FILED AS PUBLIC RECORD
ST JOHNS COUNTY FLA
02 MAY 16 PM 1:58
CHERYL STRICKLAND
CLERK OF COURTS

DONE AND ORDERED in Chambers at St. Augustine, St. Johns County, Florida, this 15 day of May, 2002.

ROBERT K. MATHIS
CIRCUIT COURT JUDGE

cc:
Office of Public Defender
Office of State Attorney
Matthew A. Siebel, M.D.

E

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR ST. JOHNS COUNTY, FLORIDA.

STATE OF FLORIDA

CASE NO.: CF01-1102
DIVISION: 56

v.

QINARD LAMAR COLLINS,

Defendant.
_____/

NOTICE OF INTENT TO RELY ON COLLATERAL CRIMES EVIDENCE

COMES NOW the State of Florida by and through the undersigned Assistant State Attorney and pursuant to 90.404(2) F.S. serves notice that the State intends to rely on the following collateral crime evidence at the trial of this matter:

1. That QINARD LAMAR COLLINS, had abused and threatened to hurt and abuse Carrie Canova prior to April 2, 2001.

2. That on or about March 17, 2001, Carrie Canova returned home from the hospital and noticed injuries to the victim that were inflicted by the Defendant.

3. That on or about March 28th or 29th, 2001, QINARD LAMAR COLLINS, struck the victim in the face.

4. That QINARD LAMAR COLLINS threatened and injured the victim between February 28, 2001, and April 2, 2001.

5. That QINARD LAMAR COLLINS struck a puppy with hammer because the puppy was a "weakling."

6. More particulars concerning the aforementioned allegations can be found in CR number 01-092146, the affidavits, and the deposition of Carrie Canova, a copy of which is attached has been previously provided to defendant through Discovery.

7. The State avers that all of the above crimes, wrongs, or acts are admissible and relevant to prove a material fact in issue, i.e., corroborate the testimony of the victim, to demonstrate the relationship between the defendant and the victim, for proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or

accident, and are not offered solely to prove propensity or bad character.

Respectfully submitted this 3rd day of September, 2002.

NOAH C. MCKINNON, JR.
ASSISTANT STATE ATTORNEY
FLORIDA BAR NUMBER:108598

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to JOSEPH ANTHONY, III, Public Defender's Office, Attorney for Defendant, by hand delivery this 3rd day of September, 2002.

NOAH C. MCKINNON, JR.
ASSISTANT STATE ATTORNEY
FLORIDA BAR NUMBER:108598

F

NOTIFICATION RE: PRE-SENT[illegible]
INVESTIGATION

STATE OF FLORIDA
VS
@INARD LAMAR COLLINS

IN T[illegible]RCUIT.COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA
CASE# CF01-1102

CHARGE(S):

Ct 1 827.03(2) AGGRAVATED CHILD ABUSE
Ct 2 782.04(1)(a)2 FIRST DEGREE MURDER

On August 8th, 2003, @INARD LAMAR COLLINS age 27, the defendant, entered a plea of NOLO CONTENDERE to:

Ct 2 782.04(1)(b)2 SECOND DEGREE MURDER [1F]

The Honorable ROBERT K MATHIS, Circuit Judge, has Ordered a Pre-Sentence Investigation.

Attached, herewith, is a copy of the Information pertaining to the above named defendants.

Dated: August 8, 2003

CHERYL STRICKLAND
CLERK OF CIRCUIT COURT
BY: Deborah G Verney
DEPUTY CLERK

Attachment:

Image#[illegible] Paper# 252 Case# CF01-1102

G

Defendant: Qinard Lamar Collins Case Number: CF01-1102:

In the Circuit Court Seventh Judicial

Circuit, in and for St. Johns County, FL

State of Florida

Division: 56

vs.

Qinard Lamar Collins
Defendant
SSN _____

JUDGMENT

The defendant, **Qinard Lamar Collins** , being personally before this court represented by Joseph Anthony, the attorney of record, and the state represented by _ Noah McKinnon___, and having entered a plea of nolo contendre to the following crime(s):

Count	Crime	Offense Statute Number(s)	Deg of Crime	Case Number	OBTS Number
TWO	Second Degree Murder	782.04(1)(b)2	1F	**CF01-1102**	

☒ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

☒ and having been convicted or found guilty of, or having entered a plea of nolo contendre or guilty, regardless of adjudication, to attempts or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), or murder (s. 782.04), aggravated battery (s. 784.045), car jacking (s. 812.133), or home invasion robbery (s. 812.135), burglary (s. 810.02), or any other offense specified in section 943.325, the defendant shall be required to submit blood specimens pursuant to the order attached hereto.

☐ and good cause being shown, IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

CIR. CT. MINUTE 279 PAGE 210

Defendant: Qinard **Lamar Collins** Case Number: CF01-1102:

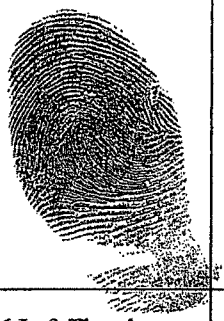
State of Florida

v.

Qinard Lamar Collins
Defendant

Case Number: **CF01-1102**

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2.Right Index	3.Right Middle	4.Right Ring	5.Right Little
				
6.Left Thumb	7.Left Index	8.Left Middle	9.Left Ring	10.Left Little
				

Fingerprints taken by: _____ DEP Sheriff
Name Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, **Qinard Lamar Collins,** and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in St. Johns County, Florida this 10th day of October, 2003.

Robert K. Mathis, Circuit Court Judge

Defendant: Qinard **Lamar Collins** Case Number: CF01-1102:

SENTENCE

(As to Count II)

The defendant, being personally before this court, accompanied by Joseph Anthony , the defendant's attorney of record, and having been adjudicated guilty herein, and the court having given defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause bring shown

(check one if applicable)

☐ and the Court having on _____ deferred imposition of sentence until this date.

☐ and the Court having previously entered a judgment in this case on _____ now resentences the defendant.

☐ and the Court having placed defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court That:

☐ The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes

☒ The defendant is hereby committed to the custody of the Department of Corrections.

☐ The defendant is hereby committed to the custody of the Sheriff of St. Johns County, Florida.

☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (Check one; unmarked sections are inapplicable):

☐ For a term of natural life.

☒ For a term of 30 years.

☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in, _____ the balance of the sentence shall be suspended and the defendant shall be place on probation/community control for a period _____ of under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

^

Defendant: Qinard **Lamar Collins** Case Number: CF01-1102:

Defendant: **Qinard Lamar Collins**

SPECIAL PROVISIONS

(As to Count II)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm	☐	It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	☐	It is further ordered that the _____ mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance (within 1000 ft. of school)	☐	It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	☐	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	☐	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order or stated on the record in open court.
Law Enforcement Protection Act	☐	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.
Capital Offense	☐	It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.
Short-Barreled Shotgun, Rifle, Machine Gun	☐	It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	☐	It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction	☐	The court retains jurisdiction over the defendant pursuant to Jurisdiction section 947.16(3), Florida Statutes (1983)
Jail Credit	☒	It is further ordered that the defendant shall be allowed a total of 862 days as credit for time incarcerated before imposition of this sentence.
Other:	☐	

Defendant: Qinard **Lamar Collins** Case Number: **CF01-1102**:

Credit for Time Served In Resentencing after Violation of Probation Or Community Control

☐ It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____ (Offenses committed before October 1, 1989).

☐ It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count _____ (Offenses committed between October 1, 1989, and December 31, 1993).

☐ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6).

☐ The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

☐ It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of re-sentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____ (Offenses committed on or after January 1, 1994)

Consecutive/ Concurrent As To Other Counts

☐ It is further ordered that the sentence imposed for this count shall run (check one) ☐ Consecutive to ☐ Concurrent with sentence set forth in count _____ of this case.

Consecutive/Concurrent As To Other Convictions

☐ It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ☐ consecutive to ☐ concurrent with the following: (check one)

☐ any active sentence being served.

☐ Specific sentences: _____.

In the event the above sentence is to the Department of Corrections, the Sheriff of St. Johns County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other document specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____.

DONE AND ORDERED in open court at St. Johns County, Florida this 10th day of October, 2003.

Robert K. Mathis, Circuit Court Judge

MINUTE 275 PAGE 214

Defendant: Qinard **Lamar Collins** Case Number: **CF01-1102**:
IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA

CASE NUMBER: **CF01-1102**
DIVISION 56

VS.

Qinard Lamar Collins
DEFENDANT

FINAL JUDGMENT FOR CHARGES/COSTS/FEES

(Costs are assessed by case)

MANDATORY COSTS/FEES:

$50.00		Pursuant to F.S. 938.03, Crimes Compensation Trust Fund. (Statutorily mandated unless specifically waived by court on the record in detail.) Reason, if waived _____.
$3.00		As a court cost pursuant to F.S. 938.01, Criminal Justice Trust Fund.
$2.00		As a court cost pursuant to F.S. 938.15, Criminal Justice Education by Municipalities and Counties.
$200.00		Pursuant to F.S. 938.05, Local Government Criminal Justice Trust Fund (Mandatory cost of $200.00 for Felonies, $50.00 for Misdemeanors, and $50.00 for Criminal Traffic Offenses).
$3.00		As a court cost pursuant to F.S. 938.19, Teen Court Cost.
$50.00	Per day	Costs of Incarceration pursuant F.S. 960.293 2 b

FINES:

(Only applicable if indicated)

☐ Total fine and 5% surcharge in the amount of $_____ pursuant to F.S. 775.083(1) & 938.04.
☐ Fine assessed by authority of F.S. 775.0835(1), in the amount of $_____ (not to exceed $10,000) when crime resulted in the death or injury of another person.
☐ Fine assessed in the amount of $_____ for violation of the Game and Fresh Water fish rules concerning endangered or threatened species pursuant to F.S.372.662, 372.663, 372.667, or 372.671.
☐ Fine for violation of Section 893, F.S. 316.193, 856.011, 856.015, Chapter 562, Chapter 567, and Chapter 568.
☐ Other: _____.
$151.00 Pursuant to F.S. 938.085 (Rape Crisis Trust Fund)

DISCRETIONARY OR SPECIFIC OFFENSE COSTS:

(Only applicable if indicated)

☒ Restitution in accordance with the attached order. Amount $_____.
☐ $100.00 to FDLE Operating Trust Fund for drug related cases pursuant to F.S. 938.25.
☐ $20.00 to Crimestoppers Trust Fund in addition to any fine assessed pursuant to F.S. 938.06.
☒ Public Defender Fees in the amount of $100.00 pursuant to F.S. 938.29.
☒ Unpaid application fee for Public Defender in the amount of $40.00 pursuant to F.S. 27.52(1)(d).
☒ Prosecution and Investigation Cost in the amount of $250.00 pursuant to F.S. 938.27.
☐ Other costs of prosecution and costs of incarceration pursuant to F.S. 938.27, 960.293(2)(a) & (b) in accordance with the attached order. Amount $_____.
☐ Up to $150.00 pursuant to F.S. 939.18.
☐ Victimless crime (no restitution order or victim notification sheet are required.)

Defendant: Qinard **Lamar Collins** Case Number: CF01-1102:

It is further ordered that the County of St. Johns State of Florida, and victim(s) shall have and recover from the Defendant the sum of the above amounts, as are applicable to each. This order shall constitute a civil restitution lien to be recorded at no charge in the Public Records of St. Johns County, Florida, and this civil restitution lien shall exist upon any real or personal property of the Defendant. This lien shall bear interest at the legal rate if not paid in accordance with the terms listed below.

DONE AND ORDERED in open court in St. Johns County, Florida, this 10th day of October, 2003.

Robert K. Mathis, Circuit Court Judge

Payment of charges, costs and fines is:
☐ A condition of probation: or
☐ Due within _____ days: or
☒ Due immediately FOR WHICH LET EXECUTION ISSUE.

DONE AND ORDERED in open court in St. Johns County, Florida, this 10th day of October, 2003.

Robert K. Mathis, Circuit Court Judge

Defendant: Qinard **Lamar Collins** Case Number: CF01-1102:

STATE OF FLORIDA
UNIFORM COMMITMENT TO CUSTODY
OF DEPARTMENT OF CORRECTIONS

The Circuit Court of St Johns County in the Spring Term, 2003, in the case of:

STATE OF FLORIDA

vs

Qinard Lamar Collins
Defendant

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETING:

The above named defendant having been duly charged with the offense specified herein in the above styled Court, and having been duly convicted and adjudged guilty of and sentenced for said offense by Court, as appears from the attached certified copies of Indictment/Information, Judgment and sentence, and Felony Disposition and Sentence Data form which are hereby made parts hereof:

Now therefore, this is to command you, the Sheriff, to take, keep and within a reasonable time after receiving this commitment, safely deliver the said defendant, together with any pertinent Investigation Report prepared in this case, into custody of Department of Corrections of the State of the Florida: and this is to command you, the said, Department of Corrections, by and through your Secretary, Regional Directors, Superintendents, and other officials, to keep and safely imprison the said defendant for the term of said sentence in the institution in the state correctional system to which you, the said Department of Corrections, may cause the said defendant to be conveyed or thereafter transferred. And these presents shall be your authority for the same. Herein fail not.

WITNESS the Honorable Robert K. Mathis,

Judge of Said Court, as also Cheryl Strickland, Clerk,

and the Seal thereof, this the 10th day of October, 2003.

CHERYL STRICKLAND, Clerk of the Circuit Court

By: _____
Deputy Clerk

RULE 3.992(a) CRIMINAL PUNISHMENT CODE SCORESHEET

1. DATE OF SENTENCE	2. PREPARER'S NAME WENDT ☑ SAO ☐ DC	3. COUNTY ST. JOHNS	4. SENTENCING JUDGE R. MATHIS	
5. DEFENDANT (LAST, FIRST, MI.I.) COLLINS, QINARD LAMAR	6. DOB 03/22/1976	8. RACE BLACK	10. PRIMARY OFF. DATE 04/02/2001	12. ☑ PLEA ☐ TRIAL
	7. DC # V18204	9. GENDER Male	11. PRIMARY DOCKET # CF01-1102	

I. PRIMARY OFFENSE:

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
1	782..04(1)(B)	SECOND DEGREE MURDER	10	

(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)

Prior capital felony triples Primary Offense points ☐

I. 116

II. ADDITIONAL OFFENSE(S):

DOCKET #	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY	COUNTS	POINTS	TOTAL

DESCRIPTION:

DESCRIPTION:

DESCRIPTION:

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Prior capital felony triples Additional Offense points ☐

II. 0

III. VICTIM INJURY:

		Number	Total			Number	Total
2nd Degree Murder	240 X	1	= 240	Slight	4 X		= 0
Death	120 X		= 0	Sex Penetration	80 X		= 0
Severe	40 X		= 0	Sex Contact	40 X		= 0
Moderate	18 X		= 0				

III. 240

IV. PRIOR RECORD:

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY	NUMBER	POINTS	TOTAL
M		M		4	0.2	0.8

DESCRIPTION: DWLSR; NO VALID D/L; LSA PROP DAMAGE; OPEN CONTAINER

DESCRIPTION:

DESCRIPTION:

(Level - Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

IV. 0.8

PDRB

Paper No. 261 Case No. CF01-1102

V. Legal Status Violation = 4 Points — V. _____

VI. Community Sanction violation before the court for sentencing 6 points x each successive violation OR
New felony conviction = 12 points x each successive violation. — VI. _____

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 points — VII. _____

VIII. Prior Serious Felony = 30 points — VIII. _____

Subtotal Sentence Points 356.8

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enforcement Protection	Drug Trafficking	Grand Theft Motor Vehicle	Street Gang (offenses commited on or after 10-1-98)	Domestic Violence (offenses commited on or after 10-1-98)
☐ x 1.5 ☐ x 2.0 ☐ x 2.5	☐ x 1.5	☐ x 1.5	☐ x 1.5	☐ x 1.5

Enhanced Subtotal Sentence Points IX. 0

TOTAL SENTENCE POINTS 356.8

SENTENCE COMPUTATION

If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction.

If total sentence points are greater than 44:

356.8 (total sentence points) minus 28 = 329 x .75 = 246.6 (lowest permissible prison sentence in months)

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s.775.082, F.S., unless the lowest permissible sentence under the code, exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If the total sentence points are greater than or equal to 363, a life sentence may be imposed.

30 (maximum sentence in years)

TOTAL SENTENCE IMPOSED

		Years	Months	Days
☑ State Prison	☐ Life	30		
☐ County Jail	☐ Time Served			
☐ Community Control				
☐ Probation				

Please check if sentenced as ☐ habitual offender, ☐ habitual violent offender, ☐ violent career offender, ☐ prison releasee reoffender, or a ☐ mandatory minimum applies.

☐ Mitigated Departure ☐ Plea Bargain

Other Reason _____

JUDGE'S SIGNATURE _____

CIR CT MINUTE 279 PAGE 216

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF01-1102

STATE OF FLORIDA

VS.

QINARD LAMAR COLLINS

Defendant.
_____/

RESTITUTION ORDER

By appropriate notation, the following provisions apply to the sentence imposed in this section:

___ Restitution is not ordered, as it is not applicable.
___ Restitution is not ordered due to financial resources of the defendant.
___ Restitution is not ordered due to _____
___ ✓ Due to the financial resources of the defendant, restitution of a portion of the damages is ordered as prescribed below.
___ Jurisdiction is reserved to determine the amount and manner of restitution payment, if any.
___ Restitution is ordered for the following victim.

_____
Name of victim Name of attorney or advocate (if applicable)
Address _____
Phone number _____

___ The sum of $_____ for medical and related services and devices related to physical, psychiatric and psychological care, including non-medical care and treatment rendered in accordance with a recognized method of healing.
___ The sum of $_____ for necessary physical and occupational therapy and rehabilitation.
___ The sum of $_____ to reimburse the victim for income lost as a result of the offense.
___ The sum of $_____ for necessary funeral and related services of the offense resulted in bodily injury resulting in the death of the victim.
___ The sum of $_____ for damages resulting from the offense.
___ The sum of $_____ for _____
_____
_____.

IT IS FURTHER ORDERED that the defendant fulfill restitution obligations in the following manner:

___ Total monetary restitution is determined to be $_____ to be paid at a rate of $_____ per (check one) ☐ month ☐ seek ☐ other (specify) _____ and is to be paid through the (check one) ☐ Clerk of the Circuit Court, ☐ the victim's designee, or ☐ through the Department of Corrections, with an additional 4% fee of $_____ for handling, processing and forwarding said restitution to the victim'(s).

___ For which sum let execution issue.

The Defendant must make payment of the debt due and owing to the State under Section 960.17 and 948.03(1)(g), Florida Statutes. The amount of such debt shall not exceed $10,000.00 and shall be determined by the Court at a later date upon final payment by the Crimes compensation Trust Fund on behalf of the victim.

DONE AND ORDERED, at SAINT AUGUSTINE, ST. JOHNS County, Florida this 16 day of OCTOBER, 2003.

FILED AND RECORDED IN PUBLIC RECORDS OF ST JOHNS COUNTY FLA
03 OCT 6 PM 5:26
CHERYL STRICKLAND CLERK OF COURTS

ROBERT K MATHIS, Circuit Court Judge

Original: Clerk of Court
Certified Copy: Victim(s)

701

Paper No. 267 Case No. CF01-1102

H

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO: CF01-1102
DIVISION: 56B

QINARD LAMAR COLLINS
APPELLANT,

vs

STATE OF FLORIDA

APPELLEE.

NOTICE OF APPEAL

NOTICE IS HEREBY given that Defendant-Appellant appeals to the District Court of Appeal, Fifth District of Florida, the Order of this Court rendered on October 10, 2003. The nature of the Order is a final Order adjudicating Defendant guilty of Second Degree Murder, and a sentence of thirty (30) years in prison.

Respectfully submitted,
JAMES B. GIBSON
PUBLIC DEFENDER

Joseph D. Anthony, III
Assistant Public Defender
St. Johns County Judicial Center
4010 Lewis Speedway, Room 299
St. Augustine, Florida 32084
(904) 824-8623
Florida Bar Number: 0935440

I

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA.

CASE NO.: CF01-1102
DIVISION: 56B

THE STATE OF FLORIDA

vs.

QINARD LAMAR COLLINS,

Defendant.

FILED 11-24-03
CHERYL STRICKLAND
CLERK CIRCUIT COURT
ST. JOHNS COUNTY
BY: Barbara Castellano
DEPUTY CLERK

STATE OF FLORIDA)
COUNTY OF ST. JOHNS)

* *

PROCEEDINGS BEFORE THE HONORABLE ROBERT K. MATHIS

DATE TAKEN: August 8, 2003

PLACE: St. Johns County Judicial Center
4010 Lewis Speedway
St. Augustine, Florida 32095

REPORTED BY: Carman L. Gaetanos,
Court Reporter and Notary Public

* *

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L03-1-32238 5D03-3601
COLLINS, Qinard L.
v. State of Florida 5th DCA
Timothy Wilson

APPEARANCES:

MAUREEN SULLIVAN CHRISTINE, ESQUIRE
and
NOAH MCKINNON, ESQUIRE
State Attorney's Office
St. Johns County Judicial Center
4010 Lewis Speedway, Room 252
St. Augustine, Florida 32095
appearing on behalf of the State.

JOSEPH D. ANTHONY, III, ESQUIRE
and
BENNETT FORD, ESQUIRE
Public Defender's Office
St. Johns County Judicial Center
4010 Lewis Speedway, Room 299
St. Augustine, Florida 32095
appearing on behalf of the Defendant.

P R O C E E D I N G S

THE COURT: All right. I understand that there's a resolution in this case.

MR. ANTHONY: Yes, Your Honor.

THE COURT: This is Qinard Lamar Collins. It's Case No. CF01-1102.

MR. ANTHONY: Would you like us to come forward?

THE COURT: If you would, please, because I'm going to have to go through a plea dialogue with him.

What resolution have you reached?

MR. ANTHONY: Your Honor, I talked with both Maureen Christine and Noah McKinnon about the case, and the resolution we have reached is that Mr. Collins would enter a plea of no contest to second-degree murder. That we would agree to a sentencing range of a low of 20 years and a high of 30. That the Court would enter a PSI, as Mr. Collins has no record.

THE COURT: Uh-huh.

MR. ANTHONY: And that we'd get a sentencing date to come back and present information to Your Honor as to what the sentence should be.

THE COURT: Mr. Collins, is that what you want to do?

THE DEFENDANT: Yes, sir.

THE COURT: Would you raise your right hand, please.

(Defendant duly sworn.)

MR. ANTHONY: Your Honor, I would just point out for the Court, for the Court's knowledge, there are two counts. There's one count of aggravated child abuse, as I recall, and the one first-degree murder count.

THE COURT: So he's pleaing to the lesser included of second-degree murder in Count Two.

MR. ANTHONY: Yes, Your Honor.

THE COURT: And that would be 782.1(a)(3); is that correct?

MR. ANTHONY: I don't have my book with me, Your Honor. I do have some -- I think I have it in the back.

THE COURT: I'm sorry, (1)(a)(2) -- no (1)(b)(2).

MR. ANTHONY: I've got --

THE COURT: That's what it is. I've got it.

MR. ANTHONY: 782.04(2) is -- I'm looking

at the jury instructions, Your Honor.

THE COURT: It would be (1)(b)(2).

MR. ANTHONY: Okay.

THE COURT: Mr. Collins, how old are you?

THE DEFENDANT: I am 27.

THE COURT: Second degree murder is a felony punishable by life imprisonment. You may be considered for lesser sentencing. The State and your attorney have announced an agreement to a sentencing range between a 20 year minimum and a 30 year maximum with the decision as to the ultimate sentence to be left to me.

If your plea is accepted, then when you're sentenced, I must impose against you mandatory court costs of $258, restitution, if there is any, damages for victim injury, if any, an attorney's fee is your attorney's court appointed, and a fine if I decide to impose a fine.

You would also be liable for a civil lien for costs of incarceration.

How far did you go in school?

THE DEFENDANT: Ninth.

THE COURT: Can you read and write?

THE DEFENDANT: Yes, sir.

THE COURT: What kind of work do you do?

THE DEFENDANT: Construction.

THE COURT: Are you married?

THE DEFENDANT: No, sir.

THE COURT: Are you a United States citizen?

THE DEFENDANT: Yes.

THE COURT: Have you ever been treated for any mental or emotional disability or do you now suffer from any mental disorder?

THE DEFENDANT: No.

THE COURT: Have you had any alcohol or narcotic drugs in the last 24 hours?

THE DEFENDANT: No, sir.

THE COURT: You have the right to remain silent. You cannot be compelled to testify against yourself. Anything that you say about your case can and will be used against you in court. You have the right to be represented by a lawyer on the charge. If you don't have the money to hire a lawyer, I'd appoint attorneys from the Public Defender's Office to represent you.

You have a right to plead not guilty. You

have a right to trial by jury as to your guilt or innocence. At that trial you have a right to confront, that is to see and hear and ask questions of the witnesses who would testify against you. You have a right to compel the attendance of witnesses to testify and give evidence in your behalf.

If you should elect to plead not guilty, then before you can be convicted, the State would have the burden to prove your guilt beyond every reasonable doubt.

By the entry of this plea, you give up those Rights and there'll not be a further trial of any kind.

A plea of no contest admits the truth of the charges. A plea of not guilty would deny the charges. By your plea, you give up the right to appeal all matters that have been decided in this case so far, including the question of whether or not you committed the crime. You do not give up the right to appeal an illegal sentence or the circumstances surrounding the entry of the plea.

Do you have any questions so far?

THE DEFENDANT: No.

THE COURT: Do you believe that your plea of no contest is in your best interest?

THE DEFENDANT: Yes, sir.

THE COURT: Has anybody used any threats, force, pressure or intimidation to make you plead no contest?

THE DEFENDANT: No, sir.

THE COURT: Other than the plea offer that's been stated on the record, has anybody promised you anything to get you to plead no contest?

THE DEFENDANT: No, sir.

THE COURT: Have you talked to Mr. Anthony about this case?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with the way he and Mr. Ford and the other attorneys from the Public Defender's Office have represented you?

THE DEFENDANT: Yes, sir.

THE COURT: What's the State prepared to prove?

MRS. CHRISTINE: Your Honor, the State's prepared to prove that on or about the 2nd day of April, 2001, within St. Johns County,

Florida, Qinard Lamar Collins did then and there unlawfully, while engaged in the perpetration or attempted perpetration of the offense of aggravated child abuse, did kill and murder Qinard Collins, Jr., a human being, by hitting him and/or shaking and/or striking said child on or about his head causing abusive head injury.

THE COURT: So for purposes of the plea, the State is willing to reduce this to the unlawful killing of a human being by an act imminently dangerous to another evincing a depraved mind?

MRS. CHRISTINE: Yes, sir.

THE COURT: Any objection to the proffer?

MR. ANTHONY: No, Your Honor.

THE COURT: Mr. Collins, has anybody coached you or told you to testify falsely today because of any promise, agreement or understanding that's not been told to me?

THE DEFENDANT: No, sir.

THE COURT: Do you still want to enter the plea?

THE DEFENDANT: Yes, sir.

THE COURT: You have no prior criminal

record, no prior felony record?

THE DEFENDANT: No, sir.

THE COURT: Then I need a Presentence Investigation. Set this for my October sentencing date which I think is the 10th, is it not?

THE CLERK: Correct.

THE COURT: Mr. Collins, there will be some folks out from the Department of Corrections to talk to you about a Presentence Investigation, and I will see you on October 10th.

THE DEFENDANT: Okay.

THE COURT: Is the State nol-prosing Count One?

MRS. CHRISTINE: Yes, Your Honor.

State of Florida announces a nol-pros to Count One, aggravated child abuse.

(Whereupon, the proceedings were concluded.)

REPORTER'S CERTIFICATE

I, Carman L. Gaetanos, Official Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 24th day of November, 2003.

CARMAN L. GAETANOS
Official Court Reporter
Seventh Judicial Circuit
Notary Public-State of Florida
Commission No. DD222562
Expires: 6/12/2007

CERTIFICATE OF CLERK

STATE OF FLORIDA
COUNTY OF ST. JOHNS

I, CHERYL STRICKLAND, Clerk of the Circuit Court for the County of St. Johns, State of Florida, do hereby certify that the foregoing pages 1 - 767, inclusive contain a correct transcript of the record of the judgment in the case of:

QINARD L. COLLINS,
Appellant,

V.

STATE OF FLORIDA,
Appellee.

5th DCA Case No.: 5D03-3601
L.T. Case No.: CF01-1102

and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in said record by the directions furnished to me. Pages 725-767, inclusive, embrace the transcribed notes of the reporter as made at court proceedings, certified to be by her

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 4TH Day of December, A.D. 2003.

CHERYL STRICKLAND
CLERK CIRCUIT COURT

(SEAL)

CIRCUIT COURT,
7th JUDICIAL CIRCUIT,
ST. JOHNS COUNTY, FLORIDA

By _____
Deputy Clerk, Appellate Division

J

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA.

CASE NO.: CF01-1102
DIVISION: 56B

THE STATE OF FLORIDA

vs.

QINARD LAMAR COLLINS,

Defendant.

STATE OF FLORIDA)
COUNTY OF ST. JOHNS)

* *

PROCEEDINGS BEFORE THE HONORABLE ROBERT K. MATHIS

DATE TAKEN: Friday, October 10, 2003

PLACE: St. Johns County Judicial Center
4010 Lewis Speedway
St. Augustine, Florida 32095

REPORTED BY: Stacey A. George, RPR-CP
Court Reporter and Notary Public

* *

APPEARANCES:

MAUREEN SULLIVAN CHRISTINE, ESQUIRE
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Public Defender's Office
St. Johns County Judicial Center
4010 Lewis Speedway, Room 299
St. Augustine, Florida 32095
appearing on behalf of the defendant.

PROCEEDINGS

THE COURT: Mr. Anthony is here now, I believe.

Are you ready on Mr. Collins?

MR. ANTHONY: Your Honor, I've got one witness that has not arrived yet, his grandfather.

THE COURT: Okay.

MR. ANTHONY: Your Honor, I do have two other witnesses I can call.

THE COURT: All right. Who's your first one?

MR. ANTHONY: Your Honor, my first witness is Kerry Wiley. Do you want to swear her in?

THE COURT: Would you raise your right hand, please, ma'am.

(Whereupon, the witness was duly sworn.)

THE COURT: You may inquire.

MR. ANTHONY: Could you state your name for the record, please.

MS. WILEY: My name is Kerry Wiley.

THE COURT: You're going to have to speak up some.

MS. WILEY: My name is Kerry Wiley.

MR. ANTHONY: And where do you live,

Ms. Wiley?

MS. WILEY: At 5 North Whitney.

MR. ANTHONY: That is in St. Augustine?

MS. WILEY: Yes.

MR. ANTHONY: And how do you know Qinard Collins?

MS. WILEY: We've been friends for some years.

THE COURT: I can't hear you at all.

MS. WILEY: We've been friends for some years.

MR. ANTHONY: Can you give the judge an estimate as to how long?

MS. WILEY: It's been about ten or eleven years.

MR. ANTHONY: And have you ever done anything socially with Mr. Collins?

MS. WILEY: Yeah, we hang out a lot.

MR. ANTHONY: Okay. How well would you say you know him?

MS. WILEY: Pretty well.

MR. ANTHONY: Do you know Mr. Collins to be a violent person?

MS. WILEY: No.

MR. ANTHONY: Has he ever done anything

against you?

MS. WILEY: No.

MR. ANTHONY: Is there anything you would -- anything else you would like to tell the judge specifically about Qinard Collins?

MS. WILEY: Just the fact that we was good friends, I've known him for a long time, and he hasn't done anything to me.

MR. ANTHONY: Would you like to say anything to the judge about sentencing here today?

MS. WILEY: I don't really know what to say on that part right there. I mean, I can't say I want him to go to prison. I can't say that.

MR. ANTHONY: I don't have any further questions of Ms. Wiley, Your Honor.

THE COURT: Any questions from the state?

MRS. CHRISTINE: No questions, Your Honor.

THE COURT: Thank you, ma'am. You may be seated.

Your next witness, please.

MR. ANTHONY: Your Honor, the defense would call Dr. Harry Krop.

THE COURT: Dr. Krop. Would you raise

your right hand, please.

THEREUPON,

DR. HARRY KROP

was called as a witness and, after having been first duly sworn, was examined and testified as follows:

THE COURT: Dr. Krop, it would be easier if you come over and take the witness stand, please.

You may inquire.

DIRECT EXAMINATION

BY MR. ANTHONY:

Q Would you state your name for the record, please.

A Harry Krop.

Q And what is your occupation, sir?

A I'm a licensed clinical psychologist.

Q And how long have you been in that occupation or employed as so?

A About thirty years or so.

Q And just briefly, what is your educational background?

A I have a Ph.D. degree in clinical psychology from the University of Miami and I've been in private practive for about the last 24 years with offices in Gainesville as well as Orange Park.

My only other position was working as a staff psychologist at the VA hospital before I went into private practice.

Q And my office contacted you and had you appointed to look into the case of Qinard Collins?

A Yes.

Q And could you give the court an idea of how long you have spent meeting with Mr. Collins and working on his case?

A I first saw him April 18th of 2001. I've seen Mr. Collins on about four different occasions. I've administered a very extensive battery of psychological tests, including neuropsychological tests, measuring IQ, measuring any evidence of possible brain damage. I've contacted his grandfather. We spoken to friends of Mr. Collins. I've reviewed probably 20, 25 depositions in this case, medical records and a lot of other -- school records and other documents which you provided at my request.

Q Can you give the court an idea of Mr. Collins' family background as to how he came to live with his grandfather as opposed to his biological mother?

A Well, he basically never met his father

until he was 14 years old. And according to my interview of him, he actually never even recalled living with his parents; although, his mother lived with the grandfather.

It's not real clear as to why his mother did not really -- wasn't responsible for him, but he had been living with his grandparents essentially since he was six months old and he forged a very close relationship with his grandparents.

His grandmother died, I believe, when Mr. Collins was about 18 and I know that was very traumatic for him.

But in discussing Mr. Collins with his grandfather, he indicated that they were very close, that he was not a significant behavior problem. The grandfather was disappointed when Mr. Collins quit school at the age of 16. And basically Mr. Collins left to live on his own at that point in time. So he's pretty much been on his own since he was 16 years old.

Q Do you know how old his biological mother was when she gave birth to Mr. Collins?

A I know she was pretty young and I know she was too young and immature to basically take care of him. I don't recall specifically how old she was.

Q Can you tell me what you observed and what you learned meeting with Mr. Collins as to feelings he has about the situation we're before the court on today?

A Sure. Let me say that I think I can pretty much summarize the evaluation in that actually, unlike a lot of individuals that I've evaluated for first-degree murder, as this case originally was, Mr. Collins really doesn't have any significant psychiatric history. I did not really see any evidence of any kind of major mental illness.

Intellectually he's functioning -- he has an IQ of 85, which is in the 16th percentile of the population, but he has a learning disability. He had always been in special education classes. He's had problems reading and so forth.

The neuropsych eval was inconsistent with any type of brain damage. So basically we have an individual who is pretty normal in the sense of his psychological status.

On the other hand, after the incident -- or since his incarceration, he's been somewhat difficult to talk to only in the sense that he's been so emotionally distraught when he talks about

his child and the death of his child. And, of course, granted his legal situation adds to the depression. So he's been pretty clinically depressed since I started working with him over two years ago, but I have felt that he's been sincerely remorseful, very distraught regarding, again, not only his involvement, but certainly the loss of the child, whom everybody that I spoke to indicated that he was very close to the child as well.

Q Would the remorse that you witnessed, would part of that be Mr. Collins crying in front of you in your office?

A That's why I said he's been difficult to interview. Any time we got to talking about the child, he would break down crying. I mean, he's obviously a very large man, he was even larger when I first started working with him, and to see this very large individual with tears just, you know, pouring out of his eyes, it seemed to me that this was very sincere.

MR. ANTHONY: Your Honor, I don't have any further questions at this point.

THE COURT: Mrs. Christine, do you have questions for him?

MRS. CHRISTINE: I got a couple.

CROSS-EXAMINATION

BY MRS. CHRISTINE:

Q Dr. Krop, did he discuss the circumstances of killing his child with you?

A He has never acknowledged killing the child.

Q Did he discuss the circumstances which resulted in the death of the child with you?

A He basically told me in terms of what the police reports say, but he has always denied killing the child.

Q So he still denies it?

A As of the last time I spoke to him, yes.

Q But you say he's remorseful too?

A He's remorseful and distraught that the death was -- that the child is dead. And he indicated that if there was anything that he did to contribute to the child's death, that he was remorseful about that. But, no, he has not acknowledged any intentional or deliberate act which led to the death of his child.

Q Okay. So you're saying that he can be remorseful without acknowledging any causation in the death of this child?

A Yes.

Q Okay. And did he ever discuss his relationship with you with the child's mother?

A Yes.

Q Did he ever indicate to you that he was physically violent to her?

A He indicated that there were some acts of domestic violence, yes.

Q And did he express any feelings of remorse about the domestic violence he perpetrated on her?

A We didn't get into it a whole lot. He never blamed the child's mother either for any of the difficulties in their relationship and he certainly did not attribute the death of the child to the mother or anybody else.

Q And my final question, did you administer an MMPI?

A Yes.

Q And did he exhibit or did he score or did you reach any diagnosis, however you want to say it, in terms of any personality disorder?

A No. Actually, surprisingly, again, compared to other individuals in this situation, his MMPI2 was valid. He was not defensive. All of the clinical scales were within normal limits. There was absolutely no evidence of psychopathology and

particularly no evidence of any social or psychopathic traits.

Q Did you have any axis one diagnosis?

A No.

Q Axis two?

A No.

Q Axis three?

A Axis three would be medical, so no.

Q And four?

A And basically there are stressors in the death of his child and his legal plight.

Q So depression?

A Depression, but I felt that his depression was situational.

MRS. CHRISTINE: All right. I have no further questions, Your Honor.

THE COURT: Anything further?

MR. ANTHONY: No, Your Honor.

THE COURT: Thank you, Dr. Krop. You may be excused.

Your next witness, please.

MR. ANTHONY: Your Honor, is there a Mr. Horace Verdell in the courtroom? I'd call Horace Verdell to the stand, please.

THE COURT: Okay.

MR. ANTHONY: Your Honor, this would be my last witness possibly, other than Mr. Collins himself.

THE COURT: Right up here, sir, if you will. Would you raise your right hand, please sir.

(Whereupon, the witness was duly sworn.)

THE COURT: You may inquire.

MR. ANTHONY: State your name for the record, please, sir.

MR. BURDELL: Horace Verdell.

MR. ANTHONY: And where do you live?

MR. BURDELL: 956 Puryear Street, here in St. Augustine.

MR. ANTHONY: And what is your relationship to Mr. Collins?

MR. BURDELL: That's my grandson.

MR. ANTHONY: Okay. And if you could explain to the court how you came to raise Mr. Collins.

MR. BURDELL: Well, we were living in Bunnell, Florida at the time and my daughter had him and she wanted to go down south. So she left him with me and my wife when he was about six months and we raised him up until he

got grown.

MR. ANTHONY: How old was your daughter when she had Mr. Collins?

MR. BURDELL: I believe she was about 15, I believe it was.

MR. ANTHONY: Okay. Do you know anything about the biological father and any contact he had with Qinard?

MR. BURDELL: I know him, but I haven't saw him lately.

MR. ANTHONY: Do you know if there was any relationship between Qinard and his biological father?

MR. BURDELL: No.

MR. ANTHONY: Okay. Was there any particular reason why your daughter gave up Qinard to you?

MR. BURDELL: I don't know. I guess she just wanting to leave home, I guess. That's all.

MR. ANTHONY: She went down to Boynton Beach to live?

MR. BURDELL: Yes, she did.

MR. ANTHONY: You have relatives down in Boynton Beach?

MR. BURDELL: Yeah.

MR. ANTHONY: How was Qinard as a child?

MR. BURDELL: Well, he was no more than a typical young child growing up. He got along pretty good. He wasn't no bad boy. He never got in no serious trouble, but, like I say, boys will be boys and that's what I got, a boy child.

MR. ANTHONY: Do you know of any major legal problems, criminal-wise, that Qinard had growing up?

MR. BURDELL: No.

MR. ANTHONY: If you'd just tell the court about when you took Qinard down to Boynton Beach to visit his biological mother as well as other relatives down there what would happen?

MR. BURDELL: He got along with them pretty good. Like I say, he knows me and his grandma as mama and daddy. And we'd take him down there and he got along with them pretty good, but he just didn't want to stay down there because he was used to us. He went down there a couple of summers and stayed, but I think he stayed about a month, something like that.

MR. ANTHONY: Would Qinard call you after being down there a week or so and want to come back?

MR. BURDELL: Oh, yeah. Yes, he did.

MR. ANTHONY: Is there anything in particular you'd like the judge to know about Qinard?

MR. BURDELL: All I know, like I say, he could be -- he got a good personality and he got a good head on him, as far as fixing things, picking around and doing things like that. And like I say, I don't know no major thing that I would say was wrong with him that would make him mean or nothing.

MR. ANTHONY: Is there anything you'd like to say to the judge here today about sentencing?

MR. BURDELL: Yes, I would. Like I say, I raised him from a baby and I love him. And like I say, when you raise a child from a baby and you don't -- you know what I mean, it always sticks with you whether it's your grand or your children. And I don't know what the sentencing is either, but I would hope and pray that it would be as lenient on him as you

could. I don't know what the -- how you would do it, but, like I said, I loved him and we got along pretty good and I'm going to miss him once he has to go over there. And I just -- like I say, I just turn it over in the hands of the Lord and let him work it out.

MR. ANTHONY: Thank you, Mr. Verdell.

THE COURT: Any questions for him?

MRS. CHRISTINE: No, Your Honor.

THE COURT: Thank you, Mr. Verdell. You may have a seat, if you'd like.

MRS. CHRISTINE: Would you please mark this as a composite exhibit.

THE COURT: All right. Mr. Anthony, who's your next witness?

MR. ANTHONY: Your Honor, Mr. Collins wanted to make a few comments to the court, if he could.

THE COURT: All right. Mr. Collins.

THE DEFENDANT: Your Honor, I truly don't know if I caused this. I truly -- I swear I truly don't. If I did in any way cause this with my son, it was not intentional. Your Honor, I would never try to intentionally cause the death of a human being.

Your Honor, that day I called 911. I tried everything in my power to save him. All I could do was just sit there and watch him stare up at me while I was trying to save him. I did CPR. I tried everything I could, but there was nothing I could do. You know, and all I want to say is if I did do this, you know what I'm saying, I didn't mean to. That's the truth.

THE COURT: Mrs. Christine, any questions for him?

MRS. CHRISTINE: No.

THE COURT: Thank you, Mr. Collins.

Any testimony from the state?

MRS. CHRISTINE: Yes, Your Honor. Judge, we have a stipulated exhibit which consists of the photographs of the baby on the day that he was killed and the inside of the house, specifically the car seat with the plastic around it. And the mother, Your Honor, would like to address the court.

THE COURT: All right. Have her come up.

Would you raise your right hand, please, ma'am.

(Whereupon, the witness was duly sworn.)

THE COURT: What's your name, please?

MS. CANOVA: Kerry Lynn Canova.

THE COURT: What would you like to tell me, ma'am?

MS. CANOVA: I would like to ask you to give him the maximum sentence that you can because by looking at those pictures that you have in your hand, you can tell that my son was tortured. And my son was sick. My son had to be on machines 12 hours out of the day, both an IV and feeding tube. There was no reason for him to do anything to my son. I told him to take everything that he had out on me and not to do anything to my son because my son had already been through too much stuff.

I'm scared of him and I really think he will try and do something to me when he gets out of jail.

He told me that jail was nothing but a vacation because you got three square meals a day and you had a bed to sleep in. And he told me if he ever did go to jail because of me and, I'm sorry, but it is in a way because of me, that he would get out and he would kill my family and he would kill me.

My son, because he had a tube in his -- an IV in his chest, it went to his heart, so the doctors, you know, they told me it's really important, you know, he can't tug on it or whatever because it did go to a main artery in his heart. Qinard would strap my son in the car seat and -- when the tubes were hooked up to him at night and he taped a washcloth around this hand and then -- so his hands would be together and so my son would not be able to move his hands and not be able to play with the cord. His hands would be in a washcloth and he wouldn't be able to move his hands and they would be taped to the car seat strap so he couldn't even move his arms up and down or anything else.

He also killed a puppy in front of me with a hammer. He crushed the puppy's skull with a hammer. The puppy was sitting there in convulsions and he said, "If your boy don't straighten up and start getting healthy and strong, I'll do his ass too." Excuse my language, but that's what he said.

THE COURT: Mr. Anthony, do you have any questions for her?

MR. ANTHONY: Just a few briefly, Your Honor.

As to these threats you just told the judge about, did you ever file any police reports so far as yourself or your family being threatened?

MS. CANOVA: I did -- when I was pregnant, I did go and file an injunction against him.

MR. ANTHONY: That wasn't my question. The threats that you just told the judge about, did you ever file a police report in reference to those threats?

MS. CANOVA: No.

MR. ANTHONY: Okay. Did you take drugs before your child was born?

MRS. CHRISTINE: Objection; relevance, Your Honor.

THE COURT: The objection is sustained.

MR. ANTHONY: I don't have any further questions, Your Honor.

THE COURT: Anything further?

MRS. CHRISTINE: No, Your Honor.

THE COURT: Thank you. Any further witnesses from the state?

MRS. CHRISTINE: No, Your Honor.

THE COURT: Argument that either of you would like to make?

MR. ANTHONY: I do just briefly, Your Honor.

MRS. CHRISTINE: I do.

MR. ANTHONY: Your Honor, this is a -- was a sad situation from the beginning. I think it is documented in the records that Ms. Canova did take drugs and she ended up having a premature baby that was in very -- had many medical problems for a while. For the first eight, nine months of the child's life he was in the hospital and had the top ten list of medical problems that he was suffering from. I think the most of which was short gut disease. He was home probably about three to four weeks and then ended up being dead.

I just point out that Mr. Collins was given to his grandparents at six months of age. I guess essentially abandoned by his birth mother. She was a child having a child at the time. His birth mother moved to Boynton Beach.

We'd ask that the court consider Mr. Collins' lack of a criminal record. I think the PSI documents that. Other than being

here today on this case, the only thing he has is a couple of DWLS's that he's done some county time for and a leaving the scene of an accident, as I recall reading through the PSI.

It is pointed out in the discovery, at least I've been provided, that he did attempt to help his son by calling 911 and performing CPR. And we took the deposition of the 911 operator that supported that.

And, Your Honor, just as Mr. Collins was trying to, I guess, express to the court, the state did not charge this under a premeditation theory. They charged it under a felony murder theory. And I guess that's -- ever since I met with Mr. Collins, that's been his whole -- I guess his whole point, that he did not intentionally set out to cause the demise of his son. That was not his intent whatsoever.

We had two persons here, two young persons, I guess ill-equipped themselves to deal with this very medically damaged child.

And, Your Honor, we would just ask for the low end of the range, ask the court to consider that, and reiterate that it was not Mr. Collins' intent to cause the demise of his

son at all.

THE COURT: Mrs. Christine.

MRS. CHRISTINE: Your Honor, the state would ask the defendant receive 30 years in the state prison. There are many, many factors present in this case. The least is the fact that the baby was his child and he does -- does and did have a duty to protect the child.

Mr. Anthony is absolutely right, this baby was born, was in the hospital, got out at the end of February of 2001, went home for seven days, went back into the hospital for some kind of infection, was in the hospital until March 16th. Between March 16th and April 2nd the baby was killed.

When that baby left the hospital on March 16th there wasn't a mark on him, a scratch, nothing at all whatsoever. During this time period the baby was brutalized. And according to Dr. Steiner, was -- he said the cause of death -- contributed cause of death was battered child syndrome. You know what that means, Judge. That means that the baby had injuries of different healing stages, meaning that the injuries were inflicted at

different times, meaning that these injuries were inflicted constantly on this nine-month-old, medically fragile baby.

And I'd like to just read the medical -- the cause of death findings from Dr. Steiner's deposition for the record. And, Judge, you have those pictures before you.

"My findings were those of death due to abusive head injury with evidence of multiple abusive injuries over varying periods in time which made a battered child syndrome as a contributed cause of death. Externally there was bruising to the face and abrasions, two areas of bruising, one on each jaw, consistent with a bite mark pressure."

You're going to see pictures there where the defendant bit the baby on the cheek. Dr. Steiner says the baby was also bitten on the back of the elbow. I don't know why anybody would bite a nine-month-old child, other than to inflict pain, because obviously you can't be doing it in the course of discipline because it's not going to do you any good for a nine-month child.

"There was bruising on the gums, on the

lips. There was areas of scabbed abrasions where the skin had been rubbed off about the nose, on the ears. There was a bite-type bruising area to the right elbow. There was externally some other scabbed abrasions on the legs and back and there was a linear area of recent bruising over the right or left buttocks" -- left or right -- "consistent with some type of blunt trauma."

"Internally the injuries were those of bruising to the underneath of the scalp in at least eight places, all recent-type bruising."

Your Honor, I didn't provide you with those photographs. I felt that Dr. Steiner's statement would be sufficient.

"There was massive swelling of the brain and hemorrhage into the membranes covering the brain and also recent hemorrhage in the subdural space over the posterior back of the brain. There was also external bruising or bleeding into the optic nerve sheath, which are the nerves to his eyes."

And he goes on to explain that this baby had been shaken. The baby had been battered. And he says the bruises in this case -- we have

abrasions and bruising both recent, meaning right near the time of death, and older, meaning several days, so that's a battered child. So this is a baby that the father knew was medically fragile, that was within not even a month, and he beat this child to death, Judge.

I think additionally Ms. Canova's testimony about the fact that he would strap a nine-month-old baby into a car seat that you have before you with plastic sheeting on it, tape the child's hands together and tape it to the car seat so he couldn't move -- and I don't believe Ms. Canova testified to this, but I think it's in her deposition, that he would not put a diaper on the child. So the child would be sitting there in its feces and so forth This is a child with a catheter to its heart.

Your Honor, you know, maybe, maybe Mr. Collins didn't intend to kill this baby, but I don't see how he could have done everything that he did to this child and not expect death to result. Therefore, Judge, we're asking that he receive the maximum sentence of 30 years in state prison.

THE COURT: Mr. Anthony, any response?

MR. FORD: Your Honor, could I respond briefly. We're not here to dispute this, in the main part of it. What we are disputing is that this was intentional, that he did this with any malice. And I think that's evidenced by the fact that he did attempt CPR, he did call 911.

The fact that the child's hands were taped to the baby seat just, I think, further shows his immaturity and his lack of parenting skills. He thought that was the way to keep the child from pulling the tubes out that went to his heart. And a small infant like that will do something like that if you don't control them. Maybe that wasn't the proper way to do it, but to Mr. Collins, that was the only way he knew how to try to keep the child from pulling the tube out. I don't think that's any evidence of any torture or intentional mistreatment of the child. In fact, I haven't heard that it was mistreatment of any sort.

Maybe you shouldn't tape a child's hands, but when he has a tube going straight to his heart that he could easily pull out and would

be disastrous, I don't think that's that unusual.

And, again, I would ask the court to please consider both his lack of maturity in parenting skillings, the lack of the mother and their inability to deal with this. And the fact that he did attempt to perform CPR. He did -- I believe he was doing that at the time the paramedics arrived. He did call 911. Had he intended to kill the child, I think he would have just left the child die. I don't think that was his intention.

THE COURT: Well, Mr. Collins, it may not have been your intention to kill the child. Your actions are certainly that that it caused the child's death. And the greater shame here is that the mother didn't do anything to protect the child. She had plenty of opportunity to do something to protect this child, if these injuries took place over a long period of time.

But, Mr. Collins, based on the totality of the circumstances in this case, I'm going to have to adjudge you to be guilty of the offense of second-degree murder. You're committed to

the custody of the Department of Corrections for a term of 30 years. You'll be given credit for 862 days time served.

The mandatory costs of $258, $250 cost of prosecution, $100 public defender's fee and a $40 public defender application fee will be assessed as a civil lien. They will be due immediately for which let execution issue.

It's your right to appeal from the judgment and sentence within 30 days of today's date. You're entitled to the assistance of counsel in the filing and preparation of your appeal. Upon your request and upon your showing that you're entitled to a lawyer at the expense of the State, I'll appoint one for you.

You need to step over and be fingerprinted.

(Whereupon, the proceedings were concluded.)

COURT CERTIFICATE

STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

I, STACEY A. GEORGE, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of November, 2003.

/s/
STACEY A. GEORGE, RPR-CP
and Notary Public.

K

WILSON
L03-1-32238

IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT OF THE STATE OF FLORIDA.

ANDERS

QUINARD COLLINS,
Appellant,
vs.
STATE OF FLORIDA,
Appellee.

DCA CASE NO. 5D 03-3601

APPEAL FROM THE CIRCUIT COURT IN AND FOR ST. JOHN'S COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

ALLISON HAVENS
ASSISTANT PUBLIC DEFENDER
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112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
(386) 252-3367

COUNSEL FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES CITED:

IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT OF THE STATE OF FLORIDA.

QUINARD COLLINS,	)	
	)	
Appellant,	)	
vs.	)	DCA CASE NO. 5D 03-3601
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

PRELIMINARY STATEMENT

Appellant was the Defendant and Appellee was the Prosecution in the Felony Division of the Circuit Court, Seventh Judicial Circuit, in and for St. John's County, Florida. In the Brief, the Appellee will be referred to as "the State" and the Appellant will be referred to as he appears before this Honorable Court of Appeal.

In the brief the following symbol(s) will be used:

"R" - Original record on appeal, Volumes I-IV.

"P" - Plea transcript, Volume IV.

"S" - Sentencing transcript, Volume IV.

STATEMENT OF THE CASE AND FACTS

Appellant was charged by indictment in case number 01-1102 with aggravated child abuse, and first degree murder, a capital felony. (R 26, Vol. I) The victim was a prematurely born ten month old who suffered from several medical problems, and required an IV tube which was connected to his heart, and demanded special care. (S 747, Vol. IV) The State alleged that Appellant killed the child by hitting and/or shaking the child on or about his head causing abusive head injury, and the child died from battered child syndrome. (P 765, Vol. IV)(S 749, Vol. IV)

On August 8, 2003, Appellant, with the assistance of counsel, entered a negotiated plea of no contest to the lesser included charge of second degree murder. (S 759, Vol. IV) The State agreed to a sentence between 20 to 30 years and nolle prosequied count one, aggravated child abuse. (S 759, Vol. IV) The court conducted a full plea colloquy to ascertain the knowing and voluntary nature of the plea. (S 760-765, Vol. IV)

Sentencing was held on October 10, 2003. The Appellant argued in mitigation and explained that he never intended to harm the child, but tried to save him by calling 911, and performing CPR. (S 742-743, Vol. IV) Defense witnesses testified as to Appellant's behavior including that Appellant was not a

violent person, he was raised by his grandfather due to the immaturity of his mother who gave birth to him at age 15. (S 728, 738, Vol. IV) Appellant had no previous felonies on his prior record. (R 699, Vol. IV) Psychologist Harry Krop, testified he found no significant finding of psychological history, but Appellant was remorseful for the death of his child. (S 733, Vol. IV) The State presented testimony from the mother of the child who testified that Appellant had threatened to kill her if he was sent to prison because of her. (S 744, Vol. IV)

The punishment code scoresheet totaled 356.8 points which allowed for a minimum of 246.6 months in prison. (R 699, Vol. IV) The court adjudicated the Appellant and sentenced him to 30 years in prison, with 921 days credit for time served. (S 755, Vol. IV)(R 693, 703, Vol. IV)

The Office of the Public Defender was appointed for the purposes of this appeal (R 721, Vol. III), and a timely Notice of Appeal was filed. (R 707, Vol. III)

SUMMARY OF ARGUMENT/STANDARD OF REVIEW

This brief is submitted in partial fulfillment of the requirements of Anders v. California, 386 U.S. 738 (1967). Pursuant to Anders, an appellate court must examine the record on appeal to the extent necessary to discover any errors apparent on the face of the record. Should the court in its independent review find it issue to be arguable on the merits, counsel should be directed to file supplemental briefs addressing such issue for the benefit of the court. State v. Causey, 503 So.2d 321 (Fla.1987).

ISSUE

WHETHER THE TRIAL COURT ERRED IN SENTENCING THE APPELLANT?

This brief is submitted in partial fulfillment of the requirements of Anders v. California, 386 U.S. 738 (1967). The Court in Anders held that where appointed counsel moves to withdraw on the grounds that he finds the appeal wholly frivolous, the Motion to Withdraw should be accompanied by a "brief referring to anything in the record that might arguably support the appeal." The Court also stated that, "this requirement would not force appointed counsel to brief his case against his client...." Anders, 386 U.S. at 745.

Pursuant to Anders, an appellate court must examine the record on appeal to the extent necessary to discover any errors apparent on the face of the record. Should the court in its independent review find it issue to be arguable on the merits, counsel should be directed to file supplemental briefs addressing such issue for the benefit of the court. State v. Causey, 503 So.2d 321 (Fla.1987).

In the instant case, Appellant entered a no contest plea to second degree murder, a first degree felony. A defendant who enters a plea of guilty or no contest waives the right of direct appeal, unless expressly reserved, of all matters except those arising contemporaneously with the plea itself. Fla. Stat.

§924.06(3)(1995); Fla. Stat. §924.051(4)(1995).

Section 924.051(4) provides:

> If a defendant pleads nolo contendere without expressly reserving the right to appeal a legally dispositive issue, or if a defendant pleads guilty without expressly reserving the right to appeal a legally dispositive issue, the defendant may not appeal the judgment or sentence.

See also Fla. Stat. §924.06(3)(1995). The Florida Supreme Court has interpreted this language to permit appellate review of the limited class of issues permitted under Robinson v. State, 373 So.2d 898 (Fla. 1979). Fla. R. App. P. 9.140(b)(2)(1996); Amendments to Florida Rules of Appellate Procedure, 696 So.2d 1103, 1105 (Fla. 1996).

In Robinson v. State, 373 So. 2d 898 (Fla. 1979), the court upheld the constitutionality as applied of Section 924.06(3), Florida Statutes (1977), precluding a direct appeal from a guilty plea or no contest plea with no express reservation of the right to appeal, and noted that although a guilty plea "forecloses appeal from matters which took place before defendant agreed to a judgment of conviction," there is still a "right of appeal from conduct that would invalidate the plea itself." Robinson at 902. The Robinson court delineated the issues which an appellate court may address in the guilty plea appeal:

(1) The subject matter jurisdiction,

(2) the illegality of the sentence,

(3) the failure of the government to abide by the plea agreement, and

(4) the voluntary and intelligent character of the plea.

Robinson at 902.

Robinson has been reviewed and approved in the recent cases of Leonard v. State, 760 So. 2d 114 (Fla. 2000), and State v. Jefferson, 758 So. 2d 661 (Fla. 2000), which hold that summary affirmance, rather than dismissal for lack of jurisdiction, is the appropriate action where an appeal lacks reserved issues, preserved error, or certain unpreserved fundamental errors under Maddox v. State, 760 So. 2d 80 (Fla. 2000).

In the instant case, the Appellant's sentence was legal. The Appellant entered a plea to a first degree felony, punishable by up to a statutory maximum of thirty years incarceration. See Fla. Stat.§ 775.082(2000). The circuit court sentenced the Appellant to 30 years of incarceration, with credit for 921 days for time served. (S 755, Vol. IV)

Additionally, regarding subject matter jurisdiction, all of the proceedings in the instant case, which involved a felony charge, occurred before the circuit court in St. John's County.

Furthermore, there is no issue that may be raised on appeal regarding the voluntariness of the plea. In Byrd v. State, 419 So. 2d 725 (Fla. 5th DCA 1982), this Honorable Court held that it had no jurisdiction to review the issue of the voluntariness of a plea absent a motion to withdraw the plea. No motion to withdraw the plea appears on the record in the instant case. See also, Graff v. State, 389 So. 2d 333 (Fla. 5th DCA 1980); Fick v. State, 388 So. 2d 1352 (Fla. 5th DCA 1980); Fla. R. App. P. 9.140(b)(2)(B)(ii).

CONCLUSION

For the above-stated reasons, the undersigned counsel requests permission to withdraw as counsel for Appellant. Further, counsel requests this Court to allow Appellant, on his own behalf or through other counsel, sufficient time to submit a brief on points he may deem appropriate.

If this Court finds reversible error in this appeal, counsel requests this application to be withdrawn, and an opportunity be granted to file another brief for Appellant.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

ALLISON HAVENS
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0183725
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
(386) 252-3367

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing has been served upon the Honorable Charles J. Crist., Jr., Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118, via his basket at the Fifth District Court of Appeal and mailed to: Quinard Collins, DOC# V18204, Walton Correctional Institution, 691 World War II Veterans Lane, DeFuniak Springs, Florida 32433 on this 7th day of January, 2004.

ALLISON HAVENS
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I HEREBY certify that the size and style of type used in this document is proportionally spaced 14 pt. Times New Roman.

ALLISON HAVENS
ASSISTANT PUBLIC DEFENDER

L

WILSON
L03-1-32238
AR

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2004

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

QINARD L. COLLINS,

Appellant,

v.

CASE NO. 5D03-3601

L.Ct.#: CF01-1102,

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed April 27, 2004

Appeal from the Circuit Court
for St. Johns County,
Robert K. Mathis, Judge.

James B. Gibson, Public Defender, and
Allison Havens Assistant Public Defender,
Daytona Beach, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Timothy D. Wilson, Assistant
Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED. *See State v. Causey,* 503 So. 2d 321 (Fla. 1987).

SHARP, W., PETERSON and GRIFFIN, JJ., concur.

4-29-04
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QINARD L. COLLINS
v.
STATE OF FLORIDA

5D03-3601 St. Johns
CF01-1102

Wilson) L03-1-32238

Mandate was forwarded to trial court today.
Clerk, Fifth District Court
of Appeal, Daytona Beach

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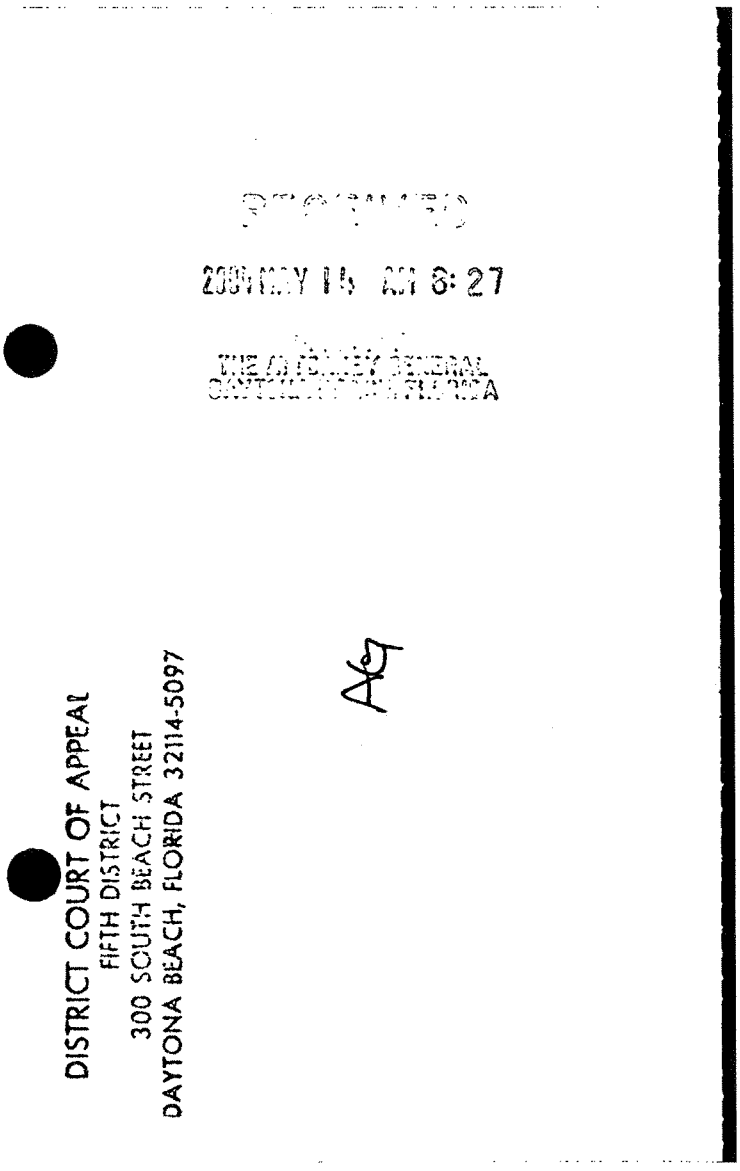
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DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114-5097
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IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR St Johns COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

QUARDL COLLINS
Defendant,

Criminal Division

Case No.: CF01-1102
(the original case number)

MOTION FOR POST CONVICTION RELIEF

INSTRUCTIONS: READ CAREFULLY

(1) This motion must be legibly handwritten or typewritten, signed by the defendant, and contain either the first or second oath set out at the end of this rule. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the facts that you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted in support of your legal claims (as opposed to your factual claims), they should be submitted in the form of a separate memorandum of law. This memorandum should have the same caption as this motion.

(3) No filing fee is required when submitting a motion for Post/Conviction Relief.

(4) Only the judgment of one case may be challenged in a single motion for postconviction relief. If you seek to challenge

judgments entered in different cases, or different courts, you must file separate motions as to each such case. The single exception to this is if you are challenging the judgments in the different cases that were consolidated for trial. In this event, show each case number involved in the caption.

(5) Your attention is directed to the fact that you must include all grounds for relief, and all facts that support such grounds, in the motion you file seeking relief from any judgment of conviction.

(6) When the motion is fully completed, the original must be mailed to the clerk of the court whose address is;

MOTION

1. Name and location of the court which entered the judgment of conviction under attack: SEVENTH JUDICIAL CIRCUIT IN AND FOR ST JOHNS COUNTY, FLORIDA

2. Date of judgment of conviction: OCTOBER 10, 2003

3. Length of sentence: THIRTY (30) YEARS STATE PRISON

4. Nature of offense(s) involved (all counts): SECOND DEGREE MURDER

5. What was your plea? (check only one)

(a) Not Guilty ____
(b) Guilty ____
(c) Nolo Contendere X
(d) Not guilty by reason of insanity ____

If you entered one plea to one count, and a different plea to another count, give details: N/A

6. Kind of trial: (check only one)

(a) Jury ____
(b) Judge only without jury ____

7. Did you testify at the trial or at any pre-trial hearing?

Yes ____ No ____

If yes, list each such occasion: ____

8. Did you appeal from the judgment of conviction?

Yes X No ____

9. If you did appeal, answer the following:

(a) Name of court: FIFTH DISTRICT OF APPEALS, FLORIDA

(b) Result: AFFIRMED CASE NO: 5D03-3601

(c) Date of result: MAY 14, 2004

(d) Citation (if known): UK

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc. with respect to this judgment in this court? Yes ____ No X

11. If your answer to number 10 was "yes", give the following information (applies only to proceedings in this court):

(a) (1) Nature of the proceeding: ____

(2) Grounds raised: ____

2.

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes _____ No X

(4) Result: N/A

(5) Date of result: N/A

(b) As to any second petition, application, motion, etc., give the same information:

(1) Nature of the proceeding: _____

(2) Grounds raised: _____

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes _____ No X

(4) Result: _____

(5) Date of result: _____

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motion, etc. with respect to this judgment in any other court? Yes _____ No X

13. If your answer to number 12 was "yes", give the following information:

(a) (1) Name of court: _____

(2) Nature of the proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes ____ No X

(5) Result: _____

(6) Date of result: _____

(b) As to any second petition, application, motion, etc., give the same information:

(1) Name of court: _____

(2) Nature of the proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes ____ No X

(5) Result: _____

(6) Date of result: _____

(c) As to any third petition, application, motion, etc., give the same information:

(1) Name of court: _____

(2) Nature of the proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes ____ No X

(5) Result: ____

(6) Date of result: ____

14. State concisely every ground on which you claim that the judgment or sentence is unlawful. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the facts supporting them. For your information, the following is a list of the most frequently raised grounds for postconviction relief. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that your conviction or sentence is unlawful.

DO NOT CHECK ANY OF THESE LISTED GROUNDS

If you select one or more of these grounds for relief, you must allege facts. The motion will not be accepted by the court if you merely check (a) through (i).

(a) Conviction obtained by plea of guilty or nolo contendere that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(c) Conviction obtained by a violation of the protection against double jeopardy.

(d) Denial of effective assistance of counsel.

(e) Denial of right of appeal.

(f) Lack of jurisdiction of the court to enter the judgment or impose sentence (such as unconstitutional statue).

(g) Sentence in excess of the maximum authorized by law.

(h) Newly discovered evidence.

(i) Changes in the law that would be retroactive.

A. Ground 1: NEWLY DISCOVERED EVIDENCE

Supporting FACTS (tell your story briefly without citing cases or law):

CONTINUED ON PAGE 6-A

B. Ground 2: INEFFECTIVE ASSISTANCE OF COUNSEL

STRICKLAND V. WASHINGTON 466 U.S 668, 104 S.Ct 2052 (1984)

Supporting FACTS (tell your story briefly without citing cases or law):

CONTINUED ON PAGE 6-C

C. Ground 3: FUNDAMENTAL ERROR

Supporting FACTS (tell your story briefly without citing cases or law):

CONTINUED ON PAGE 7-A

GROUND ONE
-CONTINUED-

ON MAY 1,2001, THE DEFENDANT QIHARD COLLINS SR. WAS CHARGED BY FELONY INDICTMENT WITH ONE COUNT OF FIRST DEGREE FELONY MURDER FOR THE DEATH OF HIS SON QIHARD COLLINS JR. IT WAS ALLEGED BY THE STATE OF FLORIDA THAT QIHARD SR. KILLED THE VICTIM BY HITTING AND/OR SHAKING AND/OR STRIKING SAID VICTIM ABOUT HIS HEAD CAUSING ABUSIVE HEAD INJURIES.

IN THE DECEMBER 3,2001 PRETRIAL DEPOSITION GIVEN BY DR. TERRENCE STEINER MEDICAL EXAMINER FOR ST. JOHNS COUNTY FLORIDA. DR. STEINER TESTIFIED THAT THE CAUSE OF THE VICTIMS DEATH WAS DUE TO ABUSIVE HEAD INJURIES AND THAT THE VICTIM SUFFERED INTERNAL BRUSING UNDER THE SCALP IN AT LEAST EIGHT DIFFERENT PLACES, MASSIVE SWELLING OF THE BRAIN AND HEMORRAGE INTO THE MEMBRANES COVERING THE BRAIN. THE VICTIM SUFFERED BLEEDING INTO THE OPTIC NERVE SHEATHS AND THE HEAD AND EYE INJURY SUFFERED WERE DETERMINED BY DR. STEINER TO BE CLASSIC OF SHAKEN BABY SYNDROME①

THROUGH PERSONAL CORRESPONDENCE WITH INMATE ROBERT BASSETT, WASHINGTON CORRECTIONAL INSTITUTION, 4455 SAM MITCHELL DRIVE, CHIPLEY, FL. 32428. ON OR ABOUT APRIL 4. 2004 THE DEFENDANT DISCOVERED FACTS THAT WERE UNKNOWN TO THE DEFENDANT WHEN MR. COLLINS PLEAD NOLO CONTENDERE TO THE CHARGE OF SECOND DEGREE MURDER.

UPON READING SEVERAL MEDICAL JOURNALS AND/OR DOCUMETARIES WRITTEN BY DR. HARLD BUTTRAM, et.al. THE DEFENDANT

---

① HEREINAFTER: S.B.S

HAS LEARNED THAT MEDICAL VACCINATIONS ADMINISTERED TO INFANTS AT BIRTH HAVE BEEN LINKED TO CAUSING INFANT MORTALITY WITH INJURIES OFTEN MISCHARACTERIZED AS RESULTING FROM CHILD ABUSE. (Exhibit A)

SOME OF THE SYMPTOMS IDENTIFIED IN DR. BUTTRAM'S MEDICAL REPORT THAT WERE FOUND TO BE CAUSED BY AN ADVERSE VACCINE REACTION WERE INTRACRANIAL AND OCULAR HEMORRHAGE AND SEVERE BRAIN SWELLING. THESE INJURIES WERE OF THE SAME TYPE SUFFERED BY THE VICTIM QUARD COLLINS JR AS FOUND BY DR. TERRANCE STEINER'S AUTOPSY. THE DEFENDANTS SON QUARD JR WAS VACCINATED BY SHANDS MEDICAL CENTER JACKSONVILLE FLORIDA.

WHEN MR. COLLINS ENTERED THE PLEA OF NOLO CONTENDR THE DEFENDANT WAS TOTALLY UNAWARE THAT A POSSIBLE LINE OF DEFENSE IN ADVERSE VACCINE REACTION WAS AVAILABLE TO BE INVESTIGATED AND RAISED TO THE CHARGED OFFENSE.

HAD THE DEFENDANT KNOWN THERE EXIST A POTENTIAL VIABLE DEFENSE OF ADVERSE VACCINE REACTION. THE DEFENDANT WOULD NOT HAVE PLEAD NOLO CONTENDERE TO SECOND DEGREE MURDER. THE DEFENDANT WOULD HAVE FIRST REQUEST DEFENSE COUNSEL TO INVESTIGATE THE VIABILITY OF SAID DEFENSE AGAINST THE FACTS OF THE STATES CASE, AND SUBSEQUENTLY PROCEEDED TO TRIAL BY JURY HAD COUNSELS INVESTIGATION PROVED THE VACCINATION GIVEN THE VICTIM WAS THE CAUSE OF DEATH. THE DEFENDANT IS INNOCENT OF KILLING THE VICTIM, AND BASED ON THE NEWLY DISCOVERED EVIDENCE ALLEGED HEREIN THE WITDRAWL OF DEFENDANTS NOLO CONTENDERE PLEA IS NECESSARY TO CORRECT A MANIFEST INJUSTICE

GROUND TWO
-CONTINUED-

THE DEFENDANTS ATTORNEY MR. JOSEPH ANTHONY RENDERED SUBSTANDARD ASSISTANCE WHEN COUNSEL FAILED TO INVESTIGATE WHETHER AN ADVERSE VACCINE REACTION IN THE VICTIM QUARD COLLINS JR WAS A CONTRIBUTING CAUSE OF THE VICTIMS DEATH.[2]

MEDICAL STUDIES HAVE SHOWN THAT NEONATAL VACCINATIONS ADMINISTERED TO INFANTS HAVE BEEN LINKED TO CAUSING INTERNAL INJURIES THAT ARE COMMONLY RULED TO HAVE OCCURRED FROM PHYSICAL CHILD ABUSE. See (Exhibit A)

PRIOR TO PLEADING NOLO CONTENDERE TO THE NEGOTIATED PLEA OF SECOND DEGREE MURDER. THE DEFENDANTS ATTORNEY INFORMED MR. COLLINS THERE WAS NO PLAUSIBLE DEFENSE TO THE OFFENSE OF FIRST DEGREE FELONY AS ALLEGED AGAINST THE DEFENDANT. QUARD COLLINS REPEATEDLY MAINTAINED TO DEFENSE COUNSEL THAT HE WAS INNOCENT OF THE CHARGED OFFENSE BUT DISPITE THE DEFENDANTS CONCESSION OF INNOCENCE. DEFENSE COUNSEL TOLD THE DEFENDANT THAT PLEADING, NOLO CONTENDERE TO THE CHARGE OF SECOND DEGREE MURDER WOULD BE DEFENDANTS BEST OPTION DUE TO THE ABSENSE OF A VIABLE DEFENSE. THE DEFENDANT TOOK COUNSELS ERRONEOUS ADVISE AND ULTIMATELY PLEAD NOLO CONTENDERE BASED SOLELY ON DEFENSE COUNSEL ASSERTION THAT DEFENDANT WOULD HAVE NO DEFENSE IN THE EVENT DEFENDANT CASE PROCEED TO TRIAL.

CONTRARY TO THE INFORMATION CONVEYED TO MR. COLLINS BY DEFENSE COUNSEL AND DEFENDANTS STANDING BELIEF OF NO POTENTIAL DEFENSE UPON PLEADING NOLO CONTENDERE.

---

2. The Defendant Incorperates Herein Any And All Facts That Are Aired In Ground One Of The Foregoing Motion.

THE DEFENDANT HAS DISCOVERED SUBSEQUENT TO PLEADING NOLO CONTENDERE THAT THERE WAS A POTENTIALY VIABLE DEFENSE OF ADVERSE VACCINE REACTION THAT COULD HAVE BEEN USED TO COMBAT THE CHARGE OF FIRST DEGREE FELONY MURDER.

BECAUSE OF DEFENSE COUNSELS FAILURE TO CONDUCT AN INVESTIGATION INTO THE FOREMENTIONED DEFENSE PRIOR TO THE DEFENDANT PLEADING NOLO CONTENDERE. MR. COLLINS MADE AN UNKNOWING DECISION TO PLEA TO SECOND DEGREE MURDER BECAUSE THE DEFENDANT PLEAD WITHOUT THE BENEFIT OF A THOROUGH INVESTIGATION INTO NOR A COMPLETE UNDERSTANDING OF WHETHER THERE WAS ACTUALY AN ALTERNATIVE CAUSE FOR THE VICTIMS DEATH THAT WOULD INTURN PROVIDE A DEFENSE TO THE STATES CASE. BASED ON THE FACTS ALLEGED IN THE FORE-GOING MOTION. DEFENDANTS NOLO CONTENDERE PLEA WAS NOT A FULLY INFORMED. INTELLIGENT CHOICE TO FORGO THE RIGHT TO TRIAL BY JURY

HAD DEFENSE COUNSEL CONDUCT AN INVESTIGATION INTO THE POSSIBILITIES OF WHETHER AN ADVERSE VACCINE REACTION COULD HAVE CAUSE THE VICTIMS DEATH, AND SUCH INVESTIGATION YIELD FAVORABLE INFORMATION TO SUPPORT A VACCINATION DEFENSE. THE DEFENDANT WOULD NOT HAVE PLEAD NOLO CONTENDERE BUT ALTERNATIVELY PLEAD NOT GUILTY AND INSISTED ON A TRIAL BY JURY.

6-D

D. Ground 4: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

15. If any of the grounds listed in 14 A, B, C and D were not previously presented on your direct appeal, state briefly what grounds were not so presented, and give your reasons why they were not so presented: _____

GROUND THREE
-CONTINUED-

THE DEFENDANT CONTENDS THAT HIS PLEA OF NOLO CONTENDERE ENTERED AUGUST 8, 2003 IS DEFICIENT AND SUBJECT TO WITHDRAL BECAUSE THE HONORABLE JUDGE ROBERT K. MATHIS FAILED TO INDICATE ON RECORD IN OPEN COURT WHAT IF ANY EVIDENCE WAS RECEIVED THAT ESTABLISHED THE CHARGE OF SECOND DEGREE MURDER. DURING THE PLEA COLLOQUY, A DETAILED INQUIRY WAS MADE BY THE PRESIDING JUDGE INTO RELEVANT MATTERS SUCH AS, WHETHER THE DEFENDANT UNDERSTOOD THE RIGHTS WAIVED BY PLEADING NOLO CONTENDERE, THE APPLICABLE SENTENCE ON SUCH PLEA, AND DEFENDANTS SATISFACTION WITH SAID PLEA.

FURTHER ON INTO THE PLEA COLLOQUY. IN AN EFFORT TO ILLUSTRATE THE FACTS OF THE CASE AGAINST THE DEFENDANT THE STATE ALLEGED READY TO PROVE, THE STATES ATTORNEY PROFFERED THE FOLLOWING FACTS TO THE TRIAL COURT:

THE COURT: What's the State Prepared To Prove ?

MS. CHRISTINE: Your Honor, The States Prepared To Prove That On Or About The 2nd Day Of April 2001. Within St. Johns County, Florida. Qinord Lamar Collins Did Then And There Unlawfully, While Engaged In The Prepetration of the Offense Of Aggrivated Child Abuse, Did Kill And Murder Qinord Collins. Jr., A Human Being, By Hitting Him And/or Shaking And/or Striking Said Child On Or About His Head Causing Abusive Head Injury.

NOTHING IN THE SUBSTANCE OF THE ABOVE FACTS TENDERED BY THE STATES ATTORNEY PROVED THAT THE DEFENDANT COMMITTED THE CRIME OF SECOND DEGREE MURDER. IN ORDER TO HAVE PROVED A SUFFICIENT BASES FOR THE CHARGE OF SECOND DEGREE MURDER, THE STATE HAD TO SHOW THAT THERE WAS EVIDENCE THAT WOULD PROVE THE DEFENDANT KILLED THE VICTIM WITH A DEPRAVED MIND REGARDLESS OF HUMAN LIFE.

BECAUSE OF THE TRIAL COURTS FAILURE TO DETERMINE WHETHER A FACTUAL BASES EXIST ON WHICH TO ACCEPT THE DEFENDANTS PLEA OF NOLO CONTENDERE TO SECOND DEGREE MURDUR AND FURTHER INDICATE ON THE RECORD THE BASES FOR ACCEPTING SUCH PLEA. THE DEFENDANT HAS PLEAD NOLO CONTENDERE TO AN OFFENSE THAT HAD NO FACTUAL BASES IN THE RECORD TO SUPPORT THE CHARGE.

THE COURT WAS IN ERROR IN FAILING TO INQUIRE INTO THE FACTUAL BASES FOR THE DEFENDANTS PLEA AND BY NOT INDICATING ON RECORD THE SOURCE OF THE FACTUAL BASES USED TO ACCEPT DEFENDANTS PLEA. AND ABSENT A BASES IN THE RECORD TO SUPPORT THE CHARGE OF SECOND DEGREE MURDER, COUPLED WITH THE TRIAL COURTS NONCOMPLIANCE WITH FLORIDA RULE OF CRIMINAL PROCEDURE 3.170(K), 3.172(a) THE WITHDRAWL OF DEFENDANTS PLEA IS NECESSARY TO CORRECT A MANIFEST INJUSTICE.

16. Do you have any petition, application, appeal, motion, etc. now pending in any court, either state or federal, as to the judgment under attack? Yes ____ No X

17. If your answer to number 16 was "yes", give the following information:

(a) Name of court: _____

(b) Nature of the proceeding: _____

(c) Grounds raised: _____

(d) Status of the proceedings: _____

18. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein.

(a) At preliminary hearing: JOSEPH D. ANTHONY III ESQ

(b) At arraignment and plea: SAME

(c) At trial: X

(d) At sentencing: SAME

(e) On appeal: UNK

(f) In any postconviction proceeding: X

(g) On appeal from any adverse ruling in a postconviction proceeding: X

WHEREFORE, Movant request that the court grant all relief to which the movant may be entitled in this proceeding, including but not limited to (here list the nature of the relief sought):

1. _____

2. And such other and further relief as the court deems just and proper.

OATH

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true.

Date: _____

_____

Walton Correctional Institution
____ World War II Veterans Lane
DeFuniak Springs, Florida 32433

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing instrument: 3.850 motion

_____ has been furnished to:

OFFice Of The State Attorney
4010 Lewis Speedway
St. Augustine, Florida 32095

by United States Mail on this 29th day of April, 2006.

Dinorel Collins

Walton Correctional Institution
691 World War II Veterans Lane
DeFuniak Springs, Florida 32433

C:\WP51\WP51\LAWFORMS\CIRCUIT

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN
AND FOR ST. JOHNS COUNTY FLORIDA

STATE OF FLORIDA
PLAINTIFF

V.

QINARD COLLINS, SR.,
DEFENDANT

CASE NO: CF01-1102

EXHIBITS

QINARD L. COLLINS
WALTON CORR. INST.
691 N.W II Veterans LANE
DEFUNIAK SPRINGS FLA. 32433
DC# V18204

EXHIBIT A

4-4-04

Hi Quinton,

Robert brought the following article to our attention. He wanted us to send you this information for you to review. He isn't sure it will help in any way but wanted you to read it.

Norm is working on the picture you sent to him and we will send it back as soon as we can.

Take care and keep in touch.

Peg & Norm

Did The Baby Die of Shaken Baby Syndrome?
by Harold E. Buttram, MD
(An edited version of a talk given at a February 16, 2002 fund-raiser)
Contributing editor, Peter G. Tocci, BA, MT

Dr. Harold Buttram:

A man has been incarcerated since he was arrested and jailed in November, 1997 for causing the death of his infant son by what is known as shaken baby syndrome (SBS). In Februray, 1999, he was convicted and imprisoned for life, without parole. Very strong evidence has since arisen that medical misdiagnosis brought the jury conviction, and an appeal has been filed. The story will be profiled here, but first, some pertinent information about immune function.

A Brief Look at Immunity
Immune function comprises two major classes: cellular (cell-mediated) immunity and humoral (antibody-mediated) immunity. Cellular immunity utilizes phagocytic activities (ingesting foreign agents) and cytotoxic activities (poisoning foreign agents). Each class is identifiable by a biochemical signature it produces in the form of substances called cytokines.

Major medical journals state that in healthy people, there is a "bias" toward cellular immunity, while people with allergies, asthma, and autoimmune diseases have immune response "skewed" toward the humoral. There is now significant evidence suggesting that vaccines disturb immune balance, thereby contributing profoundly to allergy and other illness, and to their current, alarming increase, especially in infants and children. Dr. H. H. Fudenburg, a world renowned immunologist with hundreds of publications to his credit, made the following comments: "One vaccine decreases cell-mediated immunity by 50%, two vaccines by 70% ... all triple vaccines (such as MMR, DTaP)

markedly impair cell-mediated immunity, which predisposes to recurrent viral infections, especially otitis media, as well as yeast and fungi infections."

An Ominous Health Trend

I recall attending summer camp for several seasons during the 1930s. No boy was ever sick, had allergies, or was on medication. It was much the same in the schools I attended. Compare that with today. To my inquiries years ago, school teachers replied emphatically and unanimously that they were seeing more hyperactivity, more learning disabilities/behavioral problems, and more patterns of general sickness among school children.

In 1999, full realization of this adverse health trend hit me with a severe jolt. Were vaccines playing a significant role here? While in this frame of mind, I received my first letter. It seems my thoughts and experiences had "set me up" for his letter, because, on the first reading, a sense of great injustice overwhelmed me. I suspected that studying the baby's medical records would reveal the facts of injustice. That review largely confirmed for me that death occurred in a delayed manner following a combination of vaccines--violence of a different order.

A Reign of Terror

I have since come to know the pioneering work of Australian physician Archivedes (Archie) Kalokerinos, MD, who has testified in defense of parents in over 30 SBS cases. Other pioneers in Australia and New Zealand have been working in this field for many years. Of twenty-two cases I have reviewed, all but one show clear evidence, exemplified below, of defendant innocence. In the opinion of those veteran physicians and researchers, and in mine, many cases closely resemble the Yurko scenario: delayed onset, following vaccines, of signs and symptoms conventionally accepted as the definitive criteria for SBS. Most doctors dismiss this correlation as coincidental. Although coincidence might be expected occasionally, at the frequency being observed, such conclusion is unreasonable.

The ominous suggestion follows that if a large portion of SBS accusations and convictions are the result of subsequent misdiagnosis, we are witnessing a rapidly growing reign of terror against home and family. There is no other term for it. An excerpt of a letter written from the prisononer conveys the potential of this terrorism:

". . . our four-year-old daughter was taken by the authorities to 'protect her' from me--the accused who was in a maximum security facility without bond. She was used by the police and authorities to threaten and blackmail my wife to help them fabricate evidence and testify against me. This she adamantly refused to do. She was charged as an accessory to murder, and our daughter was placed in extended custody. Here she was sexually battered and molested when her 'protectors' left her unsupervised with two boys who had a history of deviant behavior. My wife's charges were dismissed after great effort and cost, and our daughter was returned. They both fight every day to bring our family back together and have been fighting since 1997."

The Birth Experience

Now to the medical specifics of the baby's case. Importantly, the pregnancy was complicated with constant nausea such that the mother was unable to take vitamins. She lost 10 pounds after conception, and barely regained it before parturition. Additional complications included group B Streptococcal vaginal infection, E coli urinary tract infection, and gestational diabetes.

At 35 weeks, on September 16, 1997, labor was chemically induced due to lack of amniotic fluid. Although medical records showed Apgar scores of 8 and 9 (standard of newborn condition--10 being the highest), a video of the birth taken by the father tells a much different story: clear respiratory distress, with marked rib and sternal retractions, and bluish-grey skin color. Hypoxia (oxygen deficiency) was confirmed by arterial blood gasses. The baby was sent immediately to pediatric intensive care, put on a ventilator, and administered Survanta®, a lung surfactant (surface-active) rescue drug. Three daily chest X rays showed bilateral pulmonary infiltrates interpreted as "respiratory distress."

While still presenting the symptoms of respiratory distress, including raspy breathing and grunting, the baby was sent home on his seventh day. Parents and grandparents continued to observe these problems, along with brief periods of apnea (breathing cessation). On November 11, at approximately eight weeks (43 days true post-partum age), the baby was given the DTaP, Hib, OPV, and Hepatitis B vaccines despite the breathing difficulty and length/weight factors in the 3 percentile range. Within 24 hours, low grade fever, irritability, and diarrhea developed, all of which continued for about ten days until the morning of November 24. The father was at home with the baby and his 4-year old sister when the baby's breathing stopped and did not resume. While attempting mouth-to-mouth breathing, the father rushed to a nearby hospital where the baby was only temporarily resuscitated.

Autopsy and Trial

Autopsy findings comprised retinal hemorrhages, subdural hematomas (blood-filled swellings on the brain), brain changes interpreted as diffuse axonal injury (axon: nerve impulse conductor), and four rib calluses on the left interpreted as the result of prior fractures. The father was therefore accused, and subsequently convicted by a jury, of murdering his son by physical violence. As mandated by Florida law, a life sentence was imposed. Anyone familiar with the medical/legal procedures in SBS cases is aware that these pathology findings have been deemed exclusively diagnostic of SBS. However, investigation has revealed a significant body of medical literature, much of it by pathologists and specialists in the United States and Great Britain, criticizing this interpretation and showing that these conditions can, and commonly do, arise from a number of other causes.

There were four state witnesses with a total of six appearances before the trial jury, in contrast to one appearance for the single defense witness. This witness was H. Douglas Shanklin, MD, FRSM, Professor of Pathology and of Gynecology and Obstetrics, Division of Neuropathology, University of Tennessee, Memphis. I'm told he is held in the highest professional regard by his peers. Lacking prenatal and birth records at the trial, and having only pathology slides to go on, Dr. Shanklin attributed death to "natural causes" including failure-to-thrive, bilateral pneumonia (confirmed at autopsy), and meningitis.

In a letter summarizing the case, Dr. Shanklin states that either pneumonia or meningitis might or might not have caused death, but together they almost certainly would have. Without prenatal and birth records records, Dr. Shanklin could not corroborate his interpretation of the pathology slides; and the state witnesses went unchallenged with the fact of pregnancy/birth complications, for example. Perhaps the most significant factor working against the defense was the medical complexity of the case, which even doctors have had difficulty grasping. Thus, inequity and confusion led to conviction.

Why were there no prenatal and birth records in court? Unfortunately, no one knows the whole story. Unquestionably, some subterfuge and incompetence were involved. The defense attorneys probably did make a gesture at requesting them, but meeting delay or obstruction did not persist. The medical examiner was compelled to admit under oath

that he neither sought nor examined these records before or after autopsy. In any case, in my opinion, a lack of pertinent medical records should be, indeed, should have been, grounds for calling a mistrial.

Evidence of Innocence

Further complicating the scenario were the rib calluses. In the early stages of review they were quite puzzling. A rational explanation came from a later, voluminous report by Archie Kalokerinos, MD, previously mentioned. In the 1970s, Dr. Kalokerinos made a major contribution to medicine by proving that post-vaccinal death of Aboriginal babies (nearly a 50% rate in some geographical areas), especially if colds or respiratory infections were present, was caused by vaccinal aggravation of a condition he diagnosed as "subclinical scurvy."

Edward Yazbak, MD, a retired pediatrician who has been following the case, informed me that any one of the pregnancy complications would put a baby in a high-risk category. With the multiple complications noted, severe nutritional deficiencies were probable, and Dr. Shanklin reported definite retardation in kidney development. We know that vitamin C is necessary for production and maintenance of connective tissue; that spontaneous fractures and hemorrhages (from bleeding capillaries) characterize classical scurvy; and that the most common site of bleeding in scurvy is subperiosteal (under the fibrous covering of bone). In ribs, as clots from such bleeding develop and calcify, they are indistinguishable on X-ray from healing fractures. Also common in scurvy, slippages of the ribs in locations near the spine may also appear on X-rays as healing fractures. Based upon the medical literature, this is detailed in the Kalokerinos report.

More recently, the father received a report from an Australian hematologist, Michael D. Innis, MBBS, DTM&H, FRCPath, FRCPA, Honorary Consultant Haematologist, Princess Alexandria Hospital, Brisbane, Australia. He cites a highly likely contributory cause of death as intracranial hemorrhage resulting from failure of the liver to synthesize clotting factors in adequate amounts (although the causative connection between insufficient clotting factors and hemorrhage might not be immediately apparent, Dr. Innis has expertise in this area resulting from extensive research). He also emphasizes that bone underlying subperiosteal hemorrhage would become necrotic from loss of it's blood supply, and that a healing necrosis looks identical to a healing fracture at autopsy. Because appropriate post-mortem tests were not done, precise determination of all morbidity factors and their interactions is impossible. But the Innis report alone should be sufficient for the father's vindication.

Finally, the DTaP vaccine in question is known to have come from a from a batch which ranks number one in deaths, number one in non-recoveries, and fourth in total events reported. Such batches are called "Hot Lots." One might wonder why, if batches can be so identified, SBS suspects aren't given some benefit of the doubt. One challenge is that such identification is based upon clinical observation, which courts will not accept. This seems odd, since the Vaccine Adverse Events Reporting System (VAERS) plainly indicates, as does the 1986 Congressional Childhood Vaccine Injury Act, that vaccine injuries are a fact of life. When people try for compensation under this Act, the court disallows VAERS information, asking for objective evidence, such as laboratory tests. Another challenge is, of course, that the requisite tests are nonexistent (see Addendum).

The father could have plea bargained and received a lesser sentence. His refusal spoke to me of a man secure in his innocence. Also remarkable was the immediate and continuing loyalty, under soul-testing circumstances, of his wife, Francine. Following the trial, her diligent efforts secured complete medical records. Based on these records

there are, at this writing, 28 medical professionals willing to testify to the father's innocence (and the number will grow). The disciplines represented at this writing include board-certified specialists in the fields of pathology, bone pathology, toxicology, hematology, ophthalmology, pediatrics, Ob/Gyn, and forensics, with some practitioners having dual specialties including pathology. As noted, an appeal has been filed.

Extreme Importance of This Case

Due to the father's tireless effort at hand writing literally thousands of letters, the case has gained significant attention and status internationally. Its critical implications for parents and caretakers falsely accused and imprisoned, and the life-and-death questions it raises concerning medically advised and mandatory vaccine programs, rank it high among the most important legal/health issues. To illustrate further, in my experience it is common in hospital emergency rooms that, once suspicion of shaken baby syndrome arises, all thought of further diagnostic investigation ceases. I know of no other situation in medicine where the usual diagnostic thoroughness one finds in such centers is abandoned.

Finally, public confidence in America's health care system and in the medical profession in particular is already eroding. Sooner or later, it will become publicly obvious that many SBS defendants have been falsely accused and convicted through deplorable misdiagnosis pertaining to pathologies that could one day become regarded as the result of malpractice--the indiscriminate administration of childhood vaccines. Further adverse backlash is sure to ensue in the US and abroad unless this case, as a prime example, is brought to light now with plentiful and reliable support for the defense. Having also witnessed outright viciousness behind the scenes in legal proceedings (such as that, described earlier, used against Francine Yurko), I now feel that the SBS debacle is a potentially fatal malignancy in the integrity of medicine.

This case is eminently winnable. Its particulars make the likelihood of another equally propitious opportunity remote. Based upon what we can only imagine the post vaccinal suffering of that small, fragile life to exemplify, not to mention the misery visited upon his loving family, we--professionals and lay persons alike--must not relent in our insistence upon measures to prevent such tragedy. To this end, this case must be won. No other outcome is thinkable.

ADDENDUM:

To this author and many other professionals, the role of medical misdiagnosis in a significant portion, possibly a majority, of SBS accusations and convictions seems to be the result of inadequate investigation in at least three areas, listed below. To avert more tragedy, the following minimal screening is recommended as mandatory before considering charges of child abuse/shaken baby syndrome:

(1) serum ascorbate and histamine to rule out subclinical scurvy;

(2) prothrombin time, partial thromboplastin time, fibrinogen level, platelet count, and D dimer test to rule out bleeding diatheses;

(3) when there is callus or fracture, bone densitometry to rule out the recently described temporary brittle bone disease, as well as tests to rule out classical brittle bone disease and all conditions, such as rickets, that predispose to spontaneous fracture. (See **Minimal Recommended Screening Where Shaken Baby Syndrome Is Suspected** for more complete information and references.)

Caveat:

The suggested panel is not intended to be comprehensive, but only a starting point for screening purposes where child abuse is suspected. Changes and/or additions are likely

as we learn more about these areas. Such information will be added to the website.

Obviously, the panel does not include tests for vaccine reactions. As noted earlier, no suitable post-licensing diagnostic protocol for vaccine reactions has ever been officially established. There is no basic science in this area worthy of the name, and this seems to be no accident, based upon my experiences at court hearings. There are two important avenues:
1) systematic before-and-after testing for vaccinal effects on the immunological and neurological systems, not to mention their potential effects on genetics;
2) meaningful, long-term epidemiological surveillance of a significant number of vaccine recipients and controls (this implies, of course, that people be informed, and not bullied into vaccinating babies and children, so that there will be controls).
These tests would hold up in court, which is why an iron curtain of official resistance surrounds them. In my opinion also, within a reasonable degree of medical certainty, vaccines and vaccine reactions very frequently trigger subclinical scurvy and its complications, as well as bleeding complications from deficiencies of clotting factors.

Note:
This article is endorsed by Roy B. Kupsinel, MD; Susan Kreider, RN; Catherine J. M. Diodati, MA, Vaccination & Biomedical Ethics Researcher and Author; and C.A.B. Clemetson, Professor Emeritus, Tulane University School of Medicine.

As of this writing, a court date has not been set.

Shaken Baby???

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In recent years some activists have suggested that there is a connection between vaccinations and 'shaken baby syndrome'. This suggestion has brought widespread criticism and ridicule from most in the medical profession.

I was reluctant to do this page due to the inherent emotional nature of the whole notion of shaken baby syndrome. However articles are appearing both online and in the printed media about the possibility of a connection and so with some misgivings I am putting this page online.

What is Shaken Baby Syndrome?

Shaken baby syndrome (SBS) is based on findings that include[1]:

- intracranial haemorrhage
- cerebral contusion or other brain tissue injury
- evidence of cerebral trauma e.g. altered consciousness

The 'syndrome' was described by Caffey[2] in the early 1970s and he listed a 'classic' set of symptoms:

- intracranial haemorrhage
- retinal haemorrhage
- metaphyseal fractures

While none of these signs on their own are a guarantee that an infant has been shaken, together they are considered highly indicative. Attempts have been made over the years to set out guidelines and protocols to follow when investigating a suspected case. The American Academy of Pediatrics has published guidelines[3] and there are articles/policies[4] appearing which call into question the diagnosis of SIDS when proper investigative procedures have not been followed.

Mistaken Diagnosis

Are mistakes made when diagnosing SBS? There are reports in the medical and legal literature of mistakes being made. In one example a 10 week old infant girl was admitted to hospital with cerebral bleeding and bruising to the body. She later died. A diagnosis of 'non-accidental injury' was made. The article says that all caregivers considered SBS as the cause of the infant's injuries. particularly as there were bilateral retinal haemorrhages. Fortunately for the parents further blood studies were done and it was shown that the infant had Late Haemorrhagic Disease of Infancy[5]. The infant was born at home and d

not receive the standard vitamin K injection - which is given to (hopefully) prevent this particular disease. [6] This condition is recognised as "one of several bleeding disorders that can mimic the findings of nonaccidental head injury and may lead to a mistaken diagnosis of child abuse"[7].

In an Australian example a father was accused of shaking his infant daughter to death[8] [9]. Medical evidence was presented at the trial which implicated a range of factors, including vaccination. In this case there were no other signs of physical abuse such as fractures or bruising, the injury was restricted to the brain. Vaccination was presented as the 'final straw' for an infant suffering from a multitude of undiagnosed medical problems. The father was found not guilty.

Media Coverage

An article appeared in the US magazine Redbook[10] in September 2000. The article presented details of cases where fathers had been accused of shaking their children. In two cases the men were acquitted and blame was placed on vaccinations received. In another case the father was found guilty. The article explores the possibility that prosecutors are too quick to blame SBS when there are other possible causes. The National Network for Immunization Information responded to the article with a letter[11] to the magazine and an expanded rebuttal on their website.

Other doctors have also published criticisms[12] of the vaccination defence and of courts who allow the defence to be made. There have also been comments from doctors who caution against over-diagnosis[13].

The Pro-Choice Response

Articles have also appeared from the pro-choice/'anti-vaccination' movements and some accused parents actively work with vaccination awareness groups in an effort to clear their names. Viera Scheibner PhD has written one such article[14] and she is often called upon in vaccination trials. Her work is much criticised by the medical profession because she is not a medical doctor, her qualifications are in the natural science field. Comments have also been published on the NVIC[15] website and information is available on a site created by British parents[16] who claim they were wrongly accused of SBS.

There is also a case where a convicted man is being assisted by vaccination choice groups. In this case Alan Yurko was sentenced for the shaking death of his son[17]. The Yurko case is different to others using the vaccination defence because his son had evidence of healing rib fractures as well as cerebral bleeding. Supporters of Yurko refer to an article[18] about transient brittle bone disease to help explain the fractures.

Alternative Diagnosis

situation you cannot say how you will react. The fact that it is your baby in need of attention only makes the situation more stressful.

I was a registered nurse for over 15 years and I saw many emergency situations. I wish I could say that I was always calm but I can't. I saw newly registered doctors shaking uncontrollably during resuscitation attempts, I saw nurses faint and parents hysterical. If trained medical personnel are nervous during their first real emergencies why should we expect parents to react calmly when they find their baby unresponsive and lifeless? Holding an infant by the feet and spanking its bottom sounds outrageous, but it was once standard procedure following birth and is still referred to in movies. When someone says they shook their child to rouse them why do some automatically think of a violent shaking? It could just as well indicate a hand on the shoulder and a gentle shake.

In Conclusion

As with so many other legal matters a person's chance of a fair trial will depend heavily on the ability of both his lawyer and his medical 'experts'. Not all cases fit the 'profile' and the fear of many parents is that any injury to their baby will result in a diagnosis of SBS. There is also a growing movement[22, 23] of parents, usually mothers, who say they are being blamed for their child's illness. When the medical profession is unable to determine what is wrong with a child there is the possibility that the mother will be accused of Munchausen Syndrome by Proxy. This psychiatric disorder is when a person deliberately inflicts injury on someone else in order to gain attention[24]. Some mothers claim that they are threatened with the diagnosis if they do not meekly comply with their doctor's wishes.

I don't know what, if any, part vaccines play in SBS. It is apparent that the diagnosis can be made without the so-called triad of events (brain injury, retinal haemorrhage, fractures) and that it is possible for other disease processes to present similiar symptoms. These other conditions are rare, but that does not mean they don't occur. Winning a multimillion dollar lottery is a rare event, but it happens. No-one wants to see a guilty person acquitted for this crime, but everyone deserves a fair trial without hysterical media coverage. To some people the accusation of SBS is sufficient to say someone is guilty. The belief is that by suggesting there may be other factors involved you are condoning child abuse/murder. This is not the case. The conviction of an innocent person is the probable outcome of a false accusation which is not investigated properly. Such an outcome can hardly be seen as justice.

It is not possible to come to an informed opinion on whether or not abuse occurred without access to all the medical and police notes. Most cases you read about on the internet will not provide full details and so what appears straightforward might be very complicated.

(2000) Evaluation of Infants with subdural hematoma who lack external evidence of abuse. Pediatrics, Vol 105, March 2000, pp549-553

Caffey, J. The whiplash shaken infant syndrome. Pediatrics, 1974; 54: 396-403. Quoted in the above (ref 1.) article. (No abstract)
on SBS
on SIDS. to policy September 2001.
and Krous, HF. Suffocation, shaking or sudden infant death syndrome: Can we tell the difference? Journal of Paediatrics and Child Health, 1999, 35, pp 432-433.

Disease of the Newborn - what is it?
Fatal intramuscular bleeding misdiagnosed as suspected nonaccidental injury. Pediatrics, Vol. 95(5), May 1995, pp 771-773. (No abstract)
Late-form hemorrhagic disease of the newborn: a fatal case report with illustration of investigations that may assist in avoiding the mistaken diagnosis of child abuse. Am J Forensic Med Pathol 1999 Mar;20 (1):48-51

decision with explanation of the various medical factors involved in the case of Rikki Lee Walters.
Shaken Baby Syndrome or Adverse Vaccine Reaction? Summary of the judge's (ref 8.) decision.

article: Was It Murder, Or A Bad Vaccine?
from the National Network for Immunization Information. to Redbook.
medical rebuttal from The National Center on Shaken Baby Syndrome.
editorial on Shaken Babies, free registration required to read this. Three letters critical of the editorial were published in the September 5, 1998 issue of the journal (not available free online).

: the vaccination link, Viera Scheibner. See also Maureen Hickman's article at ref 9.
Reactions to vaccine match symptoms found in 'shaken-baby' cases
A group which claims to represent the 5% of SBS cases which do not fit the classic profile.
Details of the case against Alan Yurko.

Temporary brittle bone disease: association with decreased fetal movement and osteopenia. Calcif Tissue Int 1999 Feb;64 (2):137-43.
Osteogenesis imperfecta: the distinction from child abuse and the recognition of a variant form. Am J Med Genet 1993 Jan 15;45(2):187-92

. Anatomy of the shaken baby syndrome. Anatomical Record (The New Anatomist) 253: pp 13-18, 1998.
Woodward trial.
Text of a letter published in the journal Pediatrics. Shaken baby syndrome--a forensic pediatric response. Pediatrics. 1998 Feb;10 (2):321-3.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing instrument: 3.850 motion

_____ has been furnished to:

Office Of The State Attorney
4010 Lewis Speedway
St. Augustine, Florida 32095

by United States Mail on this 29th day of April, 2006.

Dinard Collins

Walton Correctional Institution
691 World War II Veterans Lane
DeFuniak Springs, Florida 32433

C:\WP51\WP51\LAWFORMS\CIRCUIT

O

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA.

CASE NO.: CF01-1102
DIVISION: 56

STATE OF FLORIDA,
Plaintiff,

vs.

QINARD COLLINS,
Defendant.
_____/

ORDER ON MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE came before the Court on the Defendant's Motion for Postconviction Relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. The Court has reviewed and considered the Motion, and being otherwise fully advised in the premises finds as follows:

The Defendant was charged by indictment with aggravated child abuse and first degree murder. The State alleged that the Defendant abused his child by biting, striking, punching, pinching or battering him, and caused the death of his child by hitting, striking, or shaking his child on the head, thereby causing abusive head injury. Pursuant to a negotiated agreement with the State the Defendant plea no contest to second degree murder and was sentenced to 30 years incarceration. He appealed his judgment and sentence to the Fifth District Court of Appeals, which court per curium affirmed this Court's decision.

The Court notes that the Motion is not under oath as required by Rule 3.850(c). While this deficiency alone provides sufficient reason to deny the Motion, the Court considers the Motion on its merits and finds that even if the Motion were under oath it would be denied.

In Ground One of his Motion the Defendant asserts that since he has been incarcerated he has become aware of a research article which indicates that problems associated with vaccinations may cause many of the symptoms associated with Shaken

Baby Syndrome. He attaches a copy of the article to his Motion. He asserts that he was unaware of this line of research as a possible defense to the charges. The Defendant does not assert that his attorney was ineffective for failing to investigate the defense or speak with him about the defense, and he does not indicate that he believes his plea was rendered involuntary as a result of the lack of such knowledge. Accordingly, the Defendant has not set out a facially sufficient claim for relief.

In Ground Two the Defendant sets out a claim for ineffective assistance of counsel. To establish a claim of ineffective assistance of counsel, the defendant must show: (i) that his counsel's performance fell below that of reasonable competent counsel; and (ii) that there is a reasonable likelihood that, but for counsel's deficient performance, the outcome of the proceedings would have been different. See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Cherry v. State, 659 So. 2d 1069, 1072 (Fla. 1985); Routly v. State, 590 So. 2d 397, 401 (Fla. 1991); see also Duggan v. State, 588 So. 2d 1054 (Fla. 1991) (citing Shaffner v. State, 562 So. 2d 430, 431 (Fla. 1st DCA 1990) (claim is facially insufficient if it does not allege that, absent the misstatement or omission, the defendant would not have entered the plea)). Such a claim is sufficient to warrant an evidentiary hearing only where the defendant alleges specific facts, not conclusively rebutted by the record, that demonstrate deficient performance by defense counsel and resulting prejudice. Mendyk v. State, 592 So. 2d 1076, 1079 (Fla. 1992); see also Turner v. State, 570 So. 2d 1114, 1114-15 (Fla. 5th DCA 1990). General allegations or mere conclusions are insufficient to demonstrate entitlement to relief. Parker v. State, 904 So.2d 370, 376 (Fla. 2005); Gutierrez v. State, 860 So.2d 1043 (Fla. 5th DCA 2003). To carry the burden of alleging and demonstrating prejudice, allegations must be specific, i.e., the defendant must plead and show how the outcome of the case would have been different had counsel not acted deficiently. Catis v. State, 741 So. 2d 1140 (Fla. 4th DCA 1998). Is it not enough for the Defendant to show that the alleged errors had some conceivable effect on the outcome of the proceeding, but rather, that there is a reasonable probability that but for the attorney's errors, the result of the proceeding would have been different. Bowman v. State, 748 So.2d 1082 (Fla. 4th DCA 2000). Mere possibility and speculation are insufficient to demonstrate prejudice. Jones v. State, 845 So.2d 55 (Fla. 2003). Moreover, "a court considering a claim of ineffectiveness of counsel need not make a specific ruling on the

performance component of the test when it is clear that the prejudice component is not satisfied." Kennedy v. State, 547 So. 2d 912, 914 (Fla. 1989) (citing Maxwell v. Wainwright, 490 So. 2d 927 (Fla.), cert. denied, 479 U.S. 972 (1986)).

The Defendant asserts that his attorney was ineffective for failing to investigate whether or not adverse vaccine reactions could have caused his child's death. He asserts that his attorney informed him that he had no plausible defenses to the charges. He states that if his attorney had investigated the research and that if his attorney's investigation had yielded positive results, he would have taken the case to trial. In this ground, the Defendant does not even make an unequivocal statement that he would have taken his case to trial had his attorney acted properly. Rather, he makes the conditional statement that he would have gone to trial *if* his attorney's research had turned out favorably. The Defendant does not indicate that such research would in fact have yielded favorable results. Accordingly, even if the attorney acted deficiently, the Defendant has failed to demonstrate that any prejudice resulted. In addition, the line of research cited by the Defendant is applicable to Shaken Baby Syndrome. The deposition of the medical examiner who performed an autopsy on the child reveals that in addition to symptoms of Shaken Baby Syndrome, the child exhibited symptoms of Battered Child Syndrome, specifically: bruising to the face and abrasions, bruises consistent with bite marks, bruising on the gums and lips, scabbed abrasions on the nose and ears, and other areas of abrasions and bruising about the body. See Exhibit 'A.' Even if the research cited by the Defendant provided an avenue of defense as to the Shaken Baby Syndrome, then, it did not explain the symptoms of Battered Baby Syndrome that were present. To the extent that the research would not have aided the Defendant as to the symptoms of Battered Baby Syndrome, no prejudice has been demonstrated and the Defendant's attorney was not deficient for failing to investigate a defense that would not have explained the injuries which the child had received.

In Ground Three the Defendant asserts that the trial court failed to ensure that sufficient facts were placed on the record to support the lesser-included, pled-to charge of second degree murder as opposed to the original charge of first degree murder. Even if this were a cognizable claim, it is one that the Defendant could have and should have raised on direct appeal.

Therefore, it is:
ORDERED AND ADJUDGED that:

1.) The Motion is DENIED.

2.) The Defendant shall have 30 days from the date of this Order within which to appeal this Court's decision.

DONE AND ORDERED in Chambers, in St. Johns County, St. Augustine, Florida, this 25th day of May, 2006.

J. MICHAEL TRAYNOR
Circuit Court Judge

Copies To: 5/25/06 KW

State Attorney

Qinard Collins
Walton Correctional Institution
691 WWII Veterans Lane.
DeFuniak Springs, FL 32433

STIPULATION

It was stipulated and agreed by and between counsel for the respective parties, and the witness, TERRENCE STEINER, M.D., CHTD, that the reading and signing of the deposition by said witness be waived and notice of filing be waived.

TERRENCE STEINER, M.D., CHTD,

having been duly sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. ANTHONY:

Q State your name for the record, please.

A Dr. Terrence Steiner.

Q And where are you employed, sir?

A I'm self-employed.

Q What kind of work do you do for the county of St. Johns then so far as criminal cases?

A Well, I have a contract, intralocal agreement. I provide forensic pathology medical examiner services to the three counties of District 23, which includes St. Johns County.

Q All right. Would that be in the capacity of being a medical examiner for them?

EXHIBIT "A"

A Yes.

Q If you would just give me a brief overview

of your medical training.

A I can -- she can get the secretary to send you a resume to save you time. I have been in the practice of forensic pathology in both hospital and forensic settings for 32 years since graduation from medical school and training at Mayo Clinic in Rochester, Minnesota.

MR. ANTHONY: If it's okay with Mr. Larizza, what I will do is we'll just stipulate to submitting this as an exhibit to the deposition. This is his CV.

MR. LARIZZA: Right. I don't have any problem with that.

MR. ANTHONY: You have any objection to that?

MR. LARIZZA: No.

MR. ANTHONY: You can show it to Dr. Steiner to see that that's the one that he provided, that is, in fact, the one I got from Dr. Steiner.

THE WITNESS: Or my secretary. Yeah.

MR. ANTHONY: Or your secretary, yeah. We'll just attach a copy of that, Debby.

BY MR. ANTHONY:

Q We're here today specifically on the case

of State of Florida versus Qinard Collins, Sr., wherein the alleged victim of that case was Qinard Collins, Jr. It was alleged that the case occurred back on April 2nd of 2001. Can you tell me when you did your autopsy of Qinard Collins, Jr., Dr. Steiner?

A I did it on the 3rd of April at 9:30 in the morning.

Q Okay. What were your findings?

A My findings were those of death due to abusive head injury with evidence of multiple abusive injuries over varied periods in time which made a battered child syndrome as a contributary cause of death. Externally there was bruising to the face and abrasions, two areas of bruising, one on each jaw consistent with a bite mark pressure. There was bruising on the gums, on the lips. There was areas of scabbed abrasion where the skin had been rubbed off about the nose, on the ears. There was a bite type bruising area to the right elbow. There was externally some other scabbed abrasions on the legs and back, and there was a linear area of recent bruising over the right -- or left buttocks, left or right, consistent with some type of blunt trauma.

Internally the injuries were those of bruising to the underneath of the scalp in at least eight places, all recent type bruising. There was massive swelling of the brain, and hemorrhage into the membranes covering the brain and also recent hemorrhage into the subdural space over the posterior -- back of the brain. There was also external bruising or bleeding into the optic never sheaths, which are the nerves to the eye.

Q The bleeding into the eye is what leads you to -- it would be an indicator of a shaken baby or battered child syndrome?

A Well, the shaken baby and battered child syndrome are different syndromes. Battered child syndrome is just evidence of trauma separated on more than one occasion. The bruises -- in this case we have abrasion and bruising both recent, meaning right near the time of death, and older, meaning several days, so that's a battered child. But the head injury in this case and the eye injury is that that is classic for the shaken baby syndrome, which is an abusive head injury with or without the associated trauma. And what the injury is is a shearing injury instead of a translational injury that you would get by rapidly violently shaking a

baby. The shear just tears the vessels in the eye, in the retina, the lining of the eye, the membranes over the brain and also the dural space where the veins cross back and forth, those get sheared and cause this type of injury. This is opposed to a blunt trauma where you have a translational injury, which is a direct force at that area and it's translated at that point to however far it gets out.

So these injuries to the brain and to the eye are those one would expect to see in a shaken baby syndrome with or without associated trauma, but in this case we also have evidence of, as I said, approximately eight areas of recent trauma to the head by some type of blunt trauma and classically that could be like knuckles or . . .

Q Now, I'm getting from what you're saying, or if you can explain it to me, that they are both sharing (sic) and what you would call translational type injuries?

A Well, the bruising is a translational, a force was applied at that area. The subdural leptomeningeal and retinal injuries are translational, that is that of violent shaking.

MR. LARIZZA: Doctor, you just said "translational."

THE WITNESS: I mean shearing, yeah.

Q Okay. So the shaking part you're saying is a sharing versus --

A Shearing.

Q Shearing. I'm sorry. I thought you said sharing.

A Shearing, s-h-e-a-r.

Q You're saying shearing versus translational?

A Yes.

Q Did you -- were you aware of any past medical history of Qinard Collins, Jr., prior to your autopsy?

A Not prior to my -- well, I had a history, the baby had the short bowel syndrome, but I didn't have the detailed medical records at that time, but I did obtain them.

Q You have reviewed all the medical records that the police have prior to writing your report?

A No, I did not. I reviewed the medical records I had prior to. I don't believe the police -- well, I guess they can get medical records by subpoena, but I got mine by my way of getting them.

Q Okay.

A I reviewed the entire medical records prior to completion of this report.

Q Did you -- which hospitals did you have records from, or do you know?

A I have records from Flagler Hospital. I had records of the emergency medical assistance at the time the child was reported unresponsive. I had records from Shands Hospital where -- from delivery and then following delivery and the complications in the neonatal unit, was transferred to Wolfson's Children's Hospital, I have those records, and I believe I also have the records when the child was readmitted in mid March for a week, early March and a week for some antibiotic therapy and then also admitted March 15th and 16th or 13th and 14th where the catheter had to be -- or the antibiotics had to be repositioned and was discharged at that time, and it has noted in the medical records available to me that the child at that time had no abrasions, no bruising, no evidence of external trauma.

I have records, too, where the child failed to keep the follow-up visit with the gastrointestinal unit, I guess at Wolfson's on the 22nd of March. And I believe I have records from the social services, that was the health department

that was, I guess, assisting in getting this child to well baby or whatever type program this baby was in.

Q Were you aware that Qinard Collins, Jr., was a premature delivery?

A Yes.

Q What effect, if any, would that have on --

A None.

Q -- on your opinion? Okay.

What about drug usage by the mother, would that vary your opinion any as to --

A No.

Q Have you had any specialized training as to bite marks or not, evaluating bite marks?

A No.

Q How many cases would you estimate that you have done involving child victims that suffered either head injury or battered child syndrome or shaken baby syndrome, those type --

A I anticipate two to three deaths per year over 32 years, plus whatever I saw in training, so you know, maybe in consultation, perhaps 2- to 300 total.

Q Do you -- have you taught any courses or written any articles yourself specifically in regard

to those type cases?

A I have used these as examples at courses I have given, but as far as taught medical students or anything, no.

MR. ANTHONY: I don't have any further questions.

MR. LARIZZA: I don't have any questions for the doctor.

MR. ANTHONY: Read or waive?

THE WITNESS: Waive.

BY MR. ANTHONY:

Q Did you read any articles or newspapers or hear anything on the radio or TV in regard to this case specifically?

A No, I don't get a newspaper. Don't send me one, please.

(Witness excused.)

(Whereupon, the deposition was concluded.)

P

CIR CT MINUTE 315 PAGE 880

Provided to Walton CI
On 6-15-06 for Mailing
Date

Inmate's Initials QC

IN THE SEVENTH JUDICIAL CIRCUIT COURT IN AND FOR St Johns COUNTY, FLORIDA

L.T. Case No.: CF-01-1102
(Lower Tribunal Case No.)

Judge: MICHAEL TRAYNOR
(Judge's Full Name)

QUINARD L. COLLINS,
Defendant/Appellant,

v.

STATE OF FLORIDA,
Plaintiff/Appellee,

NOTICE OF APPEAL
(*CRIMINAL PROCEEDING*)

CHERYL STRICKLAND
CLERK OF CIRCUIT COURT
ST. JOHNS COUNTY FL

FILED
2006 JUN 19 PM 3:10

NOTICE IS GIVEN, pursuant to Rule 9.141 (Rule #) Fla.R.App.P. that QUINARD L COLLINS (Name of defendant/appellant), defendant/appellant, pro se, appeals to the District Court of Appeal of Florida, 5th (Number of District) District, the order of this Court rendered on MAY 25th (Month/Day), 2006. (Year)

The nature of the order is a final order DENYING DEFENDANTS MOTION FOR POSTCONVICTION RELIEF UNDER § 3.850 Fla.R.CRIM.P. (State Nature of the Order).

The Judge of the lower tribunal is MICHAEL TRAYNOR (Full Name of Lower Tribunal Judge).

The defendant/appellant is in custody of the Department of Corrections. The length of sentence imposed on the defendant/appellant is (30) YEARS PRISON (Years/Months).

Quinard Collins
(Signature)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing instrument: NOTICE OF APPEAL

has been furnished to:

Office of the Attorney General
PL01, The Capitol
Tallahassee, Florida 32399-1050

by United States Mail on this 15th day of June, 2006.

Dinard Collins V18204

Walton Correctional Institution
691 World War II Veterans Lane
DeFuniak Springs, Florida 32433

Q

WILSON
L06-1-20844 DB

RECEIVED
2006 JUL 11 PM 5:22
CLERK OF APPEAL'S OFFICE
DISTRICT COURT OF APPEALS
TALLAHASSEE

IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA

QINARD L. COLLINS
Appellant
V.
THE STATE OF FLORIDA
Appellee

CASE NO: 5D06-2258
LWR CT NO: 01-1102-CF

RECEIVED
2006 JUL 18 PM 1:42
OFFICE OF THE ATTORNEY GENERAL
DAYTONA BEACH, FLORIDA

APPEAL FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR ST. JOHNS COUNTY

INITIAL BRIEF

Provided to Walton CI
On 7-10-06 for Mailing
Date
Inmate's Initials QC

QINARD COLLINS DC#V18204
WALTON CORRECTIONAL INST.
691 W.W II VETERANS LANE
DEFUNIAK SPRINGS, FL. 32433

7-19-06

L06-1-20844 5D06-2258
COLLINS, Qinard L.
v. State of Florida 5th DCA
Timothy Wilson

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TABLE OF AUTHORITIES

IN THE DISTRICT COURT OF APPEAL.
FIFTH DISTRICT OF THE SATE OF FLORIDA

QUINARD COLLINS
APPELLANT

V.

STATE OF FLORIDA
APPELLEE

CASE NO: 5D06-2258

PRELIMINARY STATEMENT

APPELLANT WAS THE DEFENDANT AND APPELLEE WAS THE PROSECUTION IN THE FELONEY DIVISION OF THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT IN AND FOR St. JOHNS COUNTY FLORIDA. IN THE BRIEF. THE APPELLEE WILL BE REFERRED TO AS "THE STATE" AND THE APPELLANT WILL BE REFERRED TO AS DEFENDANT APPELLANT OR BY SURNAME.

REFERENCES TO THE RECORD ATTACHED TO APPELLANTS BRIEF WILL BE BY (APPENDIX)

STATEMENT OF CASE AND FACTS[1]

APPELLANT QUARD COLLINS WAS CHARGED BY INDICTMEN IN CASE NO: 01-1102 WITH AGGRIVATED CHILD ABUSE. AND FIRST DEGREE MURDER. THE VICTIM QUARD COLLINS JR WAS A PREMATURLY BORN TEN MONTH OLD WHO SUFFERED FROM SEVERAL MEDICAL PROBLEMS. AND REQUIRED AN IV TUBE WHICH WAS CONNECTED TO HIS HEART AND DEMANDED SPECIAL CARE.

THE STATE ALLEGED THAT APPELLANT KILLED THE CHILD BY HITTING AND/OR SHAKING THE CHILD ON OR ABOUT HIS HEAD CAUSING ABUSIVE HEAD INJURY,

ON AUGUST 8. 2003, APPELLANT WITH THE ASSISTANCE OF COUNSEL. ENTERED A NEGOTIATED PLEA OF NO CONTEST TO THE LESSER INCLUDED CHARGE OF SECOND DEGREE MURDER. THE STATE AGREED TO A SENTENCE BETWEEN 20 TO 30 YEARS AND NOLLE PROSEQUIED COUNT ONE AGGRAVATED CHILD ABUSE. THE COURT CONDUCT A PLEA COLLOQUY TO ASCERTAIN THE KNOWING AND VOLUNTARY NATURE OF THE PLEA.

SENTENCING WAS HELD ON OCTOBER 10, 2003. THE APPELLANT ARGUED IN MITIGATION AND EXPLAINED THAT HE NEVER INTENDED TO HARM THE VICTIM, BUT TRIED TO SAVE HIM BY CALLING 911, AND PERFORMING CPR.

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[1] IN SUPPORT OF THE FACTS STATED HEREIN THE APPELLANT REQUEST THIS COURT TO TAKE JUDICIAL NOTICE OF THE RECORD ON APPEAL PREVIOUSLY FILED IN CASE NO: 5D03-3601

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRORED IN SUMMARILY DENYING DEFENDANTS CLAIM OF NEWLY DISCOVERED EVIDENCE

IT IS WELL SETTLED THAT A CLAIM OF NEWLY DISCOVERED EVIDENCE IS A SUFFICIENT GROUND ON WHICH TO WITDRAW A CRIMINAL DEFENDANT GUILTY OR NOLO CONTENDRE PLEA. see. STATE BRAVERMAN 348 So 2d 1183.1186 (Flo. 3d D.C.A 1977)

IN ORDER TO PROVE A LEGALLY SUFFICIENT CLAIM OF NEWLY DISCOVERED EVIDENCE AS THE MATTER RELATES TO PLEA NEGOTIATIONS THE FIFTH DISTRICT COURT OF APPEAL RULED THAT A DEFENDANT ALLEGING A CLAIM OF NEWLY DISCOVERED EVIDENCE MUST SHOW THAT WITHDRAWL IS NECESSARY TO CORRECT A MANIFEST INJUSTICE. MILLER v. STATE 814 So 2d 1131 (FLA.5th D.C.A. 2002)

THE TRIAL COURT DENIED DEFENDANT'S CLAIM OF NEWLY DISCOVERED EVIDENCE SPECIFICALLY FINDING THAT DEFENDANT QUIARD COLLINS FAILED TO STATE THAT HIS NOLO CONTENDRE PLEA WAS INVOLUNTARY AS A RESULT OF DEFENDANT LACK OF KNOWLEDGE OF THE NEWLY DISCOVERED EVIDENCE. (Appendix B pg 2)

THE REASONS PROVIDED IN THE TRIAL COURTS ORDER DENYING ISSUE ONE OF DEFENDANT'S RULE 3.850 MOTION IS LEGALLY ERRONEOUS. AND DOES NOT TAKE INTO ACCOUNT THAT AN ALLEGATION OF THE DEFENDANT PLEA IS INVOLUNTARY IS NOT A PREREQUSIT FOR THE DEFENDANT TO OBTAIN RELIEF ON A CLAIM OF NEWLY

DISCOVERED EVIDENCE. Cf, BRADFORD V. STATE, 869 So.2d 28 (FLA 2d D.C.A 2004) (Claim Facially Insufficient Absent Allegation that Withdrawl Is Necessary To Correct A Manifest Injustice)

THUS. FROM A THOROUGH READING OF BRADFORD supra IT IS REASONABLY INFERRABLE THAT THE ONLY ALLEGATION THAT QINARD COLLINS WAS OBLIGATED TO ALLEGE IN ASSERTING HIS CLAIM. WAS THAT WITHDRAL WAS NECESSARY TO CORRECT A MANIFEST INJUSTICE. eg SCOTT V. STATE 629 So 2d 888,890 (Fla. 4th D.C.A 1993) Cf, VOLUME*2 Florida Criminal Practice And Procedure, bu Russell E. Crawford, 2nd ed. § 10.18(a) pg 66:

> xxxxxx Another Kind of Collateral Ground Is that Concerning Newly Discovered Evidence. This Ground Is Collateral Because It "Is Not" Related To the Integral Issue of Whether A Plea Was Voluntary And Intelligently Entered. xxxxx

THE DEFENDANT DID STATE IN HIS RULE 3.850 THAT WITHDRAWL OF HIS NOLO CONTENDRE PLEA WAS NECESSARY TO CORRECT A MANIFEST INJUSTICE. (Appendix A) AND AFTER IDENTIFYING THE PRECISE NATURE AND SOURCE OF THE EVIDENCE NEWLY DISCOVERED BY THE DEFENDANT. THE DEFENDANT FURTHER PROVIDED AN INDEPT EXPLAINATION OF HOW DEFENDANTS LACK OF KNOWLEDGE OF THE NEW EVIDENCE IMPACT THE PLEA ENTERED AND THE HARM RESULTING THEREFROM. (Appendix A. pg 6 A-B)

UNDER THE ABOVE SCENARIO, THE TRIAL COURT WAS BOUND BY LAW TO ADDRESS THE MERITS OF THE DEFENDANTS CLAIM, WHEREAS THE CLAIM OF NEWLY DISCOVERED EVIDENCE AS PRESENTED IN

DEFENDANT'S RULE 3.850 MOTION DID ALLEGE A LEGALLY SUFFICIENT CLAIM CONSISTENT WITH CONTROLLING CASE LAW ON THE ISSUE.

ISSUE II

WHETHER THE TRIAL COURT ORDER SUMMARILY DENYING ISSUE II OF DEFENDANTS RULE 3.850 MOTION IS SUPPORTED BY EVIDENCE CONCLUSIVELY SHOWING DEFENDANT IS ENTITLED TO NO RELIEF.

WHEN DETERMINING THE ADEQUACY OF DEFENSE COUNSELS REPRESENTATION WITH REGARD TO PLEA NEGOTIATIONS, THE FLORIDA SUPREME COURT IN REITERATING THE STANDARD ANNOUNCED IN HILL V. LOCKHART 474 U.S. 52, 106 S.Ct 366 (1985) HELD THAT ALTHOUGH THE FIRST PRONG FOR PROVING SUCH CLAIM IS THE SAME AS STRICKLANDS[1] PERFORMANCE PRONG. THE SECOND OF THE HILL STANDARD ENTAILS A DEFENDANT SHOWING THAT BUT FOR COUNSELS ERROR. THE DEFENDANT WOULD NOT HAVE PLEAD GUILTY AND WOULD HAVE INSIST ON GOING TO TRIAL. see, GROSVENOR V. STATE 874 So 2d 1176, 1179 (Fla. 2004)

THE DEFENDANT QINARD L. COLLINS ALLEGED IN THE TRIAL COURT THAT HIS ATTORNEY MR. JOSEPH D. ANTHONY WAS INEFFECTIVE FOR FAILING TO INVESTIGATE WHETHER OR NOT ADVERSE VACCINE REACTION WAS AND/OR COULD HAVE CAUSED THE VICTIMS DEATH EXHIBITING SYMPTOMS IDENTICAL TO SHAKEN BABY SYNDROME.

[1] 466 U.S 668, 104 S.Ct 2052 (1984)

IN DENYING DEFENDANTS CLAIM. THE TRIAL COURT RELIED PRIMARILY ON THE DEPOSITION OF DR. TERRENCE STEINER MD. DR. STEINER TESTIFIED TEFFIED THAT THROUGH THE AUTOPSY PERFORMED ON THE VICTIM. DR. STEINER FOUND THAT INADDITION TO SUSTAINING INTERNAL INJURIES THAT WERE CONSISTENT WITH SHAKEN BABY SYNDROM, THE VICTIM ALSO HAD EXTERNAL INJURIES THAT WERE CONSISTENT WITH SYMPTOMS OF BATTERED CHILD SYNDROM. (Appendix B Ex A pg 3-7) ON THE BASES OF SAID TESTIMONY THE TRIAL COURT FOUND THAT A DEFENSE OF ADVERSE VACCINE REACTION EVEN IF POSSIBLE IN THE DEFENDANTS CASE WOULD NOT HAVE EXPLAINED OR AIDED DEFENDANT IN EXPLAINING THE PRESENCE OF BATTERED CHILD SYNDROME AND THUS. NO PREJUDICE WAS DEMONSTRATED BY COUNSELS FAILURE TO INVESTIGATE THE VIABILITY OF A VACCINE DEFENSE.

THE FAILURE TO INVESTIGATE A POSSIBLE LINE OF DEFENSE HAS BEEN HELD TO CONSTITUTE A LEGALLY SUFFICIENT CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. ROBINSON V. STATE, 909 So 2d 497, 499 (Fla. 5th D.C.A 2005) WHERE THE MOTION. AND RECORDS ATTACHED TO THE TRIAL COURTS ORDER OF DENIAL DO NOT CONCLUSIVELY SHOW THAT THE DEFENDANT IS ENTITLED TO NO RELIEF. AN APPEALS COURT MUST REVERSE THE ORDER DENYING DEFENDANTS 3.850 MOTION eo. LEDUC V. STATE 415 So 2d 721. 722 (FLA. 1982)

DR. TERRENCE STEINER'S DEPOSITION ATTACHED TO THE TRIAL COURTS ORDER OF DENIAL DOES NOT CONCLUSIVELY REFUTE DEFENDANTS CLAIM THAT HIS ATTORNEY WAS INEFFECTIVE IN FAILING TO INVESTIGATE THE POSSIBLE DEFENSE OF ADVERSE VACCINE REACTION. IN RENDERING ITS ORDER OF DENIAL. THE TRIAL COURT ERRONEOUSLY DISREGARDED DEFENDANTS UNEQUIVOCAL ASSERTION IN HIS RULE 3.850 MOTION

THE REASON WHY THE DEFENDANT PLEAD GUILTY WAS BECAUSE COUNSEL IN FORMED THE DEFENDANT THAT THERE WAS NO DEFENSE TO THE CHARGED CRIME. NOTHING IN THE RECORD REFUTES THIS CLAIM. ADDITIONALLY, THE APPELLANT CONTENDS THAT MERELY BECAUSE THE DEFENSE OF AN ADVERSE VACCINE REACTION WOULD NOT HAVE EXPLAINE THE EXIS TENCE OF THE INJURIES OF BATTERED CHILD SYNDROM AS FOUND BY THE LOWER COURT. THE TRIAL COURT OVERLOOKED THE FACT THAT HAD DEFENSE COUNSEL CONDUCT AN INVESTIGATION INTO THE POSSIBILITIES OF WHETHER AN ADVERSE VACCINATION COULD HAVE CAUSED THE VICTIMS DEATH, AND THE SAME PROVED USEFUL. THE DEFENDANT WOULD HAVE IN FACT HAD VALID DEFENSE CONTRARY TO DEFENSE COUNSELS INITIAL ASSERTION OF THERE BEING NO DEFENSE

WITH THE DEFENDANT'S KNOWLEDGE OF WHETER THERE WAS AN ALTERNATIVE CAUSE FOR THE VICTIM DEATH PRIOR TO PLEADING HOLO CONTENDRE. THE DEFENDANT WOULD HAVE HAD A SUBSTANTIAL BASES ON WHICH TO MAKE A FULLY INFORMED AND INTELLIGENT DECISION WHETHER TO PLEA HOLO CONTENDRE OR PROCEED TO TRIAL. WHICH INEVITABLY WAS AN OPTION THE DEFENDANT DID NOT HAVE DUE TO COUNSELS FAILURE TO INVESTIGATE THE FACTS OF THE DEFENDANT CASE THOROUGHLY. ROBINSON *Supra*

FURTHERMORE, ABSENT THE BENEFIT OF A FULL EVIDENTIARY HEARING TO DEVELOPE ESSENTIAL FACTS CURRENTLY MISSING FROM THE RECORD SUCH AS QUESTIONS AND ANSWERS FROM DR. TERRENCE STEINER AND/OR POST-MORTEM EXAMINATION OF THE VICTIM DETERMINATIVE OF WHETHER VACCINATION ADMINISTERED TO THE VICTIM COULD HAVE PLAYED A PART IN CAUSING HIS DEATH

A PROPER CREDIBILITY DETERMINATION OF THE DEFENDANTS ASSERTION THAT HE WOULD HAVE PROCEDED TO TRIAL AND NOT PLEAD NOLO CONTENDRE WAS NOT AND/OR COULD NOT HAVE BEEN ADEQUATELY MADE BY THE TRIAL COURT UNDER THE GROSVENOR, STANDARD Id at 1180-81, BECAUSE THE MERITS OF THE POTENTIAL VACCINE DEFENSE HAS NOT BEEN SUBSTANTIATED AS AN ACTUAL OCCURRENCE AGAINST THE FACTS SURROUNDING THE VICTIMS DEATH IN THE CASE SUBJUDICE.

AGAIN THE ISSUE RAISED BY MR. COLLINS CONTEST COUNSELS FAILURE TO INVESTIGATE A POSSIBLE LINE OF DEFENSE, NOT THE FAILURE TO INFORME THE DEFENDANT OF A READILY AVAILABLE DEFENSE. THEREFORE THE ONLY WAY DEFENDANTS CLAIM COULD HAVE BEEN LEGALLY PROVED OR DISPROVED UNDER THE GROSVENOR STANDARD WAS FOR THE TRIAL COURT TO HAVE FIRST HAD THE MERITS OF THE VACCINE DEFENSE FULLY ESTABLISHED AND TESTED THROUGH A FULL EVIDENTIARY HEARING WHICH WAS NOT DONE AND WAS ERROR.

ISSUE III

WHETHER THE TRIAL COURT ERRORED IN DENYING ISSUE(3) OF DEFENDANTS RULE 3.850 MOTION AS BEING PROCEDURALLY BARRED

IN ISSUE(3) OF DEFENDANTS CRIMINAL RULE 3.850 MOTION, QUINARD COLLINS ALLEGED A CLAIM OF FUNDAMENTAL ERROR IN THE TRIAL COURT FAILURE TO FIND A FACTUAL BASES FOR THE DEFENDANTS NOLO CONTENDRE PLEA TO THE LESSOR INCLUDED CHARGE OF SECOND DEGREE MURDER, WHERE THE EVIDENCE TENDERED BY THE STATE

DID NOT PROVE THE PLEAD CHARGE. Cf, F.B. V. STATE 852 So 2d 226, 230 (Fla. 2003) "citing" TROEDEL V. STATE 462 So 2d 392, 399 (Fla. 1984) (A Conviction Imposed Upon A Crime Totally Unsupported By Evidence Constitutes Fundamental Error.)

THE TRIAL COURT FOUND IN IT'S ORDER OF DENIAL THAT THE CLAIM RAISED IN DEFENDANTS MOTION SHOULD HAVE OR COULD HAVE BEEN RAISED ON DIRECT APPEAL. (Appendix B pg 3) CONTRARY TO THE CONCLUSION SETFORTH IN THE COURTS ORDER OF DENIAL. THE APPELLANT CONTENDS THAT CONTROLLING PRECEDENT FROM THE FLORIDA SUPREME COURT RECOGNIZES THAT THE FAILURE OF A DEFENDANT TO RAISE THE VALIDITY OF A PLEA BY DIRECT APPEAL IS NOT FATAL TO DEFENDANTS ABILITY TO SEEK COLLATERAL REVIEW OF SUCH PLEA. ROBINSON V. STATE 373 So 2d 898, 903 (FLA. 1979)

MOREOVER WHERE A CRIMINAL DEFENDANT'S CLAIM IS PREDICATED ON FUNDAMENTAL ERROR, SUCH CLAIM MAY BE RAISED IN A RULE 3.850 MOTION NOTWITHSTANDING THE FAILURE TO RAISE THE CLAIM ON DIRECT APPEAL. See. NOVA V. STATE, 439 So 2d 255. 261 (Fla. 3d D.C.A 1983) WILLIE V. STATE, 600 So 2d 479. 482 (Fla. 1st D.C.A 1992)

THUS, FOR THE REASONS SETFORTH HEREINABOVE. THE TRIAL COURTS BASES FOR DENYING ISSUE(3) OF DEFENDANTS RULE 3.850 MOTION IS LEGALLY INCORRECT AND SHOULD BE REVERSED WITH DIRECTIONS TO ADDRESS THE MERITS OF DEFENDANTS CLAIM.

CONCLUSION

BASED ON THE FACTS AND AUTHORITIES CITED HEREIN. THE APPELLANT STATES THAT THE TRIAL COURTS ORDER OF DENIAL IS IN ERROR AND SHOULD BE REVERSED.

RESPECTFULLY SUBMITTED

/S/ Qinard Collins

QINARD L. COLLINS DC# V18204
WALTON CORRECTIONAL INSTITUTION
691 W.W II VETERANS LANE
DEFUNIAK SPRINGS, FLO. 32433

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing instrument: INITIAL BRIEF

_____ has been furnished to:

District Court of Appeal
Fifth District
300 South Beach Street
Daytona Beach, Florida 32114

by United States Mail on this 10th day of July, 2006.

Dinard Collins

Walton Correctional Institution
691 World War II Veterans Lane
DeFuniak Springs, Florida 32433

C:\WP51\WP51\LAWFORMS\CIRCUIT

IN THE DISTRICT COURT OF APPEAL
FOR THE 5th DISTRICT
STATE OF FLORIDA

CASE NO.: 5D06-2258

Qinard L Collins,
Appellant,

v.

THE STATE OF FLORIDA,
Appellee,

APPENDIX TO INITIAL BRIEF

APPENDIX A

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR St Johns
COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

QUARD L. COLLINS
Defendant,

Criminal Division

Case No.: CF01-1102
(the original case number)

MOTION FOR POST CONVICTION RELIEF

INSTRUCTIONS: READ CAREFULLY

(1) This motion must be legibly handwritten or typewritten, signed by the defendant, and contain either the first or second oath set out at the end of this rule. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the facts that you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted in support of your legal claims (as opposed to your factual claims), they should be submitted in the form of a separate memorandum of law. This memorandum should have the same caption as this motion.

(3) No filing fee is required when submitting a motion for Post/Conviction Relief.

(4) Only the judgment of one case may be challenged in a single motion for postconviction relief. If you seek to challenge

judgments entered in different cases, or different courts, you must file separate motions as to each such case. The single exception to this is if you are challenging the judgments in the different cases that were consolidated for trial. In this event, show each case number involved in the caption.

(5) Your attention is directed to the fact that you must include all grounds for relief, and all facts that support such grounds, in the motion you file seeking relief from any judgment of conviction.

(6) When the motion is fully completed, the original must be mailed to the clerk of the court whose address is;

MOTION

1. Name and location of the court which entered the judgment of conviction under attack: SEVENTH JUDICIAL CIRCUIT IN AND FOR ST JOHNS COUNTY, FLORIDA

2. Date of judgment of conviction: OCTOBER 10, 2003

3. Length of sentence: THIRTY (30) YEARS STATE PRISON

4. Nature of offense(s) involved (all counts): SECOND DEGREE MURDER

5. What was your plea? (check only one)

(a) Not Guilty ____
(b) Guilty ____
(c) Nolo Contendere X
(d) Not guilty by reason of insanity ____

If you entered one plea to one count, and a different plea to another count, give details: N/A

6. Kind of trial: (check only one)

(a) Jury ____
(b) Judge only without jury ____

7. Did you testify at the trial or at any pre-trial hearing?

Yes ____ No ____

If yes, list each such occasion: ____

8. Did you appeal from the judgment of conviction?

Yes X No ____

9. If you did appeal, answer the following:

(a) Name of court: FIFTH DISTRICT OF APPEALS, FLORIDA

(b) Result: AFFIRMED CASE NO: 5D03-3601

(c) Date of result: MAY 14, 2004

(d) Citation (if known): UK

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc. with respect to this judgment in this court? Yes ____ No X

11. If your answer to number 10 was "yes", give the following information (applies only to proceedings in this court):

(a) (1) Nature of the proceeding: ____

(2) Grounds raised: ____

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes _____ No X

(4) Result: N/A

(5) Date of result: N/A

(b) As to any second petition, application, motion, etc., give the same information:

(1) Nature of the proceeding: _____

(2) Grounds raised: _____

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes _____ No X

(4) Result: _____

(5) Date of result: _____

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motion, etc. with respect to this judgment in any other court? Yes _____ No X

13. If your answer to number 12 was "yes", give the following information:

(a) (1) Name of court: _____

(2) Nature of the proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes ___ No X

(5) Result: _____

(6) Date of result: _____

(b) As to any second petition, application, motion, etc., give the same information:

(1) Name of court: _____

(2) Nature of the proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes ___ No X

(5) Result: _____

(6) Date of result: _____

(c) As to any third petition, application, motion, etc., give the same information:

(1) Name of court: _____

(2) Nature of the proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.? Yes ____ No X

(5) Result: ____

(6) Date of result: ____

14. State concisely every ground on which you claim that the judgment or sentence is unlawful. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the facts supporting them. For your information, the following is a list of the most frequently raised grounds for postconviction relief. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that your conviction or sentence is unlawful.

DO NOT CHECK ANY OF THESE LISTED GROUNDS

If you select one or more of these grounds for relief, you must allege facts. The motion will not be accepted by the court if you merely check (a) through (i).

(a) Conviction obtained by plea of guilty or nolo contendere that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(c) Conviction obtained by a violation of the protection against double jeopardy.

(d) Denial of effective assistance of counsel.

(e) Denial of right of appeal.

(f) Lack of jurisdiction of the court to enter the judgment or impose sentence (such as unconstitutional statue).

(g) Sentence in excess of the maximum authorized by law.

(h) Newly discovered evidence.

(i) Changes in the law that would be retroactive.

A. Ground 1: NEWLY DISCOVERED EVIDENCE

Supporting FACTS (tell your story briefly without citing cases or law):

CONTINUED ON PAGE 6-A

B. Ground 2: INEFFECTIVE ASSISTANCE OF COUNSEL

STRICKLAND V. WASHINGTON 466 U.S 668, 104 S.Ct 2052 (1984)

Supporting FACTS (tell your story briefly without citing cases or law):

CONTINUED ON PAGE 6-C

C. Ground 3: FUNDAMENTAL ERROR

Supporting FACTS (tell your story briefly without citing cases or law):

CONTINUED ON PAGE 7-A

GROUND ONE
-CONTINUED-

ON MAY 1,2001, THE DEFENDANT QUARD COLLINS SR. WAS CHARGED BY FELONY INDICTMENT WITH ONE COUNT OF FIRST DEGREE FELONY MURDER FOR THE DEATH OF HIS SON QUARD COLLINS JR. IT WAS ALLEGED BY THE STATE OF FLORIDA THAT QUARD SR. KILLED THE VICTIM BY HITTING AND/OR SHAKING AND/OR STRIKING SAID VICTIM ABOUT HIS HEAD CAUSING ABUSIVE HEAD INJURIES.

IN THE DECEMBER 3,2001 PRETRIAL DEPOSITION GIVEN BY DR. TERRENCE STEINER MEDICAL EXAMINER FOR ST. JOHNS COUNTY FLORIDA. DR. STEINER TESTIFIED THAT THE CAUSE OF THE VICTIMS DEATH WAS DUE TO ABUSIVE HEAD INJURIES AND THAT THE VICTIM SUFFERED INTERNAL BRUSING UNDER THE SCALP IN AT LEAST EIGHT DIFFERENT PLACES, MASSIVE SWELLING OF THE BRAIN AND HEMORRAGE INTO THE MEMBRANES COVERING THE BRAIN. THE VICTIM SUFFERED BLEEDING INTO THE OPTIC NERVE SHEATHS AND THE HEAD AND EYE INJURY SUFFERED WERE DETERMINED BY DR. STEINER TO BE CLASSIC OF SHAKEN BABY SYNDROME.①

THROUGH PERSONAL CORRESPONDENCE WITH INMATE ROBERT BASSETT, WASHINGTON CORRECTIONAL INSTITUTION, 4455 SAM MITCHELL DRIVE, CHIPLEY, FL. 32428. ON OR ABOUT APRIL 4. 2004 THE DEFENDANT DISCOVERED FACTS THAT WERE UNKNOWN TO THE DEFENDANT WHEN MR. COLLINS PLEAD NOLO CONTENDERE TO THE CHARGE OF SECOND DEGREE MURDER.

UPON READING SEVERAL MEDICAL JOURNALS AND/OR DOCUMETARIES WRITTEN BY DR. HARLD BUTTRAM, et.al. THE DEFENDANT

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① HEREINAFTER: S.B.S

HAS LEARNED THAT MEDICAL VACCINATIONS ADMINISTERED TO INFANTS AT BIRTH HAVE BEEN LINKED TO CAUSING INFANT MORTALITY WITH INJURIES OFTEN MISCHARACTERIZED AS RESULTING FROM CHILD ABUSE. (Exhibit A)

SOME OF THE SYMPTOMS IDENTIFIED IN DR. BUTTRAM'S MEDICAL REPORT THAT WERE FOUND TO BE CAUSED BY AN ADVERSE VACCINE REACTION WERE INTRACRANIAL AND OCULAR HEMORRHAGE AND SEVERE BRAIN SWELLING. THESE INJURIES WERE OF THE SAME TYPE SUFFERED BY THE VICTIM QUARD COLLINS JR AS FOUND BY DR. TERRANCE STEINER'S AUTOPSY. THE DEFENDANTS SON QUARD JR WAS VACCINATED BY SHANDS MEDICAL CENTER JACKSONVILLE FLORIDA.

WHEN MR. COLLINS ENTERED THE PLEA OF NOLO CONTENDR THE DEFENDANT WAS TOTALLY UNAWARE THAT A POSSIBLE LINE OF DEFENSE IN ADVERSE VACCINE REACTION WAS AVAILABLE TO BE INVESTIGATED AND RAISED TO THE CHARGED OFFENSE.

HAD THE DEFENDANT KNOWN THERE EXIST A POTENTIAL VIABLE DEFENSE OF ADVERSE VACCINE REACTION. THE DEFENDANT WOULD NOT HAVE PLEAD NOLO CONTENDERE TO SECOND DEGREE MURDER. THE DEFENDANT WOULD HAVE FIRST REQUEST DEFENSE COUNSEL TO INVESTIGATE THE VIABILITY OF SAID DEFENSE AGAINST THE FACTS OF THE STATES CASE, AND SUBSEQUENTLY PROCEEDED TO TRIAL BY JURY HAD COUNSELS INVESTIGATION PROVED THE VACCINATION GIVEN THE VICTIM WAS THE CAUSE OF DEATH. THE DEFENDANT IS INNOCENT OF KILLING THE VICTIM, AND BASED ON THE NEWLY DISCOVERED EVIDENCE ALLEGED HEREIN THE WITDRAWL OF DEFENDANTS NOLO CONTENDERE PLEA IS NECESSARY TO CORRECT A MANIFEST INJUSTICE

6-B

GROUND TWO
-CONTINUED-

THE DEFENDANTS ATTORNEY MR. JOSEPH ANTHONY RENDERED SUBSTANDARD ASSISTANCE WHEN COUNSEL FAILED TO INVESTIGATE WHETHER AN ADVERSE VACCINE REACTION IN THE VICTIM QUARD COLLINS JR WAS A CONTRIBUTING CAUSE OF THE VICTIMS DEATH.[2]

MEDICAL STUDIES HAVE SHOWN THAT NEONATAL VACCINATIONS ADMINISTERED TO INFANTS HAVE BEEN LINKED TO CAUSING INTERNAL INJURIES THAT ARE COMMONLY RULED TO HAVE OCCURRED FROM PHYSICAL CHILD ABUSE. See (Exhibit A)

PRIOR TO PLEADING NOLO CONTENDERE TO THE NEGOTIATED PLEA OF SECOND DEGREE MURDER. THE DEFENDANTS ATTORNEY INFORMED MR. COLLINS THERE WAS NO PLAUSIBLE DEFENSE TO THE OFFENSE OF FIRST DEGREE FELONY AS ALLEGED AGAINST THE DEFENDANT. QUARD COLLINS REPEATEDLY MAINTAINED TO DEFENSE COUNSEL THAT HE WAS INNOCENT OF THE CHARGED OFFENSE BUT DISPITE THE DEFENDANTS CONCESSION OF INNOCENCE. DEFENSE COUNSEL TOLD THE DEFENDANT THAT PLEADING NOLO CONTENDERE TO THE CHARGE OF SECOND DEGREE MURDER WOULD BE DEFENDANTS BEST OPTION DUE TO THE ABSENSE OF A VIABLE DEFENSE. THE DEFENDANT TOOK COUNSELS ERRONEOUS ADVISE AND ULTIMATELY PLEAD NOLO CONTENDERE BASED SOLELY ON DEFENSE COUNSEL ASSERTION THAT DEFENDANT WOULD HAVE NO DEFENSE IN THE EVENT DEFENDANT CASE PROCEED TO TRIAL.

CONTRARY TO THE INFORMATION CONVEYED TO MR. COLLINS BY DEFENSE COUNSEL AND DEFENDANTS STANDING BELIEF OF NO POTENTIAL DEFENSE UPON PLEADING NOLO CONTENDERE.

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2. The Defendant Incorperates Herein Any And All Facts That Are Aired In Ground One Of The Foregoing Motion.

THE DEFENDANT HAS DISCOVERED SUBSEQUENT TO PLEADING NOLO CONTENDERE THAT THERE WAS A POTENTIALY VIABLE DEFENSE OF ADVERSE VACCINE REACTION THAT COULD HAVE BEEN USED TO COMBAT THE CHARGE OF FIRST DEGREE FELONY MURDER.

BECAUSE OF DEFENSE COUNSELS FAILURE TO CONDUCT AN INVESTIGATION INTO THE FOREMENTIONED DEFENSE PRIOR TO THE DEFENDANT PLEADING NOLO CONTENDERE. MR. COLLINS MADE AN UNKNOWING DECISION TO PLEA TO SECOND DEGREE MURDER BECAUSE THE DEFENDANT PLEAD WITHOUT THE BENEFIT OF A THOROUGH INVESTIGATION INTO NOR A COMPLETE UNDERSTANDING OF WHETHER THERE WAS ACTUALY AN ALTERNATIVE CAUSE FOR THE VICTIMS DEATH THAT WOULD INTURN PROVIDE A DEFENSE TO THE STATES CASE. BASED ON THE FACTS ALLEGED IN THE FORE-GOING MOTION. DEFENDANTS NOLO CONTENDERE PLEA WAS NOT A FULLY INFORMED. INTELLIGENT CHOICE TO FORGO THE RIGHT TO TRIAL BY JURY

HAD DEFENSE COUNSEL CONDUCT AN INVESTIGATION INTO THE POSSIBILITIES OF WHETHER AN ADVERSE VACCINE REACTION COULD HAVE CAUSE THE VICTIMS DEATH, AND SUCH INVESTIGATION YIELD FAVORABLE INFORMATION TO SUPPORT A VACCINATION DEFENSE, THE DEFENDANT WOULD NOT HAVE PLEAD NOLO CONTENDERE BUT ALTERNATIVELY PLEAD NOT GUILTY AND INSISTED ON A TRIAL BY JURY.