

No. _____

IN THE
Supreme Court of the United States

DARNAY THIBODAUX,
PETITIONER,

v.

JON REEVES, DISTRICT ADMINISTRATOR,
JEFFERSON PARISH DISTRICT,
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,
DEPARTMENT OF PROBATION AND PAROLE;
LAUREN SKILES, PROBATION OFFICER
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX
TO PETITION FOR WRIT OF CERTIORARI

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United States Court of Appeals for the Fifth Circuit

No. 21-30600

United States Court of Appeals
Fifth Circuit

FILED

May 23, 2022

DARNAY THIBODAUX,

Lyle W. Cayce
Clerk

Petitioner—Appellant,

versus

JON REEVES, *District Administrator, Jefferson Parish District, Louisiana Department of Public Safety and Corrections, Department of Probation and Parole; LAUREN SKILES, Probation Officer,*

Respondents—Appellees.

Application for Certificate of Appealability
from the Eastern District of Louisiana
USDC No. 2:19-CV-2241

ORDER:

Darnay Thibodaux filed a federal application seeking habeas corpus relief under 28 U.S.C. § 2254. The district court denied the application and dismissed it with prejudice, then denied a certificate of appealability (COA). Thibodaux now seeks a COA in this court on the statute-of-limitations and the actual-innocence issues.

A COA may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Where a § 2254 application is dismissed

Appendix A

on procedural grounds without reaching the petitioner's underlying claim, "a COA should issue when the [petitioner] shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For claims rejected on the merits, the petitioner must "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues presented "deserve encouragement to proceed further." *Id.* Thibodaux has failed to make the required showings.

Accordingly, Thibodaux's motion for a COA is DENIED.

\s\ Jennifer Walker Elrod

JENNIFER WALKER ELROD
United States Circuit Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DARNAY THIBODAUX

CIVIL ACTION

VERSUS

NO. 19-2241

JON REEVES, *et al.*

SECTION M (3)

CERTIFICATE OF APPEALABILITY

Having separately issued a final order in connection with the captioned habeas corpus proceeding, in which the detention complained of arises out of process issued by a state court, the Court, after considering the record and the requirements of 28 U.S.C. § 2253 and Fed. R. App. P. 22(b), hereby orders that,

 a certificate of appealability shall be issued having found that petitioner has made a substantial showing of the denial of a constitutional right related to the following issue(s):

X a certificate of appealability shall not be issued for the following reason(s):
An appeal would not be taken in good faith for the reasons stated in the magistrate judge's Report & Recommendation (R. Doc. 36), which was adopted as the opinion of this Court.

New Orleans, Louisiana, this 15th day of September, 2021.


BARRY W. ASHE
UNITED STATES DISTRICT JUDGE

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DARNAY THIBODAUX

CIVIL ACTION

VERSUS

NO. 19-2241

JON REEVES, *et al.*

SECTION M (3)

ORDER

Having considered the petitioner’s application for habeas corpus relief pursuant to 28 U.S.C. § 2254, the record, the applicable law, the magistrate judge’s Report and Recommendation (“R&R”),¹ and the petitioner’s objections to the R&R,² the Court hereby overrules the petitioner’s objections, approves the R&R, and adopts it as the Court’s opinion in this matter.

Petitioner Darnay Thibodaux makes three objections to the R&R and one alternative request for issuance of a certificate of appealability (“COA”). First, Thibodaux objects to the magistrate judge’s conclusion that the State’s filing of a motion for restitution did not statutorily toll the AEDPA’s one-year limitations period under 28 U.S.C. § 2244(d)(2).³ Thibodaux argues that the State’s September 21, 2015 motion for restitution constituted collateral review as defined by the United States Supreme Court in *Wall v. Kholi*⁴ because at a restitution hearing “the Court, by definition would be engaging in a ‘modification’, ‘examination’ or ‘re-examination’ of the January 29, 2015 sentence.”⁵ Accordingly, maintains Thibodaux, the one-year statutory limitations period was tolled upon the filing of that motion, which, when combined with the tolling

¹ R. Doc. 36 (including the magistrate judge’s discovery order, R. Doc. 35).

² R. Doc. 39.

³ *Id.* at 7.

⁴ 562 U.S. 545 (2011).

⁵ R. Doc. 39 at 12.

resulting from the petitioner's state filings for post-conviction relief, renders her federal habeas petition timely.⁶

In *Khali*, having concluded that “collateral review” of a judgment or claim means a judicial reexamination of a judgment or claim in a proceeding outside of the direct review process,” 562 U.S. at 553, the Supreme Court held that a petitioner's motion for a reduction of his sentence constituted “other collateral review” for purposes of § 2244(d)(2) as to toll the AEDPA's one-year limitations period. *Id.* at 555-56. Here, the issue Thibodaux's first objection presents is whether a motion for restitution amounts to “collateral review” so as to trigger statutory tolling when the claims the petitioner asserts in her habeas petition are wholly unrelated to restitution. In line with the statute's dictates and consistent with the holdings of other courts that have addressed similar issues, this Court finds that a petitioner's motion for restitution does not toll the AEDPA's limitations period when the habeas petition does not raise a challenge to the restitution ordered by the judgment. *See* 28 U.S.C. § 2244(d)(2) (requiring post-conviction petition to pertain to the claim or judgment set forth in the habeas petition); *Howard v. Minnesota*, 2019 WL 4061998, at *3 (D. Minn. July 19, 2019) (concluding that post-conviction petition, which did not pertain to judgment challenged in federal habeas petition or any claim raised in such petition, did not toll the limitations period for the federal habeas petition), *report and recommendation adopted*, 2019 WL 4060379 (D. Minn. Aug. 28, 2019); *Westin v. Harris*, 2012 WL 2860511, at *4 (C.D. Cal. July 3, 2012) (holding that challenge to restitution order did not toll limitations period because it was not filed “with respect to the pertinent judgment or claim”), *report and recommendation adopted*, 2012 WL 2849394 (C.D. Cal. July 11, 2012); *Grace v. Giles*, 2006 WL 1663550, at *2 (M.D. Ala. June 15, 2006) (holding that a motion challenging restitution did not affect the limitations period

⁶ *Id.* at 7, 11-12.

because it did not attack the conviction or sentence that was imposed). None of the grounds raised in Thibodaux's habeas petition relates to or concerns restitution; instead, each ground presents a challenge to her judgment of conviction on some other basis.⁷ Therefore, the motion for restitution could not have tolled the limitations period because it did not pertain to any claim raised, or any aspect of the judgment challenged, by Thibodaux in her habeas petition.

Thibodaux's second objection is directed to the magistrate judge's conclusion that she failed to exercise the due diligence required for equitable tolling.⁸ Thibodaux argues that despite her counsel's inexperience in this area of law and his notice to her that he would not represent her in connection with any post-conviction proceedings, she (and counsel) acted diligently as she was "nevertheless able to file her petition on March 11, 2019."⁹ Thibodaux's counsel submits a declaration purporting to establish the diligence with which he acted in pursuing habeas relief on her behalf.¹⁰ But the question of lack of diligence is examined on the part of the petitioner, not (or, at least, not only) her counsel. Once Thibodaux's counsel advised her of his inexperience and desire to terminate his representation of her for purposes of post-conviction proceedings, Thibodaux failed to exercise due diligence in retaining counsel who could file the habeas petition within the limitations period or in filing the petition herself. *See Manning v. Epps*, 688 F.3d 177, 185-86 (5th Cir. 2012) (holding that equitable tolling was not warranted where prisoner, apart from

⁷ R. Doc. 1. Thibodaux raises four grounds for relief in her habeas petition: (1) actual innocence of all charges to which she pleaded guilty; (2) violation of due process: the petitioner's guilty plea was unconstitutionally coerced by the State's submission of false evidence and testimony pertaining to the purported victim's transactional and testimonial mental competence; (3) violation of the Compulsory Process Clause: the petitioner's guilty plea was unconstitutionally coerced by the State's false assertion that the purported victim was not mentally competent to testify on the petitioner's behalf, thereby depriving the petitioner of his favorable testimony; and (4) violation of due process: the State's false assertion during post-conviction relief proceedings that its position throughout the criminal proceedings was that the purported victim was only intermittently incompetent (that is, incompetent with "lucid intervals").

⁸ R. Doc. 39 at 12.

⁹ *Id.* at 14.

¹⁰ R. Doc. 39-1.

counsel, had obligation to exercise due diligence to comply with AEDPA's statute of limitations and failed to do so); *see also Modrowski v. Mote*, 322 F.3d 965, 968 (7th Cir. 2003) (observing "that petitioners bear ultimate responsibility for their filings ... and, if necessary, [must] take matters into their own hands") (quotation marks and citation omitted).

Thibodaux's third objection concerns the magistrate judge's determination that the actual innocence exception does not apply.¹¹ For this objection (and various other issues raised in her filing), the petitioner reiterates the same arguments presented to the magistrate judge, which the magistrate judge thoroughly and correctly analyzed in the R&R. On these points, this Court adopts the analysis and conclusions set out in the R&R.

Finally, Thibodaux requests that if the Court adopts the R&R, it should issue a COA as to all the objections she asserts.¹² In particular, Thibodaux points the Court to the supposed court split discussed by the magistrate judge concerning a specific issue of statutory tolling – namely, whether a request to reduce ordered restitution amounts to an application for collateral review under *Kholi*.¹³ However, there is no call for a COA on this question when, as discussed above, any such split is rendered irrelevant by the fact that the challenges Thibodaux makes in her habeas petition to the judgment of conviction are not directed to the ordered restitution.¹⁴ Therefore, for the foregoing reasons,

¹¹ R. Doc. 39 at 14-15.

¹² *Id.* at 18-19.

¹³ R. Doc. 36 at 7-8 n.31.

¹⁴ The observations made by the courts in the two cases the magistrate judge describes as "seemingly aligned with petitioner's view" constitute dicta since they were unnecessary to the holding in each instance. As such, there is no real split of authority in the cases cited by the magistrate judge.

IT IS ORDERED that the petition of Darnay Thibodaux for issuance of a writ of habeas corpus under 28 U.S.C. § 2254 is DENIED and DISMISSED WITH PREJUDICE.

New Orleans, Louisiana, this 15th day of September, 2021.



BARRY W. ASHE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DARNAY THIBODAUX

CIVIL ACTION

VERSUS

NO. 19-2241

JON REEVES, *et al.*

SECTION M (3)

JUDGMENT

The Court having approved the magistrate judge's Report & Recommendation and having adopted it as the Court's opinion herein; accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of respondents, Jon Reeves, Lauran Skiles, and the Attorney General of the State of Louisiana, and against petitioner, Darnay Thibodaux, dismissing Thibodaux's petition for issuance of a writ of habeas corpus under 28 U.S.C. § 2254 with prejudice.

New Orleans, Louisiana, this 15th day of September, 2021.


BARRY W. ASHE
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DARNAY THIBODAUX

CIVIL ACTION

VERSUS

NO. 19-2241

**JON REEVES, DISTRICT ADMINISTRATOR,
ET AL.**

SECTION: "M"(3)

REPORT AND RECOMMENDATION

Petitioner, Darnay Thibodaux, filed this federal application seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. For the following reasons, it is recommended that her application be **DISMISSED WITH PREJUDICE**.

On December 17, 2014, petitioner pleaded guilty in the Louisiana Twenty-Second Judicial District Court to two counts of exploitation of the infirmed pursuant to La. Rev. Stat. Ann. § 14:93.4.¹ Although she shortly thereafter moved to withdraw her guilty pleas,² the district court denied that motion on January 29, 2015,³ a denial which was subsequently upheld by the state's appellate courts.⁴ Also on January 29, 2015, she was sentenced on each conviction to a concurrent

¹ State Rec., Vol. 3 of 16, transcript of December 17, 2014; State Rec., Vol. 1 of 16, minute entry dated December 17, 2014; State Rec., Vol. 2 of 16, guilty plea form.

² State Rec., Vol. 2 of 16, Motion to Withdraw Guilty Plea and Motion to Dismiss Indictment.

³ State Rec., Vol. 3 of 16, transcript of January 29, 2015.

⁴ The Louisiana First Circuit Court of Appeal denied her related writ application challenging that ruling on February 19, 2015. State v. Thibodaux, No. 2015 KW 0280 (La. App. 1st Cir. Feb. 19, 2015); State Rec., Vol. 7 of 16. The Louisiana Supreme Court then likewise denied relief on May 15, 2015. State v. Thibodaux, 170 So. 3d 967 (La. 2015); State Rec., Vol. 3 of 16.

Appendix C

term of ten years' imprisonment, with five years suspended; it was also ordered that she be placed on five years' probation after release and make restitution.⁵

On July 28, 2016, petitioner, through counsel, filed an application for post-conviction relief with the state district court;⁶ that application was then later supplemented on two occasions.⁷ On February 23, 2017, the state district court denied relief.⁸ Her related writ applications were thereafter likewise denied by the Louisiana First Circuit Court of Appeal on May 25, 2017,⁹ and July 24, 2017,¹⁰ and the Louisiana Supreme Court on January 18, 2019.¹¹

On March 11, 2019, petitioner, through counsel, filed the instant federal application seeking habeas corpus relief.¹² The state filed an answer conceding that petitioner was "in custody" for federal habeas corpus purposes¹³ but arguing that her application was untimely.¹⁴

⁵ State Rec., Vol. 3 of 16, transcript of January 29, 2015.

⁶ State Rec., Vol. 3 of 16, Petition for Post Conviction Relief.

⁷ State Rec., Vol. 4 of 16, Motion for Leave to Supplement Petition for Post-Conviction Relief with an Additional Claim; State Rec., Vol. 6 of 16, Motion for Leave to Supplement Petition for Post-Conviction Relief with an Additional Claim.

⁸ State Rec., Vol. 6 of 16, Reasons for Judgment and Order dated February 23, 2017.

⁹ State v. Thibodaux, No. 2017 KW 0487, 2017 WL 2295097 (La. App. 1st Cir. May 25, 2017); State Rec., Vol. 11 of 16.

¹⁰ State v. Thibodaux, No. 2017 KW 0736, 2017 WL 3140817 (La. App. 1st Cir. July 24, 2017); State Rec., Vol. 13 of 16.

¹¹ State v. Thibodaux, 261 So. 3d 773 (La. 2019); State Rec., Vol. 15 of 16.

¹² Rec. Doc. 1.

¹³ Federal law provides: "The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State 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). Although the United States Supreme Court has "interpreted the statutory language as requiring that the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time [her] petition is filed," its "interpretation of the 'in custody' language has not required that a prisoner be physically confined" in order seek federal habeas corpus relief. Maleng v. Cook, 490 U.S. 488, 490-41 (1989). Rather, the custody requirement is met if a petitioner, "as a result of a state-court criminal conviction," suffers "substantial restraints not shared by the public generally." Lehman v. Lycoming County Children's Services Agency, 458 U.S. 502, 510 (1982). Although petitioner was no longer physically confined at the time her federal application was filed, she was on probation. See Rec. Doc. 1-2, p. 31. That suffices. See Brian R. Means, Federal Habeas Manual § 1:9 (May 2021 Update) ("A person who is on parole or probation at the time he files his federal habeas petition satisfies the custody requirement.").

¹⁴ Rec. Doc. 11.

She filed a reply.¹⁵ She then subsequently filed a motion asking that these federal proceedings to be stayed pending the outcome of a St. Tammany Parish Sheriff's Office investigation of Detective Montgomery, one of the officers involved in her state criminal case.¹⁶ She later filed another motion in which she made the following requests: (1) she be allowed to withdraw her motion for a stay because the referenced investigation had been completed; (2) she be allowed to supplement her application and conduct discovery; and (3) the Court hold an evidentiary hearing and allow expansion of the record.¹⁷ The Court allowed her to withdraw her motion for a stay and ordered the state to file a response to the remaining requests.¹⁸ The state filed a response as ordered,¹⁹ and she filed a reply to that response.²⁰ By separate order issued this date, the undersigned United States Magistrate Judge is denying that motion in all remaining respects given that the federal application is in fact untimely for the following reasons.

Statute of Limitations

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") includes a statute of limitations for petitioners seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Specifically, the AEDPA provides:

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;

¹⁵ Rec. Doc. 17.

¹⁶ Rec. Doc. 19.

¹⁷ Rec. Doc. 22.

¹⁸ Rec. Doc. 23.

¹⁹ Rec. Doc. 24.

²⁰ Rec. Doc. 27.

(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).

Subsections B and C

Subsections B and C of 28 U.S.C. § 2244(d)(1) clearly do not apply in the instant case because petitioner does not allege the existence of either a state-created impediment or a newly recognized constitutional right.

Subsection A

The state argues that Subsection A applies in this case. As noted, under that subsection, a petitioner must bring her claims in federal court within one (1) year of the date on which her underlying state criminal “judgment” became “final.” 28 U.S.C. § 2244(d)(1)(A). For AEDPA purposes, the “judgment” at issue consists of the conviction and the sentence; therefore, a petitioner’s judgment is not “final” under Subsection A until **both** her convictions **and** sentences are final. See Burton v. Stewart, 549 U.S. 147, 156-57 (2007); Scott v. Hubert, 635 F.3d 659, 665-67 (5th Cir. 2011). With respect to determining that date of finality, the United States Fifth Circuit Court of Appeals has explained:

The statute of limitations for bringing a federal habeas petition challenging a state conviction begins to run on “the date on which the [state] judgment became

final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). When a habeas petitioner has pursued relief on direct appeal through his state’s highest court, his conviction becomes final ninety days after the highest court’s judgment is entered, upon the expiration of time for filing an application for writ of certiorari with the United States Supreme Court. Roberts v. Cockrell, 319 F.3d 690, 693 (5th Cir. 2003). However, “[i]f the defendant stops the appeal process before that point,” ... “the conviction becomes final when the time for seeking further direct review in the state court expires.” Id. at 694; see also Foreman v. Dretke, 383 F.3d 336, 338 (5th Cir. 2004) (Section 2244(d)(1)(A) gives alternative routes for finalizing a conviction: either direct review is completed or the time to pursue direct review expires).

Although federal, not state, law determines when a judgment is final for federal habeas purposes, a necessary part of the finality inquiry is determining whether the petitioner is still able to seek further direct review. See Foreman, 383 F.3d at 338-39. As a result, this court looks to state law in determining how long a prisoner has to file a direct appeal. See Causey v. Cain, 450 F.3d 601, 606 (5th Cir. 2006); Roberts, 319 F.3d at 693.

Butler v. Cain, 533 F.3d 314, 317 (5th Cir. 2008).

Here, petitioner pleaded guilty on December 17, 2014,²¹ and she was sentenced on January 29, 2015.²² Under Louisiana law, she then had thirty days in which to file an appeal.²³ Because she filed no such appeal,²⁴ her state criminal judgment became final for the purposes of this federal proceeding no later than March 2, 2015.²⁵

In normal circumstances, petitioner’s limitations period for seeking federal habeas corpus relief would have commenced on that date. However, in this case, commencement of that period was delayed due to tolling. Specifically, regarding the limitations period set forth in § 2244(d)(1), federal law expressly provides: “The time during which a properly filed application for State post-

²¹ State Rec., Vol. 3 of 16, transcript of December 17, 2014; State Rec., Vol. 1 of 16, minute entry dated December 17, 2014; State Rec., Vol. 2 of 16, guilty plea form.

²² State Rec., Vol. 3 of 16, transcript of January 29, 2015.

²³ Louisiana law states that a criminal defendant has thirty days to file a motion to appeal a conviction or sentence. La. Code Crim. P. art. 914.

²⁴ See Rec. Doc. 1, p. 3, answer to Question No. 8.

²⁵ Because the thirtieth day fell on a Saturday, she had until Monday, March 2, 2015, to file an appeal. See La. Code Crim. P. art. 13; La. Rev. Stat. Ann. § 1:55.

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).

Here, such tolling was triggered by petitioner’s filing of her motion to withdraw her guilty pleas on January 9, 2015.²⁶ See, e.g., Gallow v. Cooper, 301 F. App’x 342, 344-45 (5th Cir. 2008) (holding that a motion to withdraw a guilty plea is a proper post-conviction motion under Louisiana law and, therefore, tolls the federal limitations period); Johnson v. Rogers, Civ. Action No. 14-1696, 2015 WL 858078, at *2 & n.20 (E.D. La. Feb. 26, 2015) (same). Moreover, although the state district court denied her motion was January 29, 2015,²⁷ she sought supervisory review of that denial in a timely manner.²⁸ Accordingly, her motion remained “pending” for tolling purposes until that ruling became final by the Louisiana Supreme Court’s related denial of relief on May 15, 2015.²⁹ See Grillette v. Warden, Winn Correctional Center, 372 F.3d 765, 769-70 (5th Cir. 2004) (“[A] state habeas application is pending, in the context of § 2244(d)(2), as long as the ordinary state collateral review process is in continuance, or, in other words, until the application has achieved final resolution through the State’s post-conviction procedures. Thus, a petitioner is entitled to, and indeed often must invoke, one full round of collateral review in state court before seeking federal habeas relief. While that full round of state habeas proceedings is properly in progress, AEDPA’s one-year period of limitations is tolled.” (citations and internal quotation marks omitted)). It was at that point that the federal limitations period finally commenced in the

²⁶ State Rec., Vol. 2 of 16, Motion to Withdraw Guilty Plea and Motion to Dismiss Indictment.

²⁷ State Rec., Vol. 3 of 16, transcript of January 29, 2015.

²⁸ The state concedes that petitioner’s related writ applications were timely filed. See Rec. Doc. 11, p. 6.

²⁹ State v. Thibodaux, 170 So. 3d 967 (La. 2015); State Rec., Vol. 3 of 16.

instant case.³⁰ The limitations period then expired one year later on May 16, 2016,³¹ unless that deadline was further extended by additional tolling.

Because petitioner had no other applications for state post-conviction or other collateral review pending at any time on or before May 16, 2016, she is not entitled to further statutory tolling.³²

³⁰ The undersigned notes that a petitioner receives no additional tolling credit for the period during which she could have sought review by the United States Supreme Court with respect to that denial of collateral review. Lawrence v. Florida, 549 U.S. 327, 332 (2007); Ott v. Johnson, 192 F.3d 510, 512-13 (5th Cir. 1999).

³¹ Because the three-hundred-sixty-fifth day of the limitations period fell on a Sunday, petitioner's deadline was extended through the following Monday, May 16, 2016. See Flanagan v. Johnson, 154 F.3d 196, 202 (5th Cir. 1998) ("We hold that [Fed.R.Civ.P.] 6(a) applies to the computation of the one year limitation period in § 2244(d) of AEDPA."); Fed. R. Civ. P. 6(a) (if the last day of an applicable period is a Saturday, a Sunday, a legal holiday, or a day when the clerk's office is inaccessible, the period runs until the end of the next day that is not one of those days).

³² Although petitioner subsequently filed a post-conviction application on July 28, 2016, filings after the expiration of the federal statute of limitations have no bearing on § 2244(d)(2) tolling determinations. See Scott v. Johnson, 227 F.3d 260, 263 (5th Cir. 2000); Magee v. Cain, Civ. Action No. 99-3867, 2000 WL 1023423, at *4 (E.D. La. July 24, 2000), aff'd, 253 F.3d 702 (5th Cir. 2001); Williams v. Cain, Civ. Action No. 00-536, 2000 WL 863132, at *2 (E.D. La. June 27, 2000). Simply put: once the federal limitations period has expired, "[t]here [i]s nothing to toll." Butler v. Cain, 533 F.3d 314, 318 (5th Cir. 2008).

However, petitioner advances an additional argument which must be addressed. Specifically, in her reply to the state's response, Rec. Doc. 17, she argues that her federal limitations period was tolled by the Motion for Restitution **filed by the state** on January 20, 2016. She opines that the state's motion should be considered a request for "other collateral review" under the definition given that term by the United States Supreme Court in Wall v. Kholi, 562 U.S. 545 (2011).

In Kholi, the Supreme Court was confronted with the issue of whether a petitioner's motion for a reduction of his sentence qualified as "other collateral review" under 28 U.S.C. § 2244(d)(2). The respondent argued that it did not because it did not challenge the legal validity of the petitioner's conviction or sentence, but instead merely sought a discretionary sentencing reduction. The petitioner and – more importantly, the Supreme Court – disagreed, noting that the respondent's view was too narrow.

The Supreme Court acknowledged that "[c]ollateral review" is not defined in AEDPA, and we have never provided a comprehensive definition of that term." Id. at 551. The Supreme Court then parsed the term. It noted that review is "collateral" if it "is not part of **direct** review"; in other words, collateral review is "a form of review that is not part of the **direct appeal** process." Id. at 552 (emphasis added). The Supreme Court then proceeded to the word "review," but simply noted that "the meaning of that term seems clear. 'Review' is best understood as an 'act of inspecting or examining' or a 'judicial reexamination.'" Id. at 553. The Supreme Court therefore concluded: "Viewed as a whole, then, 'collateral review' of a judgment or claim means a judicial reexamination of a judgment or claim in a proceeding outside of the direct review process." Id. Based on that conclusion, the Supreme Court then found that a motion for a reduction of sentence is a form of "collateral review" – it is "collateral" because it is not part of direct review; it is "review" because it "involves judicial reexamination of the sentence to determine whether a more lenient sentence is proper." Id. at 555-56.

Based on the foregoing language in Kholi, petitioner argues:

Clearly, the State's Motion for Restitution, constituted "an act of inspecting or examining" of the sentence imposed upon petitioner on January 29, 2015, as it specifically called for the determination of the amount of restitution that was initially ordered by the Court at that time.

However, another type of tolling is also potentially available: the AEDPA's statute of limitations "is subject to equitable tolling in appropriate cases." Holland v. Florida, 560 U.S. 631, 645 (2010). That said, a petitioner bears the burden of proof to establish entitlement to equitable tolling, Alexander v. Cockrell, 294 F.3d 626, 629 (5th Cir. 2002), and, frankly, it is "unavailable in most cases," Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999). Specifically, "a petitioner is entitled to equitable tolling only if [she] shows both that (1) [she] has been pursuing [her] rights diligently, **and** (2) some extraordinary circumstance stood in [her] way and prevented timely filing." Holland, 560 U.S. at 649 (emphasis added; internal quotation marks omitted).

Additionally, the Motion for Restitution can also fairly be considered "a judicial reexamination" of the amount of restitution because, as specifically acknowledged by the 22nd JDDO in its response, the State had raised and sought resolution of the amount of restitution at the January 29, 2015 sentencing hearing.

Rec. Doc. 17, p. 6. While that argument poses an interesting issue, petitioner does not cite – and the undersigned has not found – a case holding that such a motion filed by the state tolls a petitioner's limitations period under § 2244(d)(2).

In fact, the undersigned has found few cases even considering the effect of restitution motions under § 2244(d)(2), and those which do exist reach differing conclusions. See Liptrot v. Horton, Civ. Action No. 2:18-CV-13126, 2019 WL 2295370, at *2 (E.D. Mich. May 28, 2019) ("Petitioner's motion to modify restitution did not toll the limitations period pursuant to 28 U.S.C. § 2244(d)(2) because the motion did not seek a judicial reexamination of the judgment of conviction."); but see Brown v. Lynch, Case No. ED CV 19-1635, 2020 WL 6265129, at *3 ("[P]etitioner's motion to reduce the restitution amount would appear to fit within the plain language of collateral review, as defined by the Supreme Court in Wall [v. Kholi]."), adopted, 2020 WL 6263182 (C.D. Cal. Oct. 22, 2020); Carbajal v. Davey, Case No. CV 15-8990, 2016 WL 5796918, at *3 (C.D. Cal. Aug. 22, 2016) ("Prior to filing his first state habeas petition, petitioner made an ex parte request to reduce his ordered restitution and a motion to modify his sentence, either or both of which may be considered applications for collateral review." (citing Kholi)), adopted, 2016 WL 5844461 (C.D. Cal. Sept. 28, 2016). Nonetheless, even the cases seemingly aligned with petitioner's view are distinguishable.

First, those cases involved motions filed by the petitioner, not by the state. On that distinction, petitioner opines that "the phrase 'or other collateral review' does not specify that the 'collateral review' proceedings are limited to those filed by the petitioner." Rec. Doc. 17, p. 6. True enough; however, it likewise does not specify otherwise, and it is at least arguable that such a condition is implicit.

Second, and perhaps more importantly, the motions in those cases sought **modifications** of the restitution orders. Here, the state's motion did not seek modification or, for that matter, any type of "review" of the order imposing restitution. Even the Supreme Court's opinion in Kholi appears to indicate that would be required, noting: "We thus agree with the First Circuit that "'review' commonly denotes 'a looking over or examination **with a view to amendment or improvement.**'" Kholi, 562 U.S. at 553 (emphasis added). Here, far from seeking amendment or modification of the restitution order, the state was simply seeking enforcement of that existing order.

For these reasons, the undersigned finds that petitioner's reliance on Kholi is misplaced and that the state's motion did **not** constitute "other collateral review" within the meaning of § 2244(d)(2).

Regarding the two prongs of the Holland test, the United States Supreme Court has explained:

[W]e have expressly characterized equitable tolling's two components as "elements," not merely factors of indeterminate or commensurable weight. Pace v. DiGuglielmo, 544 U.S. 408, 418, 125 S.Ct. 1807, 161 L.Ed.2d 669 (2005) ("Generally, a litigant seeking equitable tolling bears the burden of establishing two elements"). And we have treated the two requirements as distinct elements in practice, too, rejecting requests for equitable tolling where a litigant failed to satisfy one without addressing whether he satisfied the other. See, e.g., Lawrence v. Florida, 549 U.S. 327, 336-337, 127 S.Ct. 1079, 166 L.Ed.2d 924 (2007) (rejecting equitable tolling without addressing diligence because habeas petitioner fell "far short of showing 'extraordinary circumstances'"); Pace, supra, at 418, 125 S.Ct. 1807 (holding, without resolving litigant's argument that he had "satisfied the extraordinary circumstance test," that, "[e]ven if we were to accept [his argument], he would not be entitled to relief because he has not established the requisite diligence").

Menominee Indian Tribe of Wisconsin v. United States, 577 U.S. 250, 256 (2016).³³ Here, however, petitioner has not met **either** prong for the following reasons.

In the instant case, petitioner argues that she is entitled to equitable tolling because "the criminal matter was prosecuted against [her] in conjunction with several other state and Federal civil actions specifically designed to weaponize the process against her in favor of her opponents in what was essentially a civil dispute over property and inheritance rights."³⁴ More specifically, she contends that "the State of Louisiana knowingly filed and prosecuted a baseless restitution motion for the specific purpose of intimidating the petitioner from seeking post conviction relief within the 1 year limitation period for Federal *habeas corpus* relief."³⁵

³³ Menominee Indian Tribe was not a habeas corpus case. However, its equitable tolling discussion is expressly based on the Supreme Court's interpretation of Holland; therefore, the reasoning therein is applicable to habeas cases. See, e.g., Brian R. Means, Federal Habeas Manual § 9A:83 (May 2021 Update).

³⁴ Rec. Doc. 1-2, p. 43.

³⁵ Id. at p. 44.

The state, however, argues that those ancillary restitution proceedings did not qualify as an “extraordinary circumstance” at all, much less one that prevented petitioner from complying with the federal statute of limitations. The state also argues that, in any event, petitioner did not exercise the diligence required for equitable tolling. Both points are well taken.

First, the fact that the government files a restitution proceeding against an individual who was **expressly ordered to pay restitution** is not an “extraordinary circumstance”; on the contrary, it would be expected. Moreover, while fighting that parallel proceeding might have been distracting, it simply cannot be said to have been so incapacitating that it **prevented** petitioner from also filing a § 2254 petition, especially given that she was being represented by counsel in both efforts. Further, the allegation that the restitution proceedings were instituted for the very purpose of dissuading her from seeking habeas relief (or for any other nefarious purpose) is wholly speculative and conclusory. Lastly, it simply is not credible to suggest that any reasonable person, especially not one who has the benefit of counsel, would be so cowed or intimidated by a parallel restitution action that she would feel compelled to forgo her right to seek federal relief concerning what she considered to be an unconstitutional conviction.

Second, in any event, petitioner also cannot meet the “diligence” prong of the Holland analysis. It is true that a petitioner need not show that she exercised the “maximum feasible diligence”; rather, “[t]he diligence required for equitable tolling purposes is reasonable diligence.” Holland, 560 U.S. at 563 (quotation marks omitted). Nonetheless, the undersigned cannot say that petitioner exercised even reasonable diligence in this case for the following reasons.

The United States Fifth Circuit Court of Appeals has held that “[w]hat a petitioner did **both before and after** the extraordinary circumstances that prevented [her] from timely filing may

indicate whether [she] was diligent overall.” Jackson v. Davis, 933 F.3d 408, 411 (5th Cir. 2019) (emphasis added). Here, petitioner took no action whatsoever to challenge her conviction or sentence in either state or federal court during the four months between the date her conviction became final (May 15, 2015) and the date the Motion for Restitution Hearing was filed (September 15, 2015); she also took to no such action during the additional six months between the date the restitution motion was dismissed (January 20, 2016) and the date her post-conviction application was filed (July 28, 2016). Even more importantly, after the state post-conviction proceedings concluded upon the Louisiana Supreme Court’s denial of relief on January 18, 2019, she did not seek federal relief until after another seven weeks elapsed, despite being represented by counsel who was aware of a limitations problem (a fact obviously demonstrated by virtue of the fact that the petition itself specifically requested equitable tolling). That is not indicative of diligence. See Stroman v. Thaler, 603 F.3d 299, 302 (5th Cir. 2010) (finding a lack of diligence where a petitioner who became aware of a limitations problem after belatedly discovering that his bid for state relief had been denied nonetheless then allowed an additional seven weeks to elapse before seeking federal relief).

Lastly, one other factor should be noted. Where, as here, a limitations problem is known to potentially exist, a petitioner can file “a ‘protective’ petition in federal court and [ask] the federal court to stay and obey the federal habeas proceedings until state remedies are exhausted.” Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005). Although petitioner and her counsel could have taken advantage of the option by filing a protective federal application at the same time the state post-conviction application was filed, they did not do so. That, too, is problematic. While a petitioner’s failure to file a protective federal habeas petition is not alone dispositive, it can nonetheless weigh

against her in the reasonable diligence inquiry. See Palacios v. Stephens, 723 F.3d 600, 608 (5th Cir. 2013); Batiste v. Vannoy, Case No. 6:18-CV-01601, 2019 WL 5296494, at *4 (W.D. La. July 24, 2019), adopted, 2019 WL 5296500 (W.D. La. Oct. 18, 2019); Morgan v. Terrell, Civ. Action No. 13-00783, 2015 WL 4488546, at *7 (M.D. La. July 22, 2015).

For all of these reasons, the Court finds that petitioner simply has not met her burden to establish that equitable tolling is warranted.

Finally, it must also be noted that a petitioner can overcome the AEDPA's statute of limitations by making a convincing claim of "actual innocence" under McQuiggin v. Perkins, 569 U.S. 383 (2013). In Perkins, the United States Supreme Court held:

This case concerns the "actual innocence" gateway to federal habeas review applied in Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995), and further explained in House v. Bell, 547 U.S. 518, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006). In those cases, a convincing showing of actual innocence enabled habeas petitioners to overcome a procedural bar to consideration of the merits of their constitutional claims. Here, the question arises in the context of 28 U.S.C. § 2244(d)(1), the statute of limitations on federal habeas petitions prescribed in the Antiterrorism and Effective Death Penalty Act of 1996. Specifically, ... can the time bar be overcome by a convincing showing that [the petitioner] committed no crime?

We hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in Schlup and House, or, as in this case, expiration of the statute of limitations. We caution, however, that tenable actual-innocence gateway pleas are rare: "[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." Schlup, 513 U.S., at 329, 115 S.Ct. 851; see House, 547 U.S., at 538, 126 S.Ct. 2064 (emphasizing that the Schlup standard is "demanding" and seldom met).

Perkins, 569 U.S. at 386. In the instant case, petitioner expressly contends that she is actually innocent of the crimes of which she stands convicted.³⁶

³⁶ See, e.g., Rec. Doc. 1-2, pp. 32-33 and 43.

As noted, petitioner was convicted of two counts of exploitation of the infirmed. At the time of the charged offense in this case, Louisiana law defined that crime as:

- (1) The intentional expenditure, diminution, or use by any person, including a caregiver, of the property or assets of the infirmed, a disabled adult, or an aged person, including but not limited to a resident of a nursing home, mental retardation facility, mental health facility, hospital, or other residential facility without the express voluntary consent of the resident or the consent of a legally authorized representative of an incompetent resident, or by means of fraudulent conduct, practices, or representations.
- (2) The use of an infirmed person's, or aged person's, or disabled adult's power of attorney or guardianship for one's own profit or advantage by means of fraudulent conduct, practices, or representations.

La. Rev. Stat. Ann. § 14:93.4(A) (version prior to 2014 amendment).³⁷

Normally, in assessing a claim of actual innocence, a federal habeas court first examines the evidence presented at trial. See, e.g., Johnson v. Cain, Civ. Action No. 14-543, 2015 WL 4528889, at *3 (E.D. La. July 27, 2015), aff'd, 667 F. App'x 474 (5th Cir. 2016); Lyles v. Tanner, Civ. Action No. 13-655, 2014 WL 4674673, at *6 (E.D. La. Sept. 17, 2014). Of course, that is impossible here because there was no trial since petitioner pleaded guilty.

Nevertheless, even if the Court merely looks to the version of the facts that petitioner herself presents in her federal application, it is apparent that the evidence against her was quite damning. Specifically, she recounts the following events:

1. In 2010, petitioner and her husband befriended Sidney Dobronich, an elderly man living alone. Mr. Dobronich had no spouse or descendants; however, he did have something which

³⁷ "Acts 2014, No. 811, § 6, effective June 23, 2014, changed some terminology to refer to persons 'with infirmities' or 'who is aged' or 'with intellectual disabilities.'" State v. Gibson, 186 So. 3d 772, 781 n.4 (La. App. 4th Cir. 2016).

proved critical in this case: “a sizable estate which he maintained in an investment account and several bank accounts.”³⁸

2. “[B]eginning in the Summer of 2012 through February of 2013,” Mr. Dobronich allowed petitioner to begin performing “care-giving services” for him.³⁹ After “Petitioner expressed to Mr. Dobronich her intention to continue to take care of Mr. Dobronich and not to allow him to be placed in a nursing home,” he allegedly offered her “an incentive” to do just that – namely, if she and her husband would agree to “developing and managing rental property with Mr. Dobronich’s financial assistance,” then “he would then leave all of his assets to [them] in his will.”⁴⁰

3. After he subsequently suffered a heart attack, “Mr. Dobronich executed a statutory will and a power of attorney executed in favor of Petitioner, which provided Petitioner with access to Mr. Dobronich’s finances.”⁴¹

4. Using that power of attorney, and purportedly at Mr. Dobronich’s “specific direction,” petitioner then

engaged in several transactions in connection with their arrangement: assets were moved from Mr. Dobronich’s investment account to purchase undeveloped or dilapidated real estate property within the immediate vicinity of Mr. Dobronich’s and the Thibodaux’s home, as well as to purchase several items necessary to develop and renovate such property. Mr. Dobronich also authorized the Thibodauxs to purchase vehicles and other personal items. From February through March of 2013, Mr. Dobronich specifically authorized over 30 transactions, which included purchases, cash withdrawals and transfers, totaling over \$334,000.⁴²

³⁸ Rec. Doc. 1-2, p. 1.

³⁹ Id. at p. 2.

⁴⁰ Id.

⁴¹ Id.

⁴² Id. at pp. 2-3 (citations omitted)

5. In March of 2013, Mr. Dobronich's nephews became aware of those financial transactions and "engaged the St. Tammany Parish Sheriff's Office in an investigation of the Thibodauxs for elder exploitation."⁴³ As a result:

[An] investigation was conducted by Detective Stefan Montgomery. Det. Montgomery's investigation proceeded from March 18, 2013 through April 4, 2013. His investigation involved a search of Mr. Dobronich's financial records, three interviews with Mr. Dobronich, as well as interviews with the Thibodauxs as well as representatives from various financial institutions. Det. Montgomery also engaged the support of the United States Secret Service; and on March 27, 2013, conducted a raid of the Thibodaux residence and the residence of Mr. Dobronich (with 10 armed St. Tammany Parish Sheriff's deputies and U.S. Secret Service Agents) and seized several items from their respective residences.⁴⁴

6. On March 27, the "same day that petitioner endured the arguably frightening and intimidating raid on her home by several armed U.S. Secret Service Agents and St. Tammany Parish sheriff's deputies,"⁴⁵ Rebecca Crawford, the notary who had notarized the power of attorney and will in favor of petitioner and her husband, returned to notarize a hastily prepared handwritten statement signed by Mr. Dobronich in which he stated both that he did not want to press charges against petitioner and her husband and that their purchases, specifically including a "Kubota Tractor, a 4-wheeler, 2001 Chevy PK, a 2013 Nissan Altima and property(s)," were "purchased with his consent and were authorized with his full knowledge."⁴⁶

7. The next day, the nephews were able to wrest control of Mr. Dobronich from petitioner and her husband. Petitioner states:

[O]n March 28, 2013, the Nephews, with their lawyers, went to Sidney Dobronich's hospital room and coerced him into signing a general power of attorney, revoking petitioner's POA and providing the Nephew's with said general power of attorney. Using said power of attorney, upon his discharge from the hospital on April 2, 2013,

⁴³ Id. at p. 3.

⁴⁴ Id. at pp. 3-4 (citations omitted).

⁴⁵ Id. at p. 9.

⁴⁶ Id. at pp. 8- 9.

Sidney Dobronich was taken by his nephew, Forest Dobronich, to his home in Diamondhead, Mississippi, where he was in the exclusive custody and control of his Nephews, under what was described as 24/7 supervision (until his death in March of 2014).⁴⁷

8. The criminal investigation and the nephews' involvement thereafter spawned a flurry of actions in both state and federal court concerning Mr. Dobronich's assets. In one of the related hearings held in June of 2013, Mr. Dobronich testified and confirmed that he had signed the aforementioned March 27 notarized statement. However, the court was so concerned that it then "terminated Mr. Dobronich's testimony soon after that point, citing his competence; and ordered that his competency be evaluated."⁴⁸

9. Dr. Paul Verrette shortly thereafter submitted to the court a report stating:

Mr. Dobronich was evaluated on July 2, 2013. He has multiple medical problems which include, hypertension, hypertensive cardiovascular disease, coronary artery disease, s/p coronary artery stent, osteoarthritis with total hip replacement of the left hip, chronic renal insufficiency and dementia. Dementia is likely due to his history of hypertension and cerebrovascular disease. His dementia is such that he is not able to direct his affairs concerning person or property in matters consistent with his own interest.⁴⁹

10. The court then issued a judgment declaring that Mr. Dobronich was incompetent to testify at trial or in a deposition.⁵⁰

11. Regarding the criminal case, petitioner acknowledges:

[T]he Louisiana Department of Justice, which was handling the prosecution in the criminal case, procured expert testimony from Dr. Michelle Garriga regarding a forensic psychiatric analysis of Mr. Sidney Dobronich. This expert testimony relied heavily upon the Verrette Reports and the statements of the Nephews and concluded that Mr. Dobronich suffered from Major Neurocognitive Disorder (Dementia) and lacked the capacity to consent to any of the transactions conducted

⁴⁷ Id. at p. 7 (citations omitted).

⁴⁸ Id. at p. 11.

⁴⁹ Id. at p. 14.

⁵⁰ Id. at p. 15.

within the last 2 years of his life, including between February and March of 2013 for which petitioner was being prosecuted.⁵¹

She then concludes:

As a result of the potential testimony of Dr. Garriga, and being functionally deprived of Mr. Dobronich's exculpatory testimony (and succumbing to a year and a half of considerable pressure from multiple lawsuits in state and Federal courts, as well as heavy handed intimidation from state and Federal law enforcement); on December 17, 2014, petitioner and her husband changed their pleas to guilty as charged.⁵²

⁵¹ Id. at pp. 16-17 (citation omitted).

⁵² Id. at p. 20. Although the undersigned finds that the foregoing version of events as alleged by petitioner herself is alone sufficiently damning to defeat her assertion of "actual innocence," it should be noted that a less self-serving summary was previously provided by United States District Judge Ivan L.R. Lemelle in connection with the related forfeiture action previously filed in this federal court. In that proceeding, Judge Lemelle summarized the evidence against petitioner as follows:

This *in rem* forfeiture action arises out of an investigation into elder exploitation. On March 26, 2013, law enforcement became aware that a caretaker and her husband, via power of attorney and other mechanisms, were defrauding their neighbor, a hospitalized elderly man named Sidney Dobronich ("Mr. Dobronich" or "Dobronich").

Law enforcement contacted Romano Investments and Insurance ("Romano Investments"), with which Mr. Dobronich had a large amount of money invested into a brokerage account. For two years, Romano Investments had been wiring a monthly electronic deposit of \$1,200 to Mr. Dobronich's Capital One bank account. On February 13, 2013, Romano Investments was contacted by Darnay Thibodaux ("Darnay"), who identified herself as Mr. Dobronich's neighbor and caretaker, claimed to have power of attorney, and requested \$30,000 to settle his medical expenses.

On February 20, 2013, Darnay presented a power of attorney and last will and testament to Romano Investments, showing that she had full authority and that all of Mr. Dobronich's assets were being willed to her upon his death. Darnay requested an additional \$30,000 transfer to the Capital One account for medical bills.

On March 5, 2013, Darnay contacted Romano Investments and requested a transfer of \$179,000 to the Capital One account for the purchase of a home. On March 11, 2013, Darnay called again, requesting an additional \$95,000 for closing costs. The brokerage firm reached out to Mr. Dobronich's family, prompting an investigation.

On March 13, 2013, Darnay deposited \$100,000 into her husband Calvin Thibodaux's Resource Bank account. On March 19, 2013, Calvin wrote a check to draw from his account \$17,697.93 to finalize the purchase of a Rockwood travel trailer. Cash payments totaling more than \$23,000 were also made to finalize this purchase. When the check could not be deposited by the retailer, Berryland Campers, a refund check in the amount of \$19,000 was issued payable to Calvin Thibodaux.

On March 18, 2013, law enforcement met with Mr. Dobronich, who denied giving permission to Darnay to borrow money, to handle his finances, or to make any transactions on his behalf. Mr. Dobronich did not recall making any large withdrawals from the brokerage account other than the \$30,000 to settle medical bills. He did not recall granting power of attorney; however, recalled that Darnay gave him "a bunch of paperwork."

After adding herself to Mr. Dobronich's bank account via power of attorney, from February 15, 2013 to March 15, 2013, Darnay made withdrawals and debits from the bank account, amounting

As part of her “actual innocence” argument, petitioner primarily attempts to convince the Court that the foregoing incriminating evidence is largely suspect or unreliable. She further attempts to insinuate that it was in fact the nephews who sought to take advantage Mr. Dobronich, pointing to their own efforts to have him sign other documents which gave them control or were financially advantageous to them.

to more than \$334,000. Law enforcement obtained Mr. Dobronich’s Capital One bank account records and determined that most of the money had been withdrawn in cash or used to purchase large items, including vehicles (Nissan Altima sedan and Chevrolet Silverado truck), a tractor and real estate. None of the money was used for the alleged medical expenses or were purchases attributable to Mr. Dobronich.

On March 27, 2013, law enforcement seized from the Thibodaux residence: the Nissan Altima registered to Darnay; the Chevrolet truck registered to her husband Calvin; the tractor; and, Mr. Dobronich’s wallet.

....

The Government alleges that the affidavit [on which the Claimants rely to show that Dobronich had “full knowledge” of the transactions at issue and knowingly gave them authorization to engage in the same] was presented to Dobronich on March 27, 2013, while he was in the hospital, and in a fragile and vulnerable condition. The Government supports this with the judicial determination, during state court civil proceedings that Dobronich was “incompetent to testify in these proceedings by way of deposition or trial testimony.” Further, during his interview with law enforcement on March 18, 2013, Dobronich denied giving permission to Claimants to borrow money, handle his finances, or make any transactions on his behalf. Thus, there is serious question as to Dobronich’s capacity to make the attestations proffered by Claimants.

The evidence shows that, on February 20, 2013, Darnay Thibodaux obtained a cashier’s check in the amount of \$26,000 payable to Calvin Thibodaux with “doctor bills” listed in the memo field; and, that the check was endorsed and deposited on the same day for the purchase of the Nissan Altima, a purchase Claimants contend Dobronich authorized.

Further, on February 13, 2013, and again on February 20, 2013, Darnay contacted Romano Investments for \$30,000 wire transfers from Dobronich’s investment account to his Capital One bank account, advising that the funds were needed in order to settle “medical expenses.” However, Claimants admitted to law enforcement that no funds were put to medical care or expenses because “the bills hadn’t come in yet.”

The Claimants contend that the basis for Dobronich’s granting of power of attorney over his affairs and finances, as well as the bequest of all of his assets to the Thibodaux’s, is the relationship that developed during Darnay’s nursing care of Dobronich over the course of two years. However, there is evidence to the contrary and that Darnay only began caring for Dobronich several months before the transactions at issue.

United States v. \$100,641.06 U.S. Currency, Civ. Action No. 13-5566, 2014 WL 6896035, at *1-2 and *7-8 (E.D. La. Dec. 8, 2014) (footnotes omitted). “A court may take judicial notice of related proceedings and records in cases before the same court.” MacMillan Bloedel Ltd. v. Flintkote Co., 760 F.2d 580, 587 (5th Cir. 1985).

Concerning that argument, the Court concedes that it is unclear who, if anyone, was truly motivated solely by Mr. Dobronich's desires and best interests. However, that is beside the point. The question before the Court is not who in this sordid tale was pure at heart; rather, the Court is constrained to determine only whether petitioner has made a colorable showing that **she** was "actually innocent" in light of "new" evidence.

Regarding that determination, the Court first notes that the foregoing evidence cited by petitioner simply was not "new." Admittedly, the jurisprudence is conflicting on what qualifies as "new" evidence in this context. As the United States Fifth Circuit Court of Appeals has observed:

The Supreme Court has not explicitly defined what constitutes "new reliable evidence" under the Schlup actual-innocence standard, and there is a circuit split.[FN 1] "This court has yet to weigh in on the circuit split concerning what constitutes 'new' evidence." Fratta v. Davis, 889 F.3d 225, 232 (5th Cir. 2018).

[FN 1] See Wright v. Quarterman, 470 F.3d [581,] 591 [(5th Cir. 2006)] (collecting cases). The disagreement centers on whether "new reliable evidence" for the purpose of the Schlup actual innocence gateway must be newly discovered, previously unavailable evidence, or, instead, evidence that was available but not presented at trial. Compare Osborne v. Purkett, 411 F.3d 911, 920 (8th Cir. 2005) (holding that evidence is "new" only if it was unavailable at trial and could not have been discovered earlier through due diligence), and Amrine v. Bowersox, 238 F.3d 1023, 1028 (8th Cir. 2001) (same), with Riva v. Ficco, 803 F.3d 77, 84 (1st Cir. 2015) (considering newly presented evidence "of opinions from a psychiatric expert that [petitioner] recently retained"), Rivas v. Fischer, 687 F.3d 514, 543 (2d Cir. 2012) (finding that "new evidence" is "evidence not heard by the jury"), Gomez v. Jaimet, 350 F.3d 673, 679 (7th Cir. 2003) ("All Schlup requires is that the new evidence is reliable and that it was not presented at trial."), and Griffin v. Johnson, 350 F.3d 956, 963 (9th Cir. 2003) (holding that "habeas petitioners may pass Schlup's test by offering 'newly presented' evidence of actual innocence").

Hancock v. Davis, 906 F.3d 387, 389-90 (5th Cir. 2018), cert. denied, 139 S.Ct. 2714 (2019). That said, the Fifth Circuit then nevertheless went on to hold:

Evidence does **not** qualify as "new" under the Schlup actual-innocence standard if "it was always within the reach of [petitioner's] personal knowledge or reasonable investigation." Moore v. Quarterman, 534 F.3d [454,] 465 [(5th Cir.

2008)]. Consequently, though we have not decided what affirmatively constitutes “new” evidence, **we have explained what does not.**

Id. at 390 (emphasis added).

The aforementioned evidence was obviously known to petitioner – or at least available to her upon reasonable investigation – prior to the time she decided to plead guilty rather than go to trial. Therefore, in this federal Circuit, it would not qualify as “new.”

In her reply to the state’s response in this proceeding, petitioner strives mightily to identify other evidence which perhaps could qualify as “new.” Ultimately, however, she points to nothing more than testimony that was adduced at a civil hearing held on February 24, 2015 (approximately two months **after** she pleaded guilty in her state criminal case). That hearing, which was part of succession proceedings concerning the victim’s estate, concerned a “Petition to Annul Probated Testament” filed by petitioner and her husband (i.e. her co-defendant in the state criminal case), in which they challenged the validity of the olographic will the victim executed leaving all his property to his family members. Specifically, in her reply to the state’s response in this federal habeas corpus proceeding, petitioner opines:

The new reliable evidence in support of petitioner’s actual innocence claim comes in the form of sworn testimony, taken at a hearing on February 24, 2015, from several witness regarding Mr. Dobronich’s mental competence:

- a) Forest Dobronich, having had the opportunity to observe Mr. Dobronich on almost a daily basis, testified that, at the time he executed the hand written will on July 18, 2013, and up until his death, Mr. Dobronich was “in good shape mentally” and “competent”. R. Doc. No. 1-11, pp. 38-39.
- b) Det. Montgomery testified that Mr. Dobronich was mentally oriented in the three interviews he had with him in March and April of 2013. R. Doc. No. 1-11, pp. 62-64.
- c) Forest Dobronich completely disavowed the basis of the Garriga report, stating that he disagreed with the characterization of “incompetency and

dementia” pertaining to Mr. Dobronich contained within the July 2, 2013 Verrette report that he, through his attorney, filed with the court in the Civil Revocation Action. R. Doc. No. 1-11, p. 68.

d) George Dobronich, having had the opportunity to observe Mr. Dobronich on a regular basis, testified that, at the time he executed his hand written [sic] will on July 18, 2013 and up until his death, Mr. Dobronich’s seemed mentally alert and oriented. R. Doc. No. 1-11, p. 78.

e) Ms. Courtney Dobronich, having had the opportunity to observe Mr. Dobronich on almost a daily basis, testified that, at the time he executed the hand written will on July 18, 2013, and up until his death, Mr. Dobronich seemed “all right” most of the time regarding capacity, and “competent”. R. Doc. No. 1-11, p. 85.⁵³

She further argues that the foregoing hearing testimony “was not available to [her] at the time of her trial,”⁵⁴ presumably because that hearing had not yet been held when she pleaded guilty. That, however, is not determinative. Although that particular civil hearing had not yet been held, the witnesses (Forest Dobronich, Detective Montgomery, George Dobronich, and Courtney Dobronich) were known to her and could have subpoenaed by her for her trial – if she had opted to face such a trial rather than simply plead guilty. Therefore, the testimony on which she now attempts to rely was still “available” to her (or, using the phrasing from the aforementioned Fifth Circuit quotation, it was “within [her] reach”). Allowing a petitioner to avoid application of the AEDPA’s statute of limitations based on nothing more than testimony from witnesses **she willingly opted not to call at trial** is just too facile a tactic to be allowed to succeed. See Goldblum v. Klem, 510 F.3d 204, 226 n.14 (3d Cir. 2007) (“Evidence is not ‘new’ if it was available at trial, but a petitioner merely chose not to present it to the jury. In that situation, the choice not to present the evidence does not open the gateway.” (citation and quotation marks omitted)).

⁵³ Rec. Doc. 17, pp. 19-20.

⁵⁴ Id. at p. 20.

Granted, petitioner attempts to brush aside that inconvenient fact by suggesting that, if she had subpoenaed the witnesses for her criminal, she “suspects” that they would have told “a much different story”⁵⁵ – a euphemistic way of suggesting they would have committed the criminal offense of perjury in order to see that she was convicted. However, that suggestion is wholly speculative and self-serving.

Lastly, in any event, the evidence cited by petitioner is not of the caliber necessary to support a colorable claim of “actual innocence.” As the United States Fifth Circuit Court of Appeals has explained:

This exception’s demanding standard requires evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error. The standard is seldom met.

An actual-innocence claim is only established when it is shown that, in the light of newly-discovered evidence, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt. Therefore, a credible claim must be supported by new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial. Actual innocence is then demonstrated only when the court scrutinizes the likely impact on reasonable jurors of the overall, newly supplemented record to conclude that, in the light of all evidence – both the evidence presented at trial and that newly discovered – no juror, acting reasonably, would have voted to find petitioner guilty beyond a reasonable doubt.

Floyd v. Vannoy, 894 F.3d 143, 154-55 (5th Cir. 2018) (citations, quotation marks, and brackets omitted).

The foregoing evidence cited by petitioner falls far short of that standard. Even if the jury believed (based on that testimony) that Mr. Dobronich was at times lucid, there was still ample

⁵⁵ Id.

other evidence that he was an infirm, elderly gentleman suffering from dementia who was exploited by petitioner in order to enrich herself. Given that contrary evidence and the totality of the circumstances, it is nothing short of ludicrous for petitioner to suggest that “**no** juror, acting reasonably, would have voted to find [her] guilty beyond a reasonable doubt” if only the foregoing testimony from the civil successions hearing had been produced at a criminal trial on these charges.

For these reasons, the Court finds that petitioner has failed to present a colorable claim of “actual innocence.”

Because petitioner is not entitled to further statutory tolling, and because she has not established that she is eligible for equitable tolling or that she is actually innocent, her federal application for habeas corpus relief had to be filed no later than **May 16, 2016**, in order to be timely under 28 U.S.C. § 2244(d)(1)(A). Her application was not filed until **March 11, 2019**, and, therefore, it was untimely under that provision.

Subsection D

However, the foregoing analysis does not end the Court’s consideration of the timeliness issue, because petitioner next argues that 28 U.S.C. § 2244(d)(1)(D) delayed commencement of the statute of limitations with respect to the following **two** of her six claims:⁵⁶

1. “Ground No. 4: Violation of 5th and 14th Amendments Due Process Clauses: False Assertion By State, During Post Conviction Relief Proceedings, that Its Position Throughout the Criminal Proceedings Had Been that the Purported Victim Was Only Intermittently Incompetent (Incompetent with ‘Lucid Intervals’);⁵⁷ and

⁵⁶ See Rec. Doc. 1, p. 15; Rec. Doc. 1-2, p. 45.

⁵⁷ Rec. Doc. 1-2, p. 37.

2. “Ground No. 5: Violation of 5th and 14 Amendments Due Process Clauses: Once the Question of the Purported Victim’s Intermittent Incompetent (Incompetent with ‘Lucid Intervals’) Was Placed at Issue in Petitioner’s Post Conviction Relief Petition; Petitioner Was Denied Adequate and Meaningful Appellate Review of those Proceedings by the State’s Failure to Produce an Accurate Transcript of Dr. Garriga’s December 16, 2014 Testimony and to Provide the Backup Audio and Notes of Said Testimony[.]”⁵⁸

She argues that the timeliness of those two claims is governed by Subsection D because they are premised on factual predicates that were not – and could not, through the exercise of due diligence, have been – discovered until long after her state criminal judgment became final. That argument raises two issues which must be addressed.

The first is whether a federal habeas petition’s timeliness is even properly considered on a “claim-by-claim” basis. On that issue, one scholar has observed:

Initially, there was some debate over whether a petitioner, who is able to allege a new, timely claim after the post-finality one-year limitations period has expired, should be permitted to include with that claim other claims that, by themselves, would be untimely. This issue arises most commonly where the petitioner more than one year after finality is able to successfully assert a claim based on a new factual predicate, § 2244(d)(1)(D), or a claim based on a newly-recognizable, retroactive right, § 2244(d)(1)(C).

....

The Third Circuit, in an opinion written by then-judge Samuel Alito, was one of the first courts to hold that commencement of the limitations period is determined on a claim-by-claim basis, not on the application as a whole. Fielder v. Varner, 379 F.3d 113, 118 (3d Cir. 2004) (prosecutorial misconduct claim untimely when not filed within one year of finality of conviction, notwithstanding the presence of later accruing and timely claim made part of the same federal petition). Later, the Sixth Circuit joined suit, concluding that the limitations period is claim

⁵⁸ Id. at p. 40.

specific. Bachman v. Bagley, 487 F.3d 979, 983-84 (6th Cir. 2007) (the limitations period on a claim involving a petitioner's designation as a sexual predator begins running once direct appeal of that claim is concluded; the limitations period is not restarted as to other conviction or sentencing claims). Most recently, the First, Ninth, Tenth, and Eleventh Circuits have adopted Fielder's claim-by-claim approach. Capozzi v. U.S., 768 F.3d 32, 33 (1st Cir. 2014), cert. denied, 2015 WL 732245 (U.S. 2015) (per curiam); Zack v. Tucker, 704 F.3d 917 (11th Cir. 2013) (en banc); Prendergast v. Clements, 699 F.3d 1182 (10th Cir. 2012); Mardesich v. Cate, 668 F.3d 1164, 1170 (9th Cir. 2012). The Eleventh Circuit in Zack reversed a prior panel decision, Walker v. Crosby, 341 F.3d 1240, 1245 (11th Cir. 2003) (en banc), that had held that “[t]he statute of limitations in § 2244(d)(1)(D) applies to the application as a whole; individual claims within an application cannot be reviewed separately for timeliness.” Emphasizing the reference in § 2244(d)(1) to “an application for a writ of habeas corpus,” the court in Walker reasoned that “[t]he statute directs the court to look at whether the ‘application’ is timely, not whether the individual ‘claims’ within the application are timely.” 341 F.3d at 1243 (emphasis added), rev'd, Zack v. Tucker, ____ F.3d ___, 2013 WL 105166 (11th Cir. 2013) (en banc).

Although the Supreme Court has not squarely addressed this issue, it indicated in Pace v. DiGuglielmo, 544 U.S. 408, 416 n.6, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005), that the statute of limitations applies on a claim-by-claim basis, Loomis v. Blades, 2006 WL 2265260, *2 (D. Idaho 2006), an approach consistent with that applied by the Third and Sixth Circuits.

Brian R. Means, Federal Habeas Manual § 9A:8 (May 2021 Update).

The United States Fifth Circuit Court of Appeals has not resolved the issue, but it has noted the use of the claim-by-claim approach by other circuits. See In re Young, 789 F.3d 518, 528 n.3 (5th Cir. 2015) (“The Fifth Circuit has not decided whether 28 U.S.C. § 2244(d)(1) applies piecemeal to each claim or to the whole habeas application. Though we do not decide that issue today, it appears that applying the statute of limitations to each claim is consistent with AEDPA and the precedent of other circuits.”). Moreover, district courts within this circuit have followed the Fielder approach. See, e.g., Moldonado v. Thaler, 662 F. Supp. 2d 684, 700-01 (S.D. Tex. 2009), aff'd, 625 F. 3d 229 (5th Cir. 2010); see also Granier v. Vannoy, Civ. Action No. 18-901, 2020 WL 7776540, at *4 (M.D. La. Dec. 30, 2020). For the purposes of this decision, the

undersigned will assume that the claim-by-claim approach is valid and that Claims 4 and 5 should be analyzed under 28 U.S.C. § 2244(d)(1)(D), even if petitioner's other four claims are governed (and, for the reasons previously explained, time-barred) by 28 U.S.C. § 2244(d)(1)(A).

The second issue is whether § 2244(d)(1)(D) in fact saves Claims 4 and 5. The state argues that it does not.⁵⁹ The undersigned agrees. The reason is two-fold.

First, as noted, Subsection D delays the commencement of the statute of limitations until "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). The purported factual predicate of Claims 4 and 5 is supposedly the prosecution's awareness of evidence indicating that the victim, despite his general incompetence, experienced lucid intervals. However, the defense obviously knew the prosecution was aware of such evidence even before petitioner pleaded guilty on December 17, 2014, because, on November 10, 2014, the prosecutor sent defense counsel a letter stating:

The State is hereby providing exculpatory evidence it has received in connection with this case complying with Brady v. Maryland, 371 U.S. 812, 83 S.Ct. 56, 9 L.Ed.2d 54 (1962). I received this document November 7, 2014. Please find the attached copy of a DVD depicting Mr. Sidney Dobronich dictating a will on July 8, 2013. The video was taken by Forest Dobronich.⁶⁰

Second, in any event, Claims 4 and 5 concern ways petitioner's rights were allegedly violated in the state **post-conviction** proceedings. Therefore, even if those claims would otherwise be considered timely under § 2244(d)(1)(D), the claims themselves simply are not cognizable under 28 U.S.C. § 2254. See *In re Gentriss*, 666 F.3d 910, 911 (5th Cir. 2012) ("Infirmities in state

⁵⁹ Rec. Doc. 11, pp. 12-14.

⁶⁰ Rec. Doc. 1-12, p. 30.

postconviction proceedings are not grounds for relief under § 2254.”); Duff-Smith v. Collins, 973 F.2d 1175, 1182 (5th Cir. 1992) (“[I]nfirmities in state habeas proceedings do not constitute grounds for federal habeas relief. We look only to the trial and direct appeal.” (footnote omitted)); Glenn v. Cain, Civ. Action No. 13-6595, 2014 WL 5040713, at *10 (E.D. La. Sept. 30, 2014).

That presents petitioner with two obstacles, both of which are fatal. First, § 2244(d)(1)(D) simply is not even triggered by inclusion of a non-cognizable claim. See, e.g., Ramey v. Akpore, No. 12 C 7174, 2014 WL 201843, at *3 (N.D. Ill. Jan. 17, 2014); Ware v. Secretary, Department of Corrections, No. 8:11-cv-418, 2011 WL 5525359, at *6 (M.D. Fla. Nov. 14, 2011). Second, even if that were not the case and those claims could be considered timely, they would still fail on the merits because – again – **they simply are not cognizable under § 2254**.

The Court is, of course, aware that petitioner argues that it is too narrow to view these claims solely as challenges to the post-conviction matters. Her argument on that point is extremely convoluted but, as best as this Court can decipher, it goes something like this: (1) Throughout the prosecution, the state’s theory of the case was that the victim was wholly incompetent without any lucid intervals during the periods of time relevant to the charges. (2) However, to later defeat petitioner’s post-conviction claims, the state changed tactics and expressly disavowed the suggestion that it had ever contended that the victim was incapable of lucid intervals. (3) Although the state’s argument prevailed and the post-conviction application was denied, petitioner nevertheless still believes that the tactics **were** changed, and she argues that allowing the state to defeat a bid for post-conviction relief by espousing a theory diametrically opposed to the theory on which the prosecution originally proceeded is fundamentally unfair.

However, this Court need not determine whether that happened or, if it did, whether it was unfair in a constitutional sense. These proceedings were brought pursuant to **28 U.S.C. § 2254**, and, in proceedings brought under that statute, the federal court “look[s] only to the trial and direct appeal.” Duff-Smith, 973 F.2d at 1182; accord Reneau v. Cockrell, No. 01-50371, 2001 WL 1747637, at *6-7 (5th Cir. Dec. 5, 2001); Morris v. Cain, 186 F.3d 581, 585 n.6 (5th Cir. 1999) (“[W]e must find constitutional error at the trial or direct review level in order to issue the writ.”); Hassine v. Zimmerman, 160 F.3d 941, 954 (3d Cir. 1998) (“[T]he federal role in reviewing an application for habeas corpus is limited to evaluating what occurred in the state or federal proceedings that actually led to the petitioner’s conviction; what occurred in the petitioner’s *collateral* proceeding does not enter into the habeas calculation.”). The unfairness of which petitioner complains, if it existed at all, first arose **during the post-conviction proceedings**. As noted, Claim 4 expressly alleges that the “False Assertion” was made by the state **“During Post Conviction Relief Proceedings.”**⁶¹ Claim 5 alleges that “Once the Question of the Purported Victim’s Intermittent Incompetent (Incompetent with ‘Lucid Intervals’) Was Placed at Issue **in Petitioner’s Post Conviction Relief Petition**; Petitioner Was Denied Adequate and Meaningful Appellate Review **of those Proceedings”**⁶² However, again: that is immaterial here. Even if petitioner’s rights were blatantly violated in the post-conviction proceedings and the related supervisory proceedings thereafter, that violation simply is not one redressable in proceedings brought pursuant to 28 U.S.C. § 2254.

⁶¹ Rec. Doc. 1, p. 37 (emphasis added).

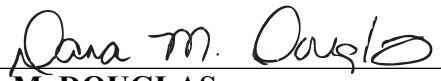
⁶² Id. at p. 40 (emphasis added).

RECOMMENDATION

It is therefore **RECOMMENDED** the federal application for habeas corpus relief filed by Darnay Thibodaux be **DISMISSED WITH PREJUDICE**.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. 28 U.S.C. § 636(b)(1); Douglass v. United Services Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).⁶³

New Orleans, Louisiana, this 28th day of July, 2021.



DANA M. DOUGLAS
UNITED STATES MAGISTRATE JUDGE

⁶³ Douglass referenced the previously applicable ten-day period for the filing of objections. Effective December 1, 2009, 28 U.S.C. § 636(b)(1) was amended to extend that period to fourteen days.

PETITION FOR HABEAS CORPUS (ADDENDUM)

A) Case Background:

In July of 2010, Petitioner and her husband, Calvin Thibodaux, met Mr. Sidney Dobronich (“Mr. Dobronich”), when they rented property next door to Mr. Dobronich’s property. **Exs. “HC 1” at p.1, “HC 2” at p.3, “HC 3”.** Mr. Dobronich was an elderly man who lived alone in a single family trailer on his property. ***Id.*** Mr. Dobronich was not married and did not have any children or grandchildren. ***Id.*** From 2011 through 2013, Claimant became friends with Mr. Dobronich and also began performing care-giving services for Mr. Dobronich. **Ex. “HC 3”.**

Mr. Dobronich had a sizable estate which he maintained in an investment account and several bank accounts. **Ex. “HC 1” at pp. 2, 5-8, 46, 48-49, 56-59, 79-84, 173-74.** His primary concern was to be permitted to live out his life at his home on Nell Drive in Sun, Louisiana and to not be placed in a nursing home. **Ex. “HC 2” at pp. 10-11.** Consistent with this concern, from around 2009 through 2011, Mr. Dobronich attempted to form a relationship with his step grandson, Mr. Craig Burdine whereby he transferred control of all of his assets to Mr. Burdine and moved to the state of Washington to live with Mr. Burdine in return for Mr. Burdine providing care for him and allowing him to not be placed in a nursing facility. **Ex. “HC 1” at pp. 169-72, “HC 5” at p.9.** During that time, Mr. Dobronich purchased real estate for Mr. Burdine in Washington State, as well as the property located at 20127 Nell Drive, along with purchasing a trailer to be placed on the property. **Ex. “HC 14”.** The arrangement with Mr. Burdine failed, and Mr. Dobronich returned to Nell Drive and removed Mr. Burdine’s control of his assets. **Ex. “HC 1” at pp. 169-72.** At the time Mr. Dobronich reacquired complete control

Appendix D

of his assets in April of 2011, he had spent well over \$300,000 of his estate during the attempted arrangement with Mr. Burdine. *See Ex. “HC 1” at pp. 169-72, “HC 5” at p.9, “HC 14”.*

Throughout the time that Petitioner was performing care-giving services to Mr. Dobronich, beginning in the Summer of 2012 through February of 2013, Mr. Dobronich attempted to form the same relationship with the Thibodauxs that he had previously attempted to form with Mr. Burdine. **Ex. “HC 3”.** Petitioner and Mr. Dobronich had several conversations whereby Mr. Dobronich expressed a strong desire not to be placed in a nursing home and to be allowed to live out his life at his home at 29127 Nell Drive, whereby Petitioner expressed to Mr. Dobronich her intention to continue to take care of Mr. Dobronich and not to allow him to be placed in a nursing home. **Ex. “HC 2” at pp. 10-11, “HC 3”.** As an incentive for them to stay in Sun, Louisiana and take care of him, Mr. Dobronich discussed with petitioner and her husband developing and managing rental property with Mr. Dobronich’s financial assistance, which would include the property at Nell Drive, as well as other in the near vicinity. **Ex. “HC 3”.** Mr. Dobronich would then leave all of his assets to the Thibodauxs in his will. ***Id.***

In February of 2013, after suffering a heart attack for which Petitioner drove him to the hospital; Mr. Dobronich decided to enter into his previously discussed arrangement with the Thibodauxs. **Exs. “HC 2” at p.4, “HC 6” at p.11.** Mr. Dobronich executed a statutory will and a power of attorney executed in favor of Petitioner, which provided Petitioner with access to Mr. Dobronich’s finances. **Exs. “HC 1” at pp. 33-37.** From February through mid-March of 2013, Petitioner, at the specific direction of Mr. Dobronich, and with the use of Mr. Dobronich’s power of attorney, engaged in several transactions in connection with their arrangement: assets were moved from Mr. Dobronich’s investment account to purchase undeveloped or dilapidated real estate property within the immediate vicinity of Mr. Dobronich’s and the Thibodaux’s home, as

well as to purchase several items necessary to develop and renovate such property. **Exs. “HC 1” at pp. 5-9, “HC 3”.** Mr. Dobronich also authorized the Thibodauxs to purchase vehicles and other personal items. *Id.* From February through March of 2013, Mr. Dobronich specifically authorized over 30 transactions, which included purchases, cash withdrawals and transfers, totaling over \$334,000. *Id.*

On March 12, 2013, Mr. Dobronich suffered a severely fractured hip from a fall at his home. **Ex. “HC 2” at p.7.** Requiring substantial rehabilitation, but not wanting to be placed in a nursing facility during his recovery, Mr. Dobronich and Petitioner decided to purchase a handicapped accessible camper, which would be placed adjoining the Thibodaux’s residence to aid Petitioner in assisting with his recovery (as his residence was approximately 50 yards away from the Thibodaux’s residence). **Exs. “HC 1” at p.9, “HC 2” at pp. 10-11, “HC 3”.**

On or around March 15, 2013, two of Mr. Dobronich’s nephews George and Forest Dobronich (“the Nephews”), were informed by Mr. Burdine (who had previously been taken off Mr. Dobronich’s accounts) that their uncle had begun spending money from his retirement account. **Ex. “HC 1” at pp. 1, 24.** Other than a general awareness of and specific interest in Mr. Dobronich’s finances, the Nephews had virtually no connection with the daily life of Mr. Dobronich: they did not visit him on a daily basis, did not assist with cooking, cleaning, or caring for him, nor did they assist in home or property maintenance; nor did they spend holidays with him, nor invite him to spend time with them or their children. *Id.*

On March 18, 2013, the Nephews engaged the St. Tammany Parish Sheriff’s Office in an investigation of the Thibodauxs for elder exploitation. **Ex. “HC 1” at p.1.** The investigation was conducted by Detective Stefan Montgomery. Det. Montgomery’s investigation proceeded from March 18, 2013 through April 4, 2013. **Ex. “HC 1” at pp. 1-26.** His investigation

involved a search of Mr. Dobronich's financial records, three interviews with Mr. Dobronich, as well as interviews with the Thibodauxs as well as representatives from various financial institutions. ***Id.*** Det. Montgomery also engaged the support of the United States Secret Service; and on March 27, 2013, conducted a raid of the Thibodaux residence and the residence of Mr. Dobronich (with 10 armed St. Tammany Parish Sheriff's deputies and U.S. Secret Service Agents) and seized several items from their respective residences. **Ex. "HC 1" at pp. 12-18, "HC 7" at pp. 9-16.**

Det. Montgomery attempted to create a false narrative that Mr. Dobronich had lived off of a \$1,200 per month stipend from his "over \$800,000.00" investment account, that he never made any other financial transactions, that the Thibodauxs had obtained a power of attorney while Mr. Dobronich was hospitalized and had used the power of attorney to spend over \$300,000.00 of Mr. Dobronich's money on purely personal items without Mr. Dobronich's knowledge or consent; that this spending was brought to the attention of his concerned Nephews by Mr. Dobronich's broker and that the Nephews were the heirs to Mr. Dobronich's estate. **Ex. "HC 1" at pp. 1-10.** The evidence collected by Det. Montgomery actually established the following:

- 1) The financial records uncovered by Det. Montgomery established that Mr. Dobronich maintained very complicated and convoluted financial arrangements, with several bank accounts each drawing income from different sources, as well as a large and unknown source of cash, and of which neither Det. Montgomery, nor even Mr. Dobronich's broker, Joe Romano, were fully aware. **Ex. "HC 1" at pp. 27, 46, 48-49, 56-59, 79-84, "HC 5" at pp. 11-12.** These financial arrangements involved the establishment of several bank accounts and the maintenance of a substantial, and unknown supply of cash by Mr.

Dobronich. *Id.* The evidence indicates that this complex financial arrangement was specifically intended by Mr. Dobronich in large part due to his fear of being exploited and taken away from his home by his Nephews. *Id.*

- 2) Several of the financial records obtained constituted checks that were signed by Mr. Dobronich himself. **Ex. “HC 1” at pp. 50, 51, 52, 85, 92, 232.** In one instance, a check for a specific transaction (purchase of a handicapped accessible camper which was to be placed adjoining Defendant’s trailer to facilitate Mr. Dobronich’s rehabilitation and recovery from his broken hip) was completely written by Mr. Dobronich himself and presented for payment after the initial attempted transaction was prevented due to the freezing of bank accounts by law enforcement pursuant to the investigation. **Ex. “HC 1” at pp. 9-11, 104-112, 232.** Additionally, the large scale transactions abruptly ceased on March 13, 2013 (one day after Mr. Dobronich was admitted to the hospital). **Ex. “HC 1” at pp. 5-8.** Likewise, testimony indicated that Mr. Dobronich’s broker specifically witnessed Mr. Dobronich authorize a substantially large transfer from the investment account. **Exs. “HC 1” at pp. 27, “HC 5” at p.14.**
- 3) Almost all of the purchases discovered were located on the Thibodauxs property, next door to Mr. Dobronich’s property and were consistent with the maintainence and development of rental property. **Ex. “HC 1” at pp. 5-10, 13-18.** Likewise the real estate purchase at 29066 Ellis Drive and another attempted real estate purchase at 28529 Hall Road were all within ¼ mile of the Thibodaux/Dobronich residences and were, likewise consistent with development and maintenance of rental property and Mr. Dobronich’s intent to give the Defendant and her husband a strong financial incentive to remain co-located with him at his home on Nell Drive. *Id.*

- 4) The interview with the investment broker, Mr. Joe Romano, and the March 27, 2013 raid uncovered evidence that Mr. Dobronich had previously attempted to form an arrangement, similar to the arrangement formed with the Thibodauxs, with his step grandson, Mr. Craig Burdine, executing a power of attorney in his favor, allowing him access to his finances, purchasing land for Mr. Burdine, in his name. **Ex. “HC 1” at pp. 1-2, 13, 27-28, 168-172.**
- 5) Significantly, Det. Montgomery asserted that Mr. Burdine “was notified out of concern by Joe Romano (owner)[Mr. Dobronich’s broker] during a phone conversation.” **Ex. “HC 1” at p.1.** In actuality, Mr. Romano indicated (in his statement and testimony under oath) that he was not concerned about the transactions (he carried them out); and that it was Mr. Romano who was contacted by Mr. Burdine, who indicated that he was concerned about recent transaction history. **Ex. “HC 1” at p.27, “HC 5” at p.15.** In fact, Mr. Romano had informed Mr. Burdine that he could not give him any information regarding the account, and did not do so until he got the Nephews in on a three way call.
Id.
- 6) The March 27, 2013 armed raid covered both the Thibodaux residence at 29145 Nell Drive and Mr. Dobronich’s residence at 29127 Nell Drive did not uncover any instrument or testament purporting to name the Nephews as beneficiaries of Mr. Dobronich. **Ex. “HC 1” at pp. 13-17.** The March 27, 2013 raid did uncover the original February 14, 2013 statutory will in favor of the Thibodauxs and the power of attorney. **Id.**
Although Det. Montgomery was able to determine the true nature of the arrangement between Mr. Dobronich and the Thibodauxs and was specifically informed by Mr. Dobronich of the nature of the arrangement and that all transactions were specifically authorized himself (see

infra); Detective Montgomery assisted the Nephews in concealing Mr. Dobronich's assent to these transactions and in gaining physical control over Mr. Dobronich through an illegally obtained power of attorney which the Nephews further used to obtain exclusive physical control over Mr. Dobronich. **See Ex. "HC 1" at pp. 2-10.**

Specifically, on March 28, 2013, the Nephews, with their lawyers, went to Sidney Dobronich's hospital room and coerced him into signing a general power of attorney, revoking petitioner's POA and providing the Nephew's with said general power of attorney. **Ex. "HC 2" at p.13, "HC 4" at pp. 9-11.** Using said power of attorney, upon his discharge from the hospital on April 2, 2013, Sidney Dobronich was taken by his nephew, Forest Dobronich, to his home in Diamondhead, Mississippi, where he was in the exclusive custody and control of his Nephews, under what was described as 24/7 supervision (until his death in March of 2014). **Ex. "HC 9" at pp. 38, 43-44.**

Using their illegally obtained power of attorney from Mr. Dobronich, the Nephews instituted two civil actions against petitioner and her husband in the 22nd Judicial District Court. The first, entitled *Forest Dobronich and George Dobronich v. Darnay Thibodaux and Calvin Thibodaux*, No. 2013-11468, 22nd J.D.C., Div. "F", (hereinafter, "the Injunction Action"), was voluntarily dismissed shortly after filing to avoid a writ of habeas corpus filed by petitioner's previous attorney. **Ex. "HC 4" at pp. 1-22.** The second action, entitled, *Forest Dobronich and George Dobronich v. Darnay Thibodaux and Calvin Thibodaux*, No. 2013-11784, 22nd J.D.C., Div. "D", (hereinafter, "the Civil Revocation Action") to revoke several transactions and for return of assets. **Ex. "HC 4" at pp. 23-32.** Using Det. Montgomery's connections with the United States Secret Service ("USSS") as part of the USSS Financial Crimes Task Force, the Nephews and Det. Montgomery also leveraged a civil asset forfeiture proceeding, *United States*

v. 100,641.06, et al., No. 13-5566, USDC EDLa, Sect. "B", to seize assets and property known by Det. Montgomery to have been rightfully obtained with Mr. Dobronich's consent. **Ex. "HC 7".** It is of no small significance that the Federal Civil Asset Forfeiture action not only deprived petitioner of any assets, but also involved a specific threat by the Office of the United States Attorney for the Eastern District of Louisiana that petitioner could be prosecuted for Federal crimes as well. **Ex. "HC 7" at p.26.** The Nephews also admitted to the seizure and acquisition by both STPSO and USSS of at least \$292,000 of the \$334,000 that was expended by Mr. Dobronich via Petitioner pursuant to their arrangement. **Ex. "HC 4" at p.25.**

These efforts by Det. Montgomery and the Nephews resulted in a criminal prosecution of Petitioner and her husband, *State v. Thibodaux*, No. 534840-1, 22nd J.D.C., Div. "C" for two counts of violations of La. R.S. 14:93.4, Exploitation of the Infirmed. **Ex. "HC 10".** Due to involvement of a high ranking member of the St. Tammany Parish District Attorney's Office with the circumstances of the case (the illegally obtained power of attorney listed Mr. Leo Hemelt, Jr. as a witness thereto), the criminal matter was prosecuted by the Louisiana Department of Justice (hereinafter, "LaAg"). **Ex. "HC 10" at pp. 1-2.**

During the pendency of the criminal investigation and the civil revocation action, and despite being under intense coercion and almost exclusive physical control of the Nephews, Sidney Dobronich had the opportunity to provide sworn testimony in two instances in which he attempted to state that all transactions performed by the Petitioner were specifically authorized and he did not want to prosecute the Petitioner or her husband. On March 27, 2013, Mr. Sidney Dobronich made the following statement, duly sworn by a notary in good standing in the State of Louisiana:

Before me, Rebecca D. Crawford, Notary Public, personally appeared:

Sidney Dobronich

who being first duly sworn, states that

- 1) He does not want to press charges against Calvin and/or Darnay Thibodaux for acting on his behalf with a Power of Attorney he executed in the presents [sic] of a Notary Public and two witnesses;
- 2) Anything purchased was with his consent and were authorized with his full knowledge;
- 3) Items such as, Kubota Tractor, a 4-wheeler, 2001 Chevy PK, a 2013 Nissan Altima and property(s) [sic] were purchased with my knowledge; the money came from my account;

Ex. “HC 1” at p.236.

Admittedly, the March 27, 2013 affidavit was hand written, being generated that same day that petitioner endured the arguably frightening and intimidating raid on her home by several armed U.S. Secret Service Agents and St. Tammany Parish sheriff’s deputies. **Ex. “HC 1” at pp. 13, 20, 236.**

On April 2, 2013; Det. Montgomery interviewed Ms. Rebecca Crawford, the individual who notarized the February 14, 2013 will and power of attorney and the March 27, 2013 affidavit. **Ex. “HC 1” at pp. 19-20.** Det. Montgomery implicitly determined that Ms. Crawford was a notary in good standing in the State of Louisiana (and was formerly a Justice of the Peace in Pearl River). **Ex. “HC 1” at p.19.** Det. Montgomery also admitted that Ms. Crawford determined that Mr. Dobronich appeared competent at all times in which he executed any documents in her presence. **Ex. “HC 1” at p.20.** Regarding the March 27, 2013 affidavit, Det. Montgomery reported that 1) Ms. Crawford had asked Mr. Dobronich if he would be willing to sign a statement, to which he affirmatively replied; 2) that Ms. Crawford had given the affidavit to Mr. Dobronich to read; 3) that Mr. Dobronich had read the affidavit; 4) that she read off the

list of items to Mr. Dobronich and asked him if he consented to the purchases, to which he answered “yes”; and 5) that he had signed the affidavit. *Id.*

On June 25, 2013, Mr Dobronich testified in open court in the Civil Revocation Action, as follows.

Q. Now, I want to show you an affidavit, sir, and this is an affidavit that I'm going to mark as Defense Exhibit Number 4. Take your time and look at it, and it's dated March 27, 2013, affidavit, okay. When you finish reading just acknowledge your head, okay, please. Are you finished reading it?

A. Uhm-hum (Affirmative response).

Q. Would you look at the bottom of it. Do you remember I pointed out Mrs. Crawford. Do you know Rebecca Crawford?

A. Yeah.

Q. Is that her name on the bottom of it?

A. It is.

Q. And is that your signature on the bottom of it?

A. Yeah.

Q. And without going into it, it says - - and we're going to go into it - - that you gave her the power of attorney to buy a Kubota tractor, a four-wheeler, a 2001 Chevy pickup, a Nissan, other property with your full knowledge and with your account and with your consent with your money from your account. Does it say that? And you do not wish to pursue these people for criminal charges. It says what it says; does it not, sir? Yes?

A. Yeah.

Q. And whose signature is on the bottom of that affidavit? Is that your signature on the bottom?

A. Yeah.

Ex. “HC 5” at pp. 74-75.

Again, on June 25, 2013; Mr. Dobronich specifically testified in the Civil Revocation Action, under direct questioning by the Court, as follows:

BY THE COURT:

Wait. I have a question, Mr. Burns.

BY MR. BURNS:

Yes, sir, surely.

BY THE COURT:

Why did you do this? Did somebody ask you to do this?

BY THE WITNESS:

I don't know.

BY THE COURT:

You don't know why you did this? You don't remember who asked you to do it?

BY THE WITNESS:

(Negative Response).

BY THE COURT:

Was it your idea? You came up with this by yourself?

BY THE WITNESS:

(Affirmative Response)

BY THE COURT:

You called up Ms. Crawford and said I want to do an affidavit?

BY THE WITNESS:

Yeah.

BY THE COURT:

You called her up? Ms. Crawford is right there. You called her up and said I want to do an affidavit and say that everything I did I don't want to prosecute them for and I want to give this to them? You called them up and said that? It was your idea?

BY THE WITNESS:

(Affirmative response).

Ex. "HC 5" at pp. 76-77.

In all fairness, the Court unfortunately, and erroneously, terminated Mr. Dobronich's testimony soon after that point, citing his competence; and ordered that his competency be evaluated. **Ex. "HC 5" at p.79.** It should be noted that Sidney Dobronich made the above independent exculpatory statements on June 25, 2013 after being in the exclusive custody and control of his Nephews, George and Forest Dobronich (hereinafter, "the Nephews"), while he stayed at the home of Forest Dobronich, in which Mr. Dobronich was under what was described as 24/7 supervision. *See Ex. "HC 9" at pp. 43-44.*

The third exculpatory statement was made by Mr. Dobronich to Det. Montgomery within the context of the three interviews of Mr. Dobronich by Det. Montgomery. In the first interview,

taken on March 18, 2013, Det. Montgomery obtained search authorization for all of Mr. Dobronich's bank accounts and financial records of his broker. **Ex. "HC 1" at pp. 3-4.** The first interview was recorded (though, interestingly, the recording does not contain any statement by Mr. Dobronich that he wanted his nephews to be his heirs, contradicting Det. Montgomery's report on that point). **Ex. "HC 1" at p.4.** Between the first interview on March 18, 2013 and the second interview on March 21, 2013, Det. Montgomery obtained several of Mr. Dobronich's financial records (though the records of Mr. Dobronich's broker, or any specific mention thereof, are conspicuously absent from his report). **Ex. "HC 1" at pp. 5-9.** Despite having what Det. Montgomery explicitly reports as over 30 transactions totaling \$334,000, Det. Montgomery only reportedly asks Mr. Dobronich vaguely about the sale of a car and a camper, to which he notes Mr. Dobronich says no. **Ex. "HC 1" at pp. 9-10.**

The third interview, conducted on April 2, 2013, and also recorded by Det. Montgomery, is significant in its own right in that Mr. Dobronich stated that he recalled signing something but he did not know what it was. **Ex. "HC 1" at p.19.** Interestingly, Mr. Dobronich signed 2 things between the second and third interviews: the March 27, 2013 affidavit, **Ex. "HC 1" at pp. 19-20, 236**, and the March 28, 2013 power of attorney revoking petitioner's prior POA in favor of the Nephews, **Exs. "HC 2" at p.13, "HC 4" at pp. 9-11.** As mentioned above, immediately after the third interview on April 2, 2013, Det. Montgomery interviewed the notary for the March 27, 2013 affidavit, Mrs. Rebecca Crawford, who confirmed Mr. Dobronich's lucidity in executing same. **Ex. "HC 1" at pp. 19-20.** As per his report, Det. Montgomery did not follow up on the Nephew's March 28, 2013 POA. Instead (again enlisting the assistance of several U.S. Secret Service Agents) Det. Montgomery turned to heavy handed intimidation tactics (and fraudulent misrepresentations regarding potential criminal exposure) directed at one of the sellers

of land to petitioner, whereby generating a potential process crime of obstruction of justice/witness tampering, from which Det. Montgomery ultimately obtained the arrest of petitioner and her husband. **Ex. “HC 1” at pp. 21-26.**

Critically, of the three interviews, only the first and third were recorded: the second interview of March 21, 2013 (the interview presumably containing the confrontation of Mr. Dobronich with all of the 30 plus transactions of over \$334,000 allegedly “perpetrated” by petitioner, discovered by Det. Montgomery as per his search authorizations, and Mr. Dobronich’s presumed shocked and angry response at the discovery of same) was not recorded. **Ex. “HC 1” at pp. 4, 9-10, 19, “HC 9” at p.63 ; see Ex. “HC 6” at pp. 57-60.** In fact, given the circumstances, Det. Montgomery was specifically told by Mr. Dobronich that the all of the transactions were authorized (and he probably told Det. Montgomery to leave petitioner and her husband alone, as well as other things about his nephews that Det. Montgomery did not want to hear).

In line with these instances of exculpatory testimony of Mr. Dobronich, prior to August of 2013, petitioner, through her counsel at the time, made repeated attempts within the Civil Revocation Action proceedings to obtain Mr. Dobronich’s testimony in a deposition, to include filing a writ of habeas corpus in the Injunction Action, making a request for deposition, then seeking the compulsory setting of a deposition in the Civil Revocation Action. **Ex. “HC 4” at pp. 12-13, 50, 59, 60.** These efforts were consistently thwarted by the Nephews. **Ex. “HC 4” at pp. 15-22, 51-58, 61-67.** These efforts also included the filing of a rule to compel Mr. Dobronich’s deposition testimony, filed on June 13, 2013, in which counsel for petitioner asserted, as follows:

Incidental to the above captioned suit #2 the plaintiffs [Nephews] have filed multiple pleadings all of which are intended to keep Mr. Sidney Dobronich from

testifying truthfully about the facts that would exonerate the defendants from any claim of wrongdoing.

Ex. “HC 4” at pp. 69-70.

On July 9, 2013, (almost immediately after the Court’s termination of Mr. Dobronich’s June 25, 2013 testimony and order for his mental competency to be evaluated) the Nephews, in their capacity as agents-in-fact of Sidney Dobronich (and with a fiduciary duty to act in his interests), submitted a medical report of Dr. Paul Verrette to the Court in the Civil Revocation Action, which declared, as followed:

Mr. Dobronich was evaluated on July 2, 2013. He has multiple medical problems which include, hypertension, hypertensive cardiovascular disease, coronary artery disease, s/p coronary artery stent, osteoarthritis with total hip replacement of the left hip, chronic renal insufficiency and dementia. Dementia is likely due to his history of hypertension and cerebrovascular disease. His dementia is such that he is not able to direct his affairs concerning person or property in matters consistent with his own interest.

Ex. “HC 4” at pp. 74-75.

This report notwithstanding, counsel for Defendant continued to persist with obtaining a deposition of Sidney Dobronich. **Ex. “HC 4” at pp. 77-78.** On July 17, 2013, counsel in the Civil Revocation Action held a status conference with the Court, which counsel for Nephews summarized as follows:

This is to confirm my conversation with you during the Status Conference with Judge Garcia wherein I informed you and the judge that we oppose the setting of Sidney Dobronich’s deposition based on his incompetency and dementia. As a result of that information, Judge Garcia has set this matter on the docket for August 27, 2013.

Ex. “HC 4” at p.80.

The “setting of Sidney Dobronich’s deposition”, as a contested matter, was set for hearing on August 27, 2013. **Ex. “HC 4” at p.81.** Not insignificantly, also pending was a motion for

contempt filed by the Nephews against petitioner and her husband (which was not filed in the record nor was otherwise apparent until the circulation of a proposed judgment by the Nephews' attorney on August 1, 2013) for merely exchanging pleasantries with Mr. Dobronich in the courtroom hallway coinciding with the June 25, 2013 hearing. **Exs. "HC 4" at pp. 85, 88-89, "HC 5" at p.80.**

On August 13, 2013, the Nephews send another report of Dr. Verrette, dated July 25, 2013, not only stating that Sidney Dobronich was not competent to handle his affairs, but also "that [Sidney Dobronich] is not mentally stable enough to be able to provide any competent testimony in a court of law, including a deposition." **Ex. "HC 4" at pp. 82-83.**

Prior to the August 27, 2013 hearing, counsel for petitioner, in an apparent shift in strategy (and in an apparent effort to stave off further negative consequences from the Nephews pending motion for contempt), discontinued his effort to obtain Mr. Dobronich's deposition testimony and agreed not to contest the Nephew's contentions of Mr. Dobronich's incompetence. **Ex. "HC 4" at p.90.**

On August 27, 2013, the Court in the Civil Revocation Action issued a judgment declaring Sidney Dobronich incompetent to testify at trial or deposition. The motion for contempt of the Nephews was also dropped. *Id.*

Petitioner acknowledges filing a motion, through her counsel at the time, with the District Court in the Criminal Proceedings seeking to exclude the testimony of Sidney Dobronich, and entering into a stipulation with the State of Louisiana to that effect on December 12, 2013. **Exs. "HC 10" at pp. 4-5, "HC 11" at pp. 7-9.** Petitioner submits that said motion and stipulation were predicated upon the August 27, 2013 judgment declaring Sidney Dobronich incompetent to testify. **Ex. "HC 4" at p.90.** Petitioner also was unaware that Sidney Dobronich purportedly

executed a handwritten will on July 18, 2013 (naming the Nephews as beneficiaries), nor could she have been aware of the Nephew's attempt to probate same on August 6, 2014. (see *infra*).

During the hearing of December 12, 2013 concerning the petitioner's Motion to Exclude Testimony, the following statements were made in open court:

THE COURT:

Now we have the motion to exclude testimony from Sidney Dobronich. I think we've had a discussion about that in chambers. And there was an agreement that there would be no testimony from Sidney Dobronich, as Mr. Dobronich **has been declared incompetent**.

Is that correct?

MR. BLAKE:

That is correct, your Honor.

MR. BURNS:

That is correct, if that's a stipulation that he is not going to testify in the court proceedings.

THE COURT:

I believe that's what Mr. Blake has indicated.

* * *

THE COURT:

No. That motion is denied.

Now, Mr. Dobronich cannot assist the State in the presentation of their case **because he is incompetent**, so he will not be sitting at the counsel table. But he is allowed to come into the courtroom.

Ex. "HC 11" at pp. 7-8, 10.

Petitioner was precluded from obtaining any potentially exculpatory testimony from Sidney Dobronich through his death on March 24, 2014. **Ex. "HC 8" at p.1.**

Notwithstanding the death of Mr. Dobronich in March of 2014, in August of 2014; the Louisiana Department of Justice, which was handling the prosecution in the criminal case, procured expert testimony from Dr. Michelle Garriga regarding a forensic psychiatric analysis of Mr. Sidney Dobronich. **Ex. "HC 10" at pp. 10-29.** This expert testimony relied heavily upon

the Verrette Reports and the statements of the Nephews and concluded that Mr. Dobronich suffered from Major Neurocognitive Disorder (Dementia) and lacked the capacity to consent to any of the transactions conducted within the last 2 years of his life, including between February and March of 2013 for which petitioner was being prosecuted.

Mr. Dobronich demonstrated confusion and memory loss, and problems with concentration, executive function, and social cognition during his court testimony on June 25, 2013. Dr. Verrette found disorientation and memory loss in his evaluation on July 2, 2013 leading to his diagnosis of dementia. Based upon his evaluation, Dr. Verrette further opined that Mr. Dobronich was “not able to direct his affairs concerning person or property in matters consistent with his own interest.”

It is my opinion that he lacked the same capacity in the months prior, i.e. during the time in question, February and March of 2014 [sic]. Dementia (except that caused by a sentinel event such as a massive stroke) has a slow, step-wise progression. It does not spontaneously appear to the degree evident in Mr. Dobronich in June and July without it having also been present in the previous months.

Ex. “HC 10” at pp. 28-29.

Clearly, without this expert testimony, in light of the absence of Mr. Dobronich and the two instances of sworn testimony indicating that the transactions were authorized; the State of Louisiana would not have had legal sufficiency to bring the criminal prosecution against Petitioner or her husband. More importantly, without Mr. Dobronich’s availability; Petitioner was effectively required to rebut the State’s evidence of the over 30 transactions of \$334,000, conducted in less than one month’s time with nothing but her own admittedly self serving testimony.

At around the same time that the State was procuring expert testimony regarding Mr. Dobronich’s competence to authorize the transactions at issue, on August 6, 2014, the Nephews, Forest and George Dobronich, along with several other purported nieces and nephews, opened a

succession: *Succession of Dobronich*, No. 2014-30680, 22nd J.D.C., Div "I" ("the Succession"), in which the Nephews submitted an affidavit, dated July 16, 2014, probating a purported olographic testament of Mr. Dobronich. **Ex. "HC 8" at pp. 1-6.** The purported olographic testament was written on what appeared to be a sheet of looseleaf notebook paper, was illegible in several areas, and the date of the purported instrument was inconsistently written. **Ex. "HC 8" at pp. 5-6.** The affidavit for probate provided in pertinent part:

BEFORE ME, the undersigned authority personally came and appeared:

FOREST DOBRONICH and GEORGE DOBRONICH

Both persons of the full age of majority, who, after first being duly sworn, did depose and state:

That Affiants are the surviving nephews of the late SIDNEY DOBRONICH.

That affiants are familiar with the handwriting of SIDNEY DOBRONICH and that Affiants have reviewed the Last Will and Testament dated July 18, 2013, which appears on one sheet of paper beginning with the words, "I, SIDNEY DOBRONICH, being of sound mine & body" and ending in the words "would like to leave all my possessions at the time of mine of my death to all my nieces and nephews to be divided equally."

Ex. "HC 8" at p.3.

This purported olographic testament, purportedly dated on July 18, 2013, is bracketed by the Nephews July 9, 2013 and August 13, 2013 submissions to the Court in the Civil Revocation Action regarding Mr. Dobronich's ability to "direct has affairs concerning person or property in matters consistent with his own interest." *See Ex. "HC 4" at pp. 74-75, 82-83.* The July 18, 2013 date is one day after the June 17, 2013 correspondence of the Nephew's attorney in the civil action pertaining that day's status conference specifically noting the Nephews opposition to the setting of a deposition of Mr. Dobronich "based on his incompetency and dementia."

Compare, Ex. "HC 4" at p.80, with, Ex. "HC 8" at pp. 3, 5.

Additionally, the sworn descriptive list filed by the Nephews in connection with the successions proceedings, when compared to the evidence collected in Det. Montgomery's investigation of Mr. Dobronich's finances, reveal that the Nephews appropriated over \$200,000 of Mr. Dobronich's estate during the time they had power of attorney over Mr. Dobronich's finances. **Compare, Ex. "HC 1" at pp. 5-10, with, "HC 8" at p.7; see also, Ex. "HC 10" at pp. 31-37.** Further, the Nephews attempted to conceal this by improperly attributing those assets to the value of the claims in the Civil Revocation Action. **Ex. "HC 8" at p.7.**

On November 7, 2014, Petitioner filed a Petition to Annul the July 18, 2014 testament. In that Petition to Annul, Petitioner herein explicitly raised the issue of Mr. Dobronich's mental capacity to execute the July 18, 2013 hand written will based on the submission of the Verrette Reports to the Court in the Civil Revocation Action. **Ex. "HC 8" at pp. 11-13.** On November 10, 2014, AAG Blake tendered to Petitioner counsel, Mr. Roy Burns, what it identified as *Brady* material regarding the July 18, 2013 purported testament of Mr. Dobronich, indicating at least its awareness of the Nephews attempt to probated a testament in direct contravention of its key piece of evidence against Petitioner. **Ex. "HC 10" at p.30.**

Trial of the criminal matter was set for December 15, 2014. On December 3, 2014, Petitioner's Counsel in this Petition filed a Motion to Enroll in the criminal matter with Mr. Burns. **Ex. "HC 10" at pp. 39-40.** On December 9, 2014, petitioner filed a Motion to Exclude the Testimony of Dr. Garriga, based on a violation of Louisiana Rules of Evidence Rule 702 (*Daubert*), in which the Petitioner specifically contested the reliability of Dr. Garriga's testimony as to the mental competency of Mr. Dobronich. **Ex. "HC 10" at pp. 42-53.** On December 16, 2014, a hearing on the Defense Motion to Exclude Expert Testimony was held, wherein Dr.

Garriga specifically explained that Major Neurocognitive Disorder was of such a nature that Mr. Dobronich was completely mentally incompetent and did not and could not have any instances of mental capacity to conduct any transactions during the existence of the disorder. **Ex. “HC 10” at pp. 54-55.** In her testimony of December 16, 2014, Dr. Garriga explained the basis for her determination that Sidney Dobronich’s dementia had progressed to such an extent at the time Dr. Verrette examined him on July 2, 2013, that the dementia would have had to have been present and February and March of 2013. **Ex. “HC 10 at pp. 28-29.** Furthermore, Dr. Garriga explicitly testified further the Sidney Dobronich could not have had any lucid moments in the timeframe of February and March of 2013, and hence could not have had any such lucid moments in July of 2013 as well. **Ex. “HC 12” at p.171.** The LaAG did not in any way attempt to qualify or correct this testimony; and the Court subsequently denied the Petitioner’s Motion at that time.

As a result of the potential testimony of Dr. Garriga, and being functionally deprived of Mr. Dobronich’s exculpatory testimony (and succumbing to a year and a half of considerable pressure from multiple lawsuits in state and Federal courts, as well as heavy handed intimidation from state and Federal law enforcement); on December 17, 2014, petitioner and her husband changed their pleas to guilty as charged. **Ex. “HC 10” at pp. 58-60.** The prosecution, while agreeing to a sentence of probation for Petitioner’s husband Calvin Thibodaux, insisted on a pre-sentence investigation as to Petitioner. ***Id.*** The Court set the sentencing hearing for January 29, 2015. ***Id.***

On January 9, 2015, petitioner filed a Motion to withdraw her guilty plea and to dismiss the indictment on the grounds that the Nephews, in coordination with the State of Louisiana, deprived her of Mr. Dobronich’s favorable testimony in violation of the Compulsory Process

Clause of the 6th Amendment and the Due Process Clause of the 5th and 14th Amendments to the United States Constitution. **Ex. “HC 10” at pp. 62-77.** In opposition Petitioner’s motion to withdraw her plea, the LaAG, in brief to the District Court, again relied on the opinion of Dr. Garriga in asserting that no Compulsory Process Clause violation occurred because the Compulsory Process Clause only applied to competent witnesses. **Ex. “HC 10” at pp. 78-85.** In making this argument, the State made this unequivocal statement:

Mr. Sidney Dobronich had no knowledge of this transaction, had no knowledge that a check drawn on his account was used, **nor was he capable of consenting to this transaction because he was suffering from dementia** all of which is why he was not a party to the transaction.

Ex. “HC 10” at p.83.

On January 29, 2015, the State of Louisiana, in arguing against the petitioner’s motion to Withdraw Plea/Dismiss, made the following statement in open court:

... There’s no state involving here, whatsoever, with Mr. Dobronich’s inability to testify. Judge, he died. The doctors **declared him incompetent to testify**. He was **declared incompetent to testify**, even in the civil suit. Judge, the State had no point in him being **declared incompetent**. Judge Garcia saw him, questioned him, and determined, while he was testifying on June 25, 2013, that he **was incompetent to testify**, Judge. Plain and simple. The Judge subsequently issued an order **declaring that he was incompetent to testify**.

Last year, December 12, 2013, there was a hearing based on a motion filed by Mr. Roy Burns that sought to exclude Mr. Dobronich’s testimony because he was **declared incompetent**, Judge. So that was resolved that day. Y’all [petitioner] agreed that he was **incompetent to testify**.

Ex. “HC 11” at pp. 49-50.

The Court subsequently denied the petitioner’s Motion to Withdraw Plea/Dismiss, making the following statement:

The Court is familiar with this case having began [sic] a trial in this matter, **listened to the testimony of Dr. Garriga**. The Court does believe that any

testimony that would have been favorable to the Thibodauxes is **all speculative at this point**; and, further, **he would not have been allowed to testify**.

Ex. “HC 11” at p.51.

Sentencing followed, wherein the Court sentenced petitioner to 10 years in prison with 5 years suspended, and 5 years probation. **Ex. “HC 10” at p.86.**

Petitioner filed her Application for Writ of Supervisory Review to the Louisiana First Circuit Court of Appeals on February 17, 2015, which application was denied on February 19, 2015. **Ex. “HC 10” at pp. 88-160.** Petitioner filed her Application for Writ of Supervisory Review to the Louisiana Supreme Court on March 9, 2015. **Ex. “HC 10 at pp. 161-189.** The State filed an opposition with the Louisiana Supreme Court in which it attached a copy of its opposition to the petitioner’s motion in the District Court, containing the statements that Mr. Dobronich was not competent and was not capable of consenting to the transactions at issue. **Ex. “HC 10” at pp. 191, 201-02.** The Louisiana Supreme Court denied petitioner’s writ application on May 15, 2015. **Ex. “HC 10” at p.204.**

Arguably, despite the legal arguments raised, given the discretion afforded to the District Court, the denial of writs could have been based on a finding that the District Court was within its discretion to find Mr. Dobronich incompetent as a potential witness throughout the pendency of the criminal prosecution up until his death, as there was no sworn testimony in the record to the contrary. Similarly, without sworn testimony; the State of Louisiana through the LaAg Office, argued in opposition to the Petitioner’s Motions and Applications that the submission of the Garriga Report was did not constitute a knowing submission of false evidence and that the District Court’s reliance on said report was within its discretion.

Subsequent to the District Court’s rulings and sentence on January 29, 2015, on February 24, 2015, the Court in the Successions proceeding held a hearing on the petition to annul

testament filed by Petitioner herein. **Exs. “HC 8” at pp. 15-16, “HC 9”.** Within that hearing, the proponents of the July 18, 2013 testament offered the sworn testimony of the Nephews, as well as Detective Stefan Montgomery of the St. Tammany Parish Sheriff’s Office, that, at all times from February 2013 through his death in March of 2014, Mr. Dobronich was fully mentally competent. **Exs. “HC 8” at pp. 15-16, “HC 9” at pp. 38-39, 62-64, 69-70, 78, 85.** Additionally, upon attempting to introduce the Verrette Report, the critical evidence supporting the State’s expert testimony against Petitioner, the Nephew’s through their counsel, objected to the introduction of the report on the grounds that the Verrette Reports constituted unreliable hearsay. **Ex. “HC 9” at pp. 52-53, 86-88.** Additionally, Forest Dobronich testified that he was certainly aware of the report and its conclusions, and stated that he “disagreed” with the conclusions. **Ex. “HC 9” at pp. 46-52, 68.** Pursuant to those occurrences, the Court in the successions proceedings accepted the testimony offered by the Nephews, sustained the hearsay objection as to the Verrette report, and issued a Judgment upholding Mr. Dobronich’s execution of the July 18, 2013 hand written will. **Ex. “HC 8” at pp. 15-16, 19-21.**

On May 20, 2015, trial in the Civil Revocation Action was held. **Ex. “HC 4” at p.93.** At the conclusion of that trial, the Court held, in part, that all property subject to this *in Rem* proceeding was the property of the Nephews, as well as several other nieces and nephews of Mr. Dobronich. **Ex. “HC 4” at pp. 93-96.** Significantly, the Court also held that the total value of the property at issue was \$304,606.46 and there was no outstanding assets of the late Mr. Dobronich that had not been recovered and either returned or held by the State of Louisiana and the Federal Government. That ruling was set forth in a written Judgment dated June 15, 2015. ***Id.***

Notwithstanding the June 15, 2015 judgment in the Civil Revocation Action, on September 21, 2015; the State of Louisiana filed a motion in the Criminal Matter seeking additional restitution from claimants herein. **Ex. “HC 10” at pp. 205-07.** The LaAG was apprised of the existence of the June 15, 2015 Judgment on September 28, 2015. **Ex. “HC 10” at p.208.** The initial setting for the hearing on the State’s motion for restitution was set for October 28, 2018. The petitioner opposed the motion, citing not only the June 15, 2015 judgment in the Civil Revocation Action, but also raised the issue of the Nephew’s misappropriation of approximately \$200,000 of Mr. Dobronich’s estate and Petitioner’s intent to legitimately use that evidence to defend against the State’s restitution motion. **Ex. “HC 10” at pp. 213-18.** The State successfully moved to continue the October 28, 2015 hearing date, over the petitioner’s objection, which hearing date was reset for December 9, 2015. **Ex. “HC 10” at pp. 209-10.** On December 9, 2015, the State again successfully moved to continue the hearing date, again over the petitioner’s objection, which hearing date was again reset for January 20, 2016. **Ex. “HC 10” at p.219.** On January 20, 2016, the State effectively withdrew its motion for restitution, and the motion was dismissed at that time. **Ex. “HC 10” at pp. 221-23.**

On July 28, 2016, petitioner filed her claims for post conviction relief. **Ex. “HC 12” at pp. 1-21.** In those claims, petitioner largely re-asserted the facts previously raised in her prior Motion to Withdraw her Guilty Plea and to Dismiss the Indictment against her as well as her unsuccessful writ applications. ***Id.*** The Post Conviction Relief petition was predicated largely on the new evidence, not originally before the District Court in her previous Motion to Withdraw Plea/Dismiss, containing sworn testimony of George and Forest Dobronich, Det. Montgomery and Courtney Dobronich unequivocally asserting the mental competence of Mr. Sidney Dobronich, as well as the District Court’s ruling in the case of Successions Proceedings, that Mr.

Dobronich was mentally competent on July 18, 2013 (4 months after the transactions that are the subject of the criminal proceedings were conducted). *Id.* In particular, petitioner's claims consisted of the following: 1) a violation of the Due Process Clause for the knowing submission of the expert testimony of Dr. Garriga, which the State knew was false; 2) a reassertion of the compulsory process clause/due process clause violation based on the State's involvement in preventing Mr. Dobronich's favorable testimony. *Id.*

On September 7, 2016, petitioner supplemented her initial petition with an additional claim, claiming a violation of the due process clause resulting from Det. Montgomery's failure to record the second interview of March 21, 2013, in which petitioner asserts that Sidney Dobronich told Det. Montgomery that all of the transactions of February and March of 2013 were authorized. **Ex. "HC 12" at pp. 25-45.**

On October 27, 2016, the State of Louisiana submitted its response to petitioner's claims. **Ex. "HC 12" at pp. 46-63.** The State obtained and introduced various filings and the verbatim transcripts for the civil proceedings, including the February 24, 2015 hearing in the matter of Successions Proceedings as well as the May 20 hearing in the matter of *Dobronich, et al. v. Thibodaux, et al.*, No. 2013-11784, 22nd J.D.C., Div. "D", (hereinafter, "the Civil Revocation Action"). The state also introduced the entire investigation report of Det. Montgomery, with exhibits, as well as the various filings in the criminal proceedings. **Ex. "HC 12" at pp. 64-65.** Finally, the State of Louisiana introduced the transcripts for the petitioner's guilty plea in the criminal proceedings on December 17, 2014; the transcript of the motions and sentencing hearing on January 29, 2015. *Id.*

Conspicuously, the State of Louisiana did not introduce any transcript of the December 16, 2014 testimony of Dr. Garriga at the hearing on petitioner's motion to exclude her testimony.

Id.

In its response, the State of Louisiana generally asserted that the evidence was insufficient to establish any of the claims asserted by petitioner in her Petition for Post Conviction Relief. **Ex. "HC 12" at pp. 51-63.** However, in so asserting, the State of Louisiana specifically acknowledged the testimony of Forest Dobronich, quoting that "from the time he moved in [April 2, 2013] until the time he died [March 24, 2014]", that Sidney Dobronich was "in good shape mentally" and that "really he was competent". **Ex. "HC 12" at pp. 54-55.** In referring to the Verrette Report which was the primary basis for Dr. Garriga's opinion, the State of Louisiana again quoted Forest Dobronich's February 24, 2015 testimony that he disagreed with the diagnosis of "incompetency and dementia." **Ex. "HC 12" at p.55.** The State of Louisiana also referenced the testimony of Det. Montgomery's February 24, 2015 testimony that Sidney Dobronich appeared "lucid" each of the three times he interviewed him at the hospital, *id.*, as well as the March 24, 2015 testimony of George Dobronich in which he "testified that he visited Sidney Dobronich seven or eight times after his March 2013 hospitalization, and that each time he visited, Sidney Dobronich appeared to be lucid", **Ex. "HC 12" at p.56.**

The State of Louisiana's explanation for these discrepancies was not to contest the above testimony, nor did the State contest the specific instances in which these witnesses testified that he was mentally competent, leading to a finding by the Court that Sidney Dobronich was mentally competent to execute an olographic testament on July 18, 2013. The State of Louisiana explained its position as follows:

Initially, the State never contended that Sidney Dobronich was completely mentally incompetent on a 24/7 basis. Instead, the State contended (and still

believes) that Mr. Dobronich was at times alert and oriented but could become disoriented quickly when in a foreign environment and/or exposed to psychological pressure.

Ex. “HC 12” at p.54.

In a supplemental response, dated October 31, 2016, the State of Louisiana elaborated:

The prosecution believes that one may both (i) suffer from dementia and (ii) from time to time experience moments of lucidity. For that reason, the opinion of Dr. Garriga is not inconsistent with the observations of Detective Montgomery. In any event, to the extent that the opinion of Dr. Garriga conflicts with the observations of Detective Montgomery, the prosecution was prepared to present such conflicts to the jury for the jury’s consideration.

Ex. “HC 12” at p. 67.

On November 15, 2016, in light of the positions taken by the State of Louisiana regarding not only Dr. Garriga’s testimony; but its own position regarding the mental competence of Sidney Dobronich; petitioner filed a motion to compel production of the transcript of the December 16, 2014 testimony of Dr. Garriga wherein she explicitly testified that, in her opinion, Sidney Dobronich could not have any lucid moments or moments of mental competency. **Ex. “HC 12” at p.70.** This motion was also accompanied by attempts by undersigned counsel, by telephone and e-mail, to procure said transcript. **Ex. “HC 12” at pp. 71-72** (attached to First Circuit Writ Application).

In addition to the evidence submitted by the petitioner and the State of Louisiana, petitioner, on January 23, 2017; petitioner requested subpoenas be issued for several witnesses for live testimony to be given at a hearing tentatively set for March 8, 2017. **Ex. “HC 12” at pp. 84-85.** The requested witnesses included Joseph Romano, Mr. Dobronich’s investment broker, Det. Montgomery, and, most importantly, Dr. Garriga. ***Id.*** In response, on February 14, 2017,

the State of Louisiana filed a request for summary adjudication of the petitioner's claims, arguing for a dismissal of petitioner's claims without further proceedings. **Ex. "HC 12" at p.87.**

On February 23, 2013, the District Court granted the request of the State of Louisiana and summarily denied petitioner's claims for post conviction relief. **Ex. "HC 12" at pp. 88-92.** Specifically, as to Claim I (knowing submission of false testimony of Dr. Garriga), the District Court accepted the State's assertion that its position was that Mr. Sidney Dobronich was both mentally incompetent but had "lucid intervals"; and that petitioner had failed to produce sufficient evidence to disprove that position. **Ex. "HC 12" at pp. 90-91.** As to Claim II (Compulsory Process Clause Violation), the District Court noted that petitioner's initial Motion to Exclude Mr. Dobronich's testimony, filed in November of 2013 and joined by the State of Louisiana in December of 2013, conspicuously omitting that not only the petitioner, but also the District Court, relied upon the State's contention that Mr. Dobronich was incompetent to testify. **Ex. "HC 12" at p.92.** As to Claim III (Spoliation of additional favorable testimony by Det. Montgomery), the District Court again simply found that petitioner failed to produce sufficient proof to support the claim. *Id.* Finally, as to Claim IV, the District Court found that the assertion as to the constitutionality of La. R.S. 14:93.4 as applied had been waived by petitioner's guilty plea of December 17, 2014. **Ex. "HC 12" at pp. 92-93.**

As to the Motion to Compel, the District Court did not explicitly make a ruling on same; though given the rulings of the District Court on all other claims; the Motion, presumably, was denied.

On May 26, 2017, petitioner filed an application for supervisory writs to the Louisiana First Circuit Court of Appeals, raising the following issues: (1) that the District Court erred in finding insufficient evidence to support violations of the Due Process Clause and the

Compulsory Process Clause underpinning all four of petitioner's claims for post conviction relief; and (2) that the District Court erred in failing to compel production of the transcript of the testimony of Dr. Garriga. **Ex. "HC 12" at pp. 96-131.** After initially refusing consideration on technical grounds, on July 24, 2017, the Louisiana First Circuit Court of Appeals denied writs, without comment. **Ex. "HC 12" at pp.132-33.**

On August 22, 2017, petitioner filed an application for supervisory writs to the Louisiana Supreme Court raising the same issues raised previously with the Louisiana First Circuit Court of Appeals. **Ex. "HC 12" at pp. 134-165.** In particular, as in the writ application to the First Circuit Court of Appeals, petitioner specifically averred that Dr. Garriga, in her December 16, 2014 testimony, specifically stated that Mr. Dobronich was unable to have any lucid moments as a result of his major neurocognitive dementia, specifically contradicting the State's revised position that it had consistently argued intermittent incompetence with lucid moments. ***Id.*** This assertion by petitioner was the impetus for her argument that she was entitled to production of the transcript of Dr. Garriga's December 16, 2014 testimony. ***Id.***

During the pendency of the petitioner's Louisiana Supreme Court writ application, on April 6, 2018, the State provided petitioner with a copy of what it purported is a transcript of the testimony of Dr. Michelle Garriga, given on December 16, 2014. **Ex. "HC 13".** The transcript provided was materially inaccurate in that it falsely reflected that Dr. Garriga testified in the affirmative that an "individual could have [major] neurocognitive dementia and still have capacity". **Exs. "HC 12" at pp. 174-75, "HC 13" at p.32.** Additionally, the transcript omitted at least one follow up question where Dr. Garriga actually confirmed that an individual with "[major] neurocognitive dementia" could not have any testimonial or transactional mental capacity. ***Id.*** The transcript certificate was also defective in that it was prepared by a court

reporter who did not conduct the actual recording and was not certified in the method used to record the testimony on December 16, 2014. **Exs. “HC 12” at p.174, “HC 13” at p.50.** Additionally, the transcript was prepared by having the court reporter, who was not present at the hearing, simply listen to the backup audio of the proceedings. ***Id.***

On April 12, 2018, petitioner filed a supplemental brief in support of her writ application to the Louisiana Supreme Court. **Ex. “HC 12” at pp. 170-181.** In that supplemental brief, petitioner noted the tender of the purported December 16, 2014 transcript of Dr. Garriga’s testimony, noted the material discrepancies of same, objected to the form and content of the transcript, and reiterated her argument that she was entitled to the raw audio recording of the testimony. ***Id.***

Despite the petitioner’s supplemental brief regarding the inaccurate transcript of Dr. Garriga’s testimony, the Louisiana Supreme Court denied petitioner’s writ application without any mention of this issue. **Ex. “HC 12” at pp.182-83.** In its denial of writs, the Louisiana Supreme Court simply stated that all non jurisdictional defects were waived by petitioner’s guilty plea. ***Id.*** The Louisiana Supreme Court also explicitly stated that petitioner “fully litigated her application for post conviction relief in state court.” ***Id.***

This Petition for Federal Habeas Corpus relief under 28 U.S.C. §2244, *et seq.* follows.

B) Jurisdictional Predicate for Relief:

On January 29, 2015, petitioner was sentenced to ten (10) years incarceration at hard labor, with five years suspended, plus five years probation upon her release. **Ex. “HC 10” at pp.86-87.** At this time, petitioner is currently on probation for the sentence imposed on January 29, 2015. ***Id.***

C) Ground No. 1: Petitioner Is Actually Innocent of all Charges in this Matter to which She Has Pled Guilty:

At the outset, it is important to note that petitioner has never been found guilty of the crimes for which she has been convicted (as she has sought to withdraw from what she avers is an unconstitutionally coerced plea of guilty on December 17, 2014). In any event, the evidence establishes her innocence. The evidence in this matter is clear and convincing that all purchases and money transfers executed by petitioner on behalf of Mr. Dobronich were made with Mr. Dobronich's specific knowledge and consent. Specifically, the purchases and transfers were made either for, or to facilitate, the acquisition, development, and management of rental property within the close proximity of Mr. Dobronich's home. Petitioner and her husband would ultimately inherit Mr. Dobronich's property. In return, petitioner and her husband would provide in home nursing and end of life care for Mr. Dobronich. As such, the money transfers and purchases were made pursuant to Mr. Dobronich's specific plan and design to facilitate his in home care by having the rental property development and management occur within such close proximity to his home.

The ultimate pleas of guilty to the charges (evidence notwithstanding) were coerced by the almost 2 years of consistent and pervasive weaponization not only of the state criminal justice process, but the state civil court procedure, Federal civil asset forfeiture procedure (with the added threat of Federal criminal prosecution). This weaponization was specifically perpetrated by Mr. Dobronich's nephews with active participation of St. Tammany Parish Sheriff's Office deputy Det. Montgomery in the falsification and concealment of evidence, coercion and exploitation of Mr. Dobronich, and improper leveraging of the full power of state and Federal law enforcement assets against petitioner and her husband, to include the St. Tammany Parish Sheriff's Office and the U.S. Secret Service.

In line with the above, the evidence clearly establishes as follows: 1) all expenditures noted in Det. Montgomery's investigation were consistent with the above noted arrangement regarding the procurement, development and management of rental properties to facilitate petitioner and her husband providing in home nursing and end of life care for Mr. Dobronich, **Ex. "HC 1" at pp. 5-10, 13-18**; 2) Mr. Dobronich's actual financial history (conspicuously ignored by Det. Montgomery, but evident in his report and the testimony of his broker) shows not only complex financial transactions that pre-date petitioner's involvement, but also shows Mr. Dobronich's unsuccessful prior attempt to form a similar arrangement with his step grandson, **Ex. "HC 1" at pp. 1-2, 27-28, 46, 48-49, 56-59, 79-84, 168-172, "HC 5" at pp. 11-12**; 3) any inculpatory statements were made in the presence of the nephews or Det. Montgomery and were shown to be clearly coerced in the weaponized investigation and subsequent prosecution, **Ex. "HC 1" at pp. 3-4, 9-10, 19, 24-28, Ex. "HC 2" at p.13, "HC 4" at p.11**.

Most significantly, the evidence contains AT LEAST two specific sworn statements by Mr. Dobronich that are circumstantially conclusive the he fully authorized all purchases and transfers made by petitioner in February and March of 2013. **Exs. "HC 1" at p.236, "HC 5" at pp. 75-77**. By virtue of the State's own admissions on October 29 and October 31, 2016 (and concurrent acknowledgement of the validity of Mr. Dobronich's July 18, 2013 hand written will) that Mr. Dobronich was, at least, intermittently competent, **Ex. "HC 12" at pp. 54-56**; those sworn statements must be accorded their proper weight and are, by themselves, clear and convincing evidence of petitioner's innocence.

As such, petitioner can establish by clear and convincing evidence that she is actually innocent of the charges to which she pled guilty on December 17, 2014.

D) Ground No. 2: Violation of 5th and 14th Amendments Due Process Clauses: Petitioner's Guilty Plea Was Unconstitutionally Coerced by State's Submission of False Evidence and Testimony Pertaining to Purported Victim's Transactional and Testimonial Mental Competence.

Based on the totality of the evidence set forth, much of which was obtained after the fact, it is clear that both the Expert Report of Dr. Garriga regarding Mr. Dobronich's purported mental incompetency in February and March of 2013, was patently false. *Compare, Exs. "HC 10" at pp. 28-29, 82-84, "HC 11" at pp. 7-8, 10, 49-50, with, Exs. "HC 8" at pp. 1-6, 15-16, "HC 9" at pp. 38-39, 62-64, 69-70, 78, 85, "HC 12 at pp. 54-55.* More disturbingly, the evidence overwhelmingly supports the conclusion that the Louisiana Department of Justice, as the prosecutor in the case, was not only aware that Garriga Report was patently false, but that it was submitted to the Court with the specific malicious intent to wrongfully benefit the Nephews of Mr. Dobronich in their attempt to acquire ownership of Mr. Dobronich's estate in the concurrent civil proceedings. *See id.* The false Garriga Report and accompanying testimony was critical for the prosecution of Petitioner, as the prosecution could not have been maintained against petitioner without it. The submission of the Garriga Report and testimony violated Petitioner's due process rights under the Fifth and Fourteenth Amendments to be free from the knowing submission of false material evidence in a criminal prosecution against her (which right not only confers a non-waivable duty upon the prosecutor not to knowingly offer false material evidence, but an equally affirmative non-waivable duty to correct such an error when discovered). *See U.S. v. Mason, 293 F.3d 826 (5th Cir. 2002).*

E) Ground No. 3: Violation of 6th Amendment Compulsory Process Clause: Petitioner's Guilty Plea Was Unconstitutionally Coerced by the State's False Assertion that the Purported Victim Was Not Mentally Competent to Testify on Petitioner's Behalf, thereby Depriving Petitioner of His Favorable Testimony:

As mentioned before, petitioner was unduly penalized for Mr. Dobronich's lack of availability. Not only was he not available for testimony, having been prevented from providing favorable testimony by the actions of the Nephews in preventing him from testifying and having him declared incompetent; but Petitioner was effectively forced to rebut the State's evidence of the over 30 transactions of \$334,000, conducted in less than one month's time with nothing but her own self serving testimony, and under a prejudicial cloud of expert testimony of Dr. Garriga as to Mr. Dobronich's lack of mental capacity.

Furthermore, while petitioner admittedly submitted, on December 12, 2013, a joint motion with the State to the effect that Mr. Dobronich was incompetent to testify in the criminal proceedings, **Exs. "HC 10" at pp. 4-5, "HC 11" at pp. 7-9**, that consent was improperly obtained through the consistent pressure and control of the Nephews over the physical person of Mr. Dobronich. That pressure and control included simply preventing Mr. Dobronich's testimony, despite several attempts to obtain same by petitioner, **Ex. "HC4" at pp. 12-13, 15-22, 50-70**; as well as the wrongful, yet successful, attempts to have Mr. Dobronich declared incompetent to testify (by 2 separate divisions of the Louisiana 22nd Judicial District Court), **Exs. "HC 4" at pp. 74-80, 82-83, 90, "HC 11" at pp. 7-8, 10**. The State's participation in said declaration by the Louisiana 22nd Judicial District Court on December 12, 2013 was conclusively established to constitute fraud by omission by virtue of the State's own admissions of October 28 and 31, 2016.

As such, the actions of the State of Louisiana in obtaining a guilty plea in this case amounts to unlawful coercion in violations of petitioner's rights under the Compulsory Process

Clause of the Sixth Amendment and the Due Process Clauses of the Fifth and Fourteenth Amendments.

F) Ground No. 4: Violation of 5th and 14th Amendments Due Process Clauses: False Assertion By State, During Post Conviction Relief Proceedings, that Its Position Throughout the Criminal Proceedings Had Been that the Purported Victim Was Only Intermittently Incompetent (Incompetent with “Lucid Intervals”):

On October 29 and 31, 2016, the State, in the face of overwhelming evidence submitted by the petitioner, took the position that Mr. Dobronich was only intermittently incompetent (essentially mentally incompetent, but with “lucid intervals”). **Ex. “HC 12” at pp. 54, 67.** A necessary predicate to the State’s position is that the so called “lucid interval” was sufficient to support the legal validity of a July 18, 2013 hand written will purportedly executed by Mr. Dobronich (under frighteningly suspicious circumstances, i.e., while under “24-7 supervision” of the Nephews, calling into serious question whether it was done so against his will; and which execution was incidentally performed at the same time these nephews were actually advocating the position to the Louisiana 22nd Judicial District Court that Mr. Dobronich was incompetent to provide testimony).

Additionally, this patently intellectually dishonest and absurd position was the only way for the State to salvage the validity of the prosecution and subsequent conviction of petitioner. Specifically, applying the State’s intermittent incompetence theory, Mr. Dobronich was mentally incompetent, but had “lucid intervals”, as follows: 1) “lucid interval” on March 18, 2013, when Mr. Dobronich executed search authorizations at the behest of Det. Montgomery, **Ex. “HC 1” at p.4**, but not on March 16, 2013, when he told his broker that a \$179,000 transfer was specifically authorized, **Exs. “HC 1” at p.27, “HC 5” at p.4**; 2) “lucid interval” on March 28, 2013 when he executed a power of attorney in favor of his nephews, **Ex. “HC 2” at p.13, “HC 4” at pp. 9-11**, but not on March 27, 2013, when he executed an affidavit stating that all transactions performed by petitioner on his behalf were authorized, **“HC 1” at pp. 19-21, 236**; 3) “lucid interval” on July 18, 2013, when Mr. Dobronich executed a hand written will leaving all of his property to

“his nieces and nephews”, **Ex. “HC 8” at pp. 1-6**, but not on July 17, 2013, when the same nephew’s attorney was asserting that he could not give a deposition due to “his incompetency and dementia”, **Ex. “HC 4” at p.80**; 4) “lucid interval” on June 25, 2013 when he testified on direct examination that petitioner’s transactions, performed on his behalf in February and March of 2013 were not authorized, **Ex. “HC 5” at pp. 55-65**, but not on June 25, 2013, when he testified that the transactions were authorized, **Ex. “HC 5” at pp. 74-77**. The State’s position, asserted during the pendency of petitioner’s post conviction relief proceedings, was, in and of itself, patently false.

More specifically for this particular Ground for Habeas Corpus Relief herein, the State asserted on October 28 and 31, 2016, that its position of Mr. Dobronich’s intermittent incompetence was actually consistent throughout the criminal proceedings and consistent with its specifically proffered testimony of Dr. Garriga. **Ex. “HC 12” at pp. 54, 67**. Aside from the utter absurdity of the State’s position, the assertion that the position of Mr. Dobronich’s intermittent incompetence was the State’s position throughout the proceedings is, likewise in and of itself, patently false and directly contradicted not only by Dr. Garriga’s testimony, but also by several assertions by the State made in pleadings and statements in open court both the Louisiana 22nd Judicial District Court and the Louisiana Supreme Court. *Compare, Ex. “HC 12” at pp. 54, 67, with, “HC 10” at pp. 81-82, 83, “HC 11” at pp. 7-8, 10.*

The State’s position of Mr. Dobronich’s intermittent incompetence, its assertion that such position was consistent throughout the criminal proceedings, and, with utmost respect, the uncritical acceptance of said positions by the Louisiana 22nd Judicial District Court, the Louisiana First Circuit Court of Appeals, and the Louisiana Supreme Court; defy logic, reason and common sense to such an extent that any semblance of petitioner’s rights to due process

protected by the Due Process Clauses of the Fifth and Fourteenth Amendments are clearly violated.

G) Ground No. 5: Violation of 5th and 14th Amendments Due Process Clauses: Once the Question of the Purported Victim’s Intermittent Incompetent (Incompetent with “Lucid Intervals”) Was Placed at Issue in Petitioner’s Post Conviction Relief Petition; Petitioner Was Denied Adequate and Meaningful Appellate Review of those Proceedings by the State’s Failure to Produce an Accurate Transcript of Dr. Garriga’s December 16, 2014 Testimony and to Provide the Backup Audio and Notes of Said Testimony:

When the State asserted for the first time on October 28, 2016 that it was asserting that Mr. Dobronich was intermittently incompetent (incompetent with “lucid intervals”), the transcript of Dr. Garriga’s December 16, 2014 testimony became particularly relevant. While the State had, in several instances, directly contradicted the later assertion of intermittent incompetence of Mr. Dobronich in pleadings and open court statements to the Louisiana 22nd Judicial District Court and the Louisiana Supreme Court; Dr. Garriga’s December 16, 2014 testimony was particularly pointed in that regard. *See Ex. “HC 12” at p.175.* As Dr. Garriga had explicitly and unequivocally testified (in response to an initial question and follow up question) that Mr. Dobronich could not have had mental “capacity” to conduct transactions or testify (and, hence, was not able to have a “lucid moment”, as defined by the State); petitioner filed a motion to compel the State to produce both the transcript of Dr. Garriga’s December 16, 2014 testimony and the raw audio thereof. *Ex. “HC 12” at p.70.*

On April 6, 2018 (during the pendency of petitioner’s writ application to the Louisiana Supreme Court as to her petition for post conviction relief), the State provided what was purported to be the transcript of Dr. Garriga’s December 16, 2014 testimony. *Ex. “HC 12” at pp. 174-75, “HC 13”.* The transcript was materially inaccurate in that it erroneously reflected that Dr. Garriga testified that Mr. Dobronich could have “capacity” (with no follow up question to confirm that critical point). *Id.* The transcript was prepared by a court reporter who did not prepare the recording of testimony, who was not present at the hearing, and was not certified in the transcription method in which the testimony was originally recorded. *Exs. “HC 12” at*

p.174, “HC 13” at p.50. Petitioner duly noted her objections as such with the Louisiana Supreme Court. **Ex. “HC 12” at p.175.**

The State’s failure to produce to the petitioner the raw audio (for validation of the transcript, and for forensic inspection as to whether the audio had been improperly altered) constitutes a violation of petitioner’s due process rights under the Fifth and Fourteenth Amendments to an adequate and meaningful opportunity for appellate review.

H) Ground No. 6: Violation of 5th and 14th Amendments Due Process Clauses: Destruction and Concealment of March 21, 2013 Exculpatory Statement of Purported Victim by the State of Louisiana:

As confirmed by the February 24, 2015 hearing in the Successions Proceeding, whereby the Nephews and Det. Montgomery completely disavowed the State's contention that Mr. Dobronich was mentally incompetent; the evidence in this case supports the contention that Mr. Dobronich specifically told Det. Montgomery on March 21, 2013 that all transactions that were made by Petitioner on Mr. Dobronich's behalf were specifically authorized and that any allegations of the Nephews to the contrary were maliciously baseless. The evidence also supports the contention that Mr. Dobronich's statement to Det. Montgomery was recorded by Det. Montgomery, which recording was either subsequently destroyed by Det. Montgomery, or not recorded at all, as it did not fit his false narrative against Petitioner and her husband. *See, Ex. "HC 1" at pp. 4, 9-10, 19, "HC 9" at p.63 ; see Ex. "HC 6" at pp. 57-60.* As such, Det. Montgomery's destruction of this recording, and/or his falsification of the substance of the March 21, 2013 interview with Mr. Dobronich, constitutes bad faith spoliation of evidence in violation of petitioner's due process rights under the Fifth and Fourteenth Amendments.

I) Timeliness of Petition under 28 U.S.C. §2244(d):

Due to her guilty plea, petitioner's conviction became final on December 17, 2014. Petitioner's post conviction relief petition, filed timely under La. C. Cr. P. Articles 926, *et seq.*, was filed timely on July 27, 2016. The post conviction relief petition was pending through January 28, 2019. Despite being more than one year between December 17, 2014 and the July 27, 2016 filing of the post conviction relief petition, petitioner's *habeas corpus* relief petition is not barred by 28 U.S.C. §2244(d), for the following reasons:

- 1) Ground No. 1 (all other Grounds by Implication): Actual Innocence Claim not Barred under *McQuiggin v. Perkins*, 569 U.S. 383 (2013):

Ground No. 1 is predicated on the actual innocence of the petitioner and is, therefore, not barred as per the holding of the United States Supreme Court case of *McQuiggin v. Perkins*, 569 U.S. 383 (2013). Petitioner further avers that all other Grounds contained within her petition are implicitly predicated on actual innocence and are, likewise, not barred under *McQuiggin*.

- 2) Grounds Nos. 2, 3, and 6: Not Barred Due to the Application of the Doctrine of Equitable Tolling (*Contra Non Valentem* in Louisiana):

Grounds Nos. 2, 3, and 6 are not barred by 28 U.S.C. §2244(d) due to the application of the Equitable Tolling Doctrine (as well as the Louisiana doctrine of *Contra Non Valentem*, equally applicable here), based on the following circumstances. As mentioned above, the criminal matter was prosecuted against petitioner in conjunction with several other state and Federal civil actions specifically designed to weaponize the process against her in favor of her opponents in what was essentially a civil dispute over property and inheritance rights. *See Exs. “HC 1”* (Det. Montgomery's criminal investigation), *“HC 4”* (the Civil Revocation Action), *“HC 7”* (the Federal Civil Asset Forfeiture Proceedings), *“HC 10”* (the Criminal Proceedings). In the Civil Revocation Action, by judgment dated June 15, 2015, the Court found that all

property allegedly taken by petitioner was within the possession of the State of Louisiana and the Federal government (necessarily finding by implication that no restitution was owed by petitioner). **Ex. “HC 4” at pp.93-96.** Despite being specifically aware of this judgment, on September 21, 2015, the State of Louisiana, pursuant to the sentence imposed upon petitioner, filed a motion for restitution against petitioner (which motion was filed within the 1 year limitation period for 28 U.S.C. §2244(d)). **Ex. “HC 10” at pp. 86, 205-08.** This motion was of considerable concern to petitioner and her husband because the Nephews in the Civil Revocation Action had asserted the value of the property allegedly taken by petitioner to be as high as \$437,800, **Ex. “HC 6” at p.35;** with the disputed value being as high as \$500,000 by the Nephews in the Successions Proceedings, **Ex. “HC 8” at p.7,** leaving a potential exposure for petitioner of \$130,000 to \$200,000 at a restitution hearing (given the prior history of this case, the concepts of *res judicata* and collateral estoppel offered little comfort to petitioner). This motion, initially set for hearing on October 28, 2015 (again, within the 1 year limitation period of 28 U.S.C. §2244(d)), was continued twice by the State over the specific objections of plaintiff, until it was set for January 20, 2016 (a date outside of the 1 year limitation period). **Ex. “HC 10” at pp. 208-211, 219.** At that time, the State agreed to voluntarily dismiss the motion for restitution. **Ex. “HC 10” at pp. 221-223.** Petitioner avers that, under the circumstances, the State of Louisiana knowingly filed and prosecuted a baseless restitution motion for the specific purpose of intimidating the petitioner from seeking post conviction relief within the 1 year limitation period for Federal *habeas corpus* relief. As such, the Federal doctrine of Equitable Tolling, as well as the corresponding Louisiana Doctrine of *Contra Non Valentem*, apply, and the statute of limitations did not begin to run against petitioner until January 20, 2016. As her post

conviction relief petition was pending from July 27, 2016 through January 28, 2019, this petition for Federal *habeas corpus* relief is timely.

3) Grounds Nos. 4 and 5: Not Barred under the Application of 18 U.S.C. §2244(d)(1)(D):

Grounds Nos. 4 and 5 are not barred by 28 U.S.C. §2244(d) because they essentially did not arise until during the pendency of the state post conviction relief proceedings. Specifically, the first time the State of Louisiana had asserted that its position was that the purported victim was only intermittently incompetent (incompetent with “lucid” intervals) was October 27, 2016, in its answer to petitioner’s initial petition for post conviction relief. **Ex. “HC 12” at p.54.** Prior to that time, the State had unequivocally asserted that the purported victim was totally incompetent, lacking any capacity, whatsoever, to either give testimony or to authorize relevant transactions. **“HC 10” at pp. 81-82, 83, “HC 11” at pp. 7-8, 10.** As such, the petitioner was effectively unable to address the State’s new position, thereby being prevented from discovery as per 28 U.S.C. §2244(d)(1)(D).

J) Exhibits:

HC 1: Det. Montgomery Investigation;

HC 2: S. Dobronich Medical Record Excerpts;

HC 3: D. Thibodaux Affidavit;

HC 4: Civil Revocation Action: Relevant Pleadings and Correspondence;

HC 5: Civil Revocation Action: June 25, 2013 Transcript;

HC 6: Civil Revocation Action: May 20, 2015 Hearing Transcript;

HC 7: Federal Civil Asset Forfeiture Proceedings: Relevant Pleadings and Correspondence;

HC 8: Successions Proceedings: Relevant Pleadings and Correspondence;

HC 9: Successions Proceedings: February 24, 2015 Hearing Transcript;

HC 10: Criminal Proceedings: Relevant Pleadings, Correspondence, and Minutes;

HC 11: Criminal Proceedings: Transcripts of December 13, 2013, December 17, 2014, January 29, 2015 Hearings;

HC 12: Post Conviction Relief Proceedings: Relevant Pleadings and Correspondence;

HC 13: Criminal Proceedings: Purported December 16, 2014 Testimony of Dr. Garriga;

HC 14: Relevant Burdine Documents.

2013-11-1784 D

THE VALLEJO LAW FIRM, LLC

428 West 21st Avenue

Covington, Louisiana 70433

E-Mail: vallejolawfirm@hotmail.com

Peggy Gonsoulin Vallejo
Attorney at Law

Telephone: (985) 892-6855
Fax: (985) 892-6898

July 9, 2013

Honorable Peter J. Garcia
22nd Judicial District Court
St. Tammany Parish
P.O. Box 1090
Covington, LA 70434

VIA FACSIMILE (985) 809-5391
and UNITED STATES MAIL

FILED

JUL 11 2013

MALISE PRIETO - CLERK
DEPUTY *Michele West*

Dear Judge Garcia:

In accordance with your ruling at the hearing held in the above referenced matter on June 25, 2013, please find attached a copy of correspondence from Paul R. Verrette, M.D., related to his evaluation of Mr. Sidney Dobronich.

Sincerely,

Peggy S. Vallejo
Peggy Gonsoulin Vallejo

PGV/vmw
Attachment

cc: Roy Burns, Esq.
Sidney Dobronich
Forest Dobronich
George Dobronich

2013 JUL 11 AM 11 11
ST. TAMMANY PARISH
FILED

Appendix E

St. Bernard Community Health Center, Inc.

8050 W. Judge Perez Dr., Chalmette, LA 70043 (504) 281-2800 Phone (504) 278-4692 Fax



July 2, 2013

2013-11784 D

FILED

JUL 11 2013

MALICE F. WEST - CLERK
DEPUTY *Malice West*

Corporate Office
843 Milling Ave
Luling, LA 70070
(985) 785-5873

Officers:

Mark F. Keiser, MBA, MHA, MPH
Executive Director

Trent Bussey
Chief Financial Officer

James G. Comeaux, LCSW
Chief Operating Officer

Kevin O. Joseph, MD
Medical Director

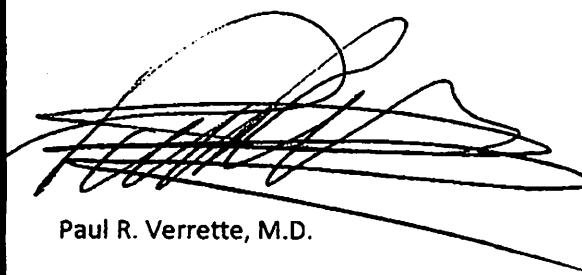
RE: Sidney Dobronich

To Whom It May Concern:

Mr. Dobronich was evaluated on July 2, 2013. He has multiple medical problems which include, hypertension, hypertensive cardiovascular disease, coronary artery disease, s/p coronary artery stent, osteoarthritis with total hip replacement of left hip, chronic renal insufficiency and dementia. Dementia is likely due to his history of hypertension and cerebrovascular disease. His dementia is such that he is not able to direct his affairs concerning person or property in matters consistent with his own interest.

If I can be of any further assistance, please do not hesitate to contact my office.

Sincerely,



Paul R. Verrette, M.D.

Roy K. Burns, Jr. LLC

Email
royburns@royburnslaw.com

Roy K. Burns, III
royburns3@royburnslaw.com

Lam M. Tran
lam@royburnslaw.com

Attorney at Law
A Limited Liability Company

Post Office Box 4780
335 N. New Hampshire St.
Covington, LA 70433

Telephone
985.892.2945

Facsimile
985.892.8105

July 15, 2013

Peggy G. Vallejo, Esq.
428 W. 21st Avenue
Covington, Louisiana 70433

RE: Forest Dobronich, and George Dobronich,
as Mandatory Agents and Attorneys-In-Fact
of Sidney Dobronich
versus
Darnay Thibodaux and Calvin Thibodaux
22nd JDC Docket No.: 2013-11784
My File No.: F-1879-13

Dear Peggy:

Thank you for the July 2, 2013 letter from Paul R. Verrette, M.D.

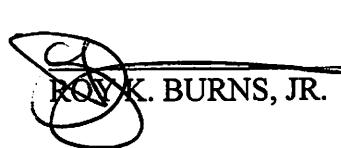
The short narrative is not dispositive of the issue of Mr. Dobronich's ability to be deposed.

The simple question is, Is Mr. Sidney Dobronich going to submit himself to a deposition?

I would like to notice his deposition on or before August 7, 2013. If I do not hear from you one way or the other I will notice his deposition at my convenience.

What say you?

Sincerely,


ROY K. BURNS, JR.

RKB/cpr
c/c: client

**FOREST DOBRONICH, And
GEORGE DOBRONICH, As
Mandatary Agents and Attorneys-in-Fact
of SIDNEY DOBRONICH**

VERSUS

**DARNAY THIBODAUX And
CALVIN THIBODAUX**

FILED: August 2, 2013

NUMBER: 2013-11784 DIV: D

**22nd JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY**

STATE OF LOUISIANA

Julie West
DEPUTY CLERK

BRIEF IN SUPPORT OF MOTION TO DISMISS

MAY IT PLEASE THE COURT:

The matter before the Court is the defendants' right to conduct discovery pursuant to the Code of Civil Procedure.

The defendants noticed the plaintiff, Sidney Dobronich, deposition, after no cooperation from plaintiff's counsel.

Prior to the date of the deposition the counsel for the plaintiff filed and obtained, without notice to the defendants' counsel, an Ex Parte Order cancelling the deposition of Sidney Dobronich.

The defendants filed a rule to require Sidney Dobronich to participate in discovery or in absence of plaintiff's participation in discovery, the plaintiff's suit be dismissed. On the rule date the court ordered the plaintiff/counsel for plaintiff to have Sidney Dobronich examined for his capacity to be deposed.

Plaintiff's counsel sent to the defendants, through their attorney, a letter from Paul R. Verrette, M.D. The substance of the letter (attached as Exhibit 1) is that Sidney Dobronich has dementia and cannot act in his own financial interest.

On the issue of the issue
In the opinion of undersigned the letter from Paul R. Verrette, M.D. is not dispositive of the

The court, on its own initiative, conducted a status conference on the issue of the plaintiff's participation in discovery.

During that conference, counsel for plaintiff made it clear that plaintiff opposed any deposition of Sidney Dobronich (Exhibit 2). WHY?

The conference concluded with the setting of defendant's Rule to Depose Sidney Dobronich

and/or Dismiss with prejudice (Exhibit 3).

The issues to be decided are :

- Does Mr. Sidney Dobronich possess the capacity/competency to participate in a deposition?
- If the answer is yes, the court would order the plaintiff to participate in discovery.
- Would there be consequences for plaintiff's failure to participate in discovery, including the dismissal of plaintiff's petition with prejudice?
- If the petitioner would be found as not having capacity/competency to testify, plaintiff would be precluded from testifying at his trial.

The defendants assert their right to conduct discovery.

Respectfully Submitted;


 ROY K. BURNS, JR.
 Louisiana Bar Roll No. 03697
 335 N. New Hampshire Street
 Covington, Louisiana 70433
 Telephone: (985) 892-2945

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been forwarded to all counsel of record by placing a copy of same in the U.S. Mail, postage prepaid, this 31 day of July, 2013.


 ROY K. BURNS, JR.
 Louisiana Bar Roll No. 03697

St. Bernard Community Health Center, Inc.
 8050 W. Judge Perez Dr., Chalmette, LA 70043 (504) 281-2800 Phone (504) 278-4692 Fax



Corporate Office
 843 Milling Ave
 Luling, LA 70070
 (985) 785-5873

Officers:

Mark F. Keiser, MBA, MHA, MPH
Executive Director

Trent Bussey
Chief Financial Officer

James G. Comeaux, LCSW
Chief Operating Officer

Kevin O. Joseph, MD
Medical Director

July 2, 2013

RE: Sidney Dobronich

FILED

AUG - 2 2013

2013-11-784-1
 MARIE PRIETO - CLERK
 Charlie West
 DEPUTY

To Whom It May Concern:

Mr. Dobronich was evaluated on July 2, 2013. He has multiple medical problems which include, hypertension, hypertensive cardiovascular disease, coronary artery disease, s/p coronary artery stent, osteoarthritis with total hip replacement of left hip, chronic renal insufficiency and dementia. Dementia is likely due to his history of hypertension and cerebrovascular disease. His dementia is such that he is not able to direct his affairs concerning person or property in matters consistent with his own interest.

If I can be of any further assistance, please do not hesitate to contact my office.

Sincerely,

Paul R. Verrette, M.D.

EXHIBIT

623

Appx. 90

21-30600.423

Jul 17 2013 4:22PM
St Tammany Parish Clerk of Court Docket#201311784

THE VALLEJO LAW FIRM, LLC

428 West 21st Avenue

Covington, Louisiana 70433

E-Mail: vallejolawfirm@hotmail.com

Peggy Gonsoulin Vallejo

Attorney at Law

Telephone: (985) 892-6855

Fax: (985) 892-6898

July 17, 2013

2013-11784D

Roy K. Burns, Jr., Esq.
335 North New Hampshire Street
Covington, Louisiana 70433

Via Facsimile (985) 892-8105

FILED

AUG - 2 2013

Malise Brieto
MALISE BRIETO, CLERK
DEPUTY
Debra West

Re: Dobronich v. Thibodaux
22nd JDC No. 2013-11784, Division "D"

Dear Mr. Burns:

This is to confirm my conversation with you during the Status Conference with Judge Garcia wherein I informed you and the judge that we oppose the setting of Sidney Dobronich's deposition based on his incompetency and dementia. As a result of that information, Judge Garcia has set this matter on the docket for August 27, 2013.

Sincerely,

Peggy G. Vallejo
Peggy Gonsoulin Vallejo

PGV/vmw

cc: Forest Dobronich
George Dobronich

EXHIBIT

623



Malise Prieto
Clerk of Court
22nd Judicial District
Parish of St. Tammany

P.O. Box 1090
Covington, LA 70434
(985) 809-8700

July 22, 2013

Peggy Gonsoulin Vallejo
Attorney at Law
428 West 21st Ave.
Covington, LA 70433

Roy K. Burns, Jr.
Attorney at Law
335 N. New Hampshire St.
Covington, LA 70433

RE: Forest Dobronich, et al
Vs: 2013-11784 D
Darnay Thibodaux, et al

2013-11784 D
FILED

AUG - 2 2013

Malise Prieto
Julie West
DEPUTY

Dear Counsel:

Please be advised that the Rule to Depose Sidney Dobronich and/or Dismiss Petition with Prejudice filed on behalf of Darnay and Calvin Thibodaux previously assigned for June 25, 2013 has been reassigned for Tuesday, August 27, 2013 at 9:30 A.M. with Judge Peter J. Garcia, Division "D", presiding.

ANY OPPOSING MEMORANDUM MUST BE FILED WITH THE CLERK OF COURT AT LEAST EIGHT DAYS PRIOR TO THE HEARING DATE. FAILURE TO DO SO WILL RESULT IN DENIAL OF ORAL ARGUMENT.

Sincerely,

Julie West
Julie West
Deputy Clerk

EXHIBIT

3

6023

2013-11787

THE VALLEJO LAW FIRM, LLC

428 West 21st Avenue
Covington, Louisiana 70433
E-Mail: vallejolawfirm@hotmail.com

Peggy Gonsoulin Vallejo
Attorney at Law

Telephone: (985) 892-6855
Fax: (985) 892-6898

August 13, 2013

Honorable Peter J. Garcia
22nd Judicial District Court
St. Tammany Parish
P.O. Box 1090
Covington, LA 70434

VIA FACSIMILE (985) 809-5391
and UNITED STATES MAIL

FILED

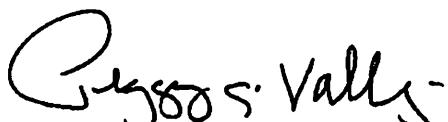
AUG 15 2013

MALISE PRIETO - CLERK
Deputy Peggy Vallejo

Dear Judge Garcia:

In accordance with the hearing held in the above referenced matter on June 25, 2013, please find attached a copy of a follow up letter from Paul R. Verrette, M.D., related to Mr. Sidney Dobronich's competency.

Sincerely,


Peggy Gonsoulin Vallejo

PGV/vmw
Attachment

cc: Roy Burns, Esq.
Sidney Dobronich
Forest Dobronich
George Dobronich

2013 AUG 15 AM 10 33
ST. TAMMANY PARISH

FILED



St. Bernard Community Health Center, Inc.

8050 W. Judge Perez Dr., Ste. 1300, Chalmette, LA 70043 (504) 281-2800 Phone (504) 278-4692 Fax



Corporate Office
843 Milling Ave
Luling, LA 70070
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Officers:

Mark P. Keiser, MBA, MHA, MPH
Executive Director

Trent Bussey
Chief Financial Officer

James G. Comeaux, LCSW
Chief Operating Officer

Kevin O. Joseph, MD
Medical Director

July 25, 2013

RE: Sidney Dobronich

To Whom It May Concern,

As a follow up to my letter dated July 2, 2013 regarding the mental and physical state of Mr. Dobronich, it is my professional medical opinion that his dementia is such that he is not able to direct his affairs concerning person or property. I also believe that he is not mentally stable enough to be able to provide any competent testimony in a court of law, including a deposition.

If I can be of any further assistance, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "PAUL R. VERRETTE, M.D."

Paul R. Verrette, M.D.

22ND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA

FOREST DOBRONICH,
And GEORGE DOBRONICH,
As Mandatory Agents and
Attorneys-in-Fact of SIDNEY DOBRONICH

SUIT NO. 2013-11784

Versus

DIVISION: "D"

DARNAY THIBODAUX
And CALVIN THIBODAUX

FILED: August 14, 2013

Julie West
DEPUTY CLERK

2013 AUG 14 AM 10:45
ST. TAMMANY PARISH
FILED

JUDGMENT

This matter came before the court on June 25, 2013 on a Rule for Sequestration, Preliminary and Permanent Injunction filed by Plaintiffs, Forest Dobronich and George Dobronich, as Mandatory Agents and Attorneys-In-Fact of Sidney Dobronich and on a Rule to Dissolve Sequestration and Rule for Deposition of Sidney Dobronich filed by Defendants, Darnay Thibodaux and Calvin Thibodaux..

PRESENT: Peggy G. Vallejo, Attorney for Forest Dobronich and George Dobronich, as Mandatory Agents and Attorneys-In-Fact of Sidney Dobronich; Forest Dobronich, George Dobronich and Sidney Dobronich;

Roy K. Burns, Jr., Attorney for Darnay Thibodaux and Calvin Thibodaux; Darnay Thibodaux and Calvin Thibodaux

After hearing and reviewing the evidence in this matter, the Court finds as follows:

IT IS ORDERED ADJUDGED AND DECREED that the Writ of Sequestration filed by Plaintiffs, Forest Dobronich and George Dobronich, as Mandatory Agents and Attorneys-In-Fact of Sidney Dobronich be and is hereby granted against the following described properties:

(1)

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, together with all the buildings and improvements thereon, and all the rights, ways, means, privileges, servitudes, advantages, prescriptions and appurtenances thereunto belonging or in anywise appertaining, situated in Headright 55, Township South, Range 13 East, Parish of St. Tammany, State of Louisiana, located in the Town of Sun, and being more particularly described as follows, to-wit:

From the corner common to Sections 37 & 55; Township 5 South, Range 13 East on the North bank of the Bogue Chitto River, go North 00 degrees 40 minutes West, 2415.2 feet to a point; thence go North 88 degrees 37 minutes East, 3126.9 feet to a point; thence go South 00 degrees 48 minutes East, 675.6 feet to a point; thence go South 88 degrees 37 minutes West, 211.4 feet to the Point of Beginning.

From the Point of Beginning, continue South 88 degrees 37 minutes West, 422.8 feet to a point; thence go North 88 degrees 37 minutes East 422.8 feet to a point; thence go North 00 degrees 38 minutes West, 206.0 feet to the Point of Beginning.

Being the same property acquired by vendor(s) herein from Edgar Pounds and Dewanna Breland Pounds by act of Cash Sale passed before Dawn Amacker, Notary Public, dated October 14, 1997, and recorded as Instrument No. 1067975 on October 17, 1997 in the official records of St. Tammany Parish, Louisiana.

(2)

ALL THAT CERTAIN PIECE OR PORTION OF LAND, together with all the buildings and improvements thereon; and all the rights, ways, means, privileges, servitudes, prescriptions, appurtenances and advantages thereunto belonging or in anywise appertaining, situated in Headright 55, Township 5 South, Range 13 East, Parish of St. Tammany, State of Louisiana, located in the Town of Sun, and being more particularly described as follows, to-wit:

From the corner common to Sections 37 and 55, Township 5 South, Range 13 East, on the North bank of the Bogue Chitto River, go North 00 degrees 40 minutes West, 2415.2 feet to a point; thence go North 88 degrees 37 minutes East, 3126.9 feet to a point; thence go South 00 degrees 38 minutes East, 1581.6 feet to a point; thence go South 88 degrees 37 minutes West, 1034.0 feet to the Point of Beginning.

From the Point of Beginning, continue South 88 degrees 37 minutes West, 260.0 feet to a point; thence go North 00 degrees 21 minutes West, 200.0 feet to a point; thence go North 88 degrees 37 minutes East, 260.0 feet to a point; thence go South 00 degrees 21 minutes East, 200.0 feet to the Point of Beginning.

Being the same property acquired by vendor(s) herein from James L. Travis, Sr. and Bernice Fay Boone Travis by Act of Sale dated October 15, 2007 and recorded as Instrument No. 1649747 in the official records of the Clerk of Court for the Parish of St. Tammany, State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rule to

Dissolve Sequestration be filed by Defendants, Darnay Thibodaux and Calvin Thibodaux, be and is hereby denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a Rule for Contempt for Violation of the Protective Order on behalf of Plaintiffs be and is hereby set for August 27, 2013 at 9:30 a.m.;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the injunction against Defendants, Darnay Thibodaux and Calvin Thibodaux, be and is hereby extended until the next hearing date of August 27, 2013;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff, Sidney Dobronich, be examined by his regular physician within the next ten (10) days and at his own expense to determine his competency.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rule for Deposition of Sidney Dobronich be and is hereby continued until Sidney Dobronich is examined by his physician.

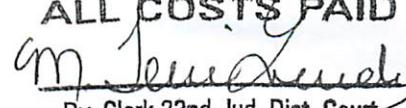
Signed in Covington, Louisiana this 14th day of August, 2013.



PETER GARCIA, JUDGE
22nd JUDICIAL DISTRICT COURT

A TRUE COPY

Dy. CLERK 22nd JUD. DIST. COURT
ST. TAMMANY PARISH, LA

ALL COSTS PAID

Dy. Clerk 22nd Jud. Dist. Court
St. Tammany Parish, LA
Appx. 97

21-30600.430

22ND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY

STATE OF LOUISIANA

**FOREST DOBRONICH,
And GEORGE DOBRONICH,
As Mandatory Agents and
Attorneys-in-Fact of SIDNEY DOBRONICH**

SUIT NO. 2013-11784

Versus

DIVISION: "D"

**DARNAY THIBODAUX
And CALVIN THIBODAUX**

FILED: August 14, 2013

Julie West
DEPUTY CLERK

DISTRICT COURT RULE 9.5 CERTIFICATE

Undersigned counsel for Forest Dobronich and George Dobronich, as Mandatory Agents and Attorneys-In-Fact of Sidney Dobronich, hereby certifies, pursuant to District Court Rule 9.5 that a copy of the attached proposed Judgment was circulated, via facsimile and United States mail, on August 1, 2013 to Roy K. Burns, Jr., counsel for Defendants, Darnay Thibodaux and Calvin Thibodaux, and no opposition was received.

Dated: August 12, 2013

Respectfully submitted,

Peggy S. Vallejo
Peggy Gonsoulin Vallejo, Bar No. 20539
THE VALLEJO LAW FIRM, LLC
428 West 21st Avenue
Covington, Louisiana 70433
(985) 892-6855 Telephone
(985) 892-6898 Facsimile

**FOREST DOBRONICH, And
GEORGE DOBRONICH, As
Mandatary Agents and Attorneys-in-Fact
of SIDNEY DOBRONICH**

VERSUS

**DARNAY THIBODAUX And
CALVIN THIBODAUX**

FILED: August 27, 2013

NUMBER: 2013-11784 DIV: D

**22nd JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY**

STATE OF LOUISIANA

Julie West
DEPUTY CLERK

RESPONSE

NOW COME the respondents, DARNAY THIBODAUX and CALVIN THIBODAUX, in response to a notice of a contempt rule set for August 27, 2013 (notice of June 27, 2013 attached), and with respect:

1.

The respondents are unable to respond in writing or word in that there has been no written rule for contempt filed here outlining in particular the acts that give rise to the contempt.

2.

The temporary restraining order was illegally obtained and illegally issued, without notice, without bond, and without judicial certification for the temporary restraining order issuance without notice and opportunity to be heard by defendants.

3.

The temporary restraining order issued had expired by operation of law after ten(10) days of its illegal issuance.

4.

Respondents were lured into a false sense of security in that Mr. Sidney Dobronich through words and actions initiated the respectful interchange.

The petitioner's relatives parked the wheelchair bound, Sidney Dobronich, right outside the door where defendants had to walk to enter and exit the courtroom.

Respondents were forced to walk around Mr. Sidney Dobronich to go to the women's restroom, the elevator, and/or water fountain.

Respectfully Submitted:

ROY K. BURNS, JR., LLC
335 N. New Hampshire Street
Covington, Louisiana 70433
Telephone: (985) 892-2945
Fax: (985) 892 - 8105



ROY K. BURNS, JR., #03697
ROY K. BURNS, III, #33752
LAM M. TRAN, #34212

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been forwarded to all counsel of record by placing a copy of same in the U.S. Mail, postage prepaid, this _____ day of _____, 2013.

ROY K. BURNS, JR.
Louisiana Bar Roll No. 03697

**FOREST DOBRONICH, And
GEORGE DOBRONICH, As
Mandatary Agents and Attorneys-in-Fact
of SIDNEY DOBRONICH**

VERSUS

**DARNAY THIBODAUX And
CALVIN THIBODAUX**

FILED: August 27, 2013

NUMBER: 2013-11784 DIV: D

**22nd JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY**

STATE OF LOUISIANA


DEPUTY CLERK

JUDGMENT

This matter comes before the court this 27th day of August, 2013, before the Honorable Peter J. Garcia, Judge of the 22nd Judicial District Court in and for the Parish of St. Tammany, State of Louisiana, pursuant to regular assignment.

1.

The court, considering the law, evidence, and the entire record, do hereby render judgment accordingly:

IT IS ORDERED, ADJUDGED, and DECREED that SIDNEY DOBRONICH is incompetent to testify in these proceedings by way of deposition or trial testimony.

This judgment read, rendered, and signed this 27th day of August, 2013, at Covington, Louisiana in open court.


PETER J. GARCIA, JUDGE

Prepared by:

**Roy K. Burns, Jr.
Louisiana Bar Roll No. 03697
335 N. New Hampshire St.
Covington, LA 70433**

***Please mail notice of Judgment**

22ND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY

STATE OF LOUISIANA

NO.: 2014-30680

DIVISION: I

SUCCESSION

OF

SIDNEY DOBRONICH

FILED: August 6, 2014 DEPUTY CLERK: Deeley Ghol

AFFIDAVIT FOR PROBATE OF OLOGRAPHIC TESTAMENT
PURSUANT TO LSA C.C.P. ARTICLE 2883

STATE OF LOUISIANA

PARISH OF ST. BERNARD

BEFORE ME, the undersigned authority, personally came and appeared:

FOREST DOBRONICH and GEORGE DOBRONICH

Both persons of the full age of majority, who, after first being duly sworn, did depose and state:

That Affiants are the surviving nephews of the late SIDNEY DOBRONICH.

That Affiants are familiar with the handwriting of SIDNEY DOBRONICH and that Affiants have reviewed the Last Will and Testament dated July 18, 2013, which appears on one sheet of paper beginning with the words, "I, SIDNEY DOBRONICH, being of sound mine & body" and ending in the words "would like to leave all my possessions at the time of mine of my death to all my nieces and nephews to be divided equally."

That Affiants state that the document is entirely written, dated and signed by SIDNEY DOBRONICH, in his handwriting and that the signature at the end of the Testament is the signature of SIDNEY DOBRONICH.

Forest Dobronich
FOREST DOBRONICH

George Dobronich
GEORGE DOBRONICH

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 16 DAY OF

July, 2014.

NOTARY PUBLIC
Notary/Bar No.: 126023
My Commission Expires: For Life

PAUL A. TABARY, III
NOTARY PUBLIC
NOTARY #12850
STATE OF LOUISIANA
My commission is for a
Lifetime

22ND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY

STATE OF LOUISIANA

NO.: 2014-30680

DIVISION: I

SUCCESSION

OF

SIDNEY DOBRONICH

FILED: August 6, 2014 DEPUTY CLERK: Gracey Thacker

O R D E R

The Last Will and Testament of the late SIDNEY DOBRONICH (hereinafter referred to as "decedent") having been drawn in accordance with the terms of the Louisiana Civil Code and having been filed in this proceeding, in accordance with Louisiana Code of Civil Procedure, as amended;

IT IS ORDERED that the proces verbal be dispensed with and that the said testament be recorded, filed and ordered executed in accordance with its terms and the law of Louisiana.

Signed at Covington, Louisiana, on this 8 day of August, 2014.


JUDGE

July 18, 2013

I Sidney Dobrowich being of sound
mine & body would like to leave all
my possessions at the time of mine
of my death to all my nieces and nephews
to be divided evenly.

Sidney Dobrowich

7-18-2013

482

~~Deputy Clerk~~
MALISE PRIETO - Clerk

AUG 06 2014

FILED

2014-30680-T

~~Deputy Clerk~~
Young

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Young

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Young

22ND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY

STATE OF LOUISIANA

NO.: 2014 - 30680

DIVISION: I

SUCCESSION

OF

SIDNEY DOBRONICH

FILED: August 6, 2014 DEPUTY CLERK: Quincy MahaDETAILED DESCRIPTIVE LIST

STATE OF LOUISIANA

PARISH OF ST. BERNARD

NOW INTO COURT comes all of the sole legatees of Sidney Dobronich, who with respect aver that in accordance with Article 3136 of the Louisiana Code of Civil Procedure they do present to this Honorable Court the following Detailed Descriptive List of all the items of property comprising the succession of SIDNEY DOBRONICH showing the location of all items of the succession property, and the fair market value of each item at the date of death for decedent.

I.

ASSETS

1.)	LPL Financial Account # XXXX-6334 In the name of Sidney J. Dobronich	\$ 510,156.68
2.)	Capital One Checking Account # XXXXXXXXXXXX7195 In the name of Sidney J. Dobronich	\$ 1,732.89
3.)	Capital One Savings Account # XXXXXXXXXXXX2091 In the name of Sidney J. Dobronich	\$ 1,655.96
4.)	Citizens Bank Savings Account # XXXXXX1435 In the name of Sidney J. Dobronich	\$ 247.99
5.)	2001 Dodge Caravan VIN# 1B4GP24361B228890	\$ 1,500.00
6.)	Miscellaneous Furnishings and Fixtures	\$ 500.00
7.)	Unliquidated Claim in proceedings 22 nd JDC #2013-11784 "D" "Forest Dobronich and George Dobronich, as Mandatory Agents and Attorneys-In-Fact of Sidney Dobronich vs. Darnay Thibodaux and Calvin Thibodaux	\$ 500,000.00

8.) 2 Double wide trailers located on property situated in Headright 55, Township South, Range 13 East Parish of St. Tammany \$ 20,000.00

TOTAL ASSETS \$1,035,793.52

II. DEBTS

1.) Memorial Hospital Gulfport, MS	\$ 5,784.58
2.) Attorney's Fees and Costs (estimated)	\$ 3,500.00

TOTAL DEBTS \$ 9,284.58

III. RECAPITULATION

TOTAL ASSETS	\$1,035,793.52
TOTAL DEBTS	\$ 9,284.58
NET ESTATE	\$1,026,508.94

The decedent made no donations or transfers of property for inadequate consideration within one (1) year prior to his death and he did not transfer any property prior to that time in contemplation of death or in avoidance of taxes.

Respectfully submitted:

TABARY & BORNE, L.L.C.

BY:


PAUL A. TABARY, III (#12623)
Three Courthouse Square
Chalmette, Louisiana 70043
Telephone: (504) 271-8011

22ND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY

STATE OF LOUISIANA

NO.: 2014-30680

DIVISION: I

SUCCESSION

OF

SIDNEY DOBRONICH

FILED: August 6, 2014 DEPUTY CLERK: Tracy Graham

JUDGMENT OF POSSESSION

Considering the petition of ALVIN CATALANO, DALE CATALANO, JUNE BOUDET, SHIRLEY B. McDOWELL, JOHN BOUDET, DENNIS BOUDET, CARMEN SANTA CRUZ, GEORGE DOBRONICH, and FOREST DOBRONICH, sole legatees of SIDNEY DOBRONICH, to be placed into possession of decedent's estate, the affidavits annexed, and it appears that no inheritance tax is due the State of Louisiana, and the law, evidence, and Last Will and Testament probated herein in favor of the petitioners for the reasons this day orally assigned.

IT IS ORDERED, ADJUDGED AND DECREED that petitioners, ALVIN CATALANO, DALE CATALANO, JUNE BOUDET, SHIRLEY B. McDOWELL, JOHN BOUDET, DENNIS BOUDET, CARMEN SANTA CRUZ, GEORGE DOBRONICH, and FOREST DOBRONICH, are entitled to the full ownership and possession of all of decedent's estate including but not limited to an undivided one-ninth (1/9) interest each in and to all of the decedent's property, including but not limited to all of the decedent's interest in the following described property:

- 1.) LPL Financial
Account # XXXX-6334
In the name of Sidney J. Dobronich
- 2.) Capital One
Checking Account # XXXXXXXXXXXX7195
In the name of Sidney J. Dobronich
- 3.) Capital One
Savings Account # XXXXXXXXXXXX2091
In the name of Sidney J. Dobronich
- 4.) Citizens Bank
Savings Account # XXXXXX1435
In the name of Sidney J. Dobronich

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- 5.) 2001 Dodge Caravan
VIN# 1B4GP24361B228890
- 6.) Miscellaneous Furnishings and Fixtures
- 7.) Unliquidated Claim in proceedings 22nd JDC #2013-11784
"D" "Forest Dobronich and George Dobronich, as Mandatory
Agents and Attorneys-In-Fact of Sidney Dobronich vs.
Darnay Thibodaux and Calvin Thibodaux
- 8.) 2 Double wide trailers located on property
situated in Headright 55, Township South,
Range 13 East Parish of St. Tammany

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all banks, trust companies, and all other persons, partnerships, unincorporated associations or corporations, have on deposit, or in their possession, or under their control, any money, credit, stocks, dividends, bonds, or other property belonging to SIDNEY DOBRONICH be and are hereby required to deliver them to ALVIN CATALANO, DALE CATALANO, JUNE BOUDET, SHIRLEY B. McDOWELL, JOHN BOUDET, DENNIS BOUDET, CARMEN SANTA CRUZ, GEORGE DOBRONICH, and FOREST DOBRONICH, sole legatees of decedent as set forth hereinabove.

JUDGMENT READ, RENDERED, AND SIGNED on the 8 day of
August, 2014 at Covington, Louisiana.



JUDGE

Roy K. Burns, Jr. Esq.

Email

royburns@royburnslaw.com

Roy K. Burns, III
royburns3@royburnslaw.com

Lam M. Tran
lam@royburnslaw.com

Attorney at Law
A Limited Liability Company

Post Office Box 4780
335 N. New Hampshire St.
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985.892.2945

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May 19, 2014

Jonathan D. Blake
Assistant Attorney General
Louisiana Department of Justice
P.O. Box 94005
Baton Rouge, LA 70804-9005

RE: State of Louisiana
versus
Calvin and Darnay Thibodaux
22nd JDC Docket No.: 538643 & 538643-1
My File No.: F-1879-13

Dear Assistant Attorney General Blake:

I hope this day finds you in well health and good spirit.

On behalf of my clients, Darnay and Calvin Thibodaux, I am requesting that your office dismiss the prosecution.

As you are aware, Mr. Dobronich has died. My clients and I are very sorry for his passing. Without Mr. Dobronich there is no victim for which to seek a recovery. The primary beneficiaries are his nephews, who have already claimed his estate. The Civil Court has sequestered all of his assets that were held by my clients.

The secondary beneficiaries are Assistant District Attorney, Leo Hemelt and his wife, Peggy Vallejo. From my perspective this is a prosecution intended solely to benefit an Assistant District Attorney. The reason for my filing a recusal and the District Attorney's Office recusing itself is that Ms. Vallejo continued to be plaintiff's counsel. Further, the plaintiff, through the District Attorney's Office obtained the records of the Sheriff's Office. This partnership is highly unusual.

I intend to make this an issue in this trial.

I have yet to see any evidence that Mr. Dobronich's intentions were in any way forced or coerced by the Thibodauxs that would amount to a violation of the exploitation criminal statute.

Let the Civil Court decide the issue.

Please consider a dismissal.

Sincerely,



ROY K. BURNS, JR.

RKB/cmp
c/c: clients

W:\Roy K. Burns, Jr\CLIENTS\TV\Thibodaux, Damay F-1879-13\Criminal Case\Attorney General-Criminal Case\Blake.ltr 5.19.14.wpd

Roy K. Burns, Jr. PLLC

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June 11, 2014

Jonathan D. Blake
Assistant Attorney General
Louisiana Department of Justice
P.O. Box 94005
Baton Rouge, LA 70804-9005

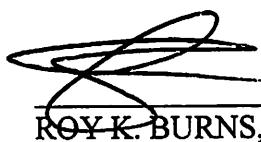
RE: State of Louisiana
versus
Calvin and Darnay Thibodaux
22nd JDC Docket No.: 538643 & 538643-1
My File No.: F-1879-13

Dear Assistant Attorney General Blake:

Thank you for your June 5, 2014 letter. Have you interviewed the expert that you eluded to. If so, please procure the expert's C.V. and any reports and what his testimony would be.

Lastly, I will be unable to try the case in August or October 2014. Please advise if you intend to object to my request for a continuance.

Sincerely,



ROY K. BURNS, JR.

RKB/lmt
c/c: clients

\covserver01\workfiles\Roy K. Burns, Jr\CLIENTS\TV\Thibodaux, Darnay F-1879-13\Criminal Case\Attorney General-Criminal Case\Blake.ltr 6.11.14.wpd



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

August 29, 2014

Roy K. Burns, Jr.
Attorney at Law
P.O. Box 4780
335 N. New Hampshire Street
Covington, LA 70433

RE: State v. Calvin Thibodeaux & Darnay Thibodeaux
No. 538643 & 538643-1

Dear Mr. Burns:

Please find the attached report from Dr. Michelle Garriga dated August 14, 2014. Please note that we do intend on calling her to testify as expert in the above captioned case. I have already provided her curriculum vitae via email to your associate, Mr. Lam Tran.

Please do not hesitate to contact me if you have any questions concerning this matter. My office number is (225) 326-6200. With best wishes, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Blake".

Jonathan Blake
Assistant Attorney General

JB/ab
Enclosures

Michelle Garriga, M.D., APMC
Board Certified in General and Forensic Psychiatry
P.O. Box 70, Jackson, Louisiana 70748
Telephone: (225)719-3426 Facsimile: (225)634-5312
MichelleGarrigaMD@yahoo.com

August 14, 2014

**RE: State of Louisiana versus Calvin Thibodeaux and Darnay Thibodeaux
Docket No.: 538643 and 538643-1**

Forensic Psychiatric Evaluation of Sidney Dobronich by Record Review Only

PURPOSE OF THE EVALUATION:

Pursuant to a request by Jonathon Blake of the Louisiana Attorney General's Office I performed an evaluation by record review of Sidney Dobronich to address his mental status and capacity to make decisions regarding his financial affairs in February and March of 2013.

QUALIFICATIONS OF THE EXAMINER:

The qualifications of the examiner, Michelle Garriga, M.D. are outlined in my Curriculum Vitae, which is available for review, upon request.

SOURCES OF INFORMATION:

1. St. Tammany Parish Hospital
2. St. Tammany Parish Sheriff's Office – Detective Stefan Montgomery Investigation Documents
3. Twenty Second Judicial District Court, St. Tammany Parish – Transcript of Proceedings
4. Last Will and Testament, Durable Power of Attorney
5. St. Bernard Community Health Center, Inc. – Paul Verrette, MD

1. St. Tammany Parish Hospital
Dates: February 10, 2013 to February 15, 2103 and March 12, 2013 to March 17, 2013

Mr. Dobronich, age 85, was admitted on February 10, 2013. Admit paperwork noted he was transferred from Bogalusa Medical Center with nonspecific complaints of generalized fatigue and weakness, low blood pressure, and an acute MI patterned EKG. A neurologic evaluation "did not reveal any brief focal motor deficit." He was thought to be in cardiogenic shock. Admit nursing assessment at 02:20 on 2/10/13 indicated he was confused to time and event and was oriented to person and place only though awake and alert. (pg 326) He was noted to live alone and his caregiver was "self." (pg 322) He was assessed a Glasgow Coma Scale of 14 for confusion. A renal consult was conducted, and this doctor indicated he had no loss of consciousness. He had recently had some problems with incontinence but no other issues beyond fatigue. He occasionally took his prescribed Lisinopril 10mg. He was noted to live alone, but had a neighbor "who is his caregiver." He was diagnosed with acute kidney injury, hyperkalemia, anemia, acidosis,

Re: Sidney Dobronich

Page 2

hypocalcemia, hematuria, and acute myocardial infarction. Another nephrologist, Dr. Torcson, wrote that he was "alert and oriented x3;" his cranial nerves were intact; his sensory and motor exams were normal; his gait and coordination were normal; he had a normal cognition; and his mood was stable. He stated Mr. Dobronich had a "very attentive" neighbor who looked after him. His stents and cardiac catheterization were performed on February 10, 2013. A Pastoral consult on February 11, 2013 noted that he left information regarding living will and medical power of attorney for Mr. Dobronich to discuss with his family and personal attorney. He declined Advanced Directives at that time. (pg 322) By February 14, 2013, it was noted Advanced Directives were placed in the chart.

Nursing progress notes starting on February 10, 2013 note that at 05:00 he was confused, had a Glasgow Coma Scale of 13, and was oriented to person and place only. Mr. Dobronich's neurological status by 07:00 noted he was obeying commands and had a Glasgow Coma Scale of 15; he was oriented to person and place and was drowsy though he awakened easily, was calm, and cooperative. He received blood products at 11:30. Under Psychosocial assessment, he was determined not to be within defined limits – no narrative was included for this assessment; bed alarms were placed on high. He was determined to be restless, agitated, and not calming with leg pains and his "friend remains at bedside." By 19:10, the nurse assessed his Glasgow Coma Scale was 14, he was appropriate verbally but drowsy. A Falls Risk Assessment documented he had confusion, disorientation, or short-term memory loss but was also on sedatives, narcotics, or hypnotics; he was assessed with impaired judgment. This nurse noted that his Psycho Social was within normal limits and Mr. Dobronich did have his cardiac procedures this date. Her narrative included that he was "oriented to person and place only. Oriented to time and event." By the morning shift of February 11, 2013, at 0500, he was confused and oriented only to person and place with a Glasgow Coma Scale of 13. By 09:00, he had a Glasgow Coma Scale of 15, but it was marked under "confusion/disorientation/short term memory loss" as "yes." He was not taking sedatives, narcotics or hypnotics at this time. (pg 183) He was calm and cooperative but his psychosocial status assessed "memory loss." The narrative indicated Mr. Dobronich was forgetful; he was reoriented and repositioned and then followed all basic commands and was oriented times 3. (pg 183) A cardiac rehab assessment on February 11, 2013 at 12:09 noted all education was done but Mr. Dobronich did not remember he had stents, an angiogram, or an MI. He was documented to have "Some confusion and dementia. Lives by himself and doesn't have family nearby." (pg 354) By the 16:00 and 19:20 assessments, he was determined to not be confused and was within normal limits. He had attempted to get back in bed by himself around 23:15 and slipped to the floor. (pg 268) On February 12, 2013 in the morning assessment, he had a Glasgow Coma Scale of 15, was oriented to person, place, time, and event, was calm and cooperative, was not noted to be confused, and psychosocial was within defined limits. At 19:00, he was alert and obeying commands with normal neuro status but was assessed with confusion, disorientation and/or short term memory loss under Falls Risk noting he was also taking sedatives, hypnotics, or narcotics. He remained calm and cooperative and a Glasgow Coma Scale at 22:30 was 14. He was slightly confused asking that the door be locked. (pg 281) Around midnight of February 13, 2013, narrative notes documented Mr. Dobronich remained slightly confused asking the nurse "What's your job, do you work at

Re: Sidney Dobronich
Page 3

this hospital?" (pg 284) On the day shift of February 13, 2013, he was within normal limits neurologically and psychosocially, was not assessed as confused, and by 19:30 remained the same. The cardiac rehab team educated him at 15:00 this date noting his "granddaughter" was present and said in the past he hadn't taken his medications but it would be different this time when he was discharged home with "family." (pg 358) At 09:30 on February 14, 2013, his Glasgow Coma Scale was 15, he was obeying commands, neuro was within defined limits; he displayed no confusion/disorientation/short term memory loss per Falls Risk assessment and was not taking narcotics or sedatives. He was calm and cooperative and Psychosocial was WDL. At 14:08, Cardiac Rehab staff documented he was the responsible caregiver for himself but his "granddaughter" was at the bedside. Documentation notes she "States that pt is not confused to her - He seems tired but answers questions appropriately." She said he did not want dialysis and kidney problems were discussed with Pam, the staff nurse. (pg 359) By 20:01 that evening, he was oriented to person, place, time, and event. No further confusion was documented by his discharge date of February 15, 2013; he was assessed within defined limits for Neurological and Psychosocial status with no disorientation identified. Cardiac Rehab on February 15, 2013 noted he verbalized understanding, was able to return demonstrate, and was ready for discharge with a rolling walker for ambulation.

An Interdisciplinary Rounds form dated February 11, 2013 and signed by Mark Knower, MD (critical care intensivist) noted a problem list of having stents placed, case management was alerted as he lived alone and had no children, and Infection Prevention team was alerted because he had an indwelling catheter and "Dementia." (pg 67) Hospitalist progress notes of February 13 and 14, 2013 (the date the power of attorney and will were signed in the hospital) note that he had no focal neurological deficits and on February 13, 2013 was noted to possibly need a blood transfusion; he was awake and not in acute respiratory distress. On February 14, 2013 Dr. Dumla documented the same neuro and "constitutional" assessment as the previous date. His creatinine was worsening noting this was probably due to IV dye nephropathy, his hypocalcemia, hyperkalemia and metabolic acidosis was improved, hyperphosphatemia was not improved. No altered state of alertness was addressed.

Discharge summary noted diagnoses of Acute inferoposterior ST elevation – post MI, Probable acute renal failure from MI, possible shock, hypotension or bradycardia/elevated creatinine, normocytic anemia, hypertension, Probable cardiogenic shock, multivessel coronary artery disease, acute or chronic kidney disease probably due to contrast nephropathy. Angiogram visualized advanced stenosis with thrombus in the RCA treated with a stent; a 70% LAD with a stent placement, and angioplasty in two other arteries. He was thought to have had chronic renal disease and was sent home with Home Health on February 15, 2013. Medications were ASA, Lipitor, Phoslo, Plavix, Protonix, Lopressor, Medrol, Bidil, Sodium Bicarb, Flomax, Lisinopril, Restoril 15-30mg, and Sonata 5mg. Interdisciplinary progress notes indicated he was educated on discharge instructions and there were nine new medications going home with a concern for "med mismanagement." Home Health was to address this. He was not documented as confused, no other person was present during instructions, and he was noted to have

Re: Sidney Dobronich

Page 4

understood with no other needs identified. They also noted he wanted to go through VA to obtain his medications since he "will not be able to afford meds otherwise." (pg 336) A discussion was also had regarding the price of a shower chair that was not covered by insurance costing \$30-\$40. He refused "BCS" for assistance.

Mr. Dobronich was readmitted to St. Tammany on March 12, 2013 following a fall at home when his legs gave out on him; he denied syncope and complained of left hip pain. He was transported via ambulance and assessed in the ER as "appropriate" and obeyed commands; his Glasgow Coma Scale was 15, he was alert and oriented to person, place time, and event, with stable mood, normal cognition, and no focal neurologic deficits. It was remarked he lived alone in Sun, LA and had a "very attentive neighbor who looks after him;" and, "Neighbor at bedside reports occasional confusion." He was admitted with a left femoral head fracture. Concurrent medical diagnoses were essential hypertension (followed at VA New Orleans), Coronary Artery Disease (CAD) status post inferoposterior ST elevation MI in 2/2013, Multilevel CAD – subtotal RCA with thrombus, 70% stenosis of LAD s/p angioplasty and stent placement, Acute on chronic kidney disease, chronic anemia. He denied dizziness.

A nephrology consult discovered Mr. Dobronich reported he had been dizzy prior to falling; Dr. Powers stated he saw "none of that" in the chart. Mr. Dobronich told him that the plan was to operate on him "although he has already been operated on" in February 2013 undergoing a left heart catheterization with balloon angioplasty of his RCA. He had not returned for follow-up care and had Stage IV kidney disease. He informed Dr. Powers that he had incontinence and nocturia at the last hospitalization and had lost 4 pounds since he was discharged. He said he had been diagnosed with kidney disease prior to the last hospitalization. He was taking Lipitor, PhosLo, Cefazolin, Lovenox, Medrol, Lopressor, Protonix, Sodium Bicarb, and Flomax. Dr. Powers identified he lived alone and his neighbor was his "caregiver." Final assessment noted he essentially had a solitary kidney due to atrophy of the right one. He did have a presyncopal issue prior to the fall. He had metabolic acidosis, hyperkalemia (and 2 blood transfusions), and hypocalcemia. Orthopedics noted he had a displaced femoral neck fracture. Dr. Chandler stated that he did "not have a syncopal episode" at the time of his fall and also documented he lived alone and had a son. A surgical consult chronicled a complicated cardiac picture including a 95% stenosis of the dominant right CA, anomalous left circumflex artery, 90% stenosis of the right coronary sinus, residual lesion of the LAD with 70% stenosis, an ejection fraction of 45-50%, wall motion abnormalities due to MI, stent placement x3, and mitral regurgitation. He had stopped taking his medications of ASA and Plavix 2 days prior to admission because he didn't like medications. He said he had spoken to his physician at the Veteran's Affairs regarding this. His neighbor "who takes care of him" commented he was unable to weight bear on the left side. He was assessed as oriented x3 and alert, and it was discussed that he was at high risk during surgery but cleared.

Physician progress notes document that he was cleared for surgery; he was alert and responsive on March 13, 2013; Dr. Chandler performed a left hip open reduction and internal fixation on this date. He was slightly groggy on a Dilaudid pump on March 14, 2013 but noted to be alert and responsive. On March 15, 2013 he was noted to appear

Re: Sidney Dobronich
Page 5

"somewhat confused" but was ambulating; he was "alert and responsive" per documentation. He received one unit of PRBC due to his chronic anemia (he was transfused three units total). He was doing well on March 16, 2013, but by March 17, 2013 he reported he had a bad night waking every hour. He was assessed as arousable and had no focal deficits on this date.

Nursing progress notes assessed Mr. Dobronich on March 13, 2013 at 0730 with "occasional confusion reported" but he obeyed commands and was appropriate. Surgery was done this day at 1600 and once back in ICU at 1815, he was assessed with a GCS of 13, confused, lethargic, and "very sedated" postoperatively. By the next morning, March 14, 2013 at 0700, he was appropriate and obeying commands, Glasgow Coma Scale was 15, and he was calm and cooperative. However, at 1700, he was documented to be "more confused since Percocet 5" was given. He was "paranoid" and thinking they were trying to tie him down. The nurse explained the medications had him confused, and he was remarked to be "very calm and cooperative." On March 15, 2013 at the 1935 assessment, the RN documented "confusion noted at times, reorients without difficulty," he was calm, cooperative, alert, and obeyed commands. His Glasgow Coma Scale remained 15. He was alert and oriented x4 on March 16, 2013 at 0830, calm and cooperative. At the 1920 assessment, he was again documented with "confusion noted at times, reorients without difficulty" with a Glasgow Coma Scale noted to be 14. He was considered to be alert but his neuro status was not considered to be within defined limits. On March 17, 2013 at the 0700 assessment, he was again alert, resting quietly and his Glasgow Coma Scale was 15. He was noted with most shifts to not be able to communicate his pain scale appropriately.

Physical Therapy notes assessed him on March 12, 2013 as alert and oriented times 4. Social worker notes on March 13, 2013 assessed he lived alone but he did have some assistance from a neighbor. The social worker informed him he would not be safe to return home alone; he appeared overwhelmed and the discussion was tabled. By the next day, he remained undecided as to his discharge plans to a Skilled Nursing Unit or Rehab facility. On March 15, 2013, Mr. Dobronich was attentive while listening to his discharge options but did not commit instead asking her to call his neighbor Darnay. She was contacted and stated she had power of attorney and would bring the paperwork. She said she had known him for three years and she and her family had provided him with meals, lawn care, and "overall care" as he had no children. She said he could be discharged to her home with Home Health but wanted to have a "family meeting" to discuss it. By the afternoon they had decided he would pursue Inpatient Rehab. By 5:30 pm, the social worker received a call from his step grandson, Craig in Washington. Mr. Dobronich stated that he used to live with him in Washington but did not have regular contact with him. Craig said he contacted Elderly Protective Services making a report concerning Darnay taking Mr. Dobronich's money. He wanted him tested for "vascular dementia" because he felt he was making poor financial decisions. On March 18, 2013, the social worker indicated that no report had been filed by Craig when they checked. The social worker filed the report due to the concerns expressed by Craig.

Mr. Dobronich's discharge documentation on March 21, 2013 noted he was to be transferred to inpatient rehab at St. Tammany. He was a Medicare patient with Part B as well discharge diagnoses were Femur Neck Fracture, Acute Kidney Failure, Acidosis,

Re: Sidney Dobronich

Page 6

Acute Post Hemorrhagic Anemia, Chronic Stage IV Kidney Disease, Hypertensive Kidney Disease, Coronary Artery Disease, fall, Hyperpotassemia, Hypocalcemia, old MI, Coronary Atherosclerosis, Angioplasty, and long term use of antiplatelet/antithrombotics.

2. **St. Tammany Parish Sheriff's Office – Detective Stefan Montgomery Investigation Documents**

Dates: 3/21/13 – 5/13/13

Detective Stefan Montgomery was assigned on March 18, 2103 to investigate a complaint of possible elderly exploitation as reported by George and Forest Dobronich. They were concerned for the financial well-being of their uncle, Mr. Sidney Dobronich. They said they had been contacted by Mr. Dobronich's step grandson, Mr. Craig Burdine, about a series of large and unusual "suspicious" withdrawals from Dobronich's brokerage account. He was 85, lived alone, and had no children. He was currently in the hospital after a hip fracture from a fall in his residence. The time period in question was from February 13, 2013 to March 21, 2013.

George and Forest Dobronich conveyed that they had met with Ms. Darnay Thibodaux at the hospital on March 18, 2013 to discuss the recent money and property transactions involving Mr. Dobronich. They stated that Darnay told Mr. Dobronich to tell his nephews about the handicapped trailer they were purchasing for him. They said he did not reply and acted "confused." The brothers asked Ms. Thibodaux to add them to the power of attorney to keep an eye on his finances, but she refused. They then contacted the Sheriff's Office. George made a statement that his uncle had lived a "private, modest life," and he felt he was being financially exploited. He said several months ago, Mr. Dobronich complained to him that the Thibodauxs had stopped paying him rent and he had loaned Calvin Thibodaux \$4,000 to fix a truck that had broken down. They had not paid rent since. He felt suspicious that his uncle would have "suddenly" given them all of his property and his money.

Detective Montgomery conducted an exhaustive financial investigation. Some highlights: On February 25, 2013, a donation inter-vivos was filed stating that Mr. Dobronich had donated his property on Nell Drive to Darnay Thibodaux, reserving life usufruct. This was not dated, was notarized by Rebecca Crawford, and indicated the purpose of the donation was made "in consideration of the love and affection given to Ms. Thibodaux" listing a value of \$160,000. The last will and testament was dated February 14, 2013 noting Ms. Thibodaux was appointed as executor of his estate; he willed her "all of his possessions upon death" specifically naming LPL Investments and a safety deposit box at Citizens Bank. The document was listed as signed in Pearl River, LA, but it was found he signed this will while in the St. Tammany Parish Hospital. The power of attorney of the same date gave Mrs. Thibodaux power over finances, real estate, and health care decisions expressly listing she had the power to make decisions for him regarding surgeries, medical expenses, nursing home residency, and medications even in the event she became "incapacitated either mentally or physically."

(See Transcript of Proceedings in Item #3 for discussion of items seized and persons listed as witnesses.) Highlights from Mr. Dobronich's interview with Detective

Re: Sidney Dobronich

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Montgomery on March 18, 2013 noted that he lived on Nell Drive in Sun, LA and the Thibodauxs were buying his property on a rent to own basis for \$500 per month but were a little behind. He could not recall Darnay's name immediately. He said he was caring for himself but they checked on him every day or two. He said he only wrote two or three checks per month "no more than that"; he was retired from the State and received a pension as well as Social Security. He said he only bothered Mr. Romano when his bills would come due for the hospital as he did not have insurance and paid out of pocket for medical expenses. He said Mrs. Thibodaux was not on any of his bank accounts and he did not let Darnay Thibodaux or anyone else borrow money, handle his finances, or direct any transactions on his behalf. He did not remember making any large withdrawals from Joe Romano and did not remember authorizing Mrs. Thibodaux to have power of attorney. He said he did remember calling Joe Romano to settle his medical bills when asked about a \$30,000 transaction but did not remember any other transactions. He did not remember signing an act of donation of property and "appeared confused about recent details." Elderly Protection Service met with him this same date in a separate interview, and he denied giving the Thibodauxs permission to use his money or make purchases. Detective Montgomery interviewed him several days later asking the same questions and he got the "same answers as the original statement." He named George and Forest Dobronich as his beneficiaries. He said he fell and broke his hip while Ms. Thibodaux was visiting him in his home and did not initially remember being in the hospital for a heart condition the previous month but knew it was March. Det. Montgomery observed Mr. Dobronich was "very clear" on details such as bank accounts and investment contact but appeared confused regarding some details about his property and hospital stays. Det. Montgomery met with him again on April 2, 2013 while he was at St. Tammany Parish Hospital; he was oriented to place, situation, day, and some current events. He was, however, unclear on some of the details he had spoken to Det. Montgomery about at the last visit though he remembered who he was. He remembered signing "something" but could not recall what it was and, again, denied giving Mrs. Thibodaux permission to handle his finances. He said he would have given her permission to pay his bills but would not have given her permission to buy a car, tractor, or other items with his money. He recalled something about a piece of property but denied gifting them any money or property and planned to hold the property he currently lived on. His nephews had been added to the power of attorney by this date.

Elderly Services interviewed him on March 18, 2013 and documented that specifically when asked if he was purchasing a new home, Mr. Dobronich replied he was not because he already owned two. They felt he appeared oriented but became confused when specific details about his finances were posed.

Financial Transactions as uncovered and chronicled per investigative efforts: Mr. Dobronich had a savings and checking account at Citizen's Bank (C.B.) opened in 2011 with a social security check direct deposited into savings monthly. No other transactions were made from this account until February 2013. In December 2012, a check from the C.B. account was written to Darnay Thibodaux for \$5,000. On February 1, 2013, a check was cashed for \$4,800. On February 13, 2013, Mrs. Thibodaux cashed a check for \$10,500 and obtained a cashier's check in the amount of \$9,950 payable to Nationwide Auto Sales for a truck purchase (for Calvin Thibodaux per testimony). She

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withdrew \$3,000 from the Capital One account. The first wire transfer for \$30,000 occurred on February 14, 2013 and was deposited into Capital One. From this checking account, a check for \$14,000 was made out to Calvin Thibodaux and deposited into his Resource Bank account. Ms. Thibodaux filed the power of attorney (signed on February 13, 2013) with Citizen's Bank on February 15, 2013; she transferred \$20,000 into his Capital One account. On February 16, 2013, a \$7,500 withdrawal was made in cash. She withdrew \$9,000 in cash on February 19, 2013. On February 20, 2013, she obtained a cashier's check payable to Calvin Thibodaux for \$26,000 referenced as "medical bills" in the memo but endorsed by Northpark Nissan for the purchase of a 2013 Nissan Altima registered to the Thibodauxs. She cashed a check from the Capital One account for \$5,000 this date. She requested the second \$30,000 wire on February 21, 2013. On February 22, 2013, Mrs. Thibodaux made a \$15,000 cash withdrawal. On February 25, 2013, Mrs. Thibodaux wrote a check for \$1,300 to Northpark Nissan. On March 5, 2013, the same day she had \$179,000 wired, she wrote a check to cash for \$10,000. A check was written to Christopher Thibodaux for \$400 on March 6, 2013. On March 7, 2013, a cash withdrawal for \$4,500 was made; on March 8, 2013 she withdrew \$10,000; and on March 11, 2013 she withdrew another \$10,000. This same day, she obtained a cashier's check for \$45,000 for the purchase of property (a trailer) at 29066 Ellis Dr. and another cashier's check payable to Evergreen Tractor for \$22,944.11 which Det. Montgomery indicated was a "brand new Kubota tractor loader and trailer." On March 11, 2013, Mrs. Thibodaux transferred \$5,000 to Mr. Dobronich's Capital One checking account. The next day she requested from Joe Romano a \$95,000 wire transfer for "closing costs." She cashed a check from Capital One on 3/12/13 for \$3,000 and made a cash withdrawal of another \$5,000. On March 13, 2013, Mrs. Thibodaux obtained a \$50,100 check payable to Platinum Title for the purchase of "other land" as well as obtaining a cashier's check in the amount of \$100,000 payable to Calvin Thibodaux, which was deposited to his Resource Bank account. She also made a \$29,000 cash withdrawal on March 13, 2013. Detective Montgomery stated that all of these wire transfers and withdrawals were performed using the power of attorney. Further charges from the Capital One checking account to iTunes (\$84.05) were made and a \$500 debit card transaction to Berryland Camper Sales on March 18, 2013; He stated that the Thibodauxs obtained \$334,000 from Mr. Dobronich's investment account in less than one month under the pretense that they were paying his medical bills and buying him a house. No evidence of medical bills was documented; there was a house purchased, but not for \$179,000 as described and nothing was purchased in Mr. Dobronich's name.

Based on his investigation evidence uncovered, Detective Montgomery obtained a search warrant for Resource Bank to secure the \$100,000 deposit in Calvin Thibodaux's account as evidence of violation – Exploitation of the Infirmed on March 21, 2013. He noted that he went to their residence this date and observed newly purchased items on the premises such as a tractor, truck, 4-wheeler, 2 utility trailers, and other items. At the newly purchased property at 29066 Ellis Drive, a Rockwood camper from Berryland Campers was parked in the front yard. Further search warrants on March 27, 2013 discovered a 1974 Chevy Nova, Honda 4 wheeler, 2 utility trailers, a boat and motor, guns, tools, and a riding lawnmower. Various receipts (as listed in Item #3) were recovered from dates February 2013 to March 2013. The computer was opened to internet pages for power of attorney laws and a page titled "stop family from taking money from mom bank

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account." All items believed to have been purchased with Mr. Dobronich's monies were seized including the vehicles, tractor, trailers, boats, motors, tools, lawnmower, etc. In speaking with attorney Mr. Burns, he told Det. Montgomery that the Thibodauxs purchased the camper for Mr. Dobronich so he could rehabilitate from his hip fracture. Detective Montgomery documented that he could not find a legitimate reason why he would live in a camper and could not find any benefit for Mr. Dobronich from all of the items or real estate purchased; Mr. Dobronich expressed on 2 occasions that he did not give them permission to use his money for these purchases.

Detective Montgomery also seized an Act of Donation document dated March 13, 2013 where Buffy Singletary donated real estate valued at \$45,000 to the Thibodauxs; this was notarized by Janet Singletary (who was also secretary for the Notary Rebecca Crawford who handled the will and power of attorney documents). It was determined that this was the same property purchased by Ms. Thibodaux at 29066 Ellis Drive with a \$45,000 cashier's check from Mr. Dobronich's account and was found to be occupied by members of Darnay Thibodaux's family who said they just moved in and were paying rent to her.

Ms. Rebecca Crawford's interview was chronicled (as discussed in Transcript of Proceedings item #3) regarding her interaction with Mr. Dobronich during the document signings noting he seemed to understand but did not have too many questions. On March 27, 2013 (at the affidavit signing at the hospital as requested by Mrs. Thibodaux), Mrs. Thibodaux was in his room when she arrived and was very upset because she said they wanted to put her in jail. Her attorney told her if they got a written statement from Mr. Dobronich they probably would not be arrested. Ms. Crawford acknowledged to Det. Montgomery that he did not appear as alert ("not as responsive) as during their earlier encounter and appeared to be in pain though he remembered who she was. Mrs. Thibodaux told her what to list in the document and she asked Mr. Dobronich if he consented to the purchases as she read them off to him and he said yes. She said she saw him read the document though he did not ask any questions and it was noisy in the room.

Detective Montgomery interviewed Kristina Penton, Darnay Thibodaux's daughter, and Lynn Lemoine, Darnay Thibodaux's mother, on March 4, 2013. Ms. Penton advised that Mrs. Thibodaux had called her in January 2013 saying that she was cleaning Mr. Dobronich's house and found a receipt showing he had \$800,000 in his account. She learned a few weeks later that Mr. Dobronich had been in the hospital after a heart attack and Mrs. Thibodaux was asking her about different medications he was taking. Ms. Lemoine stated that Mrs. Thibodaux had asked for \$300 to buy Christmas presents in December 2012 because they did not have any money; she did not loan her any. However, on Christmas Day, the Thibodauxs showed up having purchased a different car and had bought 4-wheelers for the kids; she was not aware from where the money had come. She advised that Darnay had borrowed \$50,000 from her grandparents several years ago because they had no place to live. They purchased a house and refinanced it so many times they lost it. They found it suspicious that Mrs. Thibodaux was suddenly taking care of Mr. Dobronich when she had never done so before and they were making purchases for things they never had money for in the past. Kristina asked her sister Kayla if Darnay was stealing from Mr. Dobronich and she said he was giving it to her. She thought Kayla was receiving money as well.

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The Application for Arrest Warrant was included dated April 5, 2013. Mr. and Mrs. Thibodaux turned themselves in on 4/6/13 at 0900 to a Deputy at a gas station in Covington.

Pam Adams, RN was interviewed on May 13, 2013. She advised she was called in to Mr. Dobronich's room at St. Tammany Parish Hospital around shift change to be a witness on a document (date not given). She recalled the room was noisy, and many people including children were present. She witnessed him sign the document and felt he was competent to sign but could not recall what specific condition he was in. She confirmed she had signed the will that was presented to her at the meeting stating that some aspects of the signature did not appear to be hers and she did not recall signing a second document but she could not be certain if she had.

Copies of receipts of purchase, property, vehicle and car titles, a will and worksheet, witness statements, bank statements, copies of cashier's checks and cancelled checks, bills of sale, etc. – all as part of Detective Montgomery's investigation were included for review. Also included was the undated Land Donation form as previously discussed. This hand written fill-in-the-blank document displayed that Mr. Dobronich donated his land at 29145 Nell Dr. in Bogalusa to Darnay Thibodaux. The relationship of donor to donee listed "Friendship," and the value of the property was listed as \$160,000.

3. **Twenty Second Judicial District Court, St. Tammany Parish – Transcript of Proceedings**

Date: June 25, 2013

Ms. Vallejo, Counsel for Mr. Dobronich, questioned Joseph Romano who was identified as the owner of Romano Insurance and Investment Group (or LPL Investments). He indicated Mr. Dobronich was one of his clients from 2004-2009, he moved away, and upon his return in 2011 moved all of his investments (mostly bonds) back to Mr. Romano. He saw him regularly 2-3 times per year and last saw him 3 weeks ago. He had known him to be able to take care of his own affairs. He had first spoken with Mrs. Darnay Thibodaux on February 13, 2013 when she called saying that she was the neighbor and caretaker of Mr. Dobronich, he was in the hospital, and they needed funds transferred to his account before he was discharged. She said she had power of attorney for him. He asked to speak with Mr. Dobronich who agreed he needed a transfer and would have Mrs. Thibodaux call him back with the amount. She called back and requested \$30,000 be sent which was wired to his savings account. Mr. Romano said Mr. Dobronich "never" transferred money from his accounts and had \$1200 (partial dividends) deposited per ACH (banking term which seems to indicate type of transfer) monthly to his bank account only. In 2013, Mr. Dobronich had invested about \$950,000 with his firm. Mrs. Thibodaux met with Mr. Romano on February 20, 2013 bringing with her a will and power of attorney stating that Mr. Dobronich was leaving everything to her and wanted her to handle his affairs. Mr. Romano required a "trading authorization" be signed and witnessed by a notary which she said was not a problem. She called that same day requesting another \$30,000 be transferred to pay medical bills; this was transferred. She called again on March 4, 2013 requesting \$179,000 be

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transferred because Mr. Dobronich wanted to buy a home. Mr. Romano was "alarmed" and asked to speak with Mr. Dobronich but she took issue stating that she had trading authorization and power of attorney. Mr. Dobronich called 30 minutes later and Mr. Romano said he would put the money on hold until they were ready for the sale. Mr. Dobronich agreed but Mr. Romano overheard Mrs. Thibodaux in the background saying they wanted it transferred now; \$179,000 was transferred. On 3/11/13, Mrs. Thibodaux called asking for \$95,000 as they were closing and had more expenses; this was transferred. Mr. Romano knew of a relative of Mr. Dobronich in Washington named Craig who happened to call him on March 15, 2013. He was concerned for Mr. Dobronich and informed that the only 2 heirs were Forest and George Dobronich. He spoke to George later that day, and he said Mr. Dobronich was back in the hospital. Mr. Romano stated he wanted to speak to Mr. Dobronich alone as he was concerned Mrs. Thibodaux "may have been coaching him when I had him on the phone." On March 16, 201, he spoke to Mr. Dobronich on the phone and asked him if wanted anyone else on the account, if he wanted Mrs. Thibodaux to have trading authority, and if he wanted money transferred out of his account. Mr. Dobronich answered that he did not want anyone else on the account, did not trust Mrs. Thibodaux and did not want her "or anybody" to have trading authority – he wanted that cancelled, and he did not want any money leaving his account. He told Mr. Romano he did not remember telling him to transfer \$179,000 out of his account and did not remember speaking to him that day. Mr. Romano cancelled trading authority for Mrs. Thibodaux on March 18, 2013. He presented the court with a self-typed document chronicling his interaction with Mr. Dobronich and brought proof of the \$334,000 of transactions made from January to March 11. (See item #2 – St. Tammany Parish Sheriff's Office for a list of money transferred and items purchased.)

Mr. Burns, Counsel for the Thibodaux's presented Exhibit 1, which was power of attorney, dated February 14, 2013; Mr. Romano recognized Mr. Dobronich's signature, and it was notarized. He cited that he did not charge Mr. Dobronich a management fee for investing but made 86.5 % of .25% of the amount of his accounts. He answered that he felt he was able to judge Mr. Dobronich's capacity while speaking to him on the phone and felt like he understood and was competent. Three weeks ago, he spoke directly to Mr. Dobronich and felt he was competent and understood the financial matters they were discussing but he countered he was "not as competent as he's been." He acknowledged that he spoke to him directly regarding the \$179,000 transfer but that he later told him he did not remember allowing that to happen. Mr. Romano acknowledged that the relative of Mr. Dobronich named Craig called him; Mr. Burns conveyed that Mrs. Thibodaux had actually approved a \$200,000 transaction to Craig to pay a debt. Mr. Romano said that he was not aware of this. He agreed Mr. Dobronich had no children; his nephews Forest and George Dobronich now had power of attorney for him but did not have trading authority. He said the brothers had put some money back into his account. Ms. Vallejo confirmed that since Mrs. Thibodaux's trading authority had been removed, there had been no further funds withdrawn from Mr. Dobronich's account.

Detective Stefan Montgomery, Financial Crimes Investigator of the St. Tammany Parish Sheriff's Office was next questioned by Ms. Vallejo. He became involved when he was asked to investigate "some large and unusual financial transactions" that had been made from Mr. Sidney Dobronich's investment account. His nephews, George and Forest

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Dobronich, travelled to speak with their uncle and he did not remember the transactions; the brothers then called the Thibodauxs for further information and they all went to the hospital having concerns that he did not remember the transactions and there "was a bit of uneasiness with possibly him being coached." Detective Montgomery said that he spoke with Mr. Dobronich on several occasions and each time he stated he had no knowledge of "these transactions, that he did not give them permission to handle his finances." He was very clear that Joe Romano "handled" his money. Mr. Romano, on March 18, 2013, conveyed that Mr. Dobronich's typical pattern was that he deposited \$1200 monthly into his account for living expenses until Mrs. Thibodaux contacted him on February 13, 2013 asking for \$30,000. In less than 30 days, he discovered that approximately \$334,000 had been removed from his investment account for "medical bills", a new home, and "unforeseen closing costs for that house." He was not familiar with the Thibodauxs but she produced a legal power of attorney and a will signed by a notary stating that Mr. Dobronich had given the Thibodauxs "all his assets upon his death" and had also signed over his property to them. Detective Montgomery spoke to Mrs. Thibodaux who said she had obtained an attorney. Mr. Dobronich did not ever tell him he had a caretaker but noted he lived alone and "took care of himself pretty much" and was independent driving himself up until the time he was hospitalized. He conveyed to Detective Montgomery that he moved into a smaller piece of adjoining property next door to his previous home and negotiated a "rent to own agreement with the Thibodauxs" for them to purchase his old home. Further investigation discovered the power of attorney was filed with both Citizens Savings Bank and Capital One and the \$334,000 had moved between the two accounts. One transaction was discovered that occurred prior to Mr. Dobronich being hospitalized and prior to the power of attorney being signed. This was dated February 8, 2013 at the Wal-Mart in Bogalusa using a debit card for \$834 which he found out was for the purchase of an I-Phone 5 and a laptop computer. He said Mr. Dobronich had not used a debit card "for anything" prior to this.

Detective Montgomery chronicled the report of his investigation addressing all of the financial transactions that were conducted during February and March of 2013. See item #2 St. Tammany Parish Sheriff's Office for complete details.

Detective Montgomery was questioned by the Thibodaux's attorney, Mr. Burns. Mr. Burns conveyed there was a recording of Mr. Dobronich giving permission for the purchase but they did not want to provide Det. Montgomery with a copy of it. A search warrant was obtained for the address purchased on Ellis Drive, the address they lived at, and Mr. Dobronich's trailer. The Thibodauxs stated they purchased the camper so he could live in it and rehabilitate his hip and said they were going to rent out his home. Among the things they found in their search were the original power of attorney and the will, account statements, receipts of cashier's checks, and medical bills for Mr. Dobronich totaling only \$1,946.17 – and no other medical bills. An invoice book was recovered titled "house note only" coinciding with Mr. Dobronich's statement about his rent to purchase agreement with the Thibodauxs. According to the book, the Thibodauxs "had made \$500 monthly payments beginning" July 1, 2011 for that property and the last entry on March 24, 2012 showed a remaining balance of \$80,500. The Thibodauxs were asked about this, and they said that Mr. Dobronich had wanted to give them the property and told them not to make any more payments. During the search, they recovered a safe

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in the bedroom containing a bill of sale for a boat and a 50 horsepower motor bought on February 13, 2013. Also, a bill of sale was found for a 2006 Honda 4-wheeler dated February 12, 2013, accessories from Ken's ATV and Champion Cycle, an Evergreen tractor invoice, a handwritten bill of sale for a 1974 restored Chevy Nova for \$2,000 dated February 23, 2013, and the Wal-Mart receipt previously mentioned including a service contract for the iPhone in Mr. Dobronich's name. The vehicles seized were the 2013 Nissan Altima, the Nova, the Honda 4-wheeler, a 5x8 carry-on trailer, a 2013 Cub Cadet lawnmower, a 2001 Chevy truck, and the 2013 Kubota tractor with implements; seized as well was \$7,500 in \$100 bills. These items were seized because there was evidence that they were purchased with Mr. Dobronich's funds. Additionally, a purchase agreement for a property close to the home at 28529 Hall Road was found which he said coincided with one of issued cashier's checks – a \$1,000 deposit. Mr. Burns stated they were intending to purchase the property this date and he advised them not to go through with the sale. He discovered new checks with both Mr. Dobronich's name and Mrs. Thibodaux's names on them to Capital One. Also found with purchase receipts dated after the power of attorney was a new Springfield 40 caliber pistol, various tools and equipment purchases, and the new Altima with Mr. Dobronich's 2001 Dodge van registration certificate inside. Also found in here were prescription drug receipts for Mr. Dobronich, and inside the Chevy truck were several bills of sale for equipment and trailers purchased. ATM receipts from the Capital One account were recovered, a \$19,000 cash receipt to Berryland Campers as well as a \$19,000 refund check from them (once Mrs. Thibodaux no longer had access to the accounts, the checks were not good and Berryland refunded them the money.) He found inside Mr. Dobronich's residence that a new bedroom had been added through construction. At the new residence purchased with the \$45,000 cashier's check on 29066 Ellis Drive, they met Mrs. Thibodaux's daughter, Kayla Thibodaux and Brandon McQueen who were in the process of renovating the doublewide trailer on the property. They told Detective Montgomery that the Thibodauxs had recently purchased this property and they were renting from them. Receipts from Lowe's for construction materials were found for ongoing renovations that they said were paid by them; however, a BBQ grill receipt purchased by Kayla appeared to be the "same one at Calvin and Darnay's house."

Detective Montgomery spoke with Buffy Singletary. She stated she had known the Thibodauxs for many years and they had rented the property on Ellis Drive from her. (Per St. Tammany Parish Sheriff's Office documentation, the Thibodauxs were renting "to own" the property at Ellis drive from her and they failed to pay the note.) They had wanted to move out as they had found someone who would allow them to owner finance another property – this was Mr. Dobronich. The Thibodauxs contacted her later stating they wanted to purchase the property and agreed upon a price of \$45,000. On March 7, 2013, Mrs. Thibodaux stated she had gotten a loan and wanted to handle the transaction through Hickory Title with Rebecca Crawford; not through a land title service. Hickory Title was the company who also handled the power of attorney and the will. When Ms. Singletary and the Thibodauxs went to Hickory Title to conduct the sale, it was "set up as act of donation." Ms. Singletary said she was uneasy about it but went through with the process knowingly approving an act of donation but accepting a \$45,000 check for the payment of the property. Detective Montgomery said the notary service provided the act of donation paperwork knowing that this was a cash sale.

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He spoke with Rebecca Crawford on April 2, 2013 together with her husband and her attorney by phone. She said she was called by the Thibodauxs to notarize the power of attorney and the last will which was prepared at her office and signed at the St. Tammany Parish Hospital. The land preparation was signed later at his home. Ms. Crawford stated that she was lifelong friends with the Thibodauxs and was semi-retired. Ms. Crawford asked Mr. Dobronich several questions to "ensure he was competent" and he read the entire will and power of attorney before signing it. It was witnessed by a nurse and Mr. Crawford. She said he "did seem to understand that he knew what he was signing" but did not have a lot of questions.

Ms. Vallejo decided to interrupt questioning of Detective Montgomery to question Mr. Dobronich. He established that he lived in St. Bernard for 20 years, moved to New Orleans for a while, and currently resided in Sun, LA at 29127 Nell Drive for the last four years. He said he had never lived in Washington or on the west coast. (According to STPH Social Worker documents, he had lived in Washington with his step grandson Craig.) Mr. Dobronich had been a tug boat captain for twenty years and retired as such. He said his wife was deceased and he had lived alone since that time. He said he was able to care for himself stating he could do "everything" including cooking and he drove a Dodge van. He was asked if he wanted someone to care for him and he said, "Well, maybe." He said he had family that lived in St. Bernard naming Fannie Cruise and George and Forest Dobronich. He said he took care of his money and he answered "no" when asked if he wanted anyone else to take care of his money. He said he had never signed any documents authorizing anyone else to take care of his money, did not want to do this "just yet," but would do it "when the times comes." He said he had never donated any property or money to anyone nor had he donated the house on Nell Dr. to anyone. He said he had 2 trailers on two acres and was renting one of them to the Thibodauxs. When asked if he was renting or selling, he answered "selling it to them" for \$500 a month for the last year "maybe." He said they paid him and he wrote it in a book. He had no cell phone and said he did not need a cell phone stating, "I don't know how to use them." He did not have a computer and had never used one nor did he want to have one. He did not have a camper nor did he want to have a camper stating, "I don't go for that no more." He did not have a 1974 Chevy Nova and did not want one. He did not want a 2013 Nissan Altima because he had a Dodge van and was happy with it. He said he did not ask anyone to buy him a new car or another house; he cited he owned a home in Chalmette and 2 trailers where he lived currently and "that's it." He did not want a house for investment purposes either. He did not know how much money he had in his investment accounts noting Joe Romano handled that for him. Ms. Vallejo asked if he recalled signing a document that authorized Darnay Thibodaux to have access to his investment accounts. He did not remember signing this; he did not want her to have access to his money or handle his finances; he did not remember signing a last will and testament leaving all of his property to Darnay and Calvin Thibodaux. He said he wanted "my nephews and nieces and all" to have his property when he died. He said he did not remember signing a document donating the house he lived in currently to the Thibodauxs and would not want to donate his home indicating they were buying the other one "on time." She asked him if he would have agreed to let Mrs. Thibodaux spend \$330,000 of his money and he answered "no" saying he wanted it back if he "could possibly get it."

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Mr. Dobronich acknowledged he never told the Thibodauxs to stop paying him for the house they were buying from him and he never wanted to give it to them. He wanted them to continue paying him for it. He was not aware that Darnay Thibodaux was listed on his checking accounts and could write checks. He stated "I did not give her authority for that" and did not want her on his checking accounts. Mrs. Thibodaux had never lived with him and he did not have a caretaker nor did he need one. He said she came in once a month to clean for him but that was it. He never lent Calvin Thibodaux any money other than letting them buy the house from him. Darnay was in his trailer when he fell and broke his hip but could not recall who brought him to the hospital after he had a heart attack. He said he did tell Mr. Romano to withdraw money to pay for his medical bills but could not recall how much he told him, did not know if it was \$30,000, and had not received any medical bills yet.

Mr. Burns next questioned Mr. Dobronich. He asked him if he had sundowner's disease where he had trouble remembering things and he answered with an "affirmative response." Mr. Burns asked him to answer out loud asking him if he had troubles with memory and he said he did not have trouble remembering. He was asked to identify the Thibodauxs answering they were "Calvin Klein and his wife" and agreed they lived next door to him; he had known them for a couple of years. He also identified Ms. Crawford, the notary. He said he had never given Mrs. Thibodaux any money or checks. He was presented with a \$9,000 check written to Darnay; he said it was not his signature and someone had forged his name (Exhibit 2) dated February 15, 2013. Mr. Burns had him agree he liked to go to car shows and Calvin had taken him once. He did not remember discussing with Mrs. Thibodaux that she wanted a 2013 Altima and did not remember authorizing for her to buy it. When asked if it was possible he did, he answered "yeah." Mr. Burns gave Mr. Dobronich a document of an act of donation where he gave the Thibodauxs an acre of land on Nell Drive in Sun, LA and he acknowledged it was his signature on the form. (Exhibit 3) He said he signed these papers in Covington, no one forced his hand, and he understood what he was doing. Exhibit 4 was an affidavit that he acknowledged was signed by himself and by Ms. Crawford dated March 27, 2013 giving "her the power of attorney" to buy a Kubota tractor, a 4 -wheeler, a 2001 Chevy pick-up truck, a Nissan, and other property with his "full knowledge", with his account, and with his consent to use the money from his account. It also stated he did not wish to pursue criminal charges against "these people." The Judge intervened at this point and asked Mr. Dobronich why he did this; he said he did not know. He asked him if he called Ms. Crawford up and asked her to draft an affidavit stating that he did not want to prosecute the Thibodauxs and if it was his idea. He answered "Yeah" but could not state why. Mr. Burns continued - Mr. Dobronich said he went to the VA Clinic in Bogalusa and drove himself; Mrs. Thibodaux did not bring him. He recalled she did bring him to the hospital when he had a heart attack and agreed he had told people that she had saved his life. Mr. Burns was interrupted in his next question by the Judge who asked Mr. Dobronich if he knew why everyone was in the court currently and what they were doing here. Mr. Dobronich responded, "Why am I here? I don't know." The Judge asked him several more questions about his role and commented Mr. Dobronich was just nodding his head yes. He told Mr. Dobronich to step down and stated that, based on his observation of Mr. Dobronich, "I do not think he's competent to testify."

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Ms. Vallejo recalled Detective Montgomery asking him what he observed while on break. He observed Mrs. Thibodaux attempting to get Mr. Dobronich's attention on two separate occasions and made eye contact with him; the second time she blew him a kiss. He continued from previously stating that when Ms. Crawford witnessed Mr. Dobronich sign over the property, she felt he understood what he was doing. She returned for the affidavit signing upon the request of Mrs. Thibodaux (as described in item #2 St. Tammany Parish Sheriff's Office). She felt he was "more confused maybe, a little confused" than the last time she saw him. She was asked her opinion of the transactions and she said in thirty-three years as a notary, she had not seen a situation like this where this amount of money had been withdrawn and used in such a short amount of time but she "did not see anything odd" about Mr. Dobronich's transactions. She was also asked about the "Act of Donation" transaction between Buffy Singletary and the Thibodauxs. Both she and her secretary, Janet Singletary, stated that the property was set up as an act of donation but that it was a cash sale; they set it up this way because the Thibodauxs had asked them to do this. Ms. Buffy Singletary had said the Thibodauxs told her a grandmother passed away so and they came into the \$45,000 for the sale of the property. Ms. Buffy said she had never met Mr. Dobronich but felt she was being pressured by the Thibodauxs to say she had met him (because the money was coming from Mr. Dobronich's account). Ms. Buffy became concerned she would get in trouble over the real estate transaction and recorded her conversation with Mrs. Thibodaux. She told Buffy that she did not want her to meet with Detective Montgomery, she was supposed to say she had met Mr. Dobronich on 1/15/13 where she told him she wanted to sell the house, and when she questioned Mrs. Thibodaux whether Mr. Dobronich might say he never met her, Mrs. Thibodaux replied, "Trust me, he'll say he did."

Detective Montgomery stated they felt there was overwhelming probable cause to issue arrest warrants for the Thibodauxs. They actually turned themselves in and were charged with Exploitation of the Infirmed. He stated he had spoken to Mr. Dobronich on 3 occasions during his investigation and he was consistent in his answers that he did not authorize or give them power of attorney to spend his money and did not give his property to them. He did not agree to donate his property, did not give them access to his money, he said he wanted his nephews to be beneficiaries, and he never said he needed a caretaker.

Mr. Burns questioned him next and asked about the Wal-Mart iPhone purchase. Det. Montgomery had learned from video surveillance at the store that Mrs. Thibodaux was at the electronics counter and attempting to get a contract signed while Mr. Dobronich was alone at the front of the store with his groceries. She went to him and was seen taking him outside, holding a phone to his ear after speaking with him, and then she left him outside with his groceries while she went back to the electronics counter to complete the transaction for the phone and computer. He surmised Mr. Dobronich was asked to speak with the AT&T people by phone. Mr. Burns challenged him to state with certainty that the property that was seized during the investigation was purchased with Mr. Dobronich's funds. He replied that all of these purchases happened after the date that they began receiving money from Mr. Dobronich. He agreed that each time he spoke to Mr. Dobronich, he felt he understood him and remembered him each time. Detective Montgomery said he was a nurse and could speak to his experience in dealing with

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patients with dementia and sundowner's; but because he was not present, he could not speak to Mr. Dobronich's capacity during the time he was signing the documents. The Judge eventually ceased questioning and wished to convey his ruling. He stated it was clearly established that the property at issue in parcels 1 & 2 was purchased with the funds of Mr. Dobronich and he would have claim to the property. He stated that the evidence "clearly establishes that there's been a pattern and series of events in which these people methodically and purposely used undue influence in this highly susceptible and easily influenced gentleman." He said their "outrageous behavior" in taking advantage of their elderly neighbor and landlord was exceeded only by their greed. He said they lied, perpetrated falsehoods, ignored Court orders; bought land, campers, trailers, cars, and "splurged on this man's frugality" noting he apparently had lived very modestly only to fall victim to their "profligacy and greed." He ruled to deny the motion to dissolve the writ of sequestration of parcel 1. Referencing parcel 2, or the purchase of the property from Buffy and Charles Singletary "disguised as a donation," he felt the "subterfuge and lies" involved were clear to the Court to issue the writ and to defeat the motion to dissolve it. He was extending the protective order of Mr. Dobronich against the Thibodauxs until the next hearing. Furthermore, he ruled that Mr. Dobronich not be subject to a deposition until examination by a physician ruled that he was competent. He cited Mr. Dobronich had difficulty telling him who he was, what he was doing here, and what these proceedings were about.

4. Last Will and Testament, Durable Power of attorney
Date: February 14, 2013

Mr. Dobronich's Last Will was included noting this was a copy, and it was unsigned. It was dated February 14, 2013 and the location named Pearl River, LA. He indicated he was married twice; both wives were deceased and he had no children. The document indicated he appointed Darnay Thibodaux as executrix; in the event she was unable to serve, Calvin Thibodaux was appointed. After debts being paid, he bequeathed to Calvin and Darnay all property which he possessed at death. If in the event of their deaths, then property would move to Christopher Thibodaux. The document listed specific bequests that Darnay Thibodaux should receive all property accounts including not limited to LPL Investments and Safety Deposit box at Citizen's Bank. He bequeathed the rest, residue, and remainder of his property to Darnay Thibodaux. Rebecca Crawford was listed as the notary; John Howell and Pam Adams, RN were listed as witnesses and Mr. Dobronich's signature appears on both pages.

A "Durable Procuration" was enacted on February 14, 2013 notarized by Rebecca Crawford. This document named Darnay Thibodaux as Mr. Dobronich's agent and attorney in fact with "full power and authority" to conduct, manage, transact business and concerns "of every nature and kind, without exception" in all Parishes of Louisiana and elsewhere. A lengthy two paged paragraph included a list of privileges to include such things as opening mail, make and endorse promissory notes, drafts, checks, deposits and withdrawals "from any bank and any money deposited anywhere," incur and acknowledge debts, sell and transfer shares of capital stock and dividends; exchange, sell, transfer, etc. all real and personal estate and immovable property, lease or let all personal or immovable property, accept and renounce successions, etc. It also granted Mrs.

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Thibodaux the authority to make health care decisions such as surgery, medical expenses, nursing home residency and medications even if she became incapacitated mentally or physically. The document did state in the last paragraph this was "done and passed" at Ms. Crawford's office and witnessed by Pam Adams (the RN) and John Howell.

5. St. Bernard Community Health Center, Inc. – Paul Verrette, MD
Dates of service: July 2, 2013 and July 25, 2013

Paul Verrette, MD evaluated Mr. Sidney Dobronich on July 2, 2013. He indicated Mr. Dobronich had coronary artery stents placed on 2/13 after an MI and had a left total hip replacement on 3/13. He had dementia and said he was 83 and his mother was in her 80's (noting that parents are deceased). Dr. Verrette stated that he "has no recollection of this." He cited his short and long term memory were poor, he was "not oriented to place, situation, or time." Medications were aspirin, Lipitor, Lexapro 10mg, Lopressor three times per day, and Hydralazine.

Dr. Verrette stated in a letter "to Whom it May Concern" that Mr. Dobronich had multiple medical problems including hypertension, hypertensive cardiovascular disease, coronary artery disease with s/p coronary artery stent placement, osteoarthritis with left total hip replacement, chronic renal insufficiency, and dementia. He cited that his dementia was "likely due to his history of hypertension and cerebrovascular disease." He opined his dementia was such that he was "not able to direct his affairs concerning person or property in matters consistent with his own interest."

An addendum dated July 25, 2013 was penned indicating he wished to address Mr. Dobronich's mental and physical state. He restated that his dementia negated his ability to direct his personal affairs and further opined that in his professional medical opinion, Mr. Dobronich was not "mentally stable enough to be able to provide any competent testimony in a court of law, including a deposition.

ASSESSMENT:

It is my opinion to a reasonable degree of medical certainty that Mr. Dobronich suffered from Major Neurocognitive Disorder (Dementia), Possible Vascular Neurocognitive Disorder prior to February of 2013 and up until his death.

BASIS FOR OPINION:

Dementia or Neurocognitive Disorder is cognitive decline in one or more domains (complex attention, executive function, learning and memory, language, perceptual-motor, and social cognition) that can have a multitude of etiologies. Mr. Dobronich's medical history suggests and Dr. Verrette indicated as well that his dementia was most likely subsequent to Cerebrovascular Disease and Hypertension.

Mr. Dobronich demonstrated confusion and memory loss, and problems with concentration, executive function, and social cognition during his court testimony on June 25, 2013. Dr. Verrette found disorientation and memory loss in his evaluation on July 2, 2013 leading to his

Re: Sidney Dobronich
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diagnosis of dementia. Based upon his evaluation, Dr. Verrette further opined that Mr. Dobronich was "not able to direct his affairs concerning person or property in matters consistent with his own interest."

It is my opinion that he lacked the same capacity in the months prior, i.e. during the time in question, February and March of 2014. Dementia (except that caused by a sentinel event such as a massive stroke) has a slow, step-wise progression. It does not spontaneously appear to the degree evident in Mr. Dobronich in June and July without it having also been present in the previous months. Its presence is supported multiple times in the medical record in the form of medical staff documentation of confusion, disorientation, and memory loss and in Dr. Mark Knower's reference to Mr. Dobronich's "Dementia." It was noted during his first hospitalization for myocardial ischemia in February that Mr. Dobronich did not remember that he had had a stent placed or even that he had suffered a heart attack. During his hospitalization in March for a hip fracture (which has over fifty percent comorbidity with dementia), he again could not recall that he had suffered a heart attack the preceding month.

Further evidence of his cognitive decline is the change in Mr. Dobronich's behavior from fiscally conservative and independent as described by his family and financial advisor to that seen during the early part of 2013. Joseph Romano testified that Mr. Dobronich had always been conservative in his financial affairs, withdrawing so little monthly that his portfolio was growing even in retirement. Mr. Dobronich had always been responsible for his own affairs and in his testimony and statements to investigators did not believe he had given up authority over those affairs. This marked change in his apparent willingness to concede control over his person and property suggests serious dementia.

Therefore, in summary, it is my opinion that there is ample evidence in the records to indicate that Mr. Dobronich suffered serious dementia and most likely lacked the capacity to make decisions regarding his finances, property, or medical care.

Respectfully submitted,



Michelle Garriga, MD
Forensic Psychiatrist



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

November 10, 2014

Roy K. Burns, Jr.
Attorney at Law
P.O. Box 4780
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Covington, LA 70433

RE: State v. Calvin Thibodeaux & Darnay Thibodeaux
No. 538643 & 538643-1

Dear Mr. Burns:

The State is hereby providing exculpatory evidence it has received in connection with this case complying with *Brady v. Maryland*, 371 U.S. 812, 83 S.Ct. 56, 9 L. Ed. 2d 54 (1962). I received this document November 7, 2014. Please find the attached copy of a DVD depicting Mr. Sidney Dobronich dictating a will on July 18, 2013. The video was taken by Forest Dobronich.

Please do not hesitate to contact me if you have any questions concerning this matter. My office number is (225) 326-6200. With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Blake".

Jonathan Blake
Assistant Attorney General

TWENTY-SECOND JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY
STATE OF LOUISIANA

FOREST DOBRONICH AND GEORGE DOBRONICH
AS MANDATORY AGENTS AND
ATTORNEYS-IN-FACT OF SIDNEY DOBRONICH
VERSUS #2014-30680 "I"
DARNAY THIBODAUX AND CALVIN THIBODAUX

TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE ABOVE CAPTIONED
MATTER HEARD BY THE HONORABLE REGINALD T. BADEAUX, III,
PRESIDING JUDGE, DIVISION "I," ON FEBRUARY 24, 2015.

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BRIDGETTE L. JONES
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CERTIFIED COURT REPORTER

 COPY



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FEBRUARY 24, 2015

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1 A. Yes, I have.

2 Q. You have been involved with -- you say you have seen
3 your uncle and you've been with your uncle. And Mr. Brown,
4 the Thibodaux's attorney, previously referenced letters that
5 were alleging that your uncle was incompetent and not able
6 to testify. When you saw your uncle -- did your uncle move
7 in with you after he left the hospital

8 A. My uncle moved in with me on April 2, the day he was
9 released from the hospital for his hip replacement.

10 Q. April 2. What year?

11 A. Probably 2013.

12 Q. Did your uncle live with you --

13 A. He lived with me the whole year. Yes, until he passed
14 on. I think he passed on March 26 or 24.

15 Q. Approximately a year?

16 A. A year. Right at a year, yes.

17 Q. Did you have an opportunity to observe your uncle with
18 respect to his capacity and his competency?

19 A. Yes.

20 Q. How old was your uncle?

21 A. My uncle was 86.

22 Q. Can you describe to the Court your uncle's mental
23 state, not every single day, but how was your uncle's mental
24 state from the time he moved in with you until he died?

25 A. Okay. My uncle's mental state from the time he moved
26 in until he died, I would say, you know, the beginning,
27 maybe the first six months that I had him, he looked to be
28 in good shape mentally.

29 Okay. The only thing I found is that after taking him
30 out of his habitat and bringing and subjecting him to, you
31 know, like long days at rehab, or a couple of hours at
32 rehab, or long days in court, doctors, driving him here and

1 there, he did not like being disturbed with that. He got
2 fatigued real fast, and his mind did go. But other than
3 that, if he was sitting at home, which he was comfortable
4 with, really he was competent.

5 He held conversations with me, you know. And at times,
6 he would go, you know, late in the evenings, he could lose a
7 little something, you know. But for the most part, mornings
8 and midevenings were fine. Like I said, he was just like
9 any older person, it comes and goes with their competency.

10 Q. Did he know where he was living?

11 A. Oh, yes.

12 Q. Did he know who you were?

13 A. Oh, sure.

14 Q. Did he know what day of the week it was?

15 A. Uh --

16 Q. If he would read a newspaper, would he be confused
17 about --

18 A. Oh, no, no. He read newspapers.

19 Q. Would he know family and friends who would come to
20 visit him?

21 A. Oh, yes. Sure.

22 Q. Would he be able to tell you what it was that he wanted
23 to do on that particular day, if there was anything he
24 wanted to do?

25 A. Yes, he would be.

26 Q. How about on the day that he wrote his will, can you
27 describe his competency on that day?

28 A. His competency was good that morning. He was
29 talkative. I had got up and made him some breakfast, and he
30 was discussing different things about work with me, you
31 know. I would say he was having a pretty good day.

32 Q. What kind of things was he discussing with you

1 A. I'm pretty sure something had been emailed to me by
2 then.

3 Q. Just for the record --

4 MR. BROWN:

5 Your Honor, may I approach?

6 THE COURT:

7 Yes.

8 MS. VALLEJO:

9 Your Honor, I object. This is an exhibit
10 that was objected to previously and sustained.

11 MR. BROWN:

12 I just want to let the witness -- I'm just
13 showing the witness an exhibit and asking him a
14 question about it.

15 THE COURT:

16 Overruled. Maybe he can lay a foundation for it
17 this time.

18 BY MR. BROWN:

19 Q. Mr. Dobronich, do you recall ever seeing that document?
20 Is that the document --

21 THE COURT:

22 Identify what document that is for the
23 record, please.

24 MR. BROWN:

25 For the record, this is the July 2, 2013
26 evaluation --

27 THE COURT:

28 It's Thibodaux Proffer Number 1.

29 MR. BROWN:

30 For the record, it's Thibodaux Proffer Number
31 1. I have it marked as Exhibit 2.

32 BY MR. BROWN:

1 Q. Is that the document that you saw about a week later?

2 A. I'm pretty sure, yes.

3 Q. And you don't recall receiving a carbon copy July 9,
4 2013 letter from your attorney regarding that evaluation?

5 A. A carbon copy?

6 Q. Yeah? Were you carbon copied?

7 A. Was I sent something?

8 Q. Yes, sir?

9 A. I don't recall. I mean, unless -- would it be saying
10 emailed?

11 Q. It could be email, but did you receive it?

12 THE COURT:

13 Did you get a copy of that in any shape or
14 form whatsoever?

15 THE WITNESS:

16 Yeah, I did eventually get a copy. I think
17 it was by email probably later July something, in
18 that time frame of this year.

19 BY MR. BROWN:

20 Q. Do you recall receiving that letter?

21 A. Yes, I'm pretty sure I got that.

22 Q. When did you get it?

23 A. I don't know. I don't know. I don't look at emails
24 everyday either, you know.

25 Q. Let me ask you this, it was a letter dated July 9,
26 2013. Do you have any independent reason to doubt that
27 date?

28 A. No. Not if that email was on there.

29 Q. You did receive that letter, you just testified to
30 that?

31 A. Yeah, I'm pretty sure I received that by email. I
32 don't know what time frame it was received.

1 MR. BROWN:

2 At this time, Your Honor, I would like to
3 readmit this Thibodaux Proffer 1 as an exhibit and
4 ask that it be entered as evidence.

5 THE COURT:

6 What is that?

7 MR. BROWN:

8 This is the July 9, 2013 cover letter to
9 Judge Garcia. And the witness just testified that
10 he received it. He didn't know when he received
11 it, but he --

12 THE COURT:

13 What kind of letter from whom?

14 MR. BROWN:

15 From his attorney to him.

16 THE COURT:

17 Whose attorney?

18 MR. BROWN:

19 From Mr. Dobronich's attorney.

20 THE COURT:

21 Now who is that?

22 MR. BROWN:

23 That would be Ms. Vallejo, Judge.

24 MS. VALLEJO:

25 I object to the admission of hearsay.

26 THE COURT:

27 I'm going to overrule the objection. It
28 might have some relevance.

29 THE CLERK:

30 That's no longer a proffer?

31 MR. BROWN:

32 It's no longer a proffer.

1 THE COURT:

2 Proffer Number 1, make it Thibodaux Exhibit
3 Number 1.

4 MR. BROWN:

5 It would be Number 2, Judge.

6 BY MR. BROWN:

7 Q. Do you recall if your uncle received that letter?

8 A. Did he receive it?

9 Q. Yes?

10 A. Through mail? Eventually, he probably did.

11 Q. Did he receive a copy of that evaluation?

12 A. The actual evaluation from the doctor?

13 Q. Yes?

14 A. No. I've never seen an evaluation or anything. Are
15 you talking about the outcome of it?

16 Q. Yes?

17 A. Yeah. I think I seen something came through late July
18 of the outcome, what the findings were through an
19 evaluation.

20 Q. Was he provided with a copy of the findings, your
21 uncle?

22 A. No.

23 Q. Why not?

24 A. Well, I didn't --

25 MS. VALLEJO:

26 Your Honor, I object. I don't know that this
27 witness has knowledge of why or why not his uncle
28 --

29 THE COURT:

30 Don't prompt the witness. If he can answer
31 it, he can answer it.

32 Objection overruled.

1 THE WITNESS:

2 No. I probably didn't give it to him or
3 anything. I don't know. Maybe I did. I can't
4 remember that really.

5 BY MR. BROWN:

6 Q. Now, Mr. Dobronich, were you aware that a judgment was
7 entered on August 27, 2013 declaring your uncle incompetent
8 to testify?

9 A. Yes, I've seen that. Yes.

10 Q. Was that judgment based upon the evaluation that you
11 said you received to your knowledge?

12 A. Yes.

13 Q. And that evaluation was submitted to the Court in those
14 proceedings, correct?

15 A. What proceedings? Do you mean the civil proceedings?

16 Q. Yes?

17 A. Yes.

18 THE COURT:

19 This is a civil proceeding. What other civil
20 proceeding are you talking about?

21 MR. BROWN:

22 I'm talking about the identification --

23 THE COURT:

24 Are you talking about a criminal case?

25 MR. BROWN:

26 I'm talking about the civil -- there was a
27 civil revocation matter, Your Honor.

28 THE COURT:

29 I've never heard -- what is a civil
30 revocation?

31 MR. BROWN:

32 Again, it was a petition that was filed to

1 revoke a donation that was made in favor of the
2 Thibodaux's.

3 THE COURT:

4 That was the matter in Division "D"?

5 MR. BROWN:

6 That's correct, Your Honor. I apologize.

7 THE COURT:

8 All right. I'm just trying to keep the
9 record clear in case somebody wants to appeal this
10 later.

11 Go ahead.

12 MR. BROWN:

13 I will refer to it as the civil matter in
14 Division "D", Your Honor, for clarification.

15 BY MR. BROWN:

16 Q. Mr. Dobronich, you mentioned that evaluation, the July
17 2 evaluation, was submitted to Division "D", correct?

18 A. Submitted to Judge Garcia, yes.

19 Q. And that again was during the time that you had Power
20 of Attorney over your uncle, correct?

21 A. Yes.

22 Q. And you don't contest that that evaluation was
23 submitted by your attorney -- that you submitted that
24 evaluation?

25 A. That Dr. Verrette submitted it?

26 Q. No. That your attorney submitted it to the Court?

27 A. Oh, yes.

28 Q. Mr. Dobronich, did you have an occasion to receive a
29 follow-up letter from Dr. Verrette regarding your uncle's
30 competency?

31 A. Yes. Yes, I remember the follow-up. I think it was in
32 August.

1 Q. And that follow-up was submitted to the Court as well
2 in the Division "D" matter?

3 A. I guess it was.

4 Q. I have what has been accorded Thibodaux Proffer 9. Do
5 you recognize these documents? Oh, I'm sorry. I have two
6 documents. One of them is a cover letter dated August 2013,
7 and it is enclosing a July 25, 2013 doctor's report. Do you
8 recognize these documents?

9 A. Yes, I have seen them before.

10 Q. The July 25, 2013 document is the report of Dr.
11 Verrette?

12 A. Yes.

13 Q. Do you recognize that document?

14 A. I've seen it.

15 Q. This August 13, 2013, is that the cover letter to the
16 Court in the Division "D" matter?

17 A. Yes.

18 MR. BROWN:

19 At this time, Your Honor, I would like to
20 readmit Thibodaux Proffer 9.

21 THE COURT:

22 Which is?

23 MR. BROWN:

24 Which is the August 13, 2013 cover letter
25 from Ms. Vallejo to Judge Peter Garcia in the
26 Division "D" matter. It is enclosing the July 25,
27 2013 follow-up report of Dr. Paul Verrette.

28 MS. VALLEJO:

29 No objection.

30 THE COURT:

31 Objection sustained. It's hearsay. You
32 could have subpoenaed Dr. Verrette to be here

1 today.

2 MR. BROWN:

3 Just note my original proffer, Your Honor.

4 THE COURT:

5 Noted.

6 Are you about finished with this witness?

7 MR. BROWN:

8 I'm almost finished, Your Honor.

9 THE COURT:

10 I'll tell you what, we are going to recess.

11 Let's interrupt his questioning. I want to get to
12 the detective's testimony and then I want to
13 recess for lunch and come back later this
14 afternoon and finish up. There is no way you're
15 going to finish this up.

16 MS. VALLEJO:

17 Right.

18 THE COURT:

19 Captain Montgomery, come be sworn in, please.

20 * * * * *

21 STEFAN MONTGOMERY: BEING FIRST DULY SWORN TO TELL THE
22 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP
23 HIM GOD, TESTIFIED AS FOLLOWS:

24 * * *

25 DIRECT EXAMINATION

27 DIRECT EXAMINATION BY MS. VALLEJO:

28 Q. Can you please state your full name and employment for
29 the record?

30 A. Detective Stefan Montgomery, Financial Crimes
31 Investigator with St. Tammany Parish Sheriff's Office.

32 Q. Detective Montgomery, are you familiar with the

1 I've got three of the proffers I just want to
2 make sure I get this clean for the record.

3 Proffer Number 1, which is the July 9, 2013
4 letter from Ms. Vallejo to Division "D".

5 Proffer Number 8, which is the July 17 letter
6 from Ms. Vallejo to Roy Burns.

7 Proffer Number 9, which is a letter from Ms.
8 Vallejo to Judge Garcia.

9 My understanding of the basis of the
10 objection is it's not being objected to on the
11 basis of authenticity, it's being objected on the
12 basis of hearsay. I did want to make just a quick
13 argument on that, and then I will leave it at
14 that.

15 We are not seeking to introduce these
16 documents for the purpose of proving that Mr.
17 Dobronich had dementia at that time. We are
18 offering them for the purpose that that was George
19 and Forest Dobronich's position that they put
20 forward to Division "D" at those particular times.
21 That is interval to our argument on the
22 application of judicial estoppel.

23 THE COURT:

24 So noted.

25 MR. BROWN:

26 That's all I have, Your Honor.

27 THE COURT:

28 That's it. Okay.

29 Call your next witness, please.

30 * * *

31 MS. VALLEJO:

32 Mr. Forest Dobronich is under

cross-examination.

THE COURT:

He said he's finished.

MS. VALLEJO:

Oh, that's it.

MR. BROWN:

I had a couple of more questions. I have a couple of follow-ups.

* * *

CROSS-EXAMINATION CONTINUED

CROSS-EXAMINATION BY MR. BROWN:

Q. Mr. Dobronich, regarding July 18, the execution of the will by your uncle, you were there when he did that?

A. Yes.

Q. And I know Ms. Vallejo is preparing a video that was taken. You took a video of Mr. Dobronich?

A. Yes.

Q. Describe that for me, please.

A. After he finished writing his will, I think it took about -- sitting at the dinner table probably about 20 to 25 minutes he sat around. He sat down on the bed and that's when I videoed him.

Q. The video, was that just him saying -- what did that entail?

A. Saying that -- I think I asked him a couple of questions and his response.

Q. Was anybody else there?

A. My daughter and my grandson were there. They wasn't -- they were in another part of the house, and she was tending to him.

Q. When you say your daughter, just so we know, do you have more than one daughter?

1 A. I have three daughters.

2 Q. Just identify who it was?

3 A. Courtney.

4 Q. Mr. Dobronich, I have what's been offered as Thibodaux
5 Proffer Number 8.

6 MR. BROWN:

7 Your Honor, may I approach?

8 THE COURT:

9 Yes.

10 BY MR. BROWN:

11 Q. This is a July -- it's been dated a July 17, 2013
12 letter from Ms. Vallejo to Mr. Roy Burns. Have you received
13 a copy of that letter?

14 A. Yeah, I think I received a copy. I just don't know
15 when I received it.

16 Q. I just need to ask you a few questions. It references
17 a status conference in front of the -- it references a
18 status conference in front of the judge in the matter in
19 Division "D" wherein Ms. Vallejo represents that she objects
20 -- we oppose the setting of Sidney Dobronich's deposition
21 based on his incompetency and dementia. I want to ask you,
22 sir, does that accurately reflect your position?

23 A. My position?

24 Q. Yes?

25 A. I mean, my position about what?

26 Q. Does that reflect your position as of July 17?

27 A. Do I agree to that?

28 Q. Yes?

29 A. I mean, it's a doctor that said it. I mean, you know,
30 I disagree. I was under the assumption it was to give
31 testimony at the coming trial or deposition. That's all I
32 knew. It was to determine if he could give testimony in a

1 deposition.

2 Q. But as of July 17, 2013, you would agree that that was
3 your legal position to Division "D"?

4 MS. VALLEJO:

5 I'm going to object to that. He's asking for
6 a legal conclusion, and Mr. Dobronich just
7 answered his question.

8 THE COURT:

9 I think it's been asked and answered. You
10 don't need to argue with him. Go onto something
11 else. He testified he thought whatever opinion
12 that was, it was relevant to a proposed deposition
13 at the time or further court testimony. At least
14 I understood that's what he --

15 MR. BROWN:

16 Yes, Your Honor. I understand. Again, I
17 appreciate the Court's patience. I just want to
18 make sure I've covered everything.

19 That's all I have, Your Honor.

20 MS. VALLEJO:

21 I have just two follow-up questions and then
22 I will play the video, Your Honor.

23 THE COURT:

24 Okay.

25 * * * *

26 **REDIRECT EXAMINATION**

27 REDIRECT EXAMINATION BY MS. VALLEJO:

28 Q. Forest, were you in court on June 25, 2013 for the Rule
29 for Sequestration where your uncle testified beginning at
30 about 3:30 in the afternoon?

31 A. Yes, I was.

32 Q. Did you hear his testimony when I asked him, page 62

1 2013. Do you recall whether you were there or not when he
2 wrote the will?

3 A. I was in the house that day, but I wasn't a part of it
4 or anything like that.

5 Q. Do you recall his state of mind on that day at all?

6 A. That day, he was fine. I mean, I didn't notice
7 anything --

8 Q. He was alert on that day?

9 A. Yes.

10 MS. VALLEJO:

11 That's all of the questions I have.

12 * * * *

13 MR. BROWN:

14 I have no questions, Your Honor.

15 THE COURT:

16 Thank you. You may step down.

17 MS. VALLEJO:

18 I have no other witnesses, Your Honor.

19 * * * *

20 MR. BROWN:

21 Your Honor, may we approach? Actually, we
22 are the only ones here. I'm kind of in a quandary
23 right now. It's one small point maybe. Earlier I
24 had these three letters, and my position with
25 regards to the three items was that George and
26 Forest and his daughter's position with regard to
27 the matter in Division "D" was that Mr. Dobronich
28 was incompetent. Counsel has indicated that she
29 does not object to the authenticity of these
30 objects, but she objects to the fact that they are
31 hearsay. I would be remiss if I didn't at least
32 raise the Court's attention. I think the only --

1 I've got two options here. I can either ask the
2 counsel for a stipulation at that point, or I
3 could call her to the stand and ask her these
4 specific questions with regards to their position
5 at the time. I don't want to do that, but I feel
6 like I'm not doing my job if I don't at least try
7 and clear up that hearsay objection, unless
8 counsel is willing to stipulate to the
9 authenticity and the admissibility of these three
10 documents.

11 THE COURT:

12 What are you asking me to do? Are you moving
13 me to recess this --

14 MR. BROWN:

15 No, Your Honor.

16 THE COURT:

17 Do you have witnesses?

18 MR. BROWN:

19 I was just going to ask if --

20 THE COURT:

21 I can answer that for you. I'm just going to
22 say no.

23 MR. BROWN:

24 No, I didn't need a recess, Your Honor.

25 THE COURT:

26 Isn't that correct?

27 MS. VALLEJO:

28 That's correct, Your Honor.

29 THE COURT:

30 You're not going to withdraw your objections
31 to these documents?

32 MS. VALLEJO:

1 No, I'm not.

2 MR. BROWN:

3 At this point in time, I would ask to be able
4 to call Ms. Vallejo to the stand and get a ruling
5 from the Court.

6 THE COURT:

7 Absolutely not.

8 MR. BROWN:

9 That's fine, Your Honor. That's all I need.

10 MS. VALLEJO:

11 Your Honor, it's our position that we have
12 proven that the holographic will is a valid,
13 handwritten will by Mr. Sidney Dobronich on a day
14 that he was very competent. He knew what he was
15 doing. He had stated his intentions on previous
16 occasions to various other people. His will
17 complies with Article 1575 of the Civil Code of
18 holographic testament. They had the date at the
19 top of it, July 18, 2013. He says clearly what
20 his intentions are with regard to his assets at
21 the time of his death. He signed his signature at
22 the end and he dated it again. We had three
23 witnesses to testify to his handwriting, that they
24 have seen his handwriting in the past. And they
25 verify that is the same handwriting that they've
26 seen in the past. I believe the Thibodaux's
27 petition to annul the testament should be denied.

28 THE COURT:

29 Rebuttal?

30 MR. BROWN:

31 Your Honor, this is for the record. The
32 Thibodaux's do not contest the issue as regards to

1 competency. It is our position that Mr. Dobronich
2 was mentally, very sharp throughout all of the
3 phases of these proceedings. We would argue there
4 is certainly very compelling evidence that this
5 July 18, 2013 will was not done with his consent.
6 Also, there is evidence that the Dobronich's have
7 taken a position in another matter with regards to
8 Mr. Dobronich's competency that is inconsistent
9 with what was presented here today, and we would
10 argue that judicial estoppel applies. That's all
11 the argument we have, Your Honor.

12 (At this time a Police Officer came to the
13 bench for a warrant to be signed.)

14 * * * *

15 RULING

16 THE COURT:

17 All right. Today was a hearing to annul the
18 probative testament of Sidney Dobronich. Also,
19 Peremptory Exception of Vagueness and Ambiguity
20 and No Right of Action on behalf the defendant's
21 purported heirs to Mr. Dobronich.

22 First, as to the Peremptory Exception of
23 Vagueness and Ambiguity and No Right of Action,
24 I'm going to overrule those exceptions. And to
25 the extent, I guess, you know, it has been argued
26 they have no right of action to even come in here.
27 Well, I guess they do have a right of action, as
28 much as they believe, "they" and by meaning "they"
29 I mean the "Thibodaux's." They believe they are
30 the beneficiaries of what they claim to be the
31 last valid Will and Testament of Mr. Dobronich.

32 However, subsequent to that will, Mr.

1 Dobronich perfected an holographic will on July
2 18, 2013. Now, around that time, there was some
3 -- even though there is no evidence really before
4 the Court as to his mental status, I understand
5 the gist of those -- or at least proffered
6 documents, reported documents was that at or
7 around that time he was not competent. And
8 intended Dr. Verrette to handle his affairs, but
9 certainly not to be deposed in a deposition or
10 testify in a Court of Law. The best I can tell,
11 this was ordered by Judge Garcia after testimony
12 was taken by the late Mr. Dobronich in his court
13 late on one day where he got confused and was
14 worried about Mr. Dobronich's mental status.

15 But even if I were to allow the doctor's
16 report into evidence here, absent him being here
17 to testify and being cross-examined, I still would
18 find that the holographic will is valid. It is
19 dated and several people verify or they believe
20 that is his handwriting, especially an unbiased
21 witness, Detective Montgomery, it was in his
22 handwriting with that date and his signature on
23 it. Notwithstanding any argument surrounding his
24 mental competency at the time to effect that will,
25 there is a strong line of juris prudence in our
26 state that one is presumed to be competent. He
27 was not under any form of interdiction at the
28 time. Merely, like I say, and I'm not even really
29 considering the doctor's letter, but if I did, it
30 was just stating that he didn't think he was able
31 to competently testify. I don't really know what
32 that means. Maybe the doctor meant he was not

able to give an accurate history. But absent any clear and convincing evidence that he was incompetent, I find he was competent at the time he effected the will, and the will is in proper form, and the petition to annul the probative testament is hereby denied and dismissed at petitioner's cost.

That is the judgment of the Court.

MR. BROWN:

Thank you, Your Honor.

MS. VALLEJO:

Thank you, Your Honor.

THE COURT:

Would you prepare those judgments?

MS. VALLEJO:

Yes, Your Honor.

THE COURT:

Also, just as a last housekeeping, I do note that filed yesterday was on behalf of Thibodaux's petition to file statutory will and appoint to search testament, I have not been presented with the original just yet for any signing. It might be on my desk. My intent, in light of the Court's ruling this afternoon, is to deny that petition, because even if that will was out there, it wouldn't make any difference, because the will I just declared proper, will be the final and last and will supersede any testimony.

MR. BROWN:

Understood, Your Honor.

(The proceedings in the Dobronich Succession concluded.)

REPORTER'S CERTIFICATE

This certificate is valid only for a transcript accompanied by my original signature and original seal on this page.

I, Bridgette L. Jones, Official Court Reporter, in and for the State of Louisiana, employed as an official court reporter by the Twenty-Second Judicial Court for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding, that the transcript has been prepared in compliance with the transcript format guidelines required by statute or by rules of the board or by the Supreme Court of Louisiana and that I am not related to counsel or to the parties herein nor am I otherwise interested in the outcome of this matter.

Bridgette L. Jones

Bridgette L. Jones, CCR

Official Court Reporter

Certificate No. 91376

 COPY

STATE OF LOUISIANA

NUMBER: 538643 & 538643-1 (DIV. C)

22nd JUDICIAL DISTRICT COURT

VERSUS

PARISH OF ST. TAMMANY

CALVIN THIBODEAUX &
DARNAY THIBODEAUX

STATE OF LOUISIANA

FILED: Sept 21, 2015

S/ Malene Seal
DEPUTY CLERK OF COURT

STATE'S MOTION FOR RESTITUTION HEARING

NOW INTO COURT, through the undersigned Assistant Attorney General, acting as District Attorney *ad hoc*, comes the State of Louisiana who provides answer as follows:

1.

The defendants pled guilty as charged on December 17, 2014 to two counts of Exploitation of the Infirmed in violation of LSA-R.S. 14:93.4.

2.

Calvin Thibodaux was sentenced on December 17, 2014 as follows: to serve 5 years with the Louisiana Department of Corrections suspended on each count and placed on 5 years supervised probation. The following were added as special conditions: to pay a fine of \$1,000 plus court costs, perform 15 eight hour days of court-approved community service, and the reimburse the State for the sum of \$5,700 in expert fees incurred in connection with this case and to make restitution to the victim of this offense as to be determined by the Department of Probation and Parole and possibly by the court during a restitution hearing. Please see exhibit 1 for copy of December 17, 2014 transcript for plea and sentencing of Calvin Thibodaux.

3.

Darnay Thibodaux was sentenced on January 29, 2015 as follows: to serve 10 years with the Louisiana Department of Corrections with 5 years of that sentence suspended and placed on 5 years probation once she completes her incarceration with a special condition that she makes restitution to the victim of the offense. Please see exhibit 2 for transcript January 29, 2015 sentencing.

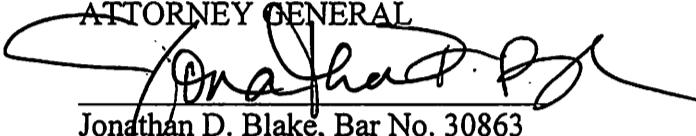
4.

The State is now requesting a restitution hearing pursuant to LSA-C.Cr. P. art. 883.2 to be determined by the Honorable Judge Richard Swartz who was the sentencing judge.

WHEREFORE, the State of Louisiana, through the undersigned Assistant Attorney General prays that a hearing date be set to determine the amount of restitution owed to the victim's heirs in this case.

RESPECTFULLY SUBMITTED,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL


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STATE OF LOUISIANA

NUMBER: 538643 & 538643-1 (DIV. C)

VERSUS

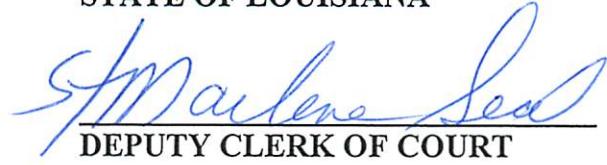
CALVIN THIBODEAUX &
DARNAY THIBODEAUX

FILED: Sept 21, 2015

22nd JUDICIAL DISTRICT COURT

PARISH OF ST. TAMMANY

STATE OF LOUISIANA


Shelly Malone Seal
DEPUTY CLERK OF COURT

ORDER

IT IS HEREBY ORDERED that a hearing on the State's Motion for Restitution
Hearing be held on the _____ of _____ at _____ o'clock a.m. in Covington,
Louisiana.

THUS SIGNED this _____ day of _____, 2015 in _____,
Louisiana.

DISTRICT JUDGE
22nd JUDICIAL DISTRICT COURT

Wednesday, December 9, 2015

COURT MET THIS DAY PURSUANT TO ADJOURNMENT, PRESENT AND PRESIDING, HIS HONOR, JUDGE RICHARD A. SWARTZ, JUDGE DIVISION "C"; RONALD GRACIANETTE, ASSISTANT DISTRICT ATTORNEY; MOLLY LANCASTER, ASSISTANT ATTORNEY GENERAL; RODNEY J. STRAIN, JR. SHERIFF; MALISE PRIETO, CLERK OF COURT. (Tasso Taylor, Baliff, and Susan Foil, Court Reporter).

538643 STATE OF LOUISIANA
VS
CALVIN R THIBODAUX, JR

The defendant being present in open Court, attended by his Counsel, Claiborne Brown, and this matter being on assignment for a Restitution Hearing, on motion of the State, Court ordered this matter continued until January 20, 2016. Defense Counsel objected and Court noted said objection.

HTO

A TRUE EXTRACT OF THE MINUTES OF THIS COURT


DEPUTY CLERK
22ND JUDICIAL DISTRICT COURT
ST. TAMMANY PARISH, LOUISIANA

Criminal - Defendant Search - Cases - Case Detail - Minutes
Minutes for Docket# 538643-1 - click entry to view detail

Date	Judge	Division
<u>2016-01-20</u>	RICHARD A. SWARTZ	C
<u>2015-12-09</u>	RICHARD A. SWARTZ	C
<u>2015-10-28</u>	RICHARD A. SWARTZ	C
<u>2015-01-29</u>	RICHARD A. SWARTZ	C
<u>2014-12-17</u>	RICHARD A. SWARTZ	C
<u>2014-12-16</u>	RICHARD A. SWARTZ	C
<u>2014-08-12</u>	RICHARD A. SWARTZ	C
<u>2014-04-28</u>	RICHARD A. SWARTZ	C
<u>2014-04-09</u>	RICHARD A. SWARTZ	C
<u>2014-02-06</u>	RICHARD A. SWARTZ	C
<u>2013-12-12</u>	RICHARD A. SWARTZ	C
<u>2013-10-24</u>	RICHARD A. SWARTZ	C
<u>2013-09-19</u>	RICHARD A. SWARTZ	C

Minute Entry Detail for 2015-12-09

Date	Judge	Division
2015-12-09	RICHARD A. SWARTZ	C

Minute Entry

538643-1 STATE OF LOUISIANA
 VS
 DARNAY LYNN THIBODAUX

The defendant not being present in open Court, but represented by her Counsel, Claiborne Brown, and this matter being on assignment for a Restitution Hearing, on motion of the State, Court ordered this matter continued until January 20, 2016, the defendant having not been transported. Defense Counsel objected and Court noted said objection.

HTO

<https://www.sttammanyclerk.org/secure/crim/minutedetail.asp?minid=684512>

5/19/2016

Wednesday, January 20, 2016

COURT MET THIS DAY PURSUANT TO ADJOURNMENT, PRESENT AND PRESIDING, HIS HONOR, JUDGE RICHARD A. SWARTZ, JUDGE DIVISION "C"; RONNIE GRACIANETTE AND JASON CUCCIA, ASSISTANT DISTRICT ATTORNEYS; RODNEY J. STRAIN, JR. SHERIFF; MALISE PRIETO, CLERK OF COURT. (Tasso Taylor, Baliff, and Mary Gressaffa, Court Reporter).

538643-1 STATE OF LOUISIANA
 VS
 DARNAY LYNN THIBODAUX

The defendant not being present in open Court but represented by his Counsel, Claiborne Brown and this matter being on assignment for Restitution Hearing, the matter being discussed in chambers with all parties, Court at this time ordered for this matter be dismissed.

slv

A TRUE EXTRACT OF THE MINUTES OF THIS COURT



DEPUTY CLERK
22ND JUDICIAL DISTRICT COURT
ST. TAMMANY PARISH, LOUISIANA

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2017-KP-1452

VS.

DARNAY THIBODAUX

IN RE: Darnay Thibodaux; - Defendant; Applying For Supervisory and/or Remedial Writs, Parish of St. Tammany, 22nd Judicial District Court Div. C, No. 543,638-1; to the Court of Appeal, First Circuit, No. 2017 KW 0736;

January 18, 2019

Denied. See per curiam.

MRC

BJJ

JLW

GGG

JDH

SJC

JTG

Supreme Court of Louisiana
January 18, 2019



Deputy

Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 17-KP-1452

JAN 18 2019

STATE OF LOUISIANA

v.

DARNAY THIBODAUX

**ON SUPERVISORY WRITS TO THE TWENTY-SECOND
JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY**

MRC

PER CURIAM:

Denied. Relator's guilty plea waived all non-jurisdictional defects in the proceedings leading to her conviction. *State v. Crosby*, 338 So.2d 584, 586 (La. 1976).

Relator has now fully litigated her application for post-conviction relief in state court. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless she can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted her right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. United States Constitution:

Amendment XIV; Section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. 28 U.S.C. § 2253:

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from-

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

3. 28 U.S.C. § 2244(d):

§ 2244. Finality of determination

(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;

Appendix F

- (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.

(2) The 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.