

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ZANE D. CROWDER,
Petitioner,

v.

RICKY D. DIXON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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

COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

	Document	Page
1.	April 21, 2022, Order of the Eleventh Circuit Court of Appeals	A-3
2.	August 31, 2021, Order of the Northern District of Florida	A-4
3.	August 31, 2021, Judgment of the Northern District of Florida.	A-6
4.	July 15, 2021, Report and Recommendation	A-7
5.	Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.	A-50
6.	Affidavit of Donna Forbes	A-65
7.	Transcript of Deposition of Linda Kay Khal	A-68
8.	North Florida Comprehensive Services for Children contract	A-88

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13394-J

ZANE D. CROWDER,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

Zane Crowder moves for a certificate of appealability in order to appeal the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. To merit a certificate of appealability, Crowder must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Crowder's motion for a certificate of appealability is DENIED because he failed to make the requisite showing.


UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ZANE D. CROWDER,
Petitioner,

vs.

Case No.: 3:20cv5934/LAC/EMT

SEC'Y DEP'T OF CORR.,
Respondent.

_____/

ORDER

The chief magistrate judge issued a Report and Recommendation on July 15, 2021 (ECF No. 21). The parties were furnished a copy of the Report and Recommendation and afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a *de novo* determination of the timely filed objections.

Having considered the Report and Recommendation, and the objections thereto, I have determined the Report and Recommendation should be adopted.

Accordingly, it is **ORDERED**:

1. The chief magistrate judge's Report and Recommendation (ECF No. 21) is adopted and incorporated by reference in this order.
2. Respondent's motion to dismiss (ECF No. 8) is **GRANTED**.

3. The amended petition for writ of habeas corpus (ECF No. 4) is **DISMISSED with prejudice** as untimely.

4. A certificate of appealability is **DENIED**.

5. The clerk of court is directed to enter judgment in accordance with this order and close the case.

DONE AND ORDERED this 31st day of August, 2021.

s/*L.A. Collier*
LACEY A. COLLIER
SENIOR UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

ZANE D. CROWDER

VS

CASE NO. 3:20-CV-5934-LC-EMT

SECRETARY DEPARTMENT OF
CORRECTIONS STATE OF FLORIDA

JUDGMENT

Pursuant to and at the direction of the Court, it is

ORDERED AND ADJUDGED that the Petitioner take nothing and that this action
be DISMISSED with prejudice as untimely.

JESSICA J. LYUBLANOVITS
CLERK OF COURT

August 31, 2021
DATE

/s/ A'Donna Bridges, Deputy Clerk
Deputy Clerk: A'Donna Bridges

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ZANE D. CROWDER,
Petitioner,

vs.

Case No.: 3:20cv5934/LAC/EMT

SEC'Y DEP'T OF CORR.,
Respondent.

_____/

REPORT AND RECOMMENDATION

This cause is before the court on Petitioner Zane D. Crowder's (Crowder) counseled amended habeas petition filed under 28 U.S.C. § 2254 (ECF No. 4). Respondent (the State) filed a motion to dismiss the petition as untimely (ECF No. 8), with relevant portions of the state court record (ECF Nos. 8-1 through 8-10 and 15-1 through 15-5). Crowder responded in opposition to the motion to dismiss (ECF No. 20).

The case was referred to the undersigned for the issuance of all preliminary orders and any recommendations to the district court regarding dispositive matters. *See* N.D. Fla. Loc. R. 72.2(B); *see also* 28 U.S.C. § 636(b)(1)(B), (C) and Fed. R. Civ. P. 72(b). After careful consideration of the timeliness issue, it is the opinion of the undersigned that no evidentiary hearing is required for the disposition of this matter, Rule 8(a), Rules Governing Section 2254 Cases. It is further the opinion of

the undersigned that the pleadings and attachments before the court show that the State's motion to dismiss should be granted, and the amended habeas petition dismissed as untimely.

I. BACKGROUND AND PROCEDURAL HISTORY

The relevant aspects of the procedural background of this case are established by the state court record (*see* ECF Nos. 8-1 through 8-10 and 15-5 through 15-5).¹ Crowder was charged in the Circuit Court for Escambia County, Florida, Case No. 2010-CF-2822, with one count of sexual battery (victim less than 12 years) (Count 1) and one count of lewd and lascivious molestation (victim less than 12 years) (Count 2) (ECF No. 15-1 at 28 (information)). On January 21, 2011, a jury convicted Crowder of both Counts as charged (ECF No. 15-1 at 47 (verdict); ECF No. 15-3 (transcript of jury trial)). The trial court sentenced Crowder as a sexual predator to life in prison on Count 1 and a concurrent mandatory minimum term of twenty-five years in prison on Count 2 (ECF No. 15-1 at 72–80 (judgment and sentence)). Crowder appealed the judgment to the Florida First District Court of Appeal (First DCA), Case No. 1D12-1478 (ECF No. 15-4 (Crowder's initial brief); ECF No. 8-1 (State's answer brief)). The First DCA affirmed the judgment per curiam without

¹ The court refers to the document numbers and page numbers automatically assigned by the court's electronic filing system.

written opinion on February 3, 2012 (ECF No. 8-2 at 4 (decision)). *Crowder v. State*, 78 So. 3d 537 (Fla. 1st DCA 2012) (Table). The mandate issued February 22, 2012 (ECF No. 8-2 at 3 (mandate)).

On December 28, 2018, Crowder filed a counseled motion for post-conviction relief in the state circuit court, pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure (ECF No. 8-4 at 17–24 (motion)). The circuit court summarily denied the Rule 3.850 motion in an order rendered on February 1, 2019 (*id.* at 29–33 (order)). Crowder appealed the decision to the First DCA, Case No. 1D19-1280 (ECF No. 8-5 (Crowder’s initial brief)). The First DCA affirmed the lower court’s decision per curiam without written opinion on December 4, 2019 (ECF No. 8-7 (decision)). *Crowder v. State*, 289 So. 3d 870 (Fla. 1st DCA 2019) (Table). The mandate issued February 25, 2020 (ECF No. 8-10 (mandate)).

Crowder commenced this federal habeas case on November 10, 2020 (*see* ECF No. 1).

II. DISCUSSION

A one-year period of limitation applies to the filing of a habeas petition by a person in custody pursuant to a state court judgment. *See* 28 U.S.C. § 2244(d)(1). The limitation period runs from the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

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

28 U.S.C. § 2244(d)(1). The time during which a properly filed application for state post-conviction or other collateral review is pending is not counted toward the one-year federal limitations period. *See* 28 U.S.C. § 2244(d)(2).

The State contends the appropriate statutory trigger for the federal limitations period in this case is the finality date of the judgment, pursuant to § 2244(d)(1)(A) (*see* ECF No. 8 at 7). Applying that trigger, Crowder's judgment of conviction becomes final, for purposes of § 2244(d)(1)(A), upon expiration of the 90-day period in which he could seek direct review of his conviction in the United States Supreme Court. The 90-day period runs from the date of entry of the judgment sought to be reviewed. *See* U.S. Sup. Ct. Rule 13; *Chavers v. Sec'y, Fla. Dep't of Corr.*, 468 F.3d

1273, 1275 (11th Cir. 2006). Calculating the finality date in Crowder’s case, the 90-day period for seeking certiorari review in the Supreme Court was triggered by the First DCA’s affirmance in the direct appeal, on February 3, 2012, and it expired ninety days later, on May 3, 2012. The federal limitations period commenced the next day, on May 4, 2012.² The limitations period ran untolled until it expired one year later, on May 4, 2013. *See Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008) (limitations period should be calculated according to “anniversary method,” under which limitations period expires on anniversary of date it began to run) (citing *Ferreira v. Dep’t of Corr.*, 494 F.3d 1286, 1289 n.1 (11th Cir. 2007))

Crowder’s counsel does not argue that a different statutory trigger for the federal limitations period applies and appears to concede that Crowder’s § 2254 petition is untimely. Crowder states he is presenting a “gateway actual innocence claim” to obtain a merits review of his otherwise time-barred claims (i.e., a “freestanding” actual innocence claim asserted in Ground 1 and two claims of ineffective assistance of counsel asserted in Grounds 2 and 3), pursuant to

² Federal Rule of Civil Procedure 6(a) provides that “[i]n computing any period of time prescribed or allowed by . . . any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included.” Fed. R. Civ. P. 6(a); *see also Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001) (Rule 6 applies to calculation of one-year statute of limitations under AEDPA).

McQuiggin v. Perkins, 569 U.S. 383 (2013) (*see* ECF No. 4 at 7). Crowder premises his “actual innocence” claim on “newly discovered evidence” he obtained in “early 2017” (*id.* at 4). Crowder states at that time, he learned from an individual named Donna Forbes, that Linda Kahl, a forensic interviewer who interviewed the victim in Crowder’s case and the alleged victim in Forbes’ husband’s case, had admitted during a deposition that she did not always follow the state mandated guidelines for child protection teams (*id.* at 4–5).³ Donna Forbes told Crowder that after Ms. Kahl’s deposition, the State dropped the capital sexual battery charge against her (Forbes’) husband (*id.*). Crowder contends if he had been aware of this “newly discovered evidence” (i.e., Ms. Kahl’s admissions during her deposition in the *Forbes* case), he would have used it to exclude admission of Kahl’s testimony and/or to impeach her trial testimony (*see* ECF No. 4 at 5; ECF No. 20 at 1–2).

³ A transcript of Ms. Kahl’s deposition in the *Forbes* case is part of the state court record (ECF No. 8-4 at 84–102). The deposition occurred on May 20, 2016, concerning an interview Kahl conducted on August 11, 2015 (*id.* at 88). During the deposition, Ms. Kahl testified that the Child Protection Team in Escambia County, where she was one of several case coordinators, followed the American Professional Society on the Abuse of Children (APSAC) Guidelines and Protocols (*id.* at 87, 98). Ms. Kahl testified that the case coordinators in the Escambia County CPT did not do the following, even though the APSAC Guidelines and Protocols recommended they do so: (1) perform a “social assessment” of the child, (2) explore “alternate hypotheses” during the interview with the child, (3) conduct specialized interviews with adults who interacted with the child, and (4) gather independent information from all of the child’s principal family members (*id.* at 92, 94, 96, 98).

Under the AEDPA, a “credible showing of actual innocence” provides a “gateway” through which a petitioner may pursue his claims on the merits notwithstanding his failure to file his habeas petition within the statute’s otherwise applicable limitations period. *McQuiggin*, 566 U.S. at 386. To pass through this gateway, however, a petitioner must satisfy the standard for actual innocence articulated by the Supreme Court in *Schlup v. Delo*, 513 U.S. 298 (1995). Under *Schlup*, a petitioner must show that, in light of newly presented evidence, “it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt,” *id.* at 327, or, to remove the double negative, “that more likely than not any reasonable juror would have reasonable doubt,” *House v. Bell*, 547 U.S. 518, 538 (2006).

Schlup makes clear that, “[t]o be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” 513 U.S. at 324. This new evidence must do more than counterbalance the evidence that sustained the petitioner’s conviction. *See Sibley v. Culliver*, 377 F.3d 1196, 1207 (11th Cir. 2004) (concluding that even if new evidence showed that the murder victim was the aggressor, “a reasonable juror could still quite possibly have concluded that

[petitioner] acted with murderous intent, rather than out of self-defense”). The new evidence must be so significant and reliable that, considered with the trial record as a whole, it “undermine[s] confidence in the result of the trial.” *Schlup*, 513 U.S. at 327 (internal quotation marks omitted).

Crowder acknowledges that in *Sawyer v. Whitley*, 505 U.S. 333, 349 (1992), the Supreme Court stated that newly discovered impeachment evidence, which is the type of evidence Crowder relies on here, will “seldom, if ever” support an actual innocence claim (*see* ECF No. 20 at 1). But Crowder contends the impeachment evidence in this case satisfies this “rare exception” (*id.*).

Crowder argues that in *Calderon v. Thompson*, 523 U.S. 538, 563 (1998), the Supreme Court described circumstances in which new evidence, although removed from the crime and tending only to impeach, may demonstrate a miscarriage of justice: (1) there was little evidence of the crime apart from the testimony to which the new impeachment evidence related, and (2) the jury accepted the testimony (to which the new impeachment evidence related) without reservation. 523 U.S. at 563.

In *Thompson*, the petitioner was convicted of raping and murdering the victim. 523 U.S. at 541. Thompson attempted to satisfy the “miscarriage of justice” exception to a procedural bar by presenting additional evidence to impeach the credibility of two “jailhouse informants,” Fink and Del Frate, who testified that

Thompson confessed the rape and murder to them. *See id.* at 562. With respect to Fink, Thompson presented additional evidence of Fink's history as an informant and of law enforcement favors for Fink. *Id.* Thompson also presented statements by law enforcement officials to the effect that Fink was an unreliable witness. *Id.* With respect to Del Frate, Thompson presented evidence that law enforcement officials and certain members of Del Frate's family regarded Del Frate as dishonest, that Del Frate shared a jail cell with David Leitch (Thompson's former roommate who knew many details about the rape and murder) prior to meeting Thompson, that Del Frate's statements to police tracked newspaper accounts of the crime, and that Del Frate neglected to mention at trial his prior convictions for grand theft and distribution of hallucinogens without a license. *Id.* at 562–63.

The Supreme Court analyzed Thompson's new impeachment evidence as follows:

This impeachment evidence provides no basis for finding a miscarriage of justice. As in *Sawyer*, the evidence is a step removed from evidence pertaining to the crime itself. 505 U.S. at 348, 112 S. Ct. at 2523–2524. It tends only to impeach the credibility of Fink and Del Frate. To find that these matters in all probability would have altered the outcome of Thompson's trial, we should have to assume, first, that there was little evidence of rape apart from the informant's testimony; and second, that the jury accepted the informants' testimony without reservation. The former assumption is belied by the evidence recited above. The latter one is belied by the substantial impeachment evidence Thompson's attorney did introduce.

With regard to Fink, Thompson’s trial counsel presented the following evidence: Fink had four prior felony convictions and had spent a total of 14 years in prison at the time of trial. He used heroin on a frequent basis during the 15 years preceding trial, including the period in which he gave his statement to police. He lied about his identity as a matter of routine. He acted as an informant on numerous other occasions, including one occasion where he informed on another inmate to gain protective custody in prison. He requested and received a transfer to another penal facility in exchange for his statement against Thompson. And he admitted being unable to explain why criminals confessed to him with such frequency.

With regard to Del Frate, Thompson’s trial counsel presented the following evidence: Del Frate had served time for second-degree murder and credit card forgery. At the time of trial, Del Frate faced felony charges in Ohio and California. Del Frate admitted claiming another murderer confessed to him during the period in which Thompson confessed to him. He also admitted changing his account of Thompson’s confession to him numerous times. Given the trial evidence impeaching each informant, we would disrespect the jury in Thompson’s case if we were to find that, had it been presented with still more impeachment evidence, it would have reached a different verdict.

523 U.S. at 563–64.

Crowder argues that in contrast to the circumstances in *Thompson*, there was no evidence of a crime “apart from the alleged victim’s testimony—which was initially obtained and framed as a result of Linda Kahl’s forensic interview” (ECF No. 20 at 2). Crowder mischaracterizes the evidence. The victim’s **initial** description of the molestation was **not** obtained as a result of Linda Kahl’s CPT interview. Rather, the trial transcript demonstrates that the victim, S.E., initially

disclosed Crowder's sexual molestation to Terrie Webb (whom S.E. referred to as "Nana") and S.E. then disclosed it to her step-father, Arlington (Abe) Levi (*see* ECF No. 15-3 at 38–120). Two days **after** these disclosures, S.E. was interviewed by Linda Kahl.

Terrie Webb testified that S.E. spent a lot of time in her home and was close to her daughter Courtney (ECF No. 15-3 at 41). Ms. Webb testified that on March 14, 2010, S.E. and Courtney were playing in the backyard and then came inside, and Courtney said, "Mom, you need to talk to [S.E.]" (*id.* at 42–43, 48–49). Ms. Webb testified Courtney went back outside, and she (Webb) and S.E. sat at the kitchen table (*id.* at 42–43). Ms. Webb testified that S.E. appeared timid, "like she was going to get in trouble" (*id.* at 43). Ms. Webb described her conversation with S.E.:

Q [by the prosecutor]. How did the conversation start?

A [by Terrie Webb]. [S.E.] said, do you know my daddy's friend, Zane? I said, yes. And she said—

Q. Did she open up immediately to you?

Q. No. It took a little bit. I had to keep asking her to speak up. I had to reassure her a couple of times that she was not in trouble, that we were just talking and she needed to tell me what was going on.

Q. And so what did you say when she asked you if she knew—if you knew her dad's friend, Zane?

A. I told her, I said, yeah. And she said, well, he touched me. I said, well, what do you mean? Did he touch you—she said, he touched me. I said, well what, did he pat you on your shoulder or touch your leg, you know? What are you talking about? She said that he had touched her privates. I asked, well, what exactly do you mean “touched your privates.” And she put her hand on the front of her jeans in the crotch area. I said, well, do you mean he touched the front of your jeans? She told me, no, that he had pulled her pants down and touched her privates.

Q. What was her demeanor like when she told you?

A. She was scared. She acted like she was going to be in trouble. She kept talking real low.

Q. Did you have to ask her to speak up so you could hear her?

A. Yes.

Q. Did she want to talk about it?

A. Not really. But when I asked her, you know—I had to ask her what exactly are you talking about, you know, she—me and her finally got it out.

Q. Did she cry?

A. Yes. She cried when she told me what he had done to her.

Q. Was the way she was acting unusual for her?

A. Yeah. She was—she’s usually a very happy, outgoing child. And, you know, when she—when she looked at me and said, you know—looked me in my face and told me that, you know—

Q. Well, let me ask you. After she told you that Zane had touched her on her private area and indicated on the skin of her private area, did she tell you anything else after that?

A. Yes. I had asked her, you know, what exactly are you talking—you've got to tell me what's going on. And she had told me that he had put his finger inside her.

Q. Did you ask her where or when this happened?

A. She had asked— she had told me that she was at her mom's house, and that Danielle [S.E.'s mother] had went to the store and Zane would watch her and her brother [Jaron]. And he would have Jaron go into his bedroom and have [S.E.] in the front room, and that's when it would happen.

Q. Did she tell you how many times it had happened?

A. She didn't tell me how many times it happened. She just told me more than once.

Q. What did you tell her after she told you all of this?

A. I told her that she was not in trouble. This was not her fault. That she needed to, you know, understand that she didn't ask for this to happen.

Q. Did you make sure she understood the gravity of what she was telling you?

A. Yes. I talked to her, and I said, do you—are you sure you're telling me the whole truth because this is very big and, you know, that Zane could get in a lot of trouble? So you need to make sure that you're telling me everything. She did; she told me everything.

Q. After this conversation, what did you do?

A. I called her mom and her step-dad, Abe.

(ECF No. 15-3 at 44–46). Ms. Webb testified that Abe came to her house and talked to S.E. on the front porch (*id.* at 47). She testified that S.E.’s biological father, Raymond Ellis also came to see S.E. that evening (*id.*).

On cross-examination, Ms. Webb testified that S.E. did **not** tell her the following: (1) that Zane touched her in on the “back” of her privates, (2) that the molestation occurred at “Christina’s” house, (3) that Zane put things other than his fingers inside of her, or (4) that Zane threatened her (ECF. No. 15-3 at 49–50).

Danielle Levi, S.E.’s mother, testified that Zane Crowder was her husband’s best friend (ECF No. 15-3 at 61). Levi testified that Crowder spent a lot of time at their home in the spring and summer of 2009, and even spent the night (*id.* at 62–63). Ms. Levi testified there were times when Crowder was at the home alone with S.E., for example, when she (Levi) went to the store or to get her nails done (*id.* at 64). Ms. Levi testified that in August of 2009, she, Abe, and S.E. stayed at her friend Christina’s house (*id.* at 65). Levi testified that Crowder spent the night there as well, and he slept in the living room, and S.E. slept in a room off the living room (*id.*).

Ms. Levi testified that after Terrie Webb told her what S.E. said, she called S.E.’s father, Raymond, and Abe went to see S.E. at Terrie’s house (ECF No. 15-3

at 67). Levi testified that Abe contacted the police approximately an hour and a half later, once Raymond arrived at Webb's house (*id.*). Ms. Levi testified that S.E. did not speak with the responding officer, but S.E. spoke with an investigator from child protective services (Jennifer Walker) the next day, and then had an interview at the Gulf Coast Kid's House (the CPT interview with Linda Kahl) the day after that (*id.*).

Ms. Levi testified that in hindsight, two unusual events occurred. First, S.E. had come into Levi's bedroom and told her that she didn't want to sit on Crowder's lap to use the computer (ECF No. 15-3 at 68). Levi testified she interpreted S.E.'s comment as wanting to be more independent (*id.*). Second, approximately three or four days prior to S.E.'s disclosure, Crowder came to a mutual friend's house (Tina Taylor) when Levi and S.E. were also there; and when S.E. saw Crowder, she turned around and walked the other direction (*id.* at 64–65, 69).

Arlington "Abe" Levi testified he and Crowder had been friends since childhood (ECF No. 15-3 at 78–79). He testified that when Terrie Webb told him and Danielle about S.E.'s disclosure, he was "extremely upset" and immediately went to Webb's house (*id.* at 81). Levi testified that S.E. was "worried and upset" (*id.* at 81–82). Levi testified he asked S.E. to tell him what Crowder did, and S.E. told him the following:

She told me that he had touched her in her private area. I asked her how and when—how was he able to do it with us around. And she said he did it whenever we would be gone or whenever we were sleeping at night to go fishing. It happened several times when we were going to go fishes [sic], and it happened several times whenever my wife was picking up boxes or going to the store to get some supplies for the house.

Q [by the prosecutor]. Did she tell you where it would happen?

A. She told me it had happened in the room where the couch was that he had stayed on the nights that he slept over.

Q. Is that in the den?

A. Yes, sir, in the den—in the computer room.

Q. Now, where did she tell you he would touch her?

A. In the room—

Q. I'm sorry. Where on her body?

A. She said on her private and on her panties.

Q. Now, when—did she tell you about another time where it happened?

A. She also said that we had spent—when me moved out and we moved into a friend's house, she said that he had done it that one night, the only night he had stayed over.

Q. At whose house?

A. Christina.

Q. And did she tell you that you guys were asleep at the time?

A. Yes, sir.

Q. Did you ask her if it happened more than one time?

A. Yes, sir, I did.

Q. What did she say?

A. She said just one time at Christina's, but more than ten times at the house.

Q. And did you say anything to her to impress upon her the gravity of what she was saying?

A. Yes, sir, I did.

Q. What did you say?

A. I let her know that this was a very serious thing and that we really needed to know exactly what had happened and she needed to tell us. Because we were going to have to call the cops and go to court and go through a lot of stuff.

.....

Q. I'm sorry. Let me just go back a little bit. What about S.E. tell [sic] you Zane touched her with?

A. His fingers.

(ECF No. 15-3 at 82–84). Mr. Levi testified he called the police immediately after talking to S.E. (*id.* at 85).

On cross-examination, Abe Levi testified that S.E. told him that Zane had placed objects inside of her (ECF No. 15-3 at 90). He testified that S.E. told him that Zane would hold her legs down when she kicked them (*id.* at 91).

S.E. testified in person at trial. She testified that Zane was her stepdad's friend and spent time with her family (ECF No. 153 at 108–09). S.E. testified regarding the molestation as follows:

Q [by the prosecutor]. Did Zane ever do anything to you that he should not have done?

A. Yes, sir.

Q. What would he do?

A. He would touch me in my lower private part.

Q. Okay. And just to be clear for the record, when you say your “lower private part,” do you mean your vagina?

A. Yes, sir.

Q. What would he touch with you?

A. His finger.

Q. And when he touched you, where would you be generally?

A. In the den.

Q. Was that where it happened mostly?

A. Yes, sir.

Q. Where in the den?

A. On the couch.

Q. And when he touched you, would anyone else be around?

A. No, sir.

Q. Where was your step-dad normally when this happened?

A. At work.

Q. And was your mom home?

A. She would be going to the store or taking someone home.

Q. And where would your brother be?

A. In his room watching TV.

Q. And would Zane tell you to do anything before it happened?

A. Yes, sir.

Q. What would he tell you to do?

A. Close your eyes.

Q. And when you [sic] told you to close your eyes, what did you do?

A. Touched me in my lower private part.

Q. Would he touch you on your skin?

A. Yes, sir.

Q. And just to be clear, when he touched you on your lower private part, was it on the skin of your lower private part?

A. Yes, sir.

Q. And would he ever touch on the inside of your lower private part?

A. Yes, sir.

Q. Would he also touch you on the outside?

A. Yes, sir.

Q. Did he ever touch you with any other part of his body than his finger?

A. No, sir.

....

Q. No? And did he tell you anything when he did that to you?

A. To close my eyes.

Q. Did he ever tell you not to tell?

A. Yes, sir.

Q. Did it ever happen anywhere else other than at your house?

A. Uh-huh (Indicating Affirmatively).

Q. Where else did it happen?

A. When I moved out of my house, at my mom's friend's house.

Q. What was her name?

A. Christina.

Q. Was there a night that Zane slept over at Christina's house?

A. Yes, sir.

Q. And was it that night that it happened?

A. Yes, sir.

Q. What happened that night?

A. He came into my bedroom and he came to my bed, and he touched me in my lower private part.

Q. Do you remember what you were wearing?

A. A nightgown that told you how to brush your teeth and some frog shorts.

Q. Did he touch you on the skin of your private part?

A. Yes, sir.

Q. Were your parents home that night?

A. Yes, sir.

Q. Where were they?

A. They were in their room sleeping.

Q. Was that the last time it happened?

A. Yes, sir.

(ECF No. 15-3 at 109–12). S.E. testified she tried to tell her mom what had happened, but her mom was making dinner and didn’t seem to understand what she was saying (*id.* at 112–13). S.E. testified she then told Courtney (*id.* at 113).

On cross-examination, S.E. testified she told Terrie Webb that Zane touched her “in the front and in the back” (ECF No. 15-3 at 116). S.E. testified that what she said was true (i.e., that she was touched in the front and the back) (*id.*). S.E. testified she was touched in the back only once, but she forgot to say that during her interview at the Gulf Coast Kid’s House (*id.* at 116–17). S.E. denied that she told Abe that Zane put anything inside her except his finger (*id.* at 117). S.E. testified that her friend had been molested (*id.* at 117–18). S.E. testified that when she spoke to Jennifer Walker (the child protective services investigator), she was untruthful about two things, one, that her mom did not smoke, and two, that Abe did not smoke (*id.* at 118). S.E. testified she was untruthful because she did not know Walker (*id.* at 118–19). S.E. testified she told the truth about these matters the next day (during the CPT interview) (*id.* at 118).

On redirect examination, S.E. testified that when she talked to “Nana” and her step-dad, she only told them things that “really happened” and did not tell anyone things that did not really happen (ECF No. 15-3 at 122). S.E. testified that everything

she described in her testimony “really happened” (*id.* at 123). She testified that Zane did not touch her with anything except his finger (*id.*).

Linda Kahl testified she was a case coordinator with the CPT (ECF No. 15-3 at 134). She testified she had conducted 40–50 forensic interviews (*id.* at 136). Ms. Kahl testified she began each interview by building rapport with the child so he or she felt comfortable communicating, for example, by asking the child questions about school and activities that the child likes and doesn’t like (*id.* at 137–38). Ms. Kahl testified she then talked to the child about “ground rules”:

After rapport building, we talk about important things to remember while we’re in the interview room, discuss with the child that if I were to say something wrong, make sure they correct me. If they don’t know an answer to something, to let me know that they don’t know the answer.

And the most important thing that we ask the child to do is to only talk about things that really happen, and we obligate the child the tell the truth while they’re talking.

(ECF No. 15-3 at 138). Ms. Kahl testified she never suggested any answers to the child (*id.* at 139). She testified she tended to ask open-ended questions (*id.*).

Ms. Kahl identified and authenticated the audio/video recording of her interview with S.E., and the video was published to the jury (ECF No. 15-3 at 140–63). The interview began with Kahl asking S.E. about her age, school, best and

worst subjects in school, best friend, and parents (*id.* at 142–45). Kahl then told S.E. the “ground rules”:

Let me tell you, [S.E.]. I told you this is my talking room and there’s some important things for us to remember what [sic] we’re in the talking room today.

I’m going to be asking you a lot of questions as I already am. If I ask you a question and you don’t know the answer, just tell me you don’t know the answer. Don’t guess, okay.

A [by S.E.]. I kind of didn’t want to tell Ms. Jennifer [Walker] some things.

Q [by Kahl]. Okay. Well you can tell me anything. We’re gonna [sic] keep talking, okay? We’ll talk about that in a minute.

And if I say something wrong, correct me. Don’t let me think that I’m saying something that’s right if it’s not right, okay?

A. Uh-huh.

Q. And it’s real important to remember that everything we talk about in here today is the truth, okay?

A. (Nods Head Affirmatively).

Q. So tell me why you’re here to talk to me today.

A. Because today I’m here to have an appointment with a doctor because my dad had a friend [S.E. later clarified that it was a friend of her step-dad’s] that he didn’t know that he was doing something wrong, and he was touching me in places that he shouldn’t be touching me.

Q. So a friend of your dad’s?

A. But now he is not his friend. He's probably going to go to jail.

Q. What's this person's name?

A. Zane.

....

Q. ... And tell me what Zane did.

A. He was touching me in places he shouldn't be touching me.

Q. Tell me what you mean by that.

A. He was touching me in my—I don't have a name for it. But he was touching me in one of my privates.

Q. Can I show you something? It's interesting you said that because I have a picture that I want to show you, okay? It's not a very good picture, but, believe it or not, this is a girl. This is the front of a girl, and this is the back of a girl. Can you tell me where he was touching you at? Can you point to me on the diagram?

A. (Witness complies).

Q. You say you don't have a name for it; but what do you call that?

A. I just call it something. I don't know what to call it.

Q. You don't know what you call it?

A. No. I don't call it nothing. I just call it the privates.

Q. Can we call it your privates for what we're talking about today?

A. (Nods head affirmatively).

....

Q. Tell me about what Zane did.

A. He told me to shut my eyes for some things, and he just kept on telling me, well, hurry up. And my mom and dad—my dad would be at work and my mom could be telling people—not telling people about Zane, but taking people somewhere.

(ECF No. 15-3 at 145–48).

S.E. told Ms. Kahl that Zane touched her private more than once (ECF No. 15-3 at 148). S.E. testified she did not remember the first time Zane touched her, but she remembered she was six years old (*id.*). Ms. Kahl asked where she was living at the time, and S.E. responded her house (*id.*). Ms. Kahl asked if she remembered the time of year it happened, and S.E. said she was in school, and it was when Zane lived with them (*id.* at 148–49). Ms. Kahl asked what happened that day, if she remembered (*id.* at 149). S.E. responded she didn't remember (*id.*). Ms. Kahl asked if she remembered what happened when the last time was that Zane touched her private, and S.E. shook her head negatively (*id.*). Kahl asked if S.E. could tell her what happened any time that Zane touched her privates, but S.E. did not respond (*id.*). Ms. Kahl continued:

Q. Let me tell you, [S.E.], you're not in any trouble today for anything that we talk about. We just want to make sure that you're safe. That's why we need to make sure.

A. My nana already told me that he was trying to see if I got hurt.

Q. We have to talk about some things first before we do anything else, okay? So I need to know what happened with Zane, if you could kind of explain to me when you say he touched you on your private. So I know what happened, if you can tell me what happened.

A. He—I was going to ask you if you were going to ask me was it on the inside or outside.

Q. That's what I want you to talk with me about. You tell me what happened.

A. It was on the inside parts.

Q. Okay. So you were at your house. You don't remember—

A. It was in the room that he was living in. It was just kind of the living room. It was called our den.

Q. Okay, and you were in the den. But he was staying in that room?

A. (Nods Head Affirmatively).

Q. And what happened?

A. It didn't have a door.

Q. Okay.

A. And he—

Q. Tell me from the beginning to the end what happened.

A. The beginning he would be touching me on it, and then he would be telling me to go to take a nap.

Q. He would be touching you on it with—did he touch you with your clothes on or with your clothes off?

A. They were on.

Q. They were on? Did he touch you on your clothes or on your skin?

A. On my skin.

Q. On your skin. And when you say he touched you, did he touch you with a part of his body or with something else?

A. With a part of his body.

Q. Do you know what the part of his body was that he touched you with?

A. His finger.

Q. With his finger? Okay. So just to make sure that I'm getting this right, okay—you correct me I'm [sic] wrong—you said that Zane touched you on your skin on your front private with his finger?

A. (Nods Head Affirmatively).

Q. And did he touch you on the outside of your private or on the inside of your private—

A. In.

Q. —if you understand what that means?

A. In.

Q. On the inside of your private? Did what Zane do, did it hurt or did it not hurt?

A. It didn't hurt.

(ECF No. 15-3 at 149–52). S.E. told Ms. Kahl she was on the couch in the den when this happened (*id.* at 152). Ms. Kahl asked S.E. to explain how Zane touched her skin if she had her clothes on:

Q. And you said you had your clothes on, but he touched you on your skin. Kind of explain to me how, if he [sic] had your clothes on, he got to your skin. How did that happen?

A. He would tell me to go change into, like, some shorts and then sit down on the couch. Because it was hot in the house. He worries about me, but I don't know why he did that. And he would tell me to close my eyes, and I don't know how he got to my skin.

Q. You don't know how he got to your skin because your eyes were closed. So he told you to clothes [sic] your eyes?

A. Uh-huh (Indicating Affirmatively).

Q. Did he say anything else to you other than to close your eyes?

A. To keep them closed.

....

Q. But you know it was his finger that went inside your private?

A. (Nods Head Affirmatively).

(ECF No. 15-3 at 152–53). Ms. Kahl asked S.E. if she knew about how many times this happened with Zane, and S.E. shook her head negatively and said, “Maybe above fifteen” (*id.* at 153).

Ms. Kahl asked S.E. if she remembered when the last time was that it happened, and S.E. responded that it was at Christina’s house when Zane spent the night (ECF No. 15-3 at 153–54). Ms. Kahl asked S.E. if she could tell her what happened that time:

Q. Can you tell me about that time?

A. He went into my room while I was asleep and did it.

Q. This was at your mom’s friend’s, Christina’s house?

A. When we lived there.

Q. And he came into your room while you were sleeping; is that what you said? I don’t want to get it wrong.

A. That’s what I said.

Q. Okay. And what happened? What did he do?

A. That same thing.

Q. He did the same thing?

A. (Nods head affirmatively). But he didn’t tell me to change. I was already wearing the shorts and my shirt because it was hot.

Q. Okay. And he touched you inside your private?

A. (Nods Head Affirmatively).

Q. With his finger?

A. No. He touched me outside that time.

Q. Outside that time? Okay.

....

Q. Did Zane ever touch you anywhere other than on your front private part?

A. No, ma'am.

Q. No, ma'am?

Did Zane ever touch you with anything other than his finger on any part of your body?

A. (Shakes head negatively).

(ECF No. 15-3 at 155).

Ms. Kahl then circled back to S.E.'s statement at the beginning of the interview, that she didn't want to tell Jennifer (Walker) some things. S.E. told Ms. Kahl that Jennifer asked if her mom and dad smoked (ECF No. 15-3 at 155). S.E. told Ms. Kahl that she told Jennifer no because she (S.E.) was shy and didn't know Jennifer well (*id.* at 155–56). Ms. Kahl asked S.E. if she wanted her (Kahl) to tell Jennifer, and S.E. responded, “Yes. You can tell her I didn't mean to lie” (*id.* at 157).

Ms. Kahl asked S.E. if she told anyone about what Zane did (ECF No. 15-3 at 157). S.E. responded:

Yes. I told my nana—well, I told my mom, but that was the first person I told. We were just getting out of a bath and—I was just getting out of the bath while she was using the bathroom, so I told her that but she was in a rush to get the dinner done.

Q. What did you tell her?

A. I told her what Zane has been doing to me; she just didn't hear it.

Q. She wasn't paying attention to you?

A. But this time she actually paid attention.

(ECF No. 15-3 at 157–58). S.E. told Ms. Kahl that she told Courtney, Courtney's mom, her (S.E.'s) dad, and Jennifer (Walker) (*id.* at 158).

Ms. Kahl paused the interview and then resumed:

Q. Can I ask you just a couple of more questions, [S.E.]?

A. Uh-huh (Indicating Affirmatively).

Q. Remember back when we were talking a little bit ago—is that water?

A. Uh-huh (Indicating Affirmatively).

Q. Cool—about when you were on the couch and Zane made you close your eyes is what you said.

A. Uh-huh (Indicating Affirmatively).

Q. Did he say anything other than close your eyes?

A. (Shakes head negatively).

Q. Did he say anything else to you about anything else that he wanted you to do or did he do anything else?

A. He didn't me [sic] to do anything. Well, actually he did.

Q. Did he say anything, like, what would happen if you didn't close your eyes? You can tell me.

A. He said he would torture me.

Q. He said would he torture you if you didn't close your eyes?

A. I need a green [crayon].

Q. Is there no green? I'm sorry.

Do you know—did he tell you what he meant when he said he would torture you if you didn't close your eyes?

A. I know what he meant. He would, like, bruise me.

Q. He said that?

A. I already know what bruise means. I know what he meant. He meant he would bruise me, and I didn't tell nobody until this—yesterday.

Q. So he said he would torture you if you didn't close your eyes?

A. And he didn't torture me.

Q. Because you closed your eyes.

A. And plus, if he tortured me, he would be dead right now.

Q. He would be dead right now?

A. Uh-huh (Indicating Affirmatively). He didn't hurt none [sic] of my body parts, but (unintelligible) just to check if he did.

(ECF No. 15-3 at 159–60). As Ms. Kahl was ending the interview, S.E. said “this happened to one of my friends before” in the first grade (*id.* at 162). S.E. said she told her “Nana” about her friend (*id.*).

Defense counsel questioned Ms. Kahl about her interview techniques as follows:

Q. Now, when you—your true/false test, you know the test that you give to determine whether or not the child is—understands being truthful, the test that you give them is whether they agree with you that the pen is blue or not blue, right? Like, for example, if you were the child, I would say, is my blouse white? Is that true or not true? That would be the test.

A. And I don't even always actually do the test.

THE COURT: Just answer her question, though.

THE WITNESS: Yes, that would be the type of test. Yes.

Q (by defense counsel, Ms. Cashwell). So whether the child is four years old or they're eight years old or they're seven years old in geometry, you ask them—I mean, the color test is what test is administered to decide whether or not that child really understands the importance of telling the truth?

A. It could be.

Q. In this case you gave [S.E.] a color test?

A. I did not.

Q. You didn't ask her any questions about whether or not she understood the importance to tell the truth?

A. I only obligated her to tell the truth.

Q. You told her, you gotta [sic] tell the truth, right?

A. Yes.

....

Q. And the other thing that you're doing is that the purpose of this forensic interview is so that the child is not interviewed multiple—a multiple number of times, like more than three times, for example?

A. I don't know that that's why I'm doing that interview. Our hope is that she doesn't have to be interviewed numerous times. Correct. I don't think that answered your question.

Q. The whole thing—you know about the research—or do you know about the research that a child not be interviewed more than three times or asked the same question more than three times. Are you familiar with that?

A. No, I'm not.

....

Q (by Ms. Cashwell). Ms. Kahl, the object, when you're doing an interview of a child, is not to be leading or in any way let the child know what sort of answer is acceptable and not acceptable; would that be fair?

A. Correct.

Q. And during your years of interviewing children, have you found that when the child is asked the same question twice, maybe three times in a row, that the child may think, okay, I'm not giving the correct response, so let me change my response?

A. That can happen.

Q. Now in this case, when you were questioning [S.E.], were you careful not to re-ask the same questions once you got an answer from [S.E.]? Or do you know?

A. I think I have a tendency to often say back to the child what they said to me, if that's what you're asking me.

Q. No. I'm asking you if you got a response from [S.E.] for a question.

A. Correct.

Q. For example, you asked [S.E.] at the very beginning, do you remember the very first time it happened, and she said no. And then you said, do you remember the last time it happened, and she shook her head no. Did you ask her that question again?

A. Yes, I did.

Q. And do you think that it is possible that [S.E.], when you asked her again, do you remember the last time it happened, that that was a way of letting the child know, okay, that answer is not acceptable; I need an answer here? Is that possible?

A. That's possible.

Q. Now, when you left the—when you left the room and then you came back, you remember that?

A. Yes.

Q. And when you left of the room and you came back, and one of the first questions that you asked her is, you said, was there anything else that Zane said to you; do you remember that?

A. Yes.

Q. And her answer was no.

A. Correct.

Q. And then you asked the question again anyway. Is there anything else that Zane said to you, and she said, close my eyes. You said, well, is there anything other than close my eyes that she said to you, and she said no. And you asked it another time. And you said, is there anything he said he would do to you if you didn't close your eyes.

....

A. . . . I think I was asked in the observation room to try to ask that question

....

Q. Now, when the child—and, you know, I'm not trying to pick on you. But, on the other hand, when the child said something to you like at the very—at the very end and says, this has happened to one of my friends before in first grade, there was no follow-up by you asking her, well, what did your friend tell you? When did your friend tell you this? Is that influencing what you're doing today? There was no follow-up for that type of question. Now is that standard protocol for the Child Protection Team?

A. That normally doesn't happen. I don't know that that's ever happened to me before, but that wasn't a conversation that I felt I needed to have with the child. I did talk to the CPI [Jennifer Walker] about that, and we had a conversation that she would follow-up with in [sic] her investigation of that.

Q. Well, let me ask you this. Another strange thing happened during the course of your interview with the child. You had asked her,

do you remember the first time? She says, no. Do you have any memory of the last time? No. And then you say, well, can you describe at least one incident? Rather than describe one incident, she comes back at you and she says, I thought you were going to ask me inside or outside. Do you remember that?

A. Yes.

Q. And there was no follow-up from you asking her, who told you that this question is going to be asked. Do you remember that?

A. Yes.

Q. Was that a conscious decision on your part?

A. We're kind of trained to stay away from, like—I don't want to say like a blaming-type question. But I didn't want to divert that back to something that wasn't so much talking about her and what she was talking about. I just kind of felt like that would have been not a good question to ask her back.

Q. The good questions that you wanted to stay focused on is to get some sort of disclosure from her; would that be fair?

A. If there was disclosure to be made, yes.

(ECF No. 15-3 at 164–66, 171–75).

The defense called Jennifer Walker Krumbein as a witness (ECF No. 15-3 at 203). Ms. Krumbein testified she interviewed S.E. on March 14, 2010 (*id.* at 208). She testified she first spoke to Terrie Webb, who told her that S.E. said she had been touched in the front and the back (*id.*). Ms. Krumbein testified S.E. told her that the molestation occurred at “the old house” (*id.* at 210). Krumbein testified she did not

recall ever hearing the name “Christina” (*id.*). Ms. Krumbein testified that S.E. told her that neither her mother nor stepfather smoked (*id.* at 212). Ms. Krumbein testified that Danielle Levi never mentioned leaving the house for a nail appointment (*id.* at 212–13).

The defense called Danielle Levi to the stand to ask if Crowder ever lived at their house during the spring or summer of 2009, and Levi responded no (ECF No. 15-3 at 221). On cross-examination, Ms. Levi testified that Crowder stayed at the house a lot and occasionally spent the night (*id.*).

The defense called Williams Davis, who was Abe Levi’s friend and Crowder’s “brother-in-law” (ECF No. 15-3 at 223). Mr. Davis testified he stayed at the Levis’ home for two months in 2009 (*id.*).

Crowder testified and denied he ever was at the Levis’ home alone with S.E., and he denied he ever inappropriately touched S.E. (ECF No. 15-3 at 227–32). Crowder admitted he spent the night at the Levi’s home and spent the night at Christina’s house when he and Abe Levi went fishing (*id.* at 233).

Following the Supreme Court analysis in *Calderon v. Thompson*, in order to find that the “newly discovered” impeachment evidence (i.e., Ms. Kahl’s admissions in the *Forbes* deposition that she did not always follow certain state-mandated CPT guidelines) would probably have altered the outcome of Crowder’s trial, the court

would have to assume, first, that there was little evidence of the sexual molestation apart from S.E.'s statements during Ms. Kahl's interview; and second, that the jury accepted the product of Ms. Kahl's interview without reservation.

The first assumption is belied by the evidence recited above, specifically, the testimony of Terrie Webb and Abe Levi regarding S.E.'s description of the molestation **before** Ms. Kahl's interview. The second assumption is belied by defense counsel's eliciting the following admissions from Ms. Kahl: (1) that she did not determine whether S.E. understood the importance of telling the truth and only "obligated" S.E. to tell the truth; (2) that when a child is asked the same question more than once, the child may think she is not giving the correct response and thus change her response; and (3) that on more than one occasion during her interview with S.E., she asked S.E. a question more than once, and S.E. could have inferred that her first answer was not acceptable. Most importantly, the jury assessed the credibility of S.E.'s disclosures firsthand by listening to her in-court testimony and observing her demeanor on the stand.

Considering the evidence presented at Crowder's trial, Crowder has failed to show that it is more likely than not that any reasonable juror would have had reasonable doubt about Crowder's guilt if the jury had been presented with the "newly discovered" impeachment evidence. Because Crowder has not made a

“credible showing of actual innocence,” he is not entitled to a merits review of his federal habeas claims.

III. CONCLUSION

Crowder’s federal habeas petition was not filed within the one-year statutory limitations period; and he has not shown he is entitled to federal review of his habeas claims through the “actual innocence” gateway recognized in *McQuiggin*. Therefore, the State’s motion to dismiss should be granted, and the amended habeas petition dismissed with prejudice as untimely.

IV. CERTIFICATE OF APPEALABILITY

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant,” and if a certificate is issued “the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2).” 28 U.S.C. § 2254 Rule 11(a). A timely notice of appeal must still be filed, even if the court issues a certificate of appealability. 28 U.S.C. § 2254 Rule 11(b).

“Section 2253(c) permits the issuance of a COA only where a petitioner has made a ‘substantial showing of the denial of a constitutional right.’” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting § 2253(c)(2)). “At the COA stage, the

only question is whether the applicant has shown that ‘jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.’” *Buck v. Davis*, — U.S.—, 137 S. Ct. 759, 773 (2017) (citing *Miller-El*, 537 U.S. at 327). The petitioner here cannot make that showing. Therefore, the undersigned recommends that the district court deny a certificate of appealability in its final order.

The second sentence of Rule 11(a) provides: “Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue.” Thus, if there is an objection to this recommendation by either party, that party may bring this argument to the attention of the district judge in the objections permitted to this report and recommendation.

Accordingly, it is respectfully **RECOMMENDED**:

1. That Respondent’s motion to dismiss (ECF No. 8) be **GRANTED**.
2. That the amended petition for writ of habeas corpus (ECF No. 4) be **DISMISSED with prejudice** as untimely.
3. That a certificate of appealability be **DENIED**.

At Pensacola, Florida, this 15th day of July 2021.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY

CHIEF UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations must be filed within fourteen days of the date of the Report and Recommendation. **Any different deadline that may appear on the electronic docket is for the court's internal use only and does not control.** An objecting party must serve a copy of the objections on all other parties. A party who fails to object to the magistrate judge's findings or recommendations contained in a report and recommendation waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions. *See* 11th Cir. Rule 3-1; 28 U.S.C. § 636.

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

<div>ZANE D. CROWDER, LIBERTY CORRECTIONAL INSTITUTION, DOC# P44924, Petitioner, v. SECRETARY, DEPARTMENT OF CORRECTIONS, STATE OF FLORIDA, Respondent.</div>	<div>Case No. 3:20-cv-5934-LAC-EMT</div>
---	--

**AMENDED¹ PETITION UNDER 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY
PURSUANT TO A STATE COURT JUDGMENT**

1. Name and location of court which entered the judgment of conviction under attack: Florida First Judicial Circuit Court, Escambia County, Florida
2. Date of judgment of conviction: February 28, 2011
3. Length of sentence: life imprisonment
4. Nature of offense involved (all counts): capital sexual battery and lewd or lascivious molestation
5. What was your plea? not guilty
6. Kind of trial: Jury
7. Did you testify at the trial? Yes
8. Did you appeal from the judgment of conviction?
Yes (☒) No (☐)

¹ This petition is amended to include the Petitioner's signature verification.

9. If you did appeal, answer the following:

- (a) Name of court: Florida First District Court of Appeal
- (b) Result: Convictions and sentence affirmed. See Crowder v. State, 78 So. 2d 537 (Fla. 1st DCA 2012)
- (c) Date of result: February 3, 2012

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

Yes (☒)² No (☐)

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

- (a) (1) Name of court: Florida First Judicial Circuit Court, Escambia County, Florida
- (2) Nature of proceeding Florida Rule of Criminal Procedure 3.850 motion
- (3) Grounds raised: Ineffective assistance of counsel
- (4) Did you receive an evidentiary hearing on your petition, application or motion? No
- (5) Result: Motion denied
- (6) Date of result: February 1, 2019
- (7) Did you appeal the result? Yes
 - i. Date of result: December 4, 2019 (mandate issued February 25, 2020)
 - ii. Court: Florida First District Court of Appeal
 - iii. Result: Denial of the motion affirmed
- (b) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?
 - (1) First petition, etc. Yes

² Petitioner Crowder has not previously challenged his convictions in federal court.

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

A. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Zane D. Crowder was the Defendant in the state court proceedings in the State of Florida (Florida First Judicial Circuit/Escambia County, case number 2010-CF-2822). Mr. Crowder will be referred to as “Petitioner Crowder” in this pleading. The prosecution/State of Florida will be referred to as “the State.”

In 2011, Petitioner Crowder was convicted of capital sexual battery and lewd or lascivious molestation. (R-36, 140).³ The state trial court sentenced Petitioner Crowder to life imprisonment. (R-38, 140). Petitioner Crowder appealed the judgment and the Florida First District Court of Appeal affirmed the convictions and sentence. *See Crowder v. State*, 78 So. 3d 537 (Fla. 1st DCA 2012).

Petitioner Crowder subsequently filed a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. (R-140). In the rule 3.850 motion, Petitioner Crowder raised a newly discovered evidence claim. On February 4, 2019, the state postconviction court summarily denied Petitioner Crowder’s rule 3.850 motion (R-28), and rehearing was denied on March 1, 2019. (R-194). On appeal, the Florida First District Court of Appeal affirmed the denial of Petitioner Crowder’s rule 3.850 motion.

³ References to the state court postconviction record on appeal will be made by the designation “R” followed by the appropriate page number. References to the trial transcripts will be made by the designation “T” followed by the appropriate page number.

B. ARGUMENT AND CITATIONS TO AUTHORITY

1. Petitioner Crowder is “actually innocent.” Petitioner Crowder brings this claim as a freestanding claim of actual innocence or, alternatively, as a gateway claim to his ineffective assistance of counsel claims.

In his rule 3.850 motion, Petitioner Crowder raised a newly discovered evidence claim. (R-144). Specifically, Petitioner Crowder explained that Linda Kahl was the forensic interviewer and case coordinator for the Child Protection Team in this case. Ms. Kahl played an integral role in the case – she interviewed the alleged victim at the Gulf Coast Kid’s House and her recorded interview was subsequently played for the jury as substantive evidence during the trial (pursuant to section 90.803(23), Florida Statutes). Ms. Kahl’s interview was the basis for the charges in this case.

In early 2017, Petitioner Crowder was contacted by Donna Forbes. Ms. Forbes informed Petitioner Crowder that her husband had previously been charged with capital sexual battery in Escambia County. Ms. Forbes further informed Petitioner Crowder that (1) Ms. Kahl was also the forensic interviewer of the alleged victim in her husband’s case and (2) after her husband was charged, Ms. Kahl was deposed and during her deposition, Ms. Kahl admitted under oath that she did not always follow the guidelines in the handbook created by the Florida Department of Health for Child Protection Teams. (R-167, 169). Ms. Forbes told Petitioner Crowder that it was learned in her husband’s case that state funding for the Gulf Coast Kid’s House is dependent upon interviewers following the guidelines in the Florida Department of Health handbook for Child Protection Teams. Finally, Ms. Forbes explained to Petitioner Crowder that after it was revealed that Ms. Kahl had failed to follow the required guidelines, the capital sexual battery charge pending against her husband was dropped. An affidavit from Ms. Forbes confirming this information was attached to Petitioner Crowder’s rule 3.850 motion (and Petitioner Crowder also attached other

documents from the *Forbes* case to his rule 3.850 motion – i.e., the transcript of Ms. Kahl’s deposition and the North Florida Comprehensive Services for Children contract). (R-150-193).

Just as in the case involving Ms. Forbes’ husband, Ms. Kahl failed to follow the required guidelines when interviewing the alleged victim in this case. Petitioner Crowder, however, was unaware of Ms. Kahl’s failure to follow the required guidelines prior to being contacted by Ms. Forbes. If Petitioner Crowder had been aware of this information prior to trial, he would have taken the same steps pursued by Ms. Forbes’ husband and he submits that just like that case, the charges in his case would have been dropped. Alternatively, had Petitioner Crowder been aware of this information prior to trial, Petitioner Crowder would have used this information to exclude the admission of Ms. Kahl’s child hearsay evidence and/or used the information to impeach her testimony (and had the child hearsay been excluded and/or had Ms. Kahl been impeached, there is a reasonable probability that the jury would have returned not guilty verdicts).⁴

⁴ It is well-documented that improper interview techniques can lead to false accusations. For example, in *Why Children’s Suggestibility Remains a Serious Concern*, the authors state the following:

Given the difficulties of identifying particularly suggestible children and of training children to resist suggestive influences, it is important for interviewers to avoid the use of suggestive techniques. Although this seems obvious, the interviewers studied in many different countries tend to over-use closed-ended, specific, and potentially leading questions and other “risky” practices. For example, one study examined seventy-two interviews conducted by experienced interviewers in Sweden. Despite universal recommendations to begin interviews with general, open-ended or “invitational” questions that promote fairly spontaneous, narrative responses, thirty-five of these interviews (forty-nine percent) began with a suggestive question. Throughout the interviews, the interviewers relied on suggestive and “option-posing” (forced-choice) questions, which accounted for fifty-three percent of the interviewers’ utterances, and elicited fifty-seven percent of the information from children. Similarly, fifty three percent of the utterances of a comparison sample of United States interviewers and thirty-five percent of Israeli interviewers’ utterances were

In *Baker v. Yates*, 339 Fed. Appx. 690, 692 (9th Cir. 2009), the Ninth Circuit Court of Appeals stated:

Baker asserts a freestanding claim of actual innocence. The Supreme Court has left open the question of whether such a claim is cognizable under federal law and, if so, whether the claim may be raised in a non-capital case. *See House v. Bell*, 547 U.S. 518, 554-555, 126 S. Ct. 2064, 2086-2087 (2006). *We have assumed that freestanding innocence claims are cognizable* and have held that “a habeas petitioner asserting a freestanding innocence claim must go beyond demonstrating doubt about his guilt, and must affirmatively prove that he is probably innocent.” *Osborne v. District Atty’s Office for Third Judicial Dist.*, 521 F.3d 1118, 1130-1131 (9th Cir. 2008) (quoting *Carriger v. Stewart*, 132 F.3d 463, 476 (9th Cir. 1997) (*en banc*)).

(Emphasis added). *See also Dist. Attorney’s Office v. Osborne*, 557 U.S. 52, 71 (2009) (“Whether such a federal right exists is an open question. We have struggled with it over the years, in some cases assuming, *arguendo*, that it exists while also noting the difficult questions such a right would pose and the high standard any claimant would have to meet.”) (citations omitted).⁵ Petitioner

suggestive or option-posing. Only six percent of the Swedish interviewers’ utterances were invitational. Corresponding figures for Israeli and United States interviewers were similar, at two percent and five percent, indicating remarkable consistency across cultures with different interview selection and training procedures. Other studies of United States interviewers have documented similar problems. An analysis of forty-two United States sexual abuse interviews found that general, open-ended questions account for ten percent or fewer of all interviewer questions, and that specific, yes-or-no-format questions account for two-thirds of all questions. In addition, interviewers sometimes (twenty-nine percent of the time) completely fail to establish rapport and often (seventy-one percent of the time) fail to establish interview ground rules by telling children that they should feel free to correct the interviewers and to answer that they do not remember or do not understand questions.

Amye R. Warren & Dorothy F. Marsil, *Why Children’s Suggestibility Remains a Serious Concern*, 65 Law and Contemporary Problems 127-148, 144-145 (Winter 2002) available at: <https://scholarship.law.duke.edu/lcp/vol65/iss1/5> (footnotes omitted).

⁵ In *Herrera v. Collins*, 506 U.S. 390, 417 (1993), the Supreme Court assumed, without deciding, that “in a capital case a truly persuasive demonstration of ‘actual innocence’ made after

Crowder requests the Court to follow the lead of the Ninth Circuit and conclude/assume that a freestanding claim of actual innocence can be raised in a § 2254 proceeding. It is counterintuitive to allow “gateway” actual innocence claims but prohibit “freestanding” actual innocence claims. However, Petitioner Crowder acknowledges that in *Cunningham v. District Attorney’s Office for Escambia County*, 592 F.3d 1237, 1272 (11th Cir. 2010), the Eleventh Circuit Court of Appeals stated that “this Court’s own precedent does not allow habeas relief on a freestanding innocence claim in non-capital cases.” (citing *Jordan v. Sec’y, Dep’t of Corr.*, 485 F.3d 1351, 1356 (11th Cir. 2007)). Because the Court is bound by *Cunningham*, Petitioner Crowder preserves his freestanding claim of actual innocence for subsequent review.

Alternatively, Petitioner Crowder raises a gateway actual innocence claim. In *McQuiggin v. Perkins*, 569 U.S. 383 (2013), the Supreme Court held that a petitioner who satisfies the actual innocence gateway standard may have otherwise time-barred claim heard on the merits. For the reasons set forth above, Petitioner Crowder meets the *McQuiggin* “actual innocence” standard, and therefore he requests the Court to consider the merits of the ineffective assistance of counsel claims argued below.

trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim.” *See also Jackson v. Calderon*, 211 F.3d 1148, 1164 (9th Cir. 2000) (noting that “a majority of the justices in *Herrera* would have supported a claim of free-standing actual innocence”); *White v. Keane*, 51 F. Supp. 2d 495, 504 (S.D.N.Y. 1999) (suggesting that a liberal reading of *Herrera* extends actual innocence claims to non-capital cases); *Wright v. Smeal*, No. 08-2073, 2009 WL 5033967 at *9-10 (E.D. Pa. Dec. 23, 2009) (addressing petitioner’s freestanding actual innocence claim in a non-capital case on the merits). *See also In re Davis*, 2010 WL 3385081 at *43 (S.D. Ga. 2010) (concluding that “executing the ‘actually’ innocent violates the cruel and unusual punishment clause of the Eighth Amendment”).

2. Defense counsel rendered ineffective assistance of counsel by failing to object when the state trial court allowed the video of the Child Protection Team interview to go to the jury room during deliberations.

Defense counsel rendered ineffective assistance of counsel by failing to object when the state trial court allowed the video of the Child Protection Team (“CPT”) interview to go to the jury room during deliberations. As a result, Petitioner Crowder was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution.

During the trial, the State played a video of the CPT interview of the alleged victim. Just before the jury retired to deliberate, the state trial court said the following to the jurors:

A couple of things. We’re going to send the CD back with you, which is the one exhibit. You really can’t just put it in your brain and look at it. If you need to watch it again, you just need to let us know and we’ll reassemble and watch it on the screen.

(T-290). Defense counsel failed to object to this procedure. After the jury retired to deliberate, witnesses observed a bailiff pushing a cart containing a television and DVD/CD player into the jury room so that the jury could view the recorded CPT interview in the deliberation room. Affidavits from these witnesses are attached to this petition (Exhibits 1, 2, and 3). Again, defense counsel did not object.

In *Young v. State*, 645 So. 2d 965, 967-968 (Fla. 1994), the Florida Supreme Court held that a videotaped out-of-court interview of a child victim, introduced into evidence under section 90.803(23), Florida Statutes, is *not* allowed to go into the jury room during deliberations.⁶ *See also Nunez v. State*, 109 So. 3d 890, 893 n.8 (Fla. 3d DCA 2013) (“Although this issue was not preserved, we take this opportunity to remind the trial courts that sending a videotaped interview of a child

⁶ In *Young*, the Florida Supreme Court added that a trial court may allow the jury to view the videotape a second time *in open court* upon request pursuant to Florida Rule of Criminal Procedure 3.410.

victim to the jury room is error). In *Young*, the Florida Supreme Court explained that allowing such a video to go the jury room places undue emphasis on the video over the other live testimony presented during the trial:

[A]llowing a jury to have access to videotaped witness statements during deliberations has much the same prejudicial effect as submitting depositions to the jury during deliberations. *By permitting the jurors to see the interview once again in the jury room, there is a real danger that the child's statements will be unfairly given more emphasis than other testimony.* Furthermore, unlike testimony in open court or even deposition testimony, the interviews are conducted on an *ex parte* basis without the right of cross-examination.

Young, 645 So. 2d at 967 (emphasis added).

In the instant case, sending the recorded CPT interview to the deliberation room violated the rule announced by the Florida Supreme Court in *Young*. Pursuant to *Young*, had defense counsel properly objected to the state trial court allowing the CPT video to go to the jury room, the state appellate court would have reversed Petitioner Crowder's convictions on appeal. *See Merkison v. State*, 1 So. 3d 279, 281 (Fla. 1st DCA 2009) ("[T]he failure to preserve an issue for appellate review may be sufficient to constitute ineffective assistance of counsel . . .").

The Sixth Amendment right to counsel implicitly includes the right to effective assistance of counsel. *See McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970); *Chatom v. White*, 858 F.2d 1479, 1484 (11th Cir. 1988). The familiar test utilized by courts in analyzing ineffective assistance of counsel claims is as follows:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.

Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversarial process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984). The Supreme Court emphasized that the Sixth

Amendment right to counsel exists “in order to protect the fundamental right to a fair trial.” *Strickland*, 466 U.S. at 684. *See also Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *United States v. Cronin*, 466 U.S. 648, 653 (1984) (“Without counsel, the right to a trial would be of little avail”) (internal quotation marks and footnote omitted); *United States v. Morrison*, 449 U.S. 361, 364 (1981).

Applying the *Strickland* standard to the state court trial record, it is clear that defense counsel rendered ineffective assistance of counsel by failing to object when the state trial court allowed the video of the CPT interview to go to the jury room during deliberations. Absent counsel’s ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel’s ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. *See Johnson v. State*, 921 So. 2d 490, 511-512 (Fla. 2005) (Pariente, C.J., specially concurring). Therefore, Petitioner Crowder satisfies both of the *Strickland* prongs in the instant case. Petitioner Crowder is entitled to a new trial. Petitioner Crowder requests an evidentiary hearing on this claim.

3. Defense counsel rendered ineffective assistance of counsel by failing to present an expert at trial to explain to the jury that the Child Protection Team interview conducted in this case was improper and therefore unreliable.

Defense counsel rendered ineffective assistance of counsel by failing to present an expert at trial to explain to the jury that the Child Protection Team (“CPT”) interview conducted in this case was improper and therefore unreliable. As a result, Petitioner Crowder was denied his right to effective assistance of counsel in violation of the Sixth Amendment.

As explained above, Linda Kahl was the forensic interviewer and case coordinator for the Child Protection Team in this case. Ms. Kahl played an integral role in the case – she interviewed the alleged victim at the Gulf Coast Kid’s House and her recorded interview was subsequently played for the jury as substantive evidence during the trial (pursuant to section 90.803(23), Florida Statutes). Ms. Kahl’s interview was the basis for the charges in this case.

Defense counsel failed to present an expert at trial to explain to the jury that Ms. Kahl’s CPT interview conducted in this case was improper and therefore unreliable. Attached to this petition is an affidavit from Hollida Wakefield, a psychologist (Exhibit 4). In her affidavit, Ms. Wakefield details all of the red flags she saw during the interview process in this case (i.e., Ms. Kahl used leading, suggestive, close-ended, and direct questioning – which contributes to tainting the evidence that may be elicited, and she failed to follow accepted guidelines for conducting these types of interviews).⁷ *See State v. Malarney*, 617 So. 2d 739, 740-41 (Fla. 4th DCA 1993) (“We also reverse because of the exclusion of defendant’s expert psychological testimony. His psychologist would have testified that the techniques used in interviewing the alleged victim were unreasonably suggestive and that the victim’s ‘affect’ was inconsistent with sexual abuse. A critical issue was the credibility of the complaining witness. The defense should be allowed broad leeway in offering contrary evidence on the subject of an alleged victim’s credibility. While it might not be proper for the state to bolster its case in chief with psychological expert testimony to the effect that the victim’s story is psychologically credible or believable, it is not necessarily equally improper for a defendant to show that the interviewing techniques and procedures of the abuse treatment experts played a role in planting a story into a young, impressionable child’s mind.”) (citation omitted).

⁷ Ms. Wakefield has been qualified as an expert in other cases on this subject matter.

Defense counsel was ineffective for failing to present at trial an expert such as Ms. Wakefield. Had the opinions set forth in Ms. Wakefield's affidavit been presented to the jury, it would have called into the question the validity/credibility of the alleged victim's accusation in this case. Had the jury heard this testimony, there is a reasonable probability that the result of the proceeding would have been different.

Accordingly, defense counsel rendered ineffective assistance of counsel by failing to present at trial an expert such as Ms. Wakefield. Counsel's failure fell below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. *See Johnson*, 921 So. 2d at 511-512 (Pariente, C.J., specially concurring). Therefore, Petitioner Crowder satisfies both of the *Strickland* prongs in the instant case. Petitioner Crowder is entitled to a new trial. Petitioner Crowder requests an evidentiary hearing on this claim.

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

Ground 1 was presented in state court, and but grounds 2 and 3 were not presented and would otherwise be time barred in state court.

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

Yes (☐) No (☒)

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

(a) At preliminary hearing: N/A

(b) At arraignment and plea: N/A

- (c) At trial: Patrece Cashwell, 201 East Government Street, Pensacola, Florida 32502
- (d) At sentencing: Ms. Cashwell
- (e) On appeal: Ross A. Keene, 224 East Government Street, Pensacola, Florida 32502
- (f) In any postconviction proceeding: undersigned counsel
- (g) On appeal from any adverse ruling in a post-conviction proceeding: undersigned counsel
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
- Yes (☒) No (☐)
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
- Yes (☐) No (☒)
18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition: As explained above, Petitioner Crowder is bringing this petition pursuant to the actual innocence exception to the § 2254 time bar.

Wherefore, Petitioner Crowder prays that the Court will grant him the relief to which he is entitled in this proceeding.

Respectfully submitted,

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

Counsel for Petitioner **CROWDER**

Oath

I certify and declare, under penalty of perjury that the foregoing is true and correct.

Date: 11/19/20

Petitioner's signature: Zane D. Crowder

Printed name of Petitioner: Zane D. Crowder

Prisoner ID #: P44924

Correctional Institution: Liberty C.I.

Address: 11064 NW Dempsey Barton Rd.
Bristol, FL 32321



CERTIFICATE OF SERVICE

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

to:

Office of the Attorney General
PL01, The Capitol
Tallahassee, Florida 32399-1050
Email: criminalappealsintake@myfloridalegal.com

by email on December 14, 2020;

Mark S. Inch, Secretary
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

by U.S. mail delivery on December 14, 2020.

Respectfully submitted,

/s/ Michael Ufferman

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

Counsel for Petitioner **CROWDER**

IN THE
FIRST JUDICIAL CIRCUIT COURT
ESCAMBIA COUNTY, FLORIDA

State of Florida, Plaintiff, v. Zane Dalton Crowder, Defendant.	Case No. 2010-CF-2822
---	-----------------------

AFFIDAVIT OF DONNA FORBES

STATE OF FLORIDA :

COUNTY OF ESCAMBIA :

I, DONNA FORBES, having been duly sworn, hereby affirm and state the following
as true and correct:

1. My name is Donna Forbes. I am over eighteen years of age. I am the wife
of David Franklin Forbes, Escambia County case number 2015-CF-004250A.

2. My husband was initially charged with sexual battery and lewd or lascivious
molestation in Escambia County. Mr. Crowder was also charged with sexual battery and
lewd or lascivious molestation in Escambia County.

3. On May 20, 2016, Linda Kahl was deposed to determine her role as a Forensic
Interviewer and Case Coordinator for the Child Protection Team in Escambia County
Florida. During deposition, Ms. Kahl admitted under oath that she was not aware of the

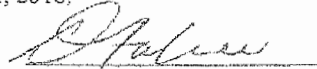
guidelines in the handbook set forth by the Florida Department of Health for Child Protection Teams. Ms. Kahl stated she was not aware of the guidelines in the handbook, thus had never followed them. After this determination was made, it was decided that Ms. Kahl's supervisor Kirsten Bucey, Linda Kahl's supervisor should be deposed. In addition, Cate Jordan was set for deposition as she was the one that signed the contract with the Florida Department of Health. The State funding for the Gulf Coast Kid's House is dependent upon the contract signed by Cate Jordan. (See Defendant's Third Amended Reciprocal Discovery) After this document was filed, all Capital Charges were dropped in this case. This was unexpected, as the Assistant State Attorney had indicated that the case would go to trial.

4. At the beginning of 2017, I learned that in Mr. Crowder's case, Ms. Kahl acted as an expert witness for the State of Florida, even though in my husband's case it was determined that she was not an expert in the area of sexual battery and lewd or lascivious molestation cases.

5. I first reached out to Mr. Crowder's family at the beginning of 2017 to introduce myself and explain to them the situation in my husband's case.

I declare that I have read the above document and that the facts stated therein are true.

Executed on this 27 day of November, 2018,



Donna Forbes

Sworn to and subscribed before me by Donna Forbes, who is personally known to me

or who has produced FL. Drivers License as identification this 27th day of November, 2018.


Notary Public, State of Florida at Large

My commission expires: 9-26-2019



VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>IN THE CIRCUIT COURT IN AND FOR ESCAMBA COUNTY, FLORIDA</p> <p>STATE OF FLORIDA, Plaintiff,</p> <p>vs. CASE NO.: 2015 CF 004250A DIVISION: N</p> <p>DAVID FRANKLIN FORBES, Defendant.</p> <p><u>VIDEOTAPED DEPOSITION OF LINDA KAY KHAL</u></p> <p>Taken on behalf of the Defendant</p> <p>DATE TAKEN: Friday, May 20th, 2016 TIME: 10:00 a.m. - 11:27 a.m. PLACE: Anchor Court Reporting 499 South Baylen Street Pensacola, Florida 32502</p> <p>Examination of the Witness reported by: Pamela Dee Elliott, Florida Professional Reporter Notary Public, State of Florida</p> <p><u>ANCHOR COURT REPORTING</u> 499 South Baylen Street Pensacola, Florida 32502</p>	<p>INDEX OF TRANSCRIPT</p> <p>WITNESS:</p> <p><u>LINDA KAY KHAL</u></p> <p>Direct Examination by Mr. Pavlinic.....06 Cross-Examination by Ms. Ambrose.....68 Redirect Examination by Mr. Pavlinic.....71 Certificate of Oath.....73 Certificate of Reporter.....74</p> <p><u>PLAINTIFF'S EXHIBITS INDEX</u></p> <table border="1"><thead><tr><th>NO.</th><th>DESCRIPTION</th><th>PAGE NO.</th></tr></thead><tbody><tr><td colspan="3">*****NONE*****</td></tr></tbody></table> <p><u>DEFENDANT'S EXHIBITS INDEX</u></p> <table border="1"><thead><tr><th>NO.</th><th>DESCRIPTION</th><th>PAGE NO.</th></tr></thead><tbody><tr><td>1</td><td>Resumé</td><td>07</td></tr><tr><td>2</td><td>2008 Forensic Interviewing Clinic Certificate</td><td>08</td></tr><tr><td>3</td><td>2009 Forensic Interviewing Clinic Certificate</td><td>08</td></tr></tbody></table>	NO.	DESCRIPTION	PAGE NO.	*****NONE*****			NO.	DESCRIPTION	PAGE NO.	1	Resumé	07	2	2008 Forensic Interviewing Clinic Certificate	08	3	2009 Forensic Interviewing Clinic Certificate	08
NO.	DESCRIPTION	PAGE NO.																	
*****NONE*****																			
NO.	DESCRIPTION	PAGE NO.																	
1	Resumé	07																	
2	2008 Forensic Interviewing Clinic Certificate	08																	
3	2009 Forensic Interviewing Clinic Certificate	08																	

<p><u>A P P E A R A N C E S</u></p> <p>FOR THE PLAINTIFF:</p> <p>ERIN AMBROSE, ESQUIRE Office of the State Attorney Coast Kids House 3401 North 12th Avenue Pensacola, Florida 32503</p> <p>FOR THE DEFENDANT:</p> <p>RYAN W. CARDOSO, ESQUIRE Cardoso Law Offices 1211 West Garden Street Pensacola, Florida 32502 and THOMAS A. PAVLINIC, ESQUIRE Attorney at Law 4000 Old Towne Centre 1900 Towne Centre Boulevard Suite 100 Annapolis, Maryland 21401</p> <p>COURT REPORTER:</p> <p>PAMELA DEE ELLIOTT, FPR ANCHOR COURT REPORTING 499 South Baylen Street Pensacola, Florida 32502 (850) 432-2511 1-800-563-6409 FAX: (850) 432-2302 www.anchorreporters.com</p>	<p><u>STIPULATION</u></p> <p>It is stipulated and agreed by Counsel for the parties that the deposition is taken for the purpose of discovery and/or evidence; that all objections save as to the form of the question are reserved to the time of trial; and that the reading and signing of the deposition are waived, together with notice of the original hereof.</p> <p>*****</p>
---	--

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 THE VIDEOGRAPHER: Here begins the video 2 deposition of Lydia Kay Khal in the matter of 3 State of Florida versus David Franklin Forbes, 4 Case Number 2015 CF 004250 A, Division N. 5 Today's date is May 20th, 2016. The time 6 on the video monitor reads 10:09 a.m. And the 7 video operator today is Ryan O'Keeley representing 8 Truman Legal Video. The court reporter is Pamela 9 Dee Elliott representing Anchor Court Reporting. 10 Today's deposition is being taken on behalf of the 11 Defendant and is taking place at Anchor Court 12 Reporting, 229 South Baylen Street, Pensacola, 13 Florida. 14 Counsel, please introduce yourselves and 15 whom you represent. 16 MS. AMBROSE: Erin Ambrose for the State. 17 MR. PAVLINIC: My name is Tom Pavlinic and 18 I'm co-counsel with Ryan Cardoso, both of whom 19 are present. 20 THE VIDEOGRAPHER: The court reporter may 21 swear in the witness, please. 22 WHEREUPON, the witness, 23 LINDA KAY KHAL, 24 having been duly sworn by the Court Reporter, testified 25 on her oath as follows:</p>	<p>1 A. I have a Bachelor of Science degree from 2 Iowa State University with a major in sociology, 3 emphasis being criminal justice. 4 Q. When did you get your degree? 5 A. 1985. 6 Q. Do you have any post-graduate master's 7 courses or anything of that nature? 8 A. I do not. 9 Q. How long have you been in your current 10 employment? 11 A. Since June of 2008. 12 Q. You -- as part of discovery in this case, 13 we've gotten a -- a resumé from you. 14 A. Yes. 15 Q. I just want to -- we'll have this marked. 16 I'm going to show you what will be marked as Deposition 17 Exhibit 1. Is that your resumé; is that your current 18 resumé? 19 A. As current as I have, yes, it is. 20 MR. PAVLINIC: And we'll just make this a 21 part of the -- as an exhibit. 22 (Whereupon, Defendant's Exhibit No. 1 was 23 marked for identification.) 24 Q. (By Mr. Pavlinic) And also attached to 25 that were -- were some certificates of training that you</p>
---	---

<p>1 THE WITNESS: I do. 2 THE VIDEOGRAPHER: Okay. 3 MR. PAVLINIC: All set. 4 DIRECT EXAMINATION 5 BY MR. PAVLINIC: 6 Q. Ms. Khal, we've not met or had any prior 7 depositions together, but I'm assuming you've had your 8 deposition taken on previous occasions? 9 A. Yes, I have. 10 Q. You're familiar with the procedures? 11 A. I hope so, yes. 12 Q. If any time I ask you anything that's -- 13 that's ambiguous to you, just ask me to clarify it; 14 okay? 15 A. Okay. 16 Q. I noticed that when the -- the reporter 17 (sic) there said your middle initial was K? 18 A. Yes. 19 Q. What's that stand for? 20 A. Kay, K-A-Y. 21 Q. Okay. And by whom are you employed? 22 A. For the Child Protection Team. 23 Q. May I ask you how old you are? 24 A. I am 53. 25 Q. And what is your -- your formal education?</p>	<p>1 received; one dated, it looks like, 2008 and one dated 2 2009. Take a look at that and see if that... 3 A. That's correct. 4 MR. PAVLINIC: We'll have these marked as 5 Deposition Exhibit 2 and 3; 2008 would be 2 and 6 2009 would be 3. 7 (Whereupon, Defendant's Exhibit Nos. 2 and 8 3 were marked for identification.) 9 Q. (By Mr. Pavlinic) I noticed that the last 10 course that you took was 2009. 11 A. I had an additional forensic interview 12 training in 2010. 13 Q. Uh-huh. 14 A. But I was not able to locate that 15 certificate. 16 Q. Was 2010 the last training session that you 17 attended? 18 A. Formal training, yes, I believe so. 19 Q. When you use the word "formal training," 20 what do you mean by that? 21 A. That I actually went to -- and actually, I 22 take that back, because we just had a couple of weeks 23 ago a two-day forensic interview training at the Gulf 24 Coast Kid's House. And when I say "formal," we have 25 informal what we call peer review within our office of</p>
--	---

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	where we review each other's forensic interviews and just discuss amongst ourselves the interviews and strengths, weaknesses, just interviewing each other's -- reviewing each other's interviews, we call that a peer review. Q. Does that include -- your group, your peer -- peer group, looking at one of the interviews that you conducted and commenting on it and critiquing it? A. Yes. Q. And is there a record of that? Tell me what happens as a result of all this A. Our supervisor is present at those and there is a form that's filled out about -- it's called a peer -- peer interview, peer review form just documenting if the procedures that we used were followed in that particular interview, if they weren't, areas for improvement, just things like that. But there is a form, yes. Q. Are these forms filed as part of your personnel file or what happens to them? A. I do not know what happens with them other than after we fill them out, they go back to my supervisor. Q. Have you seen some of the critiques of your interviews?	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	your job title? You work for the Gulf Coast Kid's House. A. I work -- I work for the Child Protection Team, which is one of the agencies housed at the Gulf Coast Kid's House. Q. And what is your job designation, what are you called? A. Case coordinator. Q. And what are your -- what is the function of a case coordinator? A. We, as case coordinators, provide services to families at the request of either DCF or law enforcement where there's been an allegation of abuse or neglect and we provide these services, which can include interviews, medical exams, psychological evaluations to assist that person requesting the service in their investigation and in their -- in their investigation. Q. As part of your role as a case coordinator, you said to provide services to -- to people that need them? A. To the agency that's requesting a service, either the Department of Children and Families or law enforcement to help us make an assessment -- help them make an assessment for abuse or neglect. Q. Okay. The extent of the abuse and neglect?	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	A. Yes. Q. How many of those would -- would be in existence, for example? A. I wouldn't even -- I wouldn't be able to even guess on that. We -- we take turns reviewing each other's interviews, so I wouldn't know how many of them were mine versus... Q. And I'm assuming that there was some positive comments by your interview -- of your interview techniques and some negative? A. I hope so, yes. Q. What would have been some of the positive things that were critiqued? A. Type of questioning, open-ended questioning, patience with the child, ability to focus on the interview. I -- I can't even think of other things off of the top of my head. Q. What about some of the negative things that may have been said? A. Just -- and I don't want to say negative, but just different case coordinators may have asked a question in a different way or gone about asking a question in a different way. I can't really think of a -- anything negative off of the top of my head. Q. Okay. So what is your actual -- your --	10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	A. Whether it exists or not, the extent of it and -- yeah, yes. Q. So when you -- when you take on the role of a case coordinator, are there any suppositions made about whether the abuse has already occurred? A. That's what we try not to do. That's what we're trying to gather when we bring the children in and the families in, whether something has occurred or not. Q. And you said you work in -- in conjunction with the agency and sometimes with law enforcement and/or both? A. I don't know if in conjunction with, but at the request of, yes. Q. In -- in these initial time periods, are defense attorneys ever invited to submit any information? A. No, not that I'm -- not that I've ever dealt with. Our cases are usually before or at the same time as an arrest is being made. They're usually very early on in the stage before anyone would even have an attorney per se. Q. And when you get the case, does sometimes the alleged perpetrator even know that the investigation is going on? A. Sometimes yes, sometimes no.	12 13 14 15 16 17 18 19 20 21 22 23 24 25

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

13	15
1 Q. How is that determined, whether they know 2 or if they don't know? 3 A. It would -- well, it's kind of a case by 4 case scenario. It depends on what we would be looking 5 at, if it would -- example, a case of physical abuse, 6 it's a question of whether at the time DCF would refer 7 it, they are aware of who may or may not have caused 8 abuse to the child. It -- it just kind of depends on 9 how early on in the investigation we're made aware. 10 That's kind of confusing, but... 11 Q. Do you have separate interviewers in -- in 12 your agency or in your -- your department? 13 A. Yes, there are, I believe, right now six 14 case coordinators, six or seven case coordinators. 15 Q. Are you using the term "case coordinator" 16 synonymously with an interviewer? 17 A. No. As a case coordinator, we -- we can 18 conduct interviews with a parent, a caregiver, a child, 19 assist with the medical exam. And when I say "assist," 20 be present. So interviewing is one of the -- one of the 21 things that we do as case coordinators. 22 Q. Do you have interviewers that do nothing 23 but interview the child? 24 A. Depending on the case, there are some cases 25 where we only do interviews, so that may be the case	1 with a medical exam and possibly interviewing a parent. 2 No, there wouldn't be a forensic interview on that 3 particular case. So it -- like I said, it just depends 4 on the type of case that it is as to what service we're 5 providing. There are cases where there's no interviews 6 done at all, but there is still a case coordinator 7 assigned to the case. 8 Q. All right. So I'm not so sure that -- that 9 you've answered my question. 10 A. Okay. 11 Q. Maybe I'm just not processing it. Are 12 there individuals that do not -- are not case 13 coordinators who just do forensic interviews and nothing 14 else? 15 A. No. 16 Q. No? 17 A. No. 18 Q. All right. So is it always part of the 19 case coordinator's duty to conduct a forensic 20 interviewer (sic) -- forensic interview? 21 A. If there is one, yes. 22 Q. Okay. 23 A. Yes. 24 Q. Would the case coordinator ever bring in a 25 third party to do the interview?
14	16
1 there. But if -- but if the particular case requires a 2 medical exam, they would also be present for the medical 3 exam. 4 Q. I'm just trying to -- in -- in looking at 5 some of the rules and regulations here, I -- I draw a 6 big distinction between an interviewer and a case 7 coordinator. An interviewer has limited involvement in 8 the case; isn't that correct? 9 A. Yes. And as the Child Protection Team, we 10 are only providing limited information about the 11 entirety of a case as well. 12 Q. Are -- are the roles of an interviewer 13 conducting a forensic interview and the role of a case 14 coordinator, are they different roles that those 15 individual would be playing? 16 A. I don't really understand the question. 17 Q. All right, let me rephrase it this way. 18 Are there individuals in your agency that do nothing but 19 interview a child and act as an independent forensic 20 examiner of the child? 21 A. Again, no. It's -- you receive a case and 22 it's whatever service is required on that case. That 23 could be interviewing. It may be not be interviewing. 24 It may like an infant that has a bruise on his head, 25 whereas a case coordinator, I would only be assisting	1 A. No. If I'm understanding your question 2 right, no. 3 Q. Now, what -- what educational training do 4 you have as part of your case coordinator duties that -- 5 that enables you to conduct a forensic interview of -- 6 of a child? 7 A. Well, as -- as I said, formal training, 8 when you begin as a case coordinator and you have to 9 attend what's called an APSAC training, which is the -- 10 the protocol that we use in our training. It's the 11 Advanced (sic) Professional Society on the Abuse of 12 Children. So I went through a 40-hour forensic 13 interviewing clinic in 2009, which is what's required as 14 a forensic interview -- interviewer. And I believe that 15 was in Tampa -- I believe Tampa. And I went through a 16 16-hour clinic in 2008 right after I started and then 17 another 16-hour clinic in 2010. That's the only formal 18 law training that I've been through. 19 Q. You mentioned -- you mentioned APSAC. So 20 you follow their -- their protocols and their 21 suggestions for conducting interviews and -- 22 A. Yes. 23 Q. -- and conducting investigations? 24 A. Yes. 25 Q. So what -- what is the duty, what's the

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>17</p> <p>1 mandate of a -- of a case coordinator? What -- what are 2 you supposed to do when you take on the responsibility 3 of an investigation? 4 A. We're making an assessment for whether a 5 child has been abused or neglected. 6 Q. And what are the steps that you take to 7 make that determination? 8 A. That can be done through interviews, 9 medical exams and we also have a team psychologist. We 10 also assess for mental injury and that can be done 11 through a psychological evaluation. It just depends on 12 the type of maltreatment, abuse or neglect that we're 13 assessing for. 14 Q. And beyond the interview of the child and 15 the medical exam that's conducted in-house, do you reach 16 out to collateral individuals? 17 A. We do not, not as the Child Protection 18 Team, no. 19 Q. Well, who has that responsibility to do 20 that? 21 A. That could be our referral source, either 22 the Department of Children and Families or law 23 enforcement. As I said, like the Child Protection Team 24 is just like one -- one entity of an investigation and 25 then like as an example, DCF, which was the referral</p>	<p>19</p> <p>1 A. Correct. 2 Q. And what about considering alternate 3 hypotheses for what the child may be saying; do you -- 4 is that a requirement of your -- of your interview? 5 A. It can be, depending on the allegation. 6 That is one of our steps is to explore that, if 7 possible, yes. 8 Q. And -- and how do you do that, how do you 9 explore alternate hypotheses? 10 A. And again, that would depend on the -- 11 the -- the allegation and what may have happened where, 12 I guess, an example would be if you were -- if it was a 13 younger child and they were giving -- making an 14 allegation that they had been touched, you would want to 15 explore was someone possibly helping you with bathing, 16 was someone possibly helping you with going to the 17 bathroom or something like that. 18 Q. We know from the discovery in this case 19 that the allegations were reported to the authorities 20 on -- on August the 8th of 2015 and you conducted your 21 interview on August the 11th of 2015. 22 A. The part about the interview, yes. I'm not 23 certain what date it was reported to law enforcement. 24 Q. That's what we have. 25 A. Okay.</p>
---	---

<p>13</p> <p>1 source in this case, would do -- take our information 2 and then also I think they call them collaterals where 3 they talk to, you know, teachers, neighbors, other 4 family members, things such as that. 5 Q. So as -- when you conduct your interview, 6 let's talk about the interview here. What's -- 7 what's -- what are the requirements, how do you 8 structure your interview, what's the goal of an 9 interview? 10 A. With a child or with a caregiver? 11 Q. With the child. 12 A. With the child, a forensic interview, it 13 is -- we are attempting to determine if something has or 14 has not happened to a child. 15 Q. Uh-huh. 16 A. That's what we're -- the overall what we're 17 trying to determine in a forensic interview. And the 18 protocol that we follow is the structure of our 19 interviews, our rapport building, obligating the child 20 to tell the truth and then moving into the allegations. 21 And our questioning is formulated with open-ended, 22 non-leading, non-suggestive questioning with the child. 23 Q. It's important for you, as the interviewer, 24 to be neutral when you go into an interview; is that 25 correct?</p>	<p>20</p> <p>1 Q. You're not disputing that? 2 A. No. 3 Q. So what information did you have and from 4 what sources prior to conducting the interview? 5 A. We have within our -- the Child Protection 6 Team, we have someone that does triaging, which is -- 7 it's like a centralized person that DCF or law 8 enforcement calls to make a request for our services and 9 that person then gathers the information. 10 In this particular case, it was from DCF, 11 the investigator, that she was requesting a forensic 12 interview of this child and a bit of the background that 13 she had obtained in her initial interview with the 14 family. And so that was -- I have that information and 15 that would have been all at the time. 16 Q. Okay. Would that have been from Bridget 17 Fair? 18 A. Yes. 19 Q. When is the last time that you talked to 20 Bridget Fair? 21 A. About any case? 22 Q. About this case. 23 A. Oh, probably at the -- at the -- within 24 probably a couple of weeks of the case. 25 Q. Do you -- do you know that her deposition</p>
--	--

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 had been taken? 21 2 A. No. 3 Q. And did you know that she had some 4 reservations about the conclusions that she reached 5 during her deposition? 6 A. No. 7 Q. Okay. So the information that you had came 8 from input from Bridget Fair? 9 A. Correct. 10 Q. And do you know what the -- what she had 11 done to conduct an independent investigation reaching 12 out to collateral contacts prior to -- to talking 13 with -- talking with you? 14 A. Only -- she didn't talk to me, she spoke 15 with, like I said, our triage person. 16 Q. Who's that? 17 A. Barbie Valletto. 18 Q. Uh-huh. 19 A. So it would have been Bridget relaying to 20 Ms. Valletto what she had gathered at the very 21 beginning, which I believe she talked to the child and 22 talked to -- I'd have to -- the mother, possibly. 23 Q. Uh-huh. Under these APSAC standards, isn't 24 it the responsibility of the -- of the case coordinator 25 to conduct specialized interviews?</p>	<p>1 Q. Have you taken advantage of his services? 23 2 A. Yes. 3 Q. So C -- CPT, Ms. Fair and her group are 4 conducting an investigation, you get information from 5 her, you're the case coordinator to determine whether or 6 not this abuse allegedly has taken place; is that 7 correct? 8 A. We are -- we gather information, yes, from 9 the -- from the family, yes. 10 Q. And that prior to your interviewing, in 11 this instance, [REDACTED] you did not conduct any 12 specialized interview with any person other than -- and 13 the mother, and did you talk to the mother before this 14 examination? 15 A. Yes. 16 Q. Other than Brianna, other than -- other 17 than Brianna? 18 A. No one. 19 Q. No one? 20 A. Correct. 21 Q. And did you -- did you have a written 22 report from Bridget Fair or somebody from that team that 23 gave you an outline of what (sic) the allegation was 24 supposed to have taken place? 25 A. Only the beginning of our reports is what's</p>
--	--

<p>1 A. Yes. 22 2 Q. And isn't it the responsibility of the case 3 coordinator to do a social assessment? 4 A. No. 5 Q. Is it the responsibility of the -- of the 6 investigator to do a social assessment? 7 A. I'm not sure even what a social 8 assessment -- we don't -- I've never conducted a social 9 assessment in eight years. We do, we conduct 10 specialized interviews when a -- if the case fits that 11 criteria. And in this case, I did, as the child was 12 brought by her mother. So I did interview the mother at 13 the same time -- well, right before I interviewed the 14 child. 15 Q. How about independent psychosexual 16 evaluations or psychological evaluations, have you ever 17 referred -- is that a responsibility of the case 18 coordinator where indicated to have the child submit to 19 a psychological -- independent psychological exam? 20 A. We have a CPT psychologist on staff where 21 normally we refer to him when DCF is requesting input 22 regarding mental injury. That's usually when we use our 23 psychologist. 24 Q. And who is that? 25 A. Julian Salinas.</p>	<p>1 called our triage. 24 2 Q. Okay. 3 A. And that's basically the first couple of 4 paragraphs of my -- all my reports. 5 Q. Did you ever learn about an individual by 6 the name [REDACTED] do you know who [REDACTED] 7 may be? 8 A. I believe that's the child's great 9 grandmother. 10 Q. Did you have any interaction with her? 11 A. I did not. 12 Q. Did you -- did you subsequently learn about 13 the interaction between [REDACTED] and [REDACTED] via 14 vise multiple discussions about abuse, sexual abuse? 15 A. I learned from the mother that that is who 16 the child disclosed to was the great grandmother. 17 Q. Okay. That was -- that's a different 18 question. 19 A. Okay, I'm sorry -- 20 Q. Were you aware of any of the -- the 21 discussions between [REDACTED] and [REDACTED] about 22 abuse, in general about [REDACTED] own abuse, 23 about [REDACTED] mother's abuse -- 24 A. No. 25 Q. -- and the impact that that may have had?</p>
---	--

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 A. No. 2 Q. Did you ever speak to [REDACTED] the 3 child's grandfather? 4 A. No. 5 Q. Were you aware that there had been multiple 6 instances of vilification of David Forbes by [REDACTED] 7 [REDACTED] 8 A. No. 9 Q. Had you had known these things prior to 10 your interview with [REDACTED] would you have asked her 11 about that? 12 A. It depends on what you're asking me what I 13 would have asked her. 14 Q. Okay. Well, let me ask you this, young 15 children, seven-year-old children, can be subject to 16 suggestibility, obviously; correct? 17 A. Yes. 18 Q. And if the record would have established 19 that there was this influence by [REDACTED] on her 20 granddaughter having multiple discussions about abuse 21 without any factual basis, would that have been 22 something you would want to ask [REDACTED] about? 23 A. Possibly. 24 Q. Okay. Why wouldn't you have wanted to do 25 it?</p>	<p>25</p> <p>1 the pervasiveness of the discussions, would that have 2 been one of the -- the factors that could maybe asked 3 (sic) you -- caused you to ask [REDACTED] about that? 4 A. As I said, it's not typically what we ask 5 is why questions like that. That's just normally not 6 part of our interviewing. 7 Q. But your interview is supposed to be 8 neutral and you're supposed to explore every hypothesis 9 that could lead the child to be making an allegation; 10 isn't that correct? 11 A. It can be, yes. 12 Q. Can sometimes children make false 13 accusations based upon influence from third parties, 14 particularly people that have an important role in their 15 lives? 16 A. They can, yes. 17 Q. Okay. And you're familiar with the term 18 "vilification"? 19 A. Yes. 20 Q. Okay. What's your definition of 21 vilification? 22 A. It would be someone -- I don't have a 23 definition for it, but like a child being -- someone 24 talking to a child about someone in a negative manner 25 and that child then having negative thoughts of that</p>
--	--

<p>1 A. It -- it -- it seems simple, but my job is 2 just -- is not to question the child about why. That 3 isn't normally a question we like to ask kids because 4 that's more of a -- it can be placing blame. That's not 5 what I'm trying to do. I'm just trying to gather a 6 statement from a child, if something happened to them or 7 not. And the why things usually get left for someone 8 else maybe to do. 9 Q. Well, that opens another area. But let -- 10 let's stick with this first. 11 A. Sure. 12 Q. So if you had this multiple discussions 13 between her great grandmother and [REDACTED] about abuse 14 where [REDACTED] didn't give any indication there was any 15 abuse or was any problem, do you think that that could 16 have been problematic in influencing the child perhaps? 17 A. It could have been. 18 Q. Okay. So if it could have been and you -- 19 and if you were aware of those facts, would you have 20 asked her about that? 21 A. Possibly. 22 Q. Okay. So what would have made the 23 determination to ask her? 24 A. I -- I can't answer that question. 25 Q. If you had known the nature and extent and</p>	<p>26</p> <p>1 child -- or of that individual. 2 Q. Okay. And are you aware that [REDACTED] 3 the child's grandfather, had made negative statements, 4 according to [REDACTED] all her life about what a bad man 5 David Forbes was? 6 A. I didn't know that. 7 Q. Okay. If -- if you had known that prior to 8 conducting your interview, would you have asked perhaps 9 about that? 10 A. Possibly. 11 Q. Why wouldn't you have asked about that? 12 A. Back to my same answer. That's not really 13 what I'm trying to gather from a child. 14 Q. Well, couldn't vilification lead the child 15 sometimes to make false accusations of abuse? 16 A. It -- it can. 17 Q. It can? 18 A. Yes. 19 Q. And wouldn't that be an alternate 20 hypothesis that you could have explored, if you had been 21 aware of these facts during your -- your interview? 22 A. Possibly. 23 Q. Okay. But just so I want to make sure that 24 you don't do any of this evaluation of these independent 25 witnesses, you're based upon what you've gotten from the</p>
---	---

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 people that have asked you to do the interview; right? 2 A. Correct. 3 Q. Okay. Now, what about prior -- exposure to 4 prior sexual activity, were you aware that [REDACTED] had 5 been exposed to some sexual activity that she observed 6 involving her mother and others? 7 A. No. 8 Q. Was that ever related to you by anybody at 9 the -- the CPT team? 10 A. Not to my knowledge, unless I'm... 11 Q. If -- 12 A. Not -- not that I recall. 13 Q. If -- if you had known prior to your 14 interview that [REDACTED] had been exposed to seeing some 15 sexual activity, would that have been something you 16 would have asked her about? 17 A. Possibly, yes. 18 Q. Okay. Why wouldn't you have asked her 19 about that? 20 A. As I said, it depends on what it was or 21 what the circumstances were. 22 Q. Well, let me give you some of the 23 circumstances. We know from [REDACTED] deposition that 24 she saw her mother in the kitchen squatting down licking 25 her boyfriend's private area, oral sex. Do you think</p>	<p>29</p> <p>1 Q. Okay. 2 A. That's my -- that's my role. 3 Q. All right. Well, in gathering the 4 statement from the child, in other words, you know that 5 there's been an allegation of abuse -- 6 A. Correct. 7 Q. -- and you want to give the child an 8 opportunity to talk about that abuse -- 9 A. Correct. 10 Q. -- right? 11 A. Correct. 12 Q. Okay. Not to determine whether or not the 13 abuse actually occurred or not? 14 A. Correct. That's not my role. 15 Q. Okay. Do you realize that you're a 16 forensic interviewer and you have certain 17 responsibilities to explore alternate hypotheses and 18 your role is limited to just have the child make a 19 statement about the abuse that's been reported to you; 20 is that -- is that what you're saying to us? 21 A. I'm an information gatherer from the child, 22 yes. And then that information, as I said, is provided 23 back to the Department of Children and Families for them 24 or through law enforcement to explore alternative 25 hypotheses, as far as things like that.</p>
--	--

<p>1 that would have been some -- that's a significant 2 observation by the -- by Raehanna? 3 A. A significant observation? 4 Q. Of being exposed to sexual acts that could 5 have influenced her in any way? 6 A. Yes. 7 Q. Okay. And how about if she saw her 8 boyfriend -- her mother's boyfriend on top of her and -- 9 and heard the bed, quote, shaking; would that have been 10 something that you would have wanted to ask her about, 11 the nature and extent of what she saw? 12 A. Again, our interviews don't normally 13 encompass that -- that information. 14 Q. Well, isn't a purpose of every forensic 15 interview to explore every possible alternate hypothesis 16 other than the fact that it happened as a -- as a (sic) 17 exclusion as to why the child may be making these 18 allegations? 19 A. Not to that scope, I don't believe so, no. 20 Q. Is the goal of your interview then to have 21 the child make an inculpatory statement about the abuse 22 and to -- and define the abuse that you've been led to 23 believe has taken place? 24 A. My goal is just to gather a statement from 25 the child.</p>	<p>30</p> <p>1 Q. Okay. Well, who would explore an alternate 2 hypothesis then? Who would have the responsibility for 3 doing that? 4 A. It could have been the Department of 5 Children and Families or law enforcement. 6 Q. So do you give them any guidance as to what 7 they should do in that regard? 8 A. No. 9 Q. In these -- these standards that are 10 published by APSAC, it talks about the responsibility of 11 a case coordinator to do these things. Are -- and 12 you've -- you're guided by APSAC. Do you routinely just 13 ignore those recommendations of APSAC? 14 A. I'm not sure what you're even referencing 15 to. 16 Q. Well, in the APSAC recommendations, it 17 talks about the responsibility of the case coordinator 18 conducting specialized interviews. 19 A. Correct. 20 Q. Okay. 21 A. Which I did do with this family. 22 Q. Pardon me? 23 A. Which I did do. 24 Q. Okay. But you did it one interview, you 25 did it with Brianna, the mother --</p>
--	---

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

1	A. Right.	33	1	A. Because I'm -- it's not my role to second	35
2	Q. -- right? Nobody else?		2	guess a child or things like that. I just -- I -- I	
3	A. Correct.		3	don't do that.	
4	Q. Okay. And you're supposed -- it requires		4	Q. All right. The facts that I -- I talked	
5	you to do a social assessment about the child's		5	to -- to you about, mainly the -- the vilification by	
6	background and where they live and things of that nature		6	Bill Rubert, that could be significant?	
7	and you didn't do that either; did you?		7	A. It could be.	
8	A. I'm not sure when you're saying a social		8	Q. Okay. You didn't know about that?	
9	assessment, what you're -- you're referring to.		9	A. No.	
10	Q. Well, are you familiar with the APSAC		10	Q. The grandmother's talking to the child	
11	guidelines of what a social assessment is?		11	about her own abuse, about Brianna, her own mother's	
12	A. A social assessment is one service that the		12	abuse and these constant repetitive discussions where	
13	Child Protection Team can offer a family.		13	there's been no statement about that, that could have	
14	Q. Uh-huh.		14	been important?	
15	A. In my eight years, I've never conducted a		15	A. Could have been.	
16	social assessment of a family.		16	Q. And the child's exposure to seeing sexual	
17	Q. Okay.		17	acts, that could have also been important, too?	
18	A. Our team is very medically -- medically, we		18	A. Could have been, yes.	
19	focus more on the medical part of the exam medically and		19	Q. When you -- you mentioned earlier that you	
20	interviews. As I said, there are teams that do social		20	talked about your -- your medical findings. In this	
21	assessments. I've never conducted a social assessment.		21	instance, Lydia Rosenberger conducted the examination;	
22	Q. Even though that's a recommendation of		22	is that correct?	
23	APSAC that you do that as a case coordinator?		23	A. She did.	
24	A. I was never aware of that. I just know		24	Q. And in your report, when you concluded it,	
25	that's a service that can be provided by the Child		25	you took some of the language that Lydia Rosenberger is	

1	Protection Team.	34	1	saying and said that you -- you wrote that down. And I	36
2	Q. So you're -- you're -- you gather		2	believe in your report, you say that you -- that the	
3	information, you've got an allegation of abuse, you give		3	child would not have been able to describe these acts,	
4	the child an opportunity of talking about that?		4	if she hadn't experienced them; do you remember that?	
5	A. Correct.		5	A. That's in Ms. Rosenberger's report, yes.	
6	Q. You don't do any independent investigation		6	Q. But you adopted that in your conclusions	
7	prior to that to determine what could have asked --		7	and findings?	
8	caused the child to make those statements?		8	A. In the final case summary?	
9	A. We do not.		9	Q. Yeah, the final case summary.	
10	Q. And you say that's the responsibility of		10	A. The final case summary is a -- basically, a	
11	law enforcement and that's the responsibility of the CPT		11	combination of all of these services that were provided	
12	team?		12	for the family.	
13	A. DCF team.		13	Q. Uh-huh.	
14	Q. DCF team?		14	A. And that would be the medical finding.	
15	A. Yes.		15	Q. And in this instance, there were no medical	
16	Q. Okay. So how then -- I -- I -- I had a		16	findings; is that correct?	
17	block and I don't know if you've explained to me. How		17	A. Not that I recall.	
18	can you explore an alternate hypothesis about why the		18	Q. Okay. That would be important. We have	
19	child may be making those statements if you don't have		19	Lydia Rosenberger saying that there was no evidence of	
20	any of that specialized information before you conduct		20	any abuse or anything of that nature, physical evidence	
21	the interview?		21	of any abuse?	
22	A. Well -- and maybe I wasn't really		22	A. I believe that's correct.	
23	understanding what you meant when you said explore		23	Q. And Ms. Rosenberger concluded that she --	
24	alternative hypotheses.		24	this was -- was positive for abuse because the child had	
25	Q. Uh-huh.		25	said it had taken place and the child wouldn't have said	

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

37

1 those things unless she experienced them. Did you --
2 did you see that in this report?
3 A. Yes, yes.
4 Q. Did you -- do you buy into those
5 conclusions? Do you think that's a proper conclusion by
6 Ms. Rosenberger?
7 A. That would be for her to say.
8 Q. Have you ever questioned her about that,
9 Ms. Rosenberger, how can you make this conclusion;
10 what's the scientific basis for your making that
11 conclusion?
12 A. I haven't asked her that, no.
13 Q. Okay. But you adopted, you know, word for
14 word, what she put in her report and included it in your
15 report?
16 A. As I said, that final report is a summary
17 of the medical --
18 Q. Okay.
19 A. -- specialized and forensic interview
20 findings, yes.
21 Q. So just to be clear, she makes the
22 conclusions, you accept them, you put them in your
23 report, that's part of your finding?
24 A. Correct.
25 Q. Now, if her findings are inaccurate or not

39

1 Q. All right. And then in her conclusion, she
2 says that, well, a seven-year-old child wouldn't say
3 these things unless she experienced them, that's her
4 conclusion.
5 A. That's her statement, yes.
6 Q. So now, there's no questioning about
7 whether or not [REDACTED] was ever exposed to the things
8 that she was describing, namely oral sex or -- or things
9 of that nature in your investigation -- in your forensic
10 interview?
11 A. Correct.
12 Q. Do you ever go, after the -- the -- the
13 investigate -- the "evalu" -- examination completed by
14 Ms. Rosenberger and ask her the scientific basis for her
15 conclusions or do you just accept them?
16 A. We usually have a discussion, but, I mean,
17 we agree on the findings, but I don't understand what
18 you're asking me.
19 Q. Well, I mean, have you ever had a reason to
20 challenge the scientific basis for her conclusions?
21 A. I don't under -- when you say the
22 scientific findings, I don't know what you mean.
23 Q. Okay. Well, if you look at her report, she
24 says there's no evidence of any abuse, physical
25 evidence.

38

1 based upon scientific principals or not based upon
2 information that she didn't know because you didn't ask,
3 what does that lead you to believe about one of the
4 bases for your conclusion?
5 A. I don't understand that question.
6 Q. Okay. The -- the forensic interview was
7 taken -- took place before the examination or after the
8 examination?
9 A. Before.
10 Q. Okay. So Ms. Rosenberger had your -- your
11 forensic interview before she conducted the examination;
12 right?
13 A. No.
14 Q. Who -- what -- who came first?
15 A. The forensic interview was conducted, but
16 Ms. Rosenberger did not witness that interview.
17 Q. Okay. So what information did she have
18 before she conducted her investigation --
19 A. That --
20 Q. -- or evaluation?
21 A. Her medical?
22 Q. Yeah.
23 A. That we were requesting a medical because
24 the child had disclosed penetration and then she makes
25 her independent questioning during her medical exam.

40

1 A. Correct.
2 Q. But this is consistent with the child's
3 accusations?
4 A. Correct.
5 Q. It's consistent because the child says it?
6 A. Right.
7 Q. And the child would not be able to say
8 these things unless she experienced them; right, that's
9 what she says?
10 A. Correct.
11 Q. Okay. Now, there are other reasons why a
12 child could say something other than why she experienced
13 them. She could have seen them; correct?
14 A. Correct.
15 Q. She could have been told to say that, she
16 could have been told to lie?
17 A. Correct.
18 Q. She could have seen some kind a video?
19 A. Correct.
20 Q. So there would be basis for a child to talk
21 about sexual things other than experience them?
22 A. Possibly.
23 Q. Okay. So have you ever asked
24 Ms. Rosenberger what's your scientific basis for
25 concluding that the only hypothesis is that she had to

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 have experienced it, otherwise she couldn't have described it?</p> <p>2 A. I've never asked her that, no.</p> <p>3 Q. And you don't know what scientific evidence that she's relying on, if any?</p> <p>4 A. Correct.</p> <p>5 Q. In the accreditation materials that APSAC puts out, there's a 41-page -- 40 -- 45-page document that's compiled here about recantation and false accusations of child abuse and some of the things that investigators and case coordinators should look at in determining whether or not the allegations are true or false. Have you ever seen that material, that 45 pages of documentation that comes from the National Children's Advocacy Center; did you ever see that?</p> <p>6 A. Possibly.</p> <p>7 Q. Okay. Is that something that you use as -- as a guide in determining --</p> <p>8 A. I may have seen that in 2010 or 2009. I've not seen that since. I'm not a member of APSAC, no.</p> <p>9 Q. Have you ever read any of that material by Stephen Ceci or Maggie Bruck?</p> <p>10 A. No.</p> <p>11 Q. Have you read the literature that talks about how false accusations of abuse can be made?</p>	<p>1 that break; law enforcement?</p> <p>2 A. I believe law enforcement, as well as DCF were in the observation room, yeah.</p> <p>3 Q. And -- and -- and that break, the purpose of having that intermission was to try to solidify the points that would corroborate the allegations of abuse?</p> <p>4 A. Or to -- possibly that or to ask something that I hadn't asked or clear up something that they needed further information on.</p> <p>5 Q. Information for purpose of prosecution?</p> <p>6 A. Possibly.</p> <p>7 Q. Okay. What other purpose would there be?</p> <p>8 A. From DCF's standpoint, it could be child safety, it could be prosecution, it could just be -- just clarification of something.</p> <p>9 Q. It's not questions to exonerate Mr. Forbes to say, look, this is a ridiculous statement, we've got no verification of this. These are all questions, pointed questions, about the identity of the person that did it, isn't that correct?</p> <p>10 A. I don't understand what you're...</p> <p>11 Q. After the break --</p> <p>12 A. Yes.</p> <p>13 Q. -- you asked a bunch of questions to [REDACTED] that had to do with did you actually see his</p>
---	---

<p>1 A. I haven't read the literature, but there -- I am aware of that, yes.</p> <p>2 Q. So if you know, as an investigator, that sometimes false accusations can be made and you're conducting a forensic interview and APSAC says that you're supposed to explore alternate hypotheses, then why don't you? Are you in violation of the protocols that APSAC says that you're supposed to do as a forensic interviewer?</p> <p>3 A. I like to think not.</p> <p>4 Q. Okay. Well, if you just told us that you don't explore another hypothesis, then you are in violation of your own protocols; aren't you?</p> <p>5 A. No, I don't believe so.</p> <p>6 Q. Well, just for -- for purposes of the record again, the child has made an accusation and you're there to have the child talk about just that allegation?</p> <p>7 A. Correct.</p> <p>8 Q. And in reviewing your interview with [REDACTED] there came a time that there was a break in the interview and then you came back and you asked her some more questions.</p> <p>9 A. Yes.</p> <p>10 Q. And those questions, who did you talk to in</p>	<p>1 face; do you remember that?</p> <p>2 A. Yes.</p> <p>3 Q. And was it painful; did he penetrate you?</p> <p>4 A. I don't think I said that.</p> <p>5 Q. And when you -- you asked earlier in the interview if anybody was in the room and she said, Grandma was in the room. And after that interview, again, you asked her was anybody in the room. And she said, Grandma and you said, she was; do you remember the inflection and tone of your voice --</p> <p>6 A. No.</p> <p>7 Q. -- when you asked that question?</p> <p>8 A. No.</p> <p>9 Q. Have you looked at the interview that you conducted?</p> <p>10 A. I have.</p> <p>11 Q. And is that -- do you see that in any way as being problematic saying to the child she was?</p> <p>12 A. I don't recall that I did that.</p> <p>13 Q. Well --</p> <p>14 A. I'm not saying I didn't do that, but I don't recall doing that.</p> <p>15 Q. Well, let's assume, for example, that you did do that. Do you think that that's proper technique in interviewing the child, questioning the child about a</p>
--	---

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

1 statement being that the grandmother was in the room? 45
2 A. No.
3 Q. Okay. If the grandmother was supposed to
4 be in the room --
5 A. Correct.
6 Q. -- when this was happening and you're
7 the -- you're the case coordinator and you're going to
8 be making recommendations in a final assessment summary
9 about the abuse --
10 A. Uh-huh.
11 Q. -- wouldn't it have been incumbent upon you
12 to talk to Donna Forbes and ask her what she observed?
13 A. No.
14 Q. And why that -- why that again?
15 A. As I said, we don't interview all of the
16 parties in a case. We interview who brings the child
17 for their interview sometimes and we don't even all the
18 time do that. That would be DCF or law enforcement's
19 role to further interview the other witnesses or people
20 that may have information.
21 Q. But you reach these conclusions of abuse,
22 you make the conclusion, you file the final case
23 summary --
24 A. Correct.
25 Q. -- you make those conclusions on the

1 talk to Donna Forbes or talk to Bill Rubert to -- 47
2 A. No.
3 Q. No?
4 A. No.
5 Q. Your -- your investigation is closed and
6 you stand by your results?
7 A. I'm technically not an investigator. I'm
8 just gathering information. I'm not investigating a
9 case.
10 Q. But -- but you're making conclusions.
11 A. Right.
12 Q. You're not just in -- in -- in --
13 assembling information, you're making conclusions.
14 A. I'm making conclusions based on what a
15 child tells me, yes.
16 Q. Okay. And what the child tells you is only
17 one part of this whole scenario; isn't --
18 A. Very correct.
19 Q. -- that correct?
20 A. Very correct.
21 Q. So your people rely on your conclusions;
22 don't they?
23 A. Yes.
24 Q. Law enforcement relies on your conclusions.
25 Oh, Ms. Khal conducted an interview and she's concluded

1 information that you have and there's other valuable 46
2 information out there, obviously, to be gleaned --
3 A. Correct.
4 Q. -- that you don't assemble and you don't
5 gather, you make this conclusion based upon the record
6 that you know. How do you justify that?
7 A. As I said, I'm one entity of an
8 investigation. I am gathering information from a child.
9 That information is then provided back for other people
10 to make a more thorough impression as to what occurred
11 or may not have occurred with the additional information
12 that you're saying may have happened and may not have
13 happened.
14 Q. And do you -- do you get any feedback later
15 on as the investigation goes forward from these other
16 individuals?
17 A. Often, yes.
18 Q. Okay. Did you get in any in this "inform"
19 -- in this case?
20 A. No.
21 Q. Did you inquire about it?
22 A. No, I did not.
23 Q. The fact that I've told you these facts,
24 does that peak your professional curiosity about maybe
25 whether you should go back and talk to Ms. Kostreba or

1 that such and such. Does it cause you any concern to 48
2 say that people are going down the -- further down the
3 trough or relying on your conclusions that you're making
4 without having a complete understanding of the facts?
5 A. Well, they're relying on my conclusions to
6 some degree. I mean, there's many cases where a child
7 will come in to interview and law enforcement is present
8 for that interview and they go and they talk to other
9 individuals on the case, no arrests are made, no
10 prosecute -- there's nothing comes of these cases. As
11 I'm saying, I'm not the one that's totally relied upon
12 as to if something actually happened to this child or
13 not.
14 Q. Uh-huh. When the child starts saying
15 things in -- in the interview about things that you may
16 find implausible, for example, is it your testimony you
17 don't challenge the child on -- on those -- those
18 points?
19 A. Give me an example.
20 Q. Well, she said that she woke up in the
21 morning and she was wet.
22 A. Correct.
23 Q. Okay. So did you find that to be a
24 plausible statement by the child?
25 A. Yes.

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

1 Q. Okay. And -- and throughout the entire
2 night she was wet and she woke up in the morning she was
3 still wet?
4 A. I don't know what time the actual alleged
5 incident occurred.
6 Q. Well, she told you it happened during the
7 night.
8 A. Correct.
9 Q. Correct?
10 A. Yes.
11 Q. And that this came as a result of this
12 alleged licking?
13 A. Yes.
14 Q. And that she woke up in the morning and she
15 was still -- she was still wet?
16 A. Correct.
17 Q. And did you find that to be a plausible
18 statement by the child?
19 A. Yes.
20 Q. Didn't find anything implausible about
21 that?
22 A. No.
23 Q. How about her vocabulary and using the word
24 molested, is that a common word that a seven year old
25 would -- would say to you, I was molested?

1 about the allegation, not independent of an incident
2 that could shed some -- some critique about the -- the
3 original allegation; is that right --
4 A. Yes.
5 Q. -- in essence?
6 A. Right.
7 Q. There -- there are -- [REDACTED] at the time
8 was -- do you know what her living situation was at the
9 time?
10 A. She was living with her mother and her
11 sister and I believe the mother had a roommate.
12 Q. And do you know that she had -- [REDACTED]
13 had spent a lot of time with -- with her grandmother,
14 Donna Forbes and David, and there were -- there were
15 three other adults living in the house; were you aware
16 of that?
17 A. In the grandmother's home?
18 Q. Yes.
19 A. No.
20 Q. And that [REDACTED] had daily activities and
21 daily exposure to these -- these adults that are living
22 in the house. In the APSAC protocols, it talks about
23 the necessity of a case coordinator to have specialized
24 interviews with the other adults that interacted with
25 the child, but you don't think that that's your duty to

1 A. I couldn't say, it could be.
2 Q. She's -- she's using expressions like he
3 touched -- he licked me where I pee and he touched me
4 where I poop and things of that nature, which are more
5 child appropriate for a seven-year-old.
6 A. Yes.
7 Q. Molestation is a sophisticated legal term;
8 isn't it?
9 A. I'm not saying she hadn't heard that word
10 from someone else, that's possible.
11 Q. How about you as the investigator, would
12 you have ever said to her, I -- I see you didn't, where
13 did you learn the term molestation?
14 A. I didn't ask her that.
15 Q. Would that have been something that could
16 have maybe led to an alternate hypothesis about why she
17 was saying these things?
18 A. It could have been.
19 Q. And if it -- if it could have been and you
20 don't explore that, have you fulfilled your role as an
21 independent forensic evaluator in trying to ferret out
22 what happened to gather information?
23 A. As I said, in this case, I feel I did.
24 Q. So the information that you're gathering
25 has to do with the allegation and the ability to talk

1 do that as the case coordinator, that's not your
2 function?
3 A. That isn't a role that we do here, no.
4 Q. Do they do that -- do other case
5 coordinators do that?
6 A. Not -- not in this area, no. I can't say
7 what other case coordinators do throughout the state,
8 no.
9 Q. Is that a policy of your -- your Gulf Coast
10 Kid's House or the people that you work for to say that
11 we don't do those specialized interviews, we leave it up
12 to others?
13 A. Well, it's not a policy. Now, if that
14 person came to the Gulf Coast Kid's House and was
15 present during our interviewing, we may or may not
16 conduct an interview with that individual.
17 Q. When you say we, do you mean you or others?
18 A. Yes, me or a fellow case coordinator,
19 depending on -- like I said, we don't -- we don't often
20 interview -- solicit other interviews, no.
21 Q. Now, you do solicit input from Bridget
22 Fair; right, because she was conducting a preliminary
23 investigation; correct?
24 A. Yes, she was our referral source, yes.
25 Q. She gave you some information about what

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 they had done? 2 A. Yes. 3 Q. Okay. And in her deposition, Bridget Fair 4 was concerned that the conclusions that she had reached 5 were not appropriate because she didn't have the basis 6 of information and came so far as to say if I had had 7 that information, I would have probably changed my 8 recommendation from indicated abuse to unsubstantiated. 9 Does that cause you any concern or is it -- or has the 10 train left the station and it's too late to take that 11 into consideration? 12 A. Well, as I said, her role is different than 13 mine. She -- I'm making my finding on a snapshot of 14 what a child tells me and DCF is making their impression 15 and findings based on many other factors. 16 Q. Did you ever open up an investigation, 17 reopen an investigation? 18 A. No, not from the Child Protection Team, no. 19 Q. Have you ever in your professional career 20 reopened an investigation now that you have facts that 21 you didn't have before? 22 A. No, no. 23 Q. So this investigation that you concluded on 24 September the 18th of 2015, that's it, your role is to 25 determine?</p>	<p>53</p>
<p>1 child to make this statement at that particular point in 2 time? 3 A. Possibly. I believe I asked the child. 4 She -- 5 Q. Go ahead. 6 A. I believe she felt safe with her 7 grandmother is why she told her grandmother. 8 Q. Well, the abuse, according to your 9 interview, is supposed to have taken place in the winter 10 of 2015 after Christmas around when Pa died or Pa Pa 11 died; do you remember that? 12 A. The winter of 2014. 13 Q. '14, I'm sorry. 14 A. Or '15, the beginning of '15, yes. 15 Q. And the interview wasn't conducted until 16 six or seven months later? 17 A. Correct. 18 Q. Okay. And during the -- during the 19 interview, [REDACTED] said that she didn't say anything to 20 anybody because she was scared. 21 A. Correct. 22 Q. Were you aware of the dynamics and the 23 interaction between [REDACTED] and David Forbes between 24 January/February 2015 and August of 2015? 25 A. No.</p>	<p>55</p>

<p>1 A. As I said, we went don't investigate. But 2 we don't, like, open investigations and close 3 investigations. That's what DCF and law enforcement 4 would do. 5 Q. Okay. Now, the -- what is commonly 6 referred to as the outcry statement, where the first 7 person the child discloses to; you've heard that 8 expression? 9 A. I don't know that I have. 10 Q. You've never heard the term outcry? 11 A. Uh-uh. 12 Q. So who is the first person that [REDACTED] 13 told of this abuse to; what is her understanding? 14 A. Her great grandmother. 15 Q. What about the circumstances under which 16 the disclosure took place? 17 A. I don't know that. 18 Q. And you didn't ask her anything about that 19 either in the interview; did you? 20 A. I didn't talk to -- the child? 21 Q. Yeah. 22 A. No, no. 23 Q. Knowing that a child can be subjected to 24 influence, isn't it important for the forensic examiner 25 to determine the circumstances under what caused the</p>	<p>54</p>
<p>1 Q. If the child said she was -- was afraid and 2 there's this rich documented evidence about hiking and 3 events and going to the movies and going to dinner and 4 all of these good times that are inconsistent with that 5 allegation, is that something you would have wanted to 6 have known? 7 A. Possibly. I mean, children disclose at 8 different times for different reasons. I don't -- I 9 don't know what prompted her disclosure, no. I do know 10 she spent time with them after it occurred, yes. 11 Q. Okay. If children disclosed at different 12 times, different reasons, is it incumbent upon you as 13 the forensic examiner to try to determine why she 14 disclosed at that period of time and what led her to 15 disclose at that period of time? 16 A. Not necessarily. 17 MR. PAVLINIC: Can we just have a minute or 18 two just to take a quick break for a second? 19 THE VIDEOGRAPHER: We're going off of the 20 video record. The time on the monitor is 21 11:04 a.m. 22 (Whereupon, a brief recess was taken at 23 11:04 a.m., after which the deposition continued 24 at 11:09 a.m.) 25 THE VIDEOGRAPHER: We're now back on the</p>	<p>56</p>

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

57
1 video record. The time on the monitor is
2 11:09 a.m. Please continue.
3 Q. (By Mr. Pavlinic) After taking a little
4 break, we just have a few more questions to ask you.
5 In -- in your investigation of these allegations of
6 abuse, is this a truth-seeking process?
7 A. Yes.
8 Q. So you're interested to know the truth
9 about whether or not this child was abused or not
10 abused; isn't that correct?
11 A. That's my ultimate interest, yes, but that
12 may not be always determined just based on my part of
13 the investigation.
14 Q. Okay. But you're interested in -- in the
15 truth-seeking process?
16 A. Yes.
17 Q. So does -- does your goal of the ultimate
18 truth-seeking process, is that facilitated by your
19 approach that I know the allegations, I'm going to give
20 the child an opportunity to talk about the allegations
21 without any other specialized interviews, without any
22 follow-up, without any independent investigation, does
23 that further the truth-seeking process from your
24 perspective?
25 A. Had I talked to additional people, is

59
1 you justify what you've done and the conclusions that
2 you've reached, if you're not following your own
3 protocols?
4 A. I believe that says to interview the parent
5 or caregiver, which...
6 Q. It says all principal family members. It
7 doesn't -- it says including them, not limited to them.
8 A. Well, but that isn't the -- the policy that
9 we follow.
10 Q. Okay. So you know you're supposed to
11 follow the guidelines, it sets out the guidelines and
12 you've determined in your organization that you don't
13 follow that policy; is that it in a nutshell?
14 A. I'm not saying I don't follow it. I'm
15 saying different teams may follow different aspects of
16 that protocol.
17 Q. What -- what determines what team follows
18 it? Do you have people on your team that follow this
19 and say I'm going to go out and do this investigation,
20 I'm going to talk to these people before I interview the
21 child or I'm going to talk to these people before I make
22 a conclusion?
23 A. No one on our team does that.
24 Q. I want to just ask you a few -- few
25 questions about your case summary here, your final case

58
1 that...
2 Q. Yes, if you had had other facts or
3 information.
4 A. As I've said, that can be for someone else
5 to do.
6 Q. Now, let's talk about your role as the case
7 coordinator. In the CPT forensic interview procedure,
8 it says that the best practices are various models, but
9 the -- the -- the American Professional Society of
10 Abusive Children Guidelines and Protocols should be the
11 protocol that you follow.
12 A. Yes.
13 Q. And in that protocol, it says that the CPT
14 case coordinator should make every effort to gather
15 independent information from all principal family
16 members and, if possible, the child. This includes the
17 parent/caregiver who may also be -- and may also include
18 the alleged perpetrator. The Child Protection Team
19 assessment should be clearly indicated what information
20 is summarized and from whom and who made it available.
21 So if it -- if your own guidelines, Child
22 Protection Team Guidelines promulgated by the State of
23 Florida tell you that the case coordinator has that
24 responsibility and you're the case coordinator and
25 you're saying you don't do that, how does your -- how do

60
1 summary. This is a three-page document that you -- that
2 you authored; do you -- do you have it?
3 A. I -- I don't believe I do, no.
4 Q. The final case summary report --
5 A. Yes.
6 Q. -- that would be you?
7 A. Yes.
8 Q. These are double-sided, but that's page one
9 with, this is page two of three and this is page three
10 of three.
11 A. Correct.
12 Q. So in this case summary report, you say
13 here [REDACTED] disclosures alone make this case
14 positive for sexual abuse as a seven-year-old child
15 would unlikely describe details of these sexual acts
16 without having personally experienced them.
17 A. That is what is incorporated in the medical
18 exam, which I said the final case summary includes
19 portions of the specialized, the forensic and the
20 medical exam.
21 Q. Okay. So you don't -- you don't attribute
22 that to the medical exam, you just know that that came
23 from the medical exam?
24 A. Correct.
25 Q. But this -- if a person is reading this,

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 this summary, no one would know that those weren't your 2 words -- 3 A. Correct. 4 Q. -- correct? 5 A. Correct. 6 Q. And then over here, it says that this was 7 authored and concluded on September the 18th of 2015, 41 8 days after the investigation was opened? 9 A. Correct. 10 Q. Is there some magic number in concluding an 11 investigation before 45 days? 12 A. I don't understand your question. 13 Q. Okay. In some of these rules and 14 regulations, it says that the supervisor is supposed to 15 pay particular interest in reviewing material cases that 16 haven't been closed within 45 days. Is that a number 17 that's given to you about the guidelines and trying to 18 conclude your investigation? 19 A. It -- it's not necessarily a deadline. We 20 try to close cases within 45 to 60 days and that just 21 depends on workload of other cases and ability to submit 22 a case for closure. 23 Q. Okay. Now, Kerstin Busey; am I saying her 24 name correctly? 25 A. Yes.</p>	<p>61</p>
<p>1 Q. Okay. But you don't know specifically what 2 she reviewed, because you didn't have any face-to-face 3 meeting with her, you're assuming that she reviewed 4 that? 5 A. No, because she would have made a 6 chronological in my -- in my notes as to what -- as to 7 her review and what she -- and her comments, yes. 8 Q. Is that part of the investigative summary 9 or the CPT workup here? 10 A. No. 11 Q. Well, how would any independent person know 12 that -- what -- what Ms. Busey did without looking at 13 those notes? 14 A. They wouldn't. 15 Q. So we'd have to have access to those notes 16 to determine what, if anything, she did? 17 A. Correct. 18 Q. And so you don't have any face-to-face 19 meeting with her sitting down saying, Ms. Busey, look, I 20 want -- this is the information I have, this is what 21 I've gathered, these are going to be my -- my findings, 22 do you have any input or anything of that nature? 23 A. Not to say that we don't, because we often 24 do, but formal case reviews are done in the way through 25 the virtual case folder, but that isn't to say there are</p>	<p>63</p>

<p>1 Q. She's your supervisor? 2 A. She is. 3 Q. During this investigation, did you have 4 sessions with Ms. Busey; did you talk to her about what 5 was happening? 6 A. We do -- she does case review. Well, it 7 could have been Kerstin or we also have a team 8 supervisor, Tara Arsenol (phonetic), who are responsible 9 for case review of our cases. And normally, there's a 10 case review done within seven to ten days of receiving 11 the case, yes. 12 Q. Well, I -- I see only her name here as 13 the -- as the -- as the supervisor. Is she the one that 14 reviewed your -- your work product, if she signed off on 15 it? 16 A. She reviewed the final case summary and the 17 work product in this particular case, yes. 18 Q. So what meetings did you have with 19 Ms. Busey before you -- you completed your -- your 20 report? 21 A. We probably wouldn't have had a 22 face-to-face meeting. She conducts case review. Our 23 files are paperless, so she would have reviewed our 24 virtual file of this case and made a note in the virtual 25 case file.</p>	<p>62</p>
<p>1 cases where we'll sit down and have case staffings and 2 case discussion with her, yes. 3 Q. What did you do in this case with her? 4 A. I don't recall any -- I don't recall. 5 Q. Okay. And has Ms. Busey ever just simply 6 signed off on your reports just based upon the fact that 7 you've completed them and she signed off four days 8 later? 9 A. It's her -- procedurally, she reviews all 10 the documents that we -- because they also have to sign 11 off on all of our reports that we write, the supervisor 12 does or the team supervisor does. So they're aware 13 ongoing what reports are being generated by the case 14 coordinator prior to the final case summary, yes. 15 Q. Since you completed your investigation, 16 have you had any follow-up contact with her at all about 17 this particular case? 18 A. Following the final case summary? 19 Q. Yeah. 20 A. No. 21 Q. There -- there's certain ethical 22 responsibilities for social workers that conduct these 23 reviews. Are -- are you a licensed social worker? 24 A. No. 25 Q. Have you ever had a license?</p>	<p>64</p>

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

<p>1 A. No. 65 2 Q. In the training that you got from -- to do 3 these investigations to become a case coordinator, is 4 the training that you get sort of in-house formally and 5 informally with regard to these courses that are 6 sponsored by APSAC and things of that nature? 7 A. Yes. 8 Q. Have you ever -- now, you've been offered 9 as an expert in this case. 10 MS. AMBROSE: No, she hasn't. 11 MR. PAVLINIC: I thought she was listed as 12 an expert. 13 MS. AMBROSE: Lydia Rosenberger. 14 MR. CARDOSO: Ms. Rosenberger. 15 MR. PAVLINIC: Oh, okay. 16 Q. (By Mr. Pavlinic) So you're not -- you're 17 not intending to offer any opinions, you've not been 18 solicited by the State to offer any opinions in the 19 case? 20 A. No. 21 Q. And the -- the CPT -- the interview that 22 took place on August 8th -- August 11th, is that a 23 complete interview? I mean, was the tape turned on at 24 the very inception of the interview and turned off at 25 the end?</p>	<p>1 recommended these policies and procedures and you say 67 2 it's not your policy and procedure at this agency to do 3 that. Who's made that determination not to follow those 4 practices and procedures? 5 A. I learned the way I do my job through my 6 supervisor, so I -- that would be my answer. 7 Q. Who's the -- who's the head -- head guy 8 over there? Who's the top dog in -- in your unit? 9 A. In my own group of -- 10 Q. Yes. 11 A. Kerstin Busey. 12 Q. Okay. 13 A. I mean, we have a Medical Director, a Child 14 Protection Team Medical Director, but she's a doctor so 15 not so much aware of interviewing. 16 Q. And the psychological evaluations that are 17 recommended under these protocols, you've never done 18 that in -- in sexual abuse allegations? 19 A. I can't say that we haven't, but not -- 20 Q. I'm talking about you, you personally. 21 A. Have I made a referral to Dr. Salinas? 22 Q. Yeah. 23 A. Yes. 24 Q. Okay, on sexual abuse allegations? 25 A. Possible. I can't recall, but possible,</p>
--	---

<p>1 A. Yes. 66 2 Q. Did you have any discussions with [REDACTED] 3 outside of that recorded interview on any topic related 4 to this investigation? 5 A. No. 6 Q. Have you seen her or talked to her since? 7 A. I have not. 8 Q. Have you seen or talked to any of the other 9 witnesses in this case since? 10 A. Since the final case summary? 11 Q. Yes, since September of 2015. 12 A. No, I don't believe so. 13 Q. And it's not your practice to talk to 14 anybody once you conclude your investigate -- conclude 15 your -- your summary, is that right? 16 A. Correct. 17 Q. Who is the individual responsible to 18 determine whether the Child Protective Team policy and 19 procedures handbook is followed or not followed? Who -- 20 who's the head person over there that would make that 21 determination? 22 A. Of the whole Child Protection Team or -- 23 Q. Yeah, in other words, I showed you that 24 you have information that says that you're supposed to 25 follow the APSAC guidelines and the State of Florida has</p>	<p>1 very possibly, yes. 68 2 Q. Okay. And what -- what triggers whether or 3 not you make a referral? 4 A. Whether there is a -- as I said, normally, 5 we use Dr. Salinas to assess for mental injury and that 6 can be from physical abuse, sexual abuse, neglect, but 7 there was no request for that in this case. 8 Q. Okay. You don't ever use Dr. Salinas to 9 determine whether or not, for example, there was 10 tainting of the child's memories in a young child and 11 whether or not the young child had been subjected to 12 some undue influence or suggestion? 13 A. No. 14 MR. PAVLINIC: Okay, all right. Well, 15 thank you so much. 16 CROSS-EXAMINATION 17 BY MS. AMBROSE: 18 Q. Ms. Khal, are you at all motivated to get a 19 disclosure from a child? 20 A. No. 21 Q. Are you just providing an opportunity for a 22 child to make a disclosure if he or she chooses to do 23 so? 24 A. Correct. 25 Q. Do you work for law enforcement?</p>
---	---

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

1 A. No.
2 Q. Do you work for the State Attorney's
3 Office?
4 A. No.
5 Q. Are there times that you've -- are there
6 times that you've assessed that the child's disclosure
7 was not positive for abuse or neglect?
8 A. Yes.
9 Q. Are there times that a child didn't want to
10 speak with you?
11 A. Yes.
12 Q. Are there times that a child didn't make a
13 disclosure?
14 A. Yes.
15 Q. In those instances, do you force a child
16 to -- to submit to an interview or do you force a child
17 to make a disclosure of some kind?
18 A. No.
19 Q. Would it be a fair characterization to say
20 that the Child Protection Team gathers information to
21 provide to law enforcement or DCF as investigative
22 bodies?
23 A. Yes.
24 Q. Are there times that you've had positive
25 findings for physical or sexual abuse or neglect and

1 a part of the whole investigation.
2 Q. And does law enforcement and DCF have
3 different investigative tools than Child Protect Teams'
4 information-gathering tool?
5 A. Yes.
6 MS. AMBROSE: I have no further questions.
7 REDIRECT EXAMINATION
8 BY MR. PAVLINIC:
9 Q. In -- just a couple of follow-up. In -- in
10 your -- your work, the initial forensic interview of the
11 child is the most important interview; isn't that
12 correct?
13 A. I can't say it's the most important because
14 the -- the child may not -- not make a disclosure
15 initially and -- and then may get referred to counseling
16 and then may come back and make a disclosure, so it
17 isn't necessarily always the case that the first
18 interview is the most important interview.
19 Q. In -- in the State of Florida, there's a
20 limitation on number of interviews that a -- that a
21 child in a sexual abuse case can be subjected to; isn't
22 that correct?
23 A. I don't know that there's -- there's a -- I
24 know there's a best case practice or maybe an
25 administrative order, but I know there -- I don't

1 you've made those findings available to DCF or law
2 enforcement and -- and no action -- no follow-up action
3 was taken by those agencies?
4 A. Yes.
5 Q. Do you -- do you know why no follow-up
6 action would have been taken by those agencies?
7 A. Possibly information gathered from a
8 different -- from another source that would possibly
9 dispute what the child may have said or a -- a
10 circumstance of what a child said.
11 Q. So when -- when you just gather this
12 information from a child, then you give it to the
13 investigative bodies who go out and talk to more people?
14 A. Correct.
15 Q. If the child's disclosure or the child's
16 statement to you doesn't -- isn't corroborated by their
17 investigation, they take no action, is that a
18 possibility?
19 A. That's a possibility, yes.
20 Q. In your final case summary, recommendation
21 number two is a recommendation to -- that law
22 enforcement should investigate the allegations?
23 A. Yes.
24 Q. Why do you make that recommendation?
25 A. So that more information can be gathered as

1 believe it's a...
2 Q. Isn't it one by the forensic interviewer,
3 one by the State's Attorney and one by defense counsel?
4 A. Not -- I don't believe so.
5 Q. So if -- if your interview is done and
6 other people are going to do other interviews, do you
7 make recommendations to the people farther down the line
8 as to what they should look for or do you just rely on
9 them?
10 A. Correct, because I'm just providing them
11 what I've obtained.
12 MR. PAVLINIC: Okay, that's all I have.
13 THE VIDEOGRAPHER: This concludes the
14 deposition of Linda Kay Khal. The number of
15 discs used is one. We're going off of the video
16 record. The time on the monitor is 11:27 a.m.
17 (The deposition was concluded at 11:27
18 a.m.)
19
20
21
22
23
24
25

ANCHOR COURT REPORTING
(850)432-2511

VIDEOTAPED DEPOSITION OF LINDA KAY KHAL 05/20/16

73
CERTIFICATE OF OATH

(STATE OF FLORIDA)
(COUNTY OF ESCAMBIA)

I, Pamela Dee Elliott, Florida Professional Reporter, Notary Public, State of Florida, certify that **LINDA KAY KHAL** personally appeared before me on the 20th day of May, 2016 and was duly sworn.

WITNESS my hand and official seal this 17th day of June, 2016.

PAMELA DEE ELLIOTT
FLORIDA PROFESSIONAL REPORTER
NOTARY PUBLIC, STATE OF FLORIDA

74
CERTIFICATE OF REPORTER

I, PAMELA DEE ELLIOTT, Court Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of **LINDA KAY KHAL**; that a review of the transcript was not requested; and that the foregoing transcript, pages 1 through 74, is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 17th day of June, 2016.

PAMELA DEE ELLIOTT
FLORIDA PROFESSIONAL REPORTER

ANCHOR COURT REPORTING
(850)432-2511

Contract #: CPX1X

EXHIBIT 1

1. FEDERAL RESOURCES AWARDED TO THE SUBRECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Program 1 Administration for Children and Families, Department of Health and Human Services, CFDA# 93.667
Title Social Services Block Grant \$393,106

Federal Program 2 CFDA# Title \$

TOTAL FEDERAL AWARDS \$393,106

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As specified in Attachment 1 of this contract.

93.667 -- To enable the state to furnish social services best suited to the needs of the individuals residing in the State. Federal block grant funds may be used to provide services directed toward one of the following five goals specified in the law: (1) To prevent, reduce, or eliminate dependency; (2) To achieve or maintain self-sufficiency; (3) To prevent neglect, abuse or exploitation of children and adults; (4) To prevent or reduce inappropriate institutional care; and (5) To secure admission or referral for institutional care when other forms of care are not appropriate.

2. STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

State financial assistance subject to Sec. 215.97, F.S.: CSFA# 64.000 Title Medical Services for Abused and Neglected Children, Department of Health \$458,077

State financial assistance subject to Sec. 215.97, F.S.: CSFA# Title \$

TOTAL STATE FINANCIAL ASSISTANCE AWARDED PURSUANT TO SECTION 215.97, F.S. \$458,077

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As specified in Attachment 1 and 2 to this contract. Child Protection Teams provide specialized evaluation and assessment services to assist the Family Safety and Preservation Program of the Department of Children and Families in the assessment of child abuse and neglect. The Provider must carry out child protection team services consistent with this contract, the Child Protection Team Handbook and the Child Protection Team Information System User Guide. Specifically:

- Assessment activities will be provided in a timely manner.
- All Abuse Reports received by the provider will be reviewed within 4 working days.
- The list of mandatory reports referred will be provided to the protective investigations units as specified in the CPT Handbook.
- The provider will be compliant with the timelines of Positive Findings of abuse or neglect verbally communicated to the Child Protective Investigators.
- The provider will be compliant with the percentage of assessment reports provided timely to the protective investigator.
- Trainings of non-CPT medical providers and other social service providers will be provided according to Attachment 1 of the contract.
- Appropriate CPT staff will complete a minimum of eight hours of training in child abuse and neglect during each fiscal year.

Financial assistance not subject to Sec. 215.97, F.S. or 2 CFR Part §200.40: \$ 0

Financial assistance not subject to Sec. 215.97, F.S. or 2 CFR Part §200.40: \$ 0

Matching and Maintenance of Effort *

Matching resources for federal program(s):

Program: N/A CFDA# Title \$ 0

Maintenance of Effort (MOE):

Program: CFDA# Title \$ 0

*Matching Resources, MOE, and Financial Assistance not subject to Sec. 215.97, F.S. or 2 CFR Part §200.306 amounts should not be included by the provider when computing the threshold for single audit requirements totals. However, these amounts could be included under notes in the financial audit or footnoted in the Schedule of Expenditures of Federal Awards and State Financial Assistance (SEFA). Matching, MOE, and Financial Assistance not subject to Sec. 215.97, F.S. or 2 CFR Part §200.306 is not considered State/Federal Assistance.

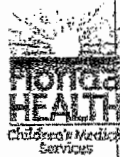
CPX1X; Amendment #2

18

October 1, 2015

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Visions: To be the Healthiest State in the Nation

Rick Scott
Governor

Celeste Philip, MD, MPH
Florida State Surgeon General

April 25, 2016

Cate Jordan, Executive Director
North Florida Comprehensive Services for Children d/b/a 90 Works
115 Gregory Square
Pensacola, Florida 32502

Dear Ms. Jordan:

Enclosed is a fully executed original copy of to the North Florida Comprehensive Services for Children d/b/a 90Works contract #CPC1X - Renewal #1 for FY 2016-2017.

Please retain this original copy for your files and distribute copies to the appropriate agency representatives who require knowledge of contract renewals and amendments.

Thank you for your assistance. If you have any questions, please contact me at 850.245.4200 ext 4001, or brenda.tune@flhealth.gov

Sincerely,

Brenda Tune, RN, BSN, FCCM
Nurse Consultant - Contract Manager
Child Protection Unit
Children's Medical Services

Enclosures

cc: Kirsten Bucey, Team Coordinator via email
Contract File

Florida Department of Health
Division of Children's Medical Services
Bureau of Child Protection and Special Technology
4052 Bald Cypress Way, Bin A-06 • Tallahassee, FL 32399
PHONE: (850) 245-4200 • FAX: (850) 414-7590

www.FloridaHealth.gov
TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: Health
FLICKR: HealthyFLA
PINTEREST: HealthyFLA

08/13

CFDA No. 93.567
CSFA No. 64.085

STATE OF FLORIDA
DEPARTMENT OF HEALTH
STANDARD CONTRACT

☒ Client ☐ Non-Client
☐ Multi-County

THIS CONTRACT is entered into between the State of Florida, Department of Health, hereinafter referred to as the *Department*, and *96 Works* hereinafter referred to as the *Provider*.

THE PARTIES AGREE:

I. THE PROVIDER AGREES:

A. To provide services in accordance with the conditions specified in Attachment I.

B. Requirements of §287.055, Florida Statutes (F.S.).

To provide units of deliverables, including reports, findings, and drafts as specified in Attachment I, to be received and accepted by the contract manager prior to payment. To comply with the criteria and final date by which such criteria must be met for completion of this contract as specified in Section II, Paragraph A. of this contract. To submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit thereof. Where applicable, to submit bills for any travel expenses in accordance with §112.081, F.S. The Department may, if specified in Attachment I, establish rates lower than the maximum provided in §112.081, F.S. To allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, F.S., made or received by the provider in conjunction with this contract. It is expressly understood that the provider's refusal to comply with this provision shall constitute an immediate breach of contract.

C. To the Following Governing Law

1. State of Florida Law

a. This contract is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State of Florida. Each party shall perform its obligations herein in accordance with the terms and conditions of the contract.

b. If this contract is valued at 1 million dollars or more, the provider agrees to refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in §215.473, F.S. Pursuant to §287.135(5), F.S., the Department shall bring a civil action against any company that falsely certifies its status on the Scrutinized Companies with Activities in Sudan or the Iran Petroleum Energy Sector Lists. The provider agrees that the Department shall take civil action against the provider as described in §287.135(5)(a), F.S., if the provider fails to demonstrate that the determination of false certification was made in error.

2. Federal Law

a. If this contract contains federal funds, the provider shall comply with the provisions of 45 CFR, Part 74, and/or 45 CFR, Part 92, and other applicable regulations as specified in Attachment I.

b. If this agreement includes federal funds and more than \$2,000 of federal funds will be used for construction or repairs, the provider shall comply with the provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The act prohibits providers from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. All suspected violations must be reported to the Department.

c. If this agreement includes federal funds and said funds will be used for the performance of experimental, developmental, or research work, the provider shall comply with 37 CFR, Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Governmental Grants, Contracts and Cooperative Agreements."

d. If this contract contains federal funds and is over \$100,000, the provider shall comply with all applicable standards, orders, or regulations issued under §306 of the Clean Air Act, as amended (42 U.S.C. 1857(h) et seq.), §508 of the Clean Water Act, as amended (33 U.S.C. 1368 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). The provider shall report any violations of the above to the Department.

e. If this contract contains federal funding in excess of \$100,000, the provider must, prior to contract execution, complete the Certification Regarding Lobbying form, Attachment IV. If a Disclosure of Lobbying Activities form, Standard Form LLL, is required, it may be obtained from the contract manager. All disclosure forms as required by the Certification Regarding Lobbying form must be completed and returned to the contract manager.

f. Not to employ unauthorized aliens. The Department shall consider employment of unauthorized aliens a violation of §274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324 a) and §101 of the Immigration Reform and Control Act of 1986. Such violation shall be cause for unilateral cancellation of this contract by the Department. The provider agrees to utilize the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the contract term by the provider. The provider shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Contractors meeting the terms and conditions of the E-Verify System are deemed to be in compliance with this provision.

g. The provider shall comply with President's Executive Order 11246, Equal Employment Opportunity (30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339), as amended by President's Executive Order 11376, and as supplemented by regulations at 41 CFR, Part 60.

h. The provider and any subcontractors agree to comply with Pro-Children Act of 1994, Public Law 103-277, which requires that smoking not be permitted in any portion of any indoor facility used for the provision of federally funded services including health, day care, early childhood development, education or library services on a routine or regular basis, to children up to age 18. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

08/13

1. HIPAA: Where applicable, the provider will comply with the Health Insurance Portability Accountability Act as well as all regulations promulgated thereunder (45CFR Parts 160, 162, and 164).
- j. Provider is required to submit a W-9 to the Department of Financial Services (DFS) electronically prior to doing business with the State of Florida via the Vendor Website at <https://vendor.myfloridagov.com>. Any subsequent changes shall be performed through this website; however, if provider needs to change their FEID, they must contact the DFS Vendor Ombudsman Section at (850) 415-5519.
- k. If the provider is determined to be a subrecipient of federal funds, the provider will comply with the requirements of the American Recovery and Reinvestment Act (ARRA) and the Federal Funding Accountability and Transparency Act, by obtaining a DUNS (Data Universal Numbering System) number and registering with the federal Central Contractor Registry (CCR). No payments will be issued until the provider has submitted a valid DUNS number and evidence of registration (i.e., a printed copy of the completed CCR registration) in CCR to the contract manager. To obtain registration and instructions, visit <http://fedgov.dnb.com/webform> and www.ccr.gov.
- D. Audits, Records, and Records Retention
 1. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the Department under this contract.
 2. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this contract for a period of six (6) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this contract.
 2. Upon completion or termination of the contract and at the request of the Department, the provider will cooperate with the Department to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in Section I, paragraph D.2, above.
 4. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the Department.
 5. ~~Persons duly authorized by the Department and federal auditors, pursuant to 45 CFR Part 82.306(f)(1)(ii), shall have full access to and the right to examine any of provider's contract and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.~~
 6. To provide a financial and compliance audit to the Department as specified in Attachment II and to ensure that all related party transactions are disclosed to the auditor.
 7. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.
 8. If Exhibit 2 of this contract indicates that the provider is a recipient or subrecipient, the provider will perform the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, and/or §215.87 F.S., as applicable and conform to the following requirements:
 - a. Documentation. To maintain separate accounting of revenues and expenditures of funds under this contract and each CSFA or CFDA number identified on Exhibit 1 attached hereto in accordance with generally accepted accounting practices and procedures. Expenditures which support provider activities not solely authorized under this contract must be allocated in accordance with applicable laws, rules and regulations, and the allocation methodology must be documented and supported by competent evidence. Provider must maintain sufficient documentation of all expenditures incurred (e.g., invoices, canceled checks, payroll detail, bank statements, etc.) under this contract which evidences that expenditures are:
 - 1) allowable under the contract and applicable laws, rules and regulations;
 - 2) reasonable; and
 - 3) necessary in order for the recipient or subrecipient to fulfill its obligations under this contract.
 The aforementioned documentation is subject to review by the Department and/or the State Chief Financial Officer and the provider will timely comply with any requests for documentation.
 - b. Financial Report. To submit an annual financial report stating, by line item, all expenditures made as a direct result of services provided through the funding of this contract to the Department within 45 days of the end of the contract. If this is a multi-year contract, the provider is required to submit a report within 45 days of the end of each year of the contract. Each report must be accompanied by a statement signed by an individual with legal authority to bind recipient or subrecipient by certifying that these expenditures are true, accurate and directly related to this contract. To ensure that funding received under this contract in excess of expenditures is remitted to the Department within 45 days of the earlier of the expiration of, or termination of, this contract.
 9. Public Records. Keep and maintain public records that ordinarily and necessarily would be required by the provider in order to perform the service; provide the public with access to such public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed that provided in Chapter 119, F.S., or as otherwise provided by law; ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and meet all requirements for retaining public records and transfer to the public agency, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the agency.
- E. Monitoring by the Department

To permit persons duly authorized by the Department to inspect any records, papers, documents, facilities, goods, and services of the provider, which are relevant to this contract, and interview any clients and employees of the provider to assure the Department of satisfactory performance of the terms and conditions of this contract. Following such evaluation the Department will deliver to the provider a written report of its findings and will include written recommendations with regard to the provider's performance of the

08/13

terms and conditions of this contract. The provider will correct all noted deficiencies identified by the Department within the specified period of time set forth in the recommendations. The provider's failure to correct noted deficiencies may, at the sole and exclusive discretion of the Department, result in any one or any combination of the following: (1) the provider being deemed in breach or default of this contract; (2) the withholding of payments to the provider by the Department; and (3) the termination of this contract for cause.

F. Indemnification

1. The provider shall be liable for and shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from all claims, suits, judgments, or damages, consequential or otherwise and including attorneys' fees and costs, arising out of any act, actions, neglect, or omissions by the provider, its agents, or employees during the performance or operation of this contract or any subsequent modifications thereof, whether direct or indirect, and whether to any person or tangible or intangible property.
2. The provider's inability to evaluate liability or its evaluation of liability shall not excuse the provider's duty to defend and indemnify within seven (7) days after such notice by the Department is given by certified mail. Only adjudication or judgment after highest appeal is exhausted specifically finding the provider not liable shall excuse performance of this provision. The provider shall pay all costs and fees related to this obligation and its enforcement by the Department. The Department's failure to notify the provider of a claim shall not release the provider of the above duty to defend. NOTE: Paragraph I.F.1. and I.F.2. are not applicable to contracts executed between state agencies or subdivisions, as defined in §768.22, F.S.

G. Insurance

To provide adequate liability insurance coverage on a comprehensive basis and to hold such liability insurance at all times during the existence of this contract and any renewal(s) and extension(s) of it. Upon execution of this contract, unless it is a state agency or subdivision as defined by §768.22, F.S., the provider accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protections for the provider and the clients to be served under this contract. The limits of coverage under each policy maintained by the provider do not limit the provider's liability and obligations under this contract. Upon the execution of this contract, the provider shall furnish the Department written verification supporting both the determination and existence of such insurance coverage. Such coverage may be provided by a self-insurance program established and operating under the laws of the State of Florida. The Department reserves the right to require additional insurance as specified in Attachment I when appropriate.

H. Safeguarding Information

Not to use or disclose any information concerning a recipient of services under this contract for any purpose not in conformity with state and federal law or regulations except upon written consent of the recipient, or the responsible parent or guardian when authorized by law.

I. Assignments and Subcontracts

1. To neither assign the responsibility of this contract to another party nor subcontract for any of the work contemplated under this contract without prior written approval of the Department, which shall not be unreasonably withheld. Any sub-license, assignment, or transfer otherwise occurring shall be null and void.
2. The provider shall be responsible for all work performed and all expenses incurred with the project. If the Department permits the provider to subcontract all or part of the work contemplated under this contract, including entering into subcontracts with vendors for services and commodities, it is understood by the provider that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and the provider shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. The provider, at its expense, will defend the Department against such claims.
3. The State of Florida shall at all times be entitled to assign or transfer, in whole or part, its rights, duties, or obligations under this contract to another governmental agency in the State of Florida, upon giving prior written notice to the provider. In the event the State of Florida approves transfer of the provider's obligations, the provider remains responsible for all work performed and all expenses incurred in connection with the contract. In addition, this contract shall bind the successors, assigns, and legal representatives of the provider and of any legal entity that succeeds to the obligations of the State of Florida.
4. The contractor shall provide a monthly Subcontractor Expenditure Report summarizing the participation of certified and non-certified minority subcontractors/material suppliers for the current month, and project to date. The report shall include the names, addresses, and dollar amount of each certified and non-certified MBE participant, and a copy must be forwarded to the Contract Manager of the Department of Health. The Office of Supplier Diversity (850-487-6915) will assist in furnishing names of qualified minorities. The Department of Health, Minority Coordinator (850-245-4199) will assist with questions and answers.
5. Unless otherwise stated in the contract between the provider and subcontractor, payments made by the provider to the subcontractor must be within seven (7) working days after receipt of full or partial payments from the Department in accordance with §267.0585, F.S. Failure to pay within seven (7) working days will result in a penalty charged against the provider and paid by the provider to the subcontractor in the amount of one-half of one (1/2) percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due.

J. Return of Funds

To return to the Department any overpayments due to unearned funds or funds disallowed and any interest attributable to such funds pursuant to the terms of this contract that were disbursed to the provider by the Department. In the event that the provider or its independent auditor discovers that overpayment has been made, the provider shall repay said overpayment within 40 calendar days without prior notification from the Department. In the event that the Department first discovers an overpayment has been made, the Department will notify the provider by letter of such a finding. Should repayment not be made in a timely manner, the Department will charge interest of one (1) percent per month compounded on the outstanding balance after 40 calendar days after the date of notification or discovery.

K. Incident Reporting

Abuse, Neglect, and Exploitation Reporting

In compliance with Chapter 415, F.S., an employee of the provider who knows or has reasonable cause to suspect that a child, aged person, or disabled adult is or has been abused, neglected, or exploited shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the single statewide toll-free telephone number 1-800-96ABUSE.

If clients are to be transported under this contract, the provider will comply with the provisions of Chapter 427, F.S., and Chapter 41-2, Contract # CPX1X - CPT Pensacola

08/13

F.A.C. The provider shall submit to the Department the reports required pursuant to Volume 10, Chapter 27, Department of Health Accounting Procedures Manual.

16. Purchasing

1. It is agreed that any articles which are the subject of, or are required to carry out this contract shall be purchased from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) identified under Chapter 948, F.S., in the same manner and under the procedures set forth in §948.516(2) and §(4), F.S. For purposes of this contract, the provider shall be deemed to be substituted for the Department insofar as dealings with PRIDE. This clause is not applicable to subcontractors unless otherwise required by law. An abbreviated list of products/services available from PRIDE may be obtained by contacting PRIDE, 1-800-643-9459.

2. Procurement of Materials with Recycled Content

It is expressly understood and agreed that any products or materials which are the subject of, or are required to carry out this contract shall be procured in accordance with the provisions of §403.7095, and §287.043, F.S.

3. MyFloridaMarketPlace Vendor Registration

Each vendor doing business with the State of Florida for the sale of commodities or contractual services as defined in section 287.012, Florida Statutes, shall register in the MyFloridaMarketPlace system, unless exempted under Rule 60A-1.030(3) F.A.C.

4. MyFloridaMarketPlace Transaction Fee

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide procurement system. Pursuant to §287.057(2b), F.S. (2008), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the provider shall pay to the State.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the vendor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

The provider shall receive a credit for any Transaction Fee paid by the provider for the purchase of any item(s) if such item(s) are returned to the provider through no fault, act, or omission of the provider. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the vendor's failure to perform or comply with specifications or requirements of the agreement. Failure to comply with these requirements shall constitute grounds for declaring the vendor in default and recovering procurement costs from the vendor in addition to all outstanding fees. Providers delinquent in paying transaction fees may be excluded from conducting future business with the State.

16. Civil Rights Requirements

Civil Rights Certification: The provider will comply with applicable provisions of Department of Health publication, "Methods of Administration, Equal Opportunity in Service Delivery."

17. Independent Capacity of the Contractor

1. In the performance of this contract, it is agreed between the parties that the provider is an independent contractor and that the provider is solely liable for the performance of all tasks contemplated by this contract, which are not the exclusive responsibility of the Department.
2. Except where the provider is a state agency, the provider, its officers, agents, employees, subcontractors, or assignees, in performance of this contract, shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State of Florida. Nor shall the provider represent to others that it has the authority to bind the Department unless specifically authorized to do so.
3. Except where the provider is a state agency, neither the provider, its officers, agents, employees, subcontractors, nor assignees are entitled to state retirement or state leave benefits, or to any other compensation of state employment as a result of performing the duties and obligations of this contract.
4. The provider agrees to take such actions as may be necessary to ensure that each subcontractor of the provider will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.
5. Unless justified by the provider and agreed to by the Department in Attachment I, the Department will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, or clerical support) to the provider, or its subcontractor or assignee.
6. All deductions for social security, withholding taxes, income taxes, contributions to unemployment compensation funds, and all necessary insurance for the provider, the provider's officers, employees, agents, subcontractors, or assignees shall be the responsibility of the provider.

18. Sponsorship

As required by §286.25, F.S., if the provider is a non-governmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this contract, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: *Sponsored by (provider's name) and the State of Florida, Department of Health*. If the sponsorship reference is in written material, the words *State of Florida, Department of Health* shall appear in at least the same size letters or type as the name of the organization.

19. Final Invoice

To submit the final invoice for payment to the Department no more than 30 days after the contract ends or is terminated. If the provider fails to do so, all right to payment is forfeited and the Department will not honor any requests submitted after the aforesaid time period. Any payment due under the terms of this contract may be withheld until all reports due from the provider and necessary adjustments thereto have been approved by the Department.

20. Use of Funds for Lobbying Prohibited

To comply with the provisions of §216.347, F.S., which prohibit the expenditure of contract funds for the purpose of lobbying the Legislature, judicial branch, or a state agency.

21. Public Entity Crime and Discriminatory Vendor

1. Pursuant to §287.133, F.S., the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with the Department: When a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, he/she may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with

03/13

any public entity, and may not transact business with any public entity in excess of the threshold amount provided in §287.017, F.S., for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

2. Pursuant to §287.134, F.S., the following restrictions are placed on the ability of persons convicted of discrimination to transact business with the Department: When a person or affiliate has been placed on the discriminatory vendor list following a conviction for discrimination, before may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in §287.017, F.S., for CATEGORY TWO for a period of 36 months from the date of being placed on the discriminatory vendor list.

T. Patents, Copyrights, and Royalties

1. If any discovery or invention arises or is developed in the course or as a result of work or services performed under this contract, or in anyway connected herewith, the provider shall refer the discovery or invention to the Department to be referred to the Department of State to determine whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under or in connection with the performance of this contract are hereby reserved to the State of Florida.

2. In the event that any books, manuals, films, or other copyrightable materials are produced, the provider shall notify the Department of State. Any and all copyrights accruing under or in connection with the performance under this contract are hereby reserved to the State of Florida.

3. The provider, without exception, shall indemnify and save harmless the State of Florida and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured by the provider. The provider has no liability when such claim is solely and exclusively due to the Department of State's alteration of the article. The State of Florida will provide prompt written notification of claim of copyright or patent infringement. Further, if such claim is made or is pending, the provider may, at its option and expense, procure for the Department of State, the right to continue use of, replace, or modify the article to render it non-infringing. If the provider uses any design, device, or materials covered by letters, patent, or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

U. Construction or Renovation of Facilities Using State Funds

Any state funds provided for the purchase of or improvements to real property are contingent upon the provider granting to the state a security interest in the property at least to the amount of the state funds provided for at least (5) years from the date of purchase or the completion of the improvement or, if the state's interest in the property is not perfected, the provider will refund the proportionate share of the state's initial investment, as adjusted by depreciation.

V. Electronic Fund Transfer

The provider agrees to enroll in Electronic Fund Transfer, offered by the State Comptroller's Office. Questions should be directed to the EFT Section at (850) 410-9466. The previous sentence is for notice purposes only. Copies of Authorization form and sample bank letter are available from the Department.

W. Information Security

The provider shall maintain confidentiality of all data, files, and records including client records related to the services provided pursuant to this agreement and shall comply with state and federal laws, including, but not limited to, §384.29, §381.004, §392.65, and §456.057, F.S. Procedures must be implemented by the provider to ensure the protection and confidentiality of all confidential matters. These procedures shall be consistent with the Department of Health Information Security Policies, as amended, which is incorporated herein by reference and the receipt of which is acknowledged by the provider, upon execution of this agreement. The provider will adhere to any amendments to the Department's security requirements provided to it during the period of this agreement. The provider must also comply with any applicable professional standards of practice with respect to client confidentiality.

II. THE DEPARTMENT AGREES:

A. Contract Amount

To pay for contracted services according to the conditions of Attachment I in an amount not to exceed \$848,433 subject to the availability of funds. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. The costs of services paid under any other contract or from any other source are not eligible for reimbursement under this contract.

B. Contract Payment

Pursuant to §215.422, F.S., the Department has five (5) working days to inspect and approve goods and services, unless the bid specifications, Purchase Order, or this contract specifies otherwise. With the exception of payments to health care providers for hospital, medical, or other health care services, if payment is not available within 40 days, measured from the later of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty set by the Comptroller pursuant to §55.03, F.S., will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, contact the fiscal office/contract administrator. Payments to health care providers for hospitals, medical, or other health care services, shall be made not more than 35 days from the date eligibility for payment is determined, at the daily interest rate of 0.03533%. Invoices returned to a vendor due to preparation errors will result in a payment delay. Interest penalties less than one dollar will not be enforced unless the vendor requests payment. Invoice payment requirements do not start until a properly completed invoice is provided to the Department.

C. Vendor Ombudsman

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-6516 or (800) 342-2762, the State of Florida Chief Financial Officer's Hotline.

08/13

III. THE PROVIDER AND THE DEPARTMENT MUTUALLY AGREE

A. Effective and Ending Dates

This contract shall begin on July 1, 2015 or on the date on which the contract has been signed by both parties, whichever is later. It shall end on June 30, 2016.

B. Termination

1. Termination at Will

This contract may be terminated by either party upon no less than thirty (30) calendar days notice in writing to the other party, without cause, unless a lesser time is mutually agreed upon in writing by both parties. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

2. Termination Because of Lack of Funds

In the event funds to finance this contract become unavailable, the Department may terminate the contract upon no less than twenty-four (24) hours notice in writing to the provider. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Department shall be the final authority as to the availability and adequacy of funds. In the event of termination of this contract, the provider will be compensated for any work satisfactorily completed prior to notification of termination.

3. Termination for Breach

This contract may be terminated for the provider's non-performance upon no less than twenty-four (24) hours notice in writing to the provider. If applicable, the Department may employ the default provisions in Chapter 30A-1.006(3), F.A.C. Waiver of breach of any provisions of this contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this contract. The provisions herein do not limit the Department's right to remedies at law or in equity.

C. Renegotiation or Modification

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed by both parties. The rate of payment and dollar amount may be adjusted retroactively to reflect price level increases and changes in the rate of payment when these have been established through the appropriations process and subsequently identified in the Department's operating budget.

D. Official Payee and Representatives (Names, Addresses and Telephone Numbers)

1. The name (provider name as shown on page 1 of this contract) and mailing address of the official payee to whom the payment shall be made is:

90 Works
115 Gregory Square
Pensacola, Florida 32502

2. The name of the contact person and street address where financial and administrative records are maintained is:

Laura Poloski, CFO
115 Gregory Square, Pensacola, Florida 32502
(850) 908-6757 ext. 104
lpoloski@90works.org

3. The name, address, and telephone number of the contract manager for the Department for this contract is:

Brenda Pellin, RN, BSN, FCCM, Contract Manager
Florida Department of Health, Children's Medical Services
4052 Bald Cypress Way, BIN A06, Tallahassee, Florida 32309
850-245-4200 ext. 3661

4. The name, address, and telephone number of the provider's representative responsible for administration of the program under this contract is:

Cate Jordan, Executive Director
115 Gregory Square, Pensacola, Florida 32502
(850) 908-6757 ext. 103
cjordan@90works.org

5. Upon change of representatives (names, addresses, telephone numbers) by either party, notice shall be provided in writing to the other party and said notification attached to originals of this contract.

E. All Terms and Conditions Included

This contract and its attachments as referenced, Attachment I, II, III, IV, V, VI & Exhibit 1, 2, and 3 contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of the contract is found to be illegal or unenforceable, the remainder of the contract shall remain in full force and effect and such term or provision shall be stricken.

I have read the above contract and understand each section and paragraph.

IN WITNESS THEREOF, the parties hereto have caused this 29 page contract to be executed by their undersigned officials as duly authorized.

PROVIDER: 90 WORKS

SIGNATURE: [Signature]

PRINT/TYPE NAME: CATE JORDAN

TITLE: EXECUTIVE DIRECTOR

DATE: 6-10-15

STATE OF FLORIDA, DEPARTMENT OF HEALTH

SIGNATURE: [Signature]

PRINT/TYPE NAME: CASSANDRA G. PASLEY, BSN, JD

TITLE: DIRECTOR, DIVISION OF CHILDREN'S MEDICAL SERVICES

DATE: 6/15/2015

AM-00-2018 RUN 04-01-20

FBI

1,000

STATE AGENCY 29-DIGIT FLAIR CODE:

FEDERAL BID# (OR SSN): 59-2299573

PROVIDER FISCAL YEAR ENDING DATE: 6/30

ADD-00-2010 BUN 01/04/10

2010

2010

AMENDMENT #1

This amendment, entered into between the State of Florida Department of Health, hereinafter referred to as the "Department" and 90 Works, hereinafter referred to as the "provider", amends contract #CPX1X.

The Department and the Provider have agreed to amend this contract to incorporate the requirement of § 20.055 (5), Florida Statutes.

1. Page 2, Section I.D., is amended to add the following paragraph:

10. Cooperation with Inspectors General. Provider acknowledges and understands that it has a duty to and will cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to § 20.055 (5), F.S.

2. This amendment shall begin on July 1, 2015 or the date on which the amendment has been signed by both parties, whichever is later.

All provisions in the contract and any attachments thereto in conflict with this amendment shall be and are hereby changed to conform with this amendment.

All provisions not in conflict with this amendment are still in effect and are to be performed at the level specified in the contract.

This amendment and all its attachments are hereby made a part of the contract.

IN WITNESS THEREOF, the parties hereto have caused this one page amendment to be executed by their officials thereunto duly authorized.

PROVIDER: 90 Works

SIGNED
BY: Cate Jordan

NAME: Cate Jordan

TITLE: Executive Director

DATE: 7.27.15

FEDERAL ID NUMBER: 59-2299573

STATE OF FLORIDA
DEPARTMENT OF HEALTH

SIGNED
BY: Cheryl Young for

NAME: Cassandra G. Pasley, BSN, JD

TITLE: Director, Division of Children's Medical Services

DATE: 8/10/2015

Cassandra Pasley