TO THE HONORABLE MEMBERS OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES:

EXHIBITS APPENDIX 2 OF 2

TO

PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS
OF MELISSA LUCIO BY THE UNITED STATES OF AMERICA

AND

REQUEST FOR PRECAUTIONARY MEASURES

By the undersigned, appearing as counsel for the Petitioner under the provisions of Article 23 of the Commission’s Regulations, on behalf of Melissa Lucio

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Exhibit P

Interrogation Transcript
Volume 3
Third DVD Recording
of
Melissa Lucio
Custodial Interrogation
STATE HABEAS ATTORNEY’s TRANSCRIPTION

OF

STATE’S EXHIBIT 5
VICTOR: What was it? A little upset at Mariah?

A: uh uh [shaking head no]

VICTOR: Then why'd you bite her so hard?

A: Frustration, I guess

VICTOR: At what?

A: The kids jumping around.

VICTOR: And why did you take that out on Mariah?

A: I don't know.

VICTOR: So what did you do? You comb your hair... and what do you do?

A: I just finished combing her hair and I just brought her up towards me and I bit her.

VICTOR: Did you hit her?

A: Huh unh [shaking head no]

VICTOR: ok. The bruising on her back. All this black and blue on her back on her back.

How'd that happen? Show me that.... You said she was laying down. She was

A: At times she was laying down, at times she ummm When I would take her into the

shower, when I would tell her to turn around or sit down or do something so I could bathe

her, she wouldn't do it and I would spank her.

VICTOR: ok. Show... lay her down and show me how you would spank her. But it was it

like... was it one time? [puts left hand on baby] Was it several times?

A: Several times.

VICTOR: Show me how. But show me the... the same force you would use. With your

right or your left hand?
1 A: Left... Right hand
2 VICTOR: Would you be standing up or sitting down?
3 A: Both... Me?
4 VICTOR: How would you do it when you were sitting down? Show me how you would do it. Wha... I mean the way you actually did it. Just get it over with.
5 A: [spanking doll with right hand] Just spanked her real hard. On her back.
6 VICTOR: Well do it real hard like you... like you would do it.
7 A: [spanking doll with right hand again] Spank her hard.
8 VICTOR: That the way you would do it?
9 A: that's the way I would do it. I mean I wouldn't pound on her.
10 VICTOR: But [demonstrating with his hands]
11 A: Uh huh [spans doll 3 times with right hand] Like that.
12 VICTOR: Was it harder?
13 A: No
14 VICTOR: Cause I just... I... I'm doing it hard [demonstrating with his hands again].
15 A: Well... you're doing it on yourself... and this is... I mean I wasn't pounding on her or anything, I was [spanking doll again]
16 VICTOR: Show me exactly how you would do it... like this?
17 A: [spanking doll] Yes.
18 VICTOR: ok. how bout her legs? The bruising around her legs. Around her thighs...
19 between the knee and her hip... how... what's that from?
20 A: Spanking her.
VICTOR: How would you spank her there? Wha... laying down? Standing up?

A: No. She'd be sitting down and I would be getting her dressed and I would just spank her like that on her leg [hits doll's right leg with her right hand]

VICTOR: Pretty hard?

A: [nods head yes] uh huh

VICTOR: Why would you spank her? front of the legs like that?

A: Just out of frustration.

VICTOR: She didn’t wanna get dressed. or...?

A: She...she ... she wouldn't let me get her dressed.

VICTOR: Vagina? All those little bruises...ummm bruising? When would you... when would you pinch her there?

A: When I would be getting her dressed.

VICTOR: You’d pinch her there?

A: uh huh

VICTOR: Why there? How bout when she's taking a shower?

A: No

VICTOR: When would you pinch her vagina? The outside.

A: When I would... When I would be changing her.

VICTOR: Did you ever poke her vagina inside?

A: Nuh uh [shaking head no] no

VICTOR: How bout the bruising on her arms... this area? [touching doll on upper arms]. At her neck. The neck, shoulder, arms. How did those bruises occur?
1 VICTOR: How about the bruises on her stomach and her chest area?
2 A: The same thing.
3 VICTOR: How? Like that little bruise in her stomach area. How'd you... how'd that
4 happen?
5 A: That one I don't know either. [shaking head no]
6 VICTOR: ok. Her chest?
7 A: Uh uh [shaking head no]
8 VICTOR: You said "same thing" What'd you mean by that?
9 A: Ohh... I thought you were talking about these over here. [points to picture]
10 VICTOR: How about all these bruises?
11 A: I don't know about those.
12 VICTOR: Did you spank her in the chest?
13 A: uh uh [shaking head no] No.
14 VICTOR: Did you punch her?
15 A: uh uh
16 VICTOR: Did you ever punch her?
17 A: uh uh [shaking head no]
18 VICTOR: How about the bruising right here? [points to picture] On top of her vagina?
19 A: Spanking.
20 VICTOR: Spanking? How would you spank her there? [moving doll] Show me exactly
21 how you did it.
22 A: I would just spank her like [hitting doll with right hand]
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VICTOR: Do it the way you would actually do it. I know it's a baby, but..

A: Spank her hard. [hitting doll again]

VICTOR: How many times?

A: Several times.

VICTOR: What's several times?

A: 2, 3

VICTOR: but 2, 3 is not gonna do that..its...

A: No. I mean cause it was like day after day.

VICTOR: Day after day?

A: uh huh [nodding head yes] For it to be occuring that severe.

VICTOR: The scratches around her face?

A: [shaking head no] I don't know about those.

VICTOR: Did you love your daughter?

A: Yes

VICTOR: Did you have a favorite?

A: [nods yes]

VICTOR: Was this one your favorite?

A: [nods head no]

VICTOR: Why?

A: She was never with me.

VICTOR: Were you close to her?

A: uh uh
Exhibit Q

Alvarez Trial Transcript
Volume 1
The State of Texas : IN THE DISTRICT COURT
VS : 107TH JUDICIAL DISTRICT
Roberto Antonio Alvarez : Cameron County, Texas

TRIAL ON THE MERITS

On the 8th day of September, 2009, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Benjamin Euresti, Jr., Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.
PROCEEDINGS

(Voir dire, jury seated and sworn)
(Lunch recess 1:40 p.m. to 2:55 p.m.)
(Defendant and jury present)
(Court's instructions to the jury)

THE COURT: I think we're ready to proceed. Is the State ready?

MS. DeFORD: Yes, Your Honor.
THE COURT: Is the defendant ready?
MR. STAPLETON: Yes, Your Honor.
THE COURT: Will the defendant please stand at this time?

MR. GUZMAN: "In the name and by the authority of the State of Texas, the grand jury for the County of Cameron and State aforesaid, duly organized as such at the July term, 2008, of the 107th Judicial Court, in and for said county, upon their oaths in said court present that Roberto Antonio Alvarez, also known as Robert Alvarez, hereinafter called the defendant, on or about the 17th day of February, 2007, and anterior to the presentment of this indictment, in the County of Cameron and State of Texas, did then and there intentionally or knowingly by omission cause serious bodily injury to Mariah Alvarez, a child 14 years of
age or younger, by failing to seek medical care for
Mariah Alvarez, and the defendant had assumed care,
custody, or control of said child. Against the peace
and dignity of the State."

THE COURT: To which the defendant
pleads?

THE DEFENDANT: Not guilty.

THE COURT: All right. You may be
seated.

Counsel, do you have an opening?

MS. DeFORD: Yes, Your Honor. Very
briefly.

THE COURT: You may proceed. I'll
give 45 minutes to the side, up to 45 minutes.

MS. DeFORD: Good afternoon.

THE JURY: Good afternoon.

MS. DeFORD: Mariah Alvarez was two
years old when she died. She had been born cocaine
addicted. This was a little girl who was a survivor.
She had overcome that. She had been in the care of
the defendant and his wife Melissa Lucio, had been in
their care for 88 days. During those 88 days, you
will learn specifically the weeks prior to her death
that she was beaten on a daily basis by Melissa
Lucio.
A. I don't know who he is, sir.

Q. He's an officer with the Harlingen P.D. Were you there when they were there?

A. There was officers on the scene, yes, sir.

Q. Okay. I believe one of the officers is going to identify Roberto Alvarez as saying that he was weeping, he was crying a lot. And then he said the same thing you said about the mother; but that as far as Roberto, he said he was crying. You didn't -- you weren't around for that?

A. No, sir.

Q. So -- and of course the baby's on the floor because there's no furnishing, right?

A. I couldn't speculate why the child was on the floor. That's why I was asking what had happened to her.

Q. Okay. But there isn't any furniture to put the baby on?

A. It was a dark room. My concern was my safety at the time and the treatment of the child. I look at my scene and determine if it's safe for me to be there, if there's any immediate threat. And that's about the extent of the scene that I --

Q. I understand that, but apparently from the direct examination, you drew some conclusions from
THE STATE OF TEXAS:
COUNTY OF CAMERON:

CERTIFICATE OF COURT REPORTER

I, PAM L. MARCINIK, former Official Court
Reporter in and for the 107th Judicial District Court
of Cameron County, State of Texas, do hereby certify
that the above and foregoing contains a true and
correct transcription of all portions of evidence and
other proceedings requested in writing by counsel for
the parties to be included in this volume of the
Reporter's Record, in the above-entitled and numbered
cause, all of which occurred in open court or in
chambers and were reported by me.

WITNESS MY OFFICIAL HAND on this the 24th day of
October, 2018.

PAM L. MARCINIK
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Exhibit R

Alvarez Trial Transcript
Volume 2
REPORTER'S RECORD

TRIAL COURT CAUSE NO. 08-CR-1622-A

VOLUME 2 OF 12 VOLUMES

THE STATE OF TEXAS : IN THE DISTRICT COURT

VS : 107TH JUDICIAL DISTRICT

ROBERTO ANTONIO ALVAREZ : CAMERON COUNTY, TEXAS

TRIAL ON THE MERITS

On the 9th day of September, 2009, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Benjamin Euresti, Jr., Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.
administering all this first aid to the child.

Q. You didn't see her crying or sobbing or something?
A. As soon as a family member would come over to console with her, she would break down and cry. And then as soon as the family member would step away, she automatically switched off back to -- it seemed like she would turn on a switch.

Q. Did you see this happening like a couple of times or two or three times?
A. Yes, sir, I did.

Q. Okay. Was that kind of different for you?
A. Yes, sir.

Q. Did you at some point get to speak to her?
A. Yes, sir, I did.

Q. And what did you ask of her?
A. I basically asked all the information on the child. I asked her what happened to the child and just general questions about the remaining family members in the house.

Q. Okay. Did she explain to you -- without telling us what she said, did she explain to you what happened?
A. Yes, she did.

Q. Okay. Did you get to ask her anything
Q. Okay. And as you were asking him these questions, he would respond to you?
A. Yes, sir.
Q. Okay. Did he seem to understand the questions that you were asking him?
A. Yes, sir.
Q. Did he seem to be having any kind of problem in understanding what you were saying?
A. None at all, sir.
Q. Was he asking you to repeat the questions as if he didn't understand them?
A. No, sir.
Q. Okay. Did he seem kind of -- I guess kind of slow to you when you were talking to him?
A. No, sir.
Q. And when you would ask him the question, would he kind of delay in answering the question --
MR. STAPLETON: Your Honor, we'll object to leading this witness.
THE COURT: I'll sustain.
Q. (BY MR. GUZMAN) What was your impression of him as you were having this conversation?
A. He was very emotional at the time. He was crying; but aside from that, he answered all the
questions. He seemed to be genuinely concerned about the child.

Q. No problems in talking to him or anything of that nature?

A. No, sir.

MR. GUZMAN: One moment, Your Honor.

(Brief pause in proceedings)

Q. (BY MR. GUZMAN) What did you then do at that point?

A. At that point the scene was -- the crime scene, the scene was sealed off to anybody else, just law enforcement. And at that point the detectives and the crime scene arrived on scene. I turned the scene over to them. And then since there were so many family members and interviews had to be conducted, several -- all -- as many patrol cars as we could accommodate for the family, the children, mom, dad, everybody was put into a patrol car and taken over to the Harlingen police station.

MR. GUZMAN: No further at this time, Your Honor. Pass the witness.

CROSS-EXAMINATION

BY MR. STAPLETON:

Q. Mr. Palafox, correct?

A. Yes, sir.
MR. GUZMAN: One moment.

(Brief pause in proceedings)

Q. (BY MR. GUZMAN) To your knowledge from what you heard through your radio or what was told to you, was there any attempt or a call made for -- by the defendant concerning the defendant seeking any kind of medical care for Mariah?

A. No, sir.

MR. GUZMAN: No further at this time, Your Honor. Pass the witness.

MR. STAPLETON: If I may approach, Your Honor?

THE COURT: You may.

RECROSS-EXAMINATION

BY MR. STAPLETON:

Q. Just to review your interview with Mr. Alvarez at the scene, first you contacted him believing him to be father; and you say that he was very distraught and emotional throughout the whole ordeal?

A. Yes.

Q. Okay. What does that mean?

A. He was crying. He was -- he would just sit down. He was sitting down. Pretty much he was just sitting outside the apartment on like a little
concrete -- I think it was either the adjoining
apartment steps and he was just sitting there, and he
would cry and he would feel -- he had this sad face,
sad look on his face.

Q. And then -- you say then he confirmed the
story that he got with the two boys to the old
apartment to pick up some beds?
A. Yes.

Q. Okay. So you -- that's what Melissa had
told you and he said, "That's right. I had gone with
the two boys"?
A. Yes.

Q. Do you know which two boys those were?
A. I don't know, sir.

Q. They're older teen-age boys?
A. All I know is the older boys. I don't know
what their ages are or --

Q. But they were teen-agers that could help in
that instance?
A. Right. They were older kids.

Q. And then he stated that when he got back to
the apartment, he went to check on Mariah?
A. Yes.

Q. Okay. And he failed -- he found her to be
pale and unresponsive?
A. I don't really know, sir.

Q. Was it your impression in talking with him that he knew she needed to be checked on for her own safety?

MR. STAPLETON: I'll object to the form of the question as both leading, suggestive, and speculation.

THE COURT: Sustained.

Q. (BY MR. GUZMAN) Did you ask him why he needed to check up on her?

A. That I recall, no, sir.

Q. Did you ask him if he had a concern over her, over Ms. Lucio?

A. No, sir.

Q. So you got to go ahead and speak to Melissa Lucio?

A. Yes, sir, after.

Q. What was her relationship, if anything, to the child?

A. Mother.

Q. And when you observed her alone, what was her demeanor as the child lay there receiving emergency treatment?

A. She was -- I spoke to her outside when the child was inside and she was crying.
Q. Was she crying continuously or --
A. No. It would stop.
Q. What do you mean?
A. She would cry like when somebody would approach her, a family member, and then she'd stop.
Q. She would stop whenever a family member would come up?
A. When a family member would approach her, she'd start to cry. After they'd go their way, she'd stop crying and would just be there and have a stare, a blank stare.
Q. And what did you ask of her?
A. I asked her what had happened and she said she was putting away things because they were moving into a new apartment and her husband had left to retrieve some beds at 214 East Madison with two other sons. And when he got home, she heard him yelling out for her. And she was still putting away things, so she didn't really go. And when she finally went to go check what was going on, that's when she noticed the child -- they had brought the child to the living room floor.
Q. In speaking to her, did she tell you what time he left to go to the other apartment?
A. She told me ten minutes prior I think -- or
THE STATE OF TEXAS:
COUNTY OF CAMERON:

CERTIFICATE OF COURT REPORTER

I, PAM L. MARCINIK, former Official Court Reporter in and for the 107th Judicial District Court of Cameron County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-entitled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND on this the 29th day of October, 2018.

PAM L. MARCINIK
Certified Shorthand Reporter
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Certificate No. 2369
Expiration Date: 12/31/18
Exhibit S

Alvarez Trial Transcript
Volume 12
PUNISHMENT PHASE AND SENTENCING

On the 29th day of September, 2009, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Benjamin Euresti, Jr., Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.
evidence in this case.

We can't do this alone, ladies and gentlemen. I need your help. Thank you.

THE COURT: All right. Ladies and gentlemen of the jury, at this time I'll ask you to please follow the bailiff to the jury room to begin your deliberations.

(Jury began deliberations at 10:26 a.m.)

(Lunch recess at 11:48 a.m.)

(Jury resumed deliberations at 1:17 p.m.)

(Jury reached a verdict at 2:34 p.m.)

(Defendant present, jury not present)

THE COURT: All right. Bring the jury in.

(Jury brought into the courtroom)

THE COURT: You may be seated.

Mr. Presiding Juror, has the jury reached a verdict?

PRESIDING JUROR: Yes, Your Honor.

THE COURT: Would you hand it to the bailiff, please?

Will the defendant please rise?

"We, the jury, having found the defendant, Roberto Antonio Alvarez, also known as
Robert Alvarez, guilty of reckless injury to a child by omission as charged in the indictment, assess his punishment at confinement in the Texas Department of Criminal Justice-Institutional Division for four years, being not less than two years, no more than 20 years, and assess a fine of none," signed by the presiding juror.

Does anyone wish to poll the jury?

MR. STAPLETON: The defense does not.

MR. VILLALOBOS: No, Your Honor.

THE COURT: All right. You may be seated.

All right. Ladies and gentlemen of the jury, the Court has previously instructed you that you should observe strict secrecy during the trial and during your deliberations and you should not discuss this case with anyone except other jurors during your deliberations.

I am now about to discharge you. After you're discharged, you are released from your secrecy. You will then be free to discuss the case and your deliberations with anyone. However, you're also free to decline to discuss the case and your deliberations if you wish.

After you are discharged, it is lawful
THE STATE OF TEXAS:
COUNTY OF CAMERON:

CERTIFICATE OF COURT REPORTER

I, PAM L. MARCINIK, former Official Court
Reporter in and for the 107th Judicial District Court
of Cameron County, State of Texas, do hereby certify
that the above and foregoing contains a true and
correct transcription of all portions of evidence and
other proceedings requested in writing by counsel for
the parties to be included in this volume of the
Reporter's Record, in the above-entitled and numbered
cause, all of which occurred in open court or in
chambers and were reported by me.

WITNESS MY OFFICIAL HAND on this the 20th day of
November, 2018.

PAM L. MARCINIK
Certified Shorthand Reporter
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Certificate No. 2369
Expiration Date: 12/31/18
Exhibit T

Trial Transcript Volume 9
PRETRIAL HEARING - NO. 7

On the 21st day of November, 2007, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable A. C. Nelson, Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.
THE COURT: Are you satisfied with their services up to now?

DEFENDANT LUCIO: Yes.

THE COURT: We have a trial date in February. And I have set this up for a status hearing a couple of times because I am concerned that the State and the defense is not getting ready. We're going to try that in February. That comes real quick. It comes real quick. And I'm concerned that they are not up to speed. And the other thing that is concerning me is -- I have never seen you interact with them very much at all. Usually, when we have hearings of any sort, the defendant is whispering something into the defendant's ears or telling them something, or guiding them or reminding them of something, and assisting in their defense. I have not seen that with you. I have not seen that with you, and it bothers me that they may not be the people to defend you, or that you are not helping them. You know, you stand there shaking your head Mrs. Lucio. But you need to help them. You are facing the death penalty, Mrs. Lucio. And I don't want the trial to go on unless you have every opportunity to defend yourself. God helps those who helps themselves, and you've got to do something about it. Okay?

DEFENDANT LUCIO: (Nods head in the affirmative).
THE COURT: I'm concerned about it. I want to visit on this case again, and I was going to do it by next Friday the 30th. But given the holidays, I'm not sure. No. That's enough time to identify experts and all of that.

MR. CORDOVA: That would be all right.

THE COURT: I want to have a report done, Mr. Gilman and Mr. Cordova, on Friday, the 30th, as to who you think you need.

Mrs. Lucio? Between now and then, please work with them.

DEFENDANT LUCIO: (Nods head in the affirmative).

MR. GILMAN: Your Honor, if I report to this Court as possible experts --

THE COURT: As long as you're not talking about the facts of the case, you can deal with the Court itself. In other words, we can just do this in chambers. If you're going to discuss what the facts are, then I want the State to be there.

MR. GILMAN: Certainly. And I don't want to be accused of any ex parte'ing. And I am sure the Court doesn't want to be accused of any of that. I am just trying to understand on the 30th, the Court is expecting me to be in contact with the experts.
THE STATE OF TEXAS:
COUNTY OF HIDALGO:

CERTIFICATE OF COURT REPORTER

I, ADELAIDO FLORES, JR, Official Court Reporter in
and for the 430th Judicial District Court of Hidalgo
County, State of Texas, do hereby certify that the above
and foregoing contains a true and correct transcription of
all portions of evidence and other proceedings requested
in writing by counsel for the parties to be included in
this volume of the Reporter's Record, in the
above-entitled and numbered cause, all of which occurred
in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the
proceedings truly and correctly reflects the exhibits, if
any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND on this the 4th day of June,
2009.

ADELAIDO FLORES, JR., Texas CSR
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Certificate No. 1117
Expiration Date: 12/31/10

Adelaido Flores, Jr.
Certified Shorthand Reporter
REPORTER’S RECORD

VOLUME 10 OF 44 VOLUMES

TRIAL COURT CAUSE NO. 07-CR-885-B

---x
STATE OF TEXAS : IN THE DISTRICT COURT
VS : 138th JUDICIAL DISTRICT
MELISSA ELIZABETH LUCIO : CAMERON COUNTY, TEXAS
---x

PRETRIAL HEARING - NO. 8

On the 30th day of January, 2008, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable A. C. Nelson, Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.

ORIGINAL

Adelaido Flores, Jr.
Certified Shorthand Reporter
PROCEEDINGS

Time: 1:23 p.m.

(Defendant present)

THE COURT: Call now, Cause Number 07-CR-885-B, State of Texas versus Melissa Elizabeth Lucio. Hi, Mrs. Lucio.

I had a status hearing called so we could find out where we were in terms of the trial -- the experts and everything else.

MR. GILMAN: Judge, the experts are now appointed by the Court.

THE COURT: They've been appointed.

MR. GILMAN: Yes, sir. One on December 10, and we had the Christmas holidays that kind of messed things up. And then on January 22, they met with Mrs. Lucio last week. And I believe that they were going to continue meeting with her as of today, and carrying on with their investigation and do what they need to do.

In discussing this matter with the experts, they're going to need some four months to prepare and get these reports in and whatnot, and I think we will be ready to go to trial in June.

THE COURT: Aren't we set for Monday?

MR. GILMAN: Well, nobody is going to be
ready Monday, Judge.

THE COURT: I set this last year, with plenty of anticipation, and warning everybody we're going to trial on Monday.

MR. GILMAN: Yes, sir. But we don't have our expert's reports in, and it takes more than 30 days to do this, Judge.

THE COURT: Who is lead counsel for the State?

MR. KRIIPPEL: The State is ready, Your Honor. But we are not opposed to more time. The defense has got to prepare the defense. And we certainly don't want to go into a five week trial so it can just be overturned by the appellate court because the defense was not adequately prepared through, really, no fault of their own. Whatever time the experts need, is the time their experts need. We're ready to go to trial. The only problem is, we don't know who their experts are. Their experts haven't been designated, and we need at least the minimum legal 20 day window so that we can know who the experts are, and what they are going to testify to so we can adequately prepare any cross examination for that. But aside from that, we're ready.

Additionally, Your Honor, I'm glancing over some additional CPS documents that Mrs. Mary Jane

Adelaido Flores, Jr.
Certified Shorthand Reporter
Zamarripa has put together. These are the copies that we'll be tendering to defense. I'm just looking them over real quickly to see what I've got before, as we hand them over.

THE COURT: Mrs. Lucio has been in jail almost a year.

MR. GILMAN: Yes, sir. I'm aware of that.

THE COURT: And what I told Mr. Krippel, holds true for the defense --

MR. GILMAN: Yes, sir.

THE COURT: -- in my mind, it's obscene for a defendant to wait that much for trial.

MR. GILMAN: I hear you, Judge. And I am going as fast as I can. It is sometimes difficult getting people together, organized, and then trying to get something set up with everything else.

The experts are telling me that they're going to need four months. I have asked them: Are we going to be ready to go to trial in June?

THE COURT: Four months for an evaluation? We're not talking about treatment. We're talking about evaluations.

MR. GILMAN: It is not so much Doctor Pinkerman, but the social study that needs to be done by Norma Villanueva, is time consuming. There's a lot of
background check that she needs to do. And we need this for the punishment phase more so than the guilt/innocence phase. But this goes directly as to the issues that the jury has to go for. The State has a right to talk to our experts after we've designated them. But we haven't even designated them yet. I don't even have a report yet. They just met her for the first time last week on Monday, on a holiday, at the jail.

Judge, in a capital murder case, also, a list of the possible jurors have got to be sent out --

THE COURT: Three days before.

MR. GILMAN: -- by the Court --

THE COURT: Three days before.

MR. GILMAN: -- and this matter hasn't been done --

THE COURT: That's why I set it for today.

MR. GILMAN: -- to get the number of jurors in here.

MR. KRIJPPEL: Speaking of the jurors, Your Honor, I don't know if the Court would entertain a motion that a special venire be requested so that we're not poaching the entire jury pool that is brought in on a biweekly basis. The State would request that a special venire be called and that notice be sent out by the district clerk at this Court's direction. We're going to
THE STATE OF TEXAS:
COUNTY OF HIDALGO:

CERTIFICATE OF COURT REPORTER

I, ADELAIDO FLORES, JR, Official Court Reporter in
and for the 430th Judicial District Court of Hidalgo
County, State of Texas, do hereby certify that the above
and foregoing contains a true and correct transcription of
all portions of evidence and other proceedings requested
in writing by counsel for the parties to be included in
this volume of the Reporter's Record, in the
above-entitled and numbered cause, all of which occurred
in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the
proceedings truly and correctly reflects the exhibits, if
any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND on this the 4th day of June,
2009.

ADELAIDO FLORES, JR., Texas CSR
Official Court Reporter
430th District Court
111 SO. 9th Street
Edinburg, Texas 78539
(956) 318-2900
Certificate No. 1117
Expiration Date: 12/31/10

Adelaido Flores, Jr.
Certified Shorthand Reporter
Exhibit V

Trial Transcript Volume 13
REPORTER'S RECORD

VOLUME 13 OF 44 VOLUMES

TRIAL COURT CAUSE NO. 07-CR-885-B

--- x

STATE OF TEXAS

: IN THE DISTRICT COURT

VS

: 138th JUDICIAL DISTRICT

MELISSA ELIZABETH LUCIO

: CAMERON COUNTY, TEXAS

--- x

PRETRIAL HEARING - NO. 11

On the 27th day of May, 2008, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable A. C. Nelson, Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.

Adelaido Flores, Jr.
Certified Shorthand Reporter
Q (By Mr. Padilla) I will show you a document that is entitled curriculum vitae in this matter. Is that your curriculum vitae?
A Yes, it is.
Q And, obviously, all of the information contained therein is true and correct?
A Yes, it is.
Q How long, ma'am, have you been serving as a mitigation expert?
A Since 1996.
Q And on how many different occasions have you testified in court concerning cases involving the death penalty as a mitigation expert?
A My guess, sir, would be right around ten. Nine or ten cases.
Q And have they all been here in South Texas?
A No, they have not been, sir.
Q Where have they been?
A Arizona, Missouri, and different areas here in Texas.
Q As a result of your training and expertise, have you met the defendant in this case?
A Yes, I have.
Q And when did you first meet with her?
A I met her on only one occasion and it was an
introduction meeting. All of this time I've been doing
the records reviews.

Q By doing the records what do you mean?
A That means going over -- anything I can get my
hands on -- going over different records about what she
has put in writing that is already of record, looking at
her different social history records of different types --
with her dealing with different social agencies. Things
of that sort. It's all the background work.

Q And have you prepared a report?
A No, I have not.

Q When do you anticipate the report to be ready?
A Ah, sir, I'm not anticipating preparing a
report.

Q Okay. So you don't anticipate preparing a
written report concerning your investigation, your
actions, and everything concerning Melissa Lucio?
A Not at this time, sir.

Q Is that -- does that happen in every case, or in
your experience, or not?
A Sir, it's happened, I would say, 40 to
50 percent of the time. It depends on how my information
is going to be utilized.

Q Well, you got two and a half months. Is it your
testimony now here today that you have not had sufficient

Adelaido Flores, Jr.
Certified Shorthand Reporter
time to complete any written report if one is requested of you?

A I am not finished with my mitigation investigation, sir.

Q You understand that they have designated you as an expert on the issue of mitigation, is that correct?

Are you familiar with that?

A Yes, sir.

Q That's the reason for your involvement with this Mr. Cordova, Mr. Gilman and Mrs. Lucio. Is that correct?

A That is correct, sir.

Q Is it your opinion that two and a half months period since you have been contact was made to you, that it is insufficient time to prepare a report or not?

A If I had prepared a report with all due respect it would have been incomplete. That's the first thing. The second thing, I've been keeping in touch with both attorneys and telling them of what I have -- where my status is on the mitigation investigation.

Q By when do you intend to have an opinion, or complete your investigation for the purposes of offering testimony to assist Ms. Lucio's as a mitigation expert?

A Within, approximately, another two weeks, sir.

Q So it's your testimony now it's incomplete and you continued to work at this time on the issue. Is that
THE STATE OF TEXAS:
COUNTY OF HIDALGO:

CERTIFICATE OF COURT REPORTER

I, ADELAIDO FLORES, JR, Official Court Reporter in
and for the 430th Judicial District Court of Hidalgo
County, State of Texas, do hereby certify that the above
and foregoing contains a true and correct transcription of
all portions of evidence and other proceedings requested
in writing by counsel for the parties to be included in
this volume of the Reporter's Record, in the
above-entitled and numbered cause, all of which occurred
in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the
proceedings truly and correctly reflects the exhibits, if
any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND on this the 4th day of June,
2009.

ADELAIDO FLORES, JR., Texas CSR
Official Court Reporter
430th District Court
111 SO. 9th Street
Edinburg, Texas 78539
(956) 318-2900
Certificate No. 1117
Expiration Date: 12/31/10

Adelaido Flores, Jr.
Certified Shorthand Reporter
Exhibit W

Appointment of Peter Gilman
CAUSE NO. 07-CR-885-B

THE STATE OF TEXAS
VS.
MELISSA ELIZABETH LUCIO

IN THE DISTRICT COURT OF
CAMERON COUNTY, TEXAS
138TH JUDICIAL DISTRICT

ORDER APPOINTING ATTORNEY

The Court having determined that Melissa Elizabeth Rubio, Defendant in this cause, is too poor to employ counsel:

IT IS ORDERED that such Defendant file an affidavit of indigency and that Honorable Peter C. Gilman, a practicing attorney be, and he is hereby, appointed to defend such Defendant.


ATTORNEY’S CLAIM FOR COMPENSATION

I hereby make claim against Cameron County, Texas, for compensation for representation of the above Defendant under Article 26.05 of the Code of Criminal Procedure. I swear that I actually appeared in court in this Court on each of the following days (list exact dates):

Attorney’s Mailing Address:

Phone No.

SWORN TO AND SUBSCRIBED before me this ____ day of ________, 20__.

APPROVED FOR PAYMENT:

Notary Public - State of Texas

$________

JUDGE PRESIDING

Copies to
Assistant District Attorney
Defense Attorney
Defendant Cameron County Jail, #211719
Exhibit X

Affidavit of Ed Stapleton
AFFIDAVIT OF ED STAPLETON REGARDING MELISSA LUCIO

STATE OF TEXAS

COUNTY OF CAMERON

BEFORE ME, the undersigned authority on this day personally appeared ED STAPLETON, who after being by me first duly sworn, deposed and said that:

"I am over 18 years of age and of sound mind. I have never been convicted of a felony. I am fully competent to testify to the matters stated below. I have personal knowledge of each factual statement made in this Affidavit and they are true and correct."

a. "I am a lawyer practicing indigent criminal defense in Brownsville, Texas. I was appointed to represent Richard Alvarez, the boyfriend of Melissa Lucio.

b. "About May of 2008, according to my best calculations, Pete Gilman contacted me asking to speak to my client, Richard Alvarez, to discover what he would testify about his client Melissa Lucio. We went together to the Cameron County jail where he interviewed Mr. Alvarez about the death of Ms. Lucio’s daughter Mariah.

c. "During this time, Mr. Gilman shared his thoughts that his defense would be a fall Mariah had suffered a few days before her death.

d. "We discussed the need for expert testimony to show the cause of death may have originated a few days before in time rather than on the day of the death. I suggested he speak to a neurosurgeon, Jose Kuri, MD.

e. "Pete Gilman, his wife Irma, Dr. Kuri and I met at a restaurant and reviewed the medical and autopsy records exploring possibilities for defense theories. I was also interested because I would be able to use this information in defense of my client, Richard Alvarez.

f. "Both Dr. Kuri and Mr. Gilman informed me later that Mr. Gilman had requested Dr. Kuri be appointed as an expert witness for the trial.

Although I watched some portions of the Ms. Lucio’s trial, but only a brief
part of Dr. Kuri's testimony because of other commitments. After I talked
to a pathologist, Sridar Natarajan, MD, my theory of the defense for Mr.
Alvarez changed so that I wanted to show the short period between
Mariah's injury and death, rather than try to relate it back to the fall, so I
did not call Dr. Kuri to testify in the trial of Mr. Alvarez."

"The facts herein are within my personal knowledge and are true and correct."

ED STAPLETON, Affiant

BEFORE ME, the undersigned authority, on this day personally appeared ED
STAPLETON, who is personally known to me, to be the person whose name is subscribed hereto
and who stated to me under oath that she signed the foregoing instrument for the purpose and
consideration therein expressed and the answers are true and correct.

Sworn to and subscribed before me, a Notary Public, on this 27th day of December, 2010.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

[Signature]

Notary Commission Expires:
10/01/2012

[Seal]

ELIZABETH SIGALA
Notary Public, State of Texas
My Commission Expires
October 01, 2012
Exhibit Y

Disclosure of Dr. Kuri
IN THE 138TH JUDICIAL DISTRICT COURT, CAMERON COUNTY, TEXAS

STATE OF TEXAS

VS.

MELISSA ELIZABETH LUCIO

DEFENDANT'S MOTION FOR LEAVE TO FILE
SECOND SUPPLEMENTAL DISCLOSURE OF EXPERT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MELISSA LUCIO, Defendant herein and files this her Motion for Leave to File Second Supplemental Disclosure of Expert, and for cause of action would show unto this Honorable Court as follows:

I.

MELISSA LUCIO, Defendant herein is requesting that she be allowed to file her Second Supplemental Disclosure of Expert to identify Dr. Jose Kuri as an expert witness on her behalf.

WHEREFORE, PREMISES CONSIDERED, Defendant, MELISSA LUCIO, herein prays that she be granted leave to file her Second Supplemental Disclosure of Expert
Respectfully submitted,

LAW OFFICE OF ADOLFO E. CORDOVA, JR.
711 NORTH SAM HOUSTON
SAN BENITO, TEXAS 78586
(956) 399-1299
(956) 399-4484 - FAX

BY: ADOLFO E. CORDOVA, JR
STATE BAR #00787287
ATTORNEY FOR DEFENDANT
CAUSE NO. 07-CR-885-B

IN THE 138TH JUDICIAL DISTRICT COURT, CAMERON COUNTY, TEXAS

STATE OF TEXAS  )

VS.  )

MELISSA ELIZABETH LUCIO  )

ORDER SETTING HEARING ON DEFENDANT'S MOTION FOR LEAVE TO FILE
SECOND SUPPLEMENTAL DISCLOSURE OF EXPERT

On the __________ day of __________________, 2008, came on to be considered Defendant’s Motion for Leave to File Second Supplemental Disclosure of Expert, and the Court after considering said motion is of the opinion that the same shall be heard.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that Defendant’s Motion for Leave to File Second Supplemental Disclosure of Expert shall be heard on the ___ day of ____________, 2008.

Signed for entry this __________ day of __________________, 2008

__________________________________________
JUDGE PRESIDING
CAUSE NO 07-CR-885-B

IN THE 138TH JUDICIAL DISTRICT COURT, CAMERON COUNTY, TEXAS

STATE OF TEXAS

VS.

MELISSA ELIZABETH LUCIO

ORDER ON DEFENDANT'S MOTION FOR LEAVE TO FILE
FIRST SUPPLEMENTAL DISCLOSURE OF EXPERT

On the __________ day of ________________, 2008, came on to be considered Defendant's Motion for Leave to File Second Supplemental Disclosure of Expert, and the Court after considering said motion is of the opinion that the same shall be in all things ________________.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that Defendant's Motion for Leave to File Second Supplemental Disclosure of Expert shall be ________________.

Signed for entry this __________ day of ________________, 2008.

JUDGE PRESIDING
CAUSE NO. 07-CR-885-B

IN THE 138TH JUDICIAL DISTRICT COURT, CAMERON COUNTY, TEXAS

STATE OF TEXAS

VS.

MELISSA ELIZABETH LUCIO

DEFENDANT'S SECOND SUPPLEMENTAL DISCLOSURE OF EXPERT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes MELISSA ELIZABETH LUCIO, Defendant in the above entitled and numbered cause, by and through her undersigned counsel, and gives notice of her intention to call as an expert witness the person named below in addition to the expert previously listed:

Dr. Jose Kun
98 E. Price Road, Suite B
Brownsville, Texas 78521
(956) 546-8622

Respectfully submitted,

LAW OFFICE OF ADOLFO E. CORDOVA, JR.
711 N. SAM HOUSTON
SAN BENITO, TEXAS 75886
(956) 399-1299
(956) 399-4484 - FAX

BY.

ADOLFO E. CORDOVA, JR.
STATE BAR #00787287
ATTORNEY FOR DEFENDANT
CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Defendant's Second Supplemental Disclosure of Expert has been forwarded to all counsel of record as follows:

CAMERON COUNTY DISTRICT ATTORNEY
974 E. HARRISON
BROWNSVILLE, TEXAS 78520

(VIA HAND DELIVERY ON THIS THE 22ND DAY OF MAY, 2008)

ADOLFO E. CORDOVA, JR.
STATE BAR #00787287
ATTORNEY FOR DEFENDANT
CAUSE NO. 07-CR-885-B

IN THE 138TH JUDICIAL DISTRICT COURT, CAMERON COUNTY, TEXAS

STATE OF TEXAS

VS

MELISSA ELIZABETH LUCIO

ADVANCE OF FUNDS FOR WITNESS EXPENSES FOR INDIGENT DEFENDANT

STATE OF TEXAS

COUNTY OF CAMERON

MELISSA LUCIO, Defendant makes this application for advance of expenses necessary to secure the attendance of DR. JOSE KURI to provide testimony which is material to Defendant's case.

DR. JOSE KURI is a resident of Cameron County. He is an expert designated by the Defendant to testify at trial. Said expert has requested a $2,500.00 retainer.

The amount of expenses requested is $2,500.00, and this request is made in accordance with Article 35.27, section 8 of the Texas Code of Criminal Procedure. Defendant is indigent, and this advance of funds is necessary if Defendant is to have rights to compulsory process, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, Article I Section 10 of the Texas Constitution, and Article 1.05 of the Texas Code of Criminal Procedure.

Signed: May 23, 2008

Respectfully submitted

LAW OFFICE OF ADOLFO E. CORDOVA, JR.
711 NORTH SAM HOUSTON
SAN BENITO, TEXAS 78586
(956) 399-1299
(956) 399-4484 - FAX

BY: ADOLFO E. CORDOVA, JR.
STATE BAR #00787287
ATTORNEY FOR DEFENDANT
CAUSE NO. 07-CR-885-B

STATE OF TEXAS

VS

MELISSA ELIZABETH LUCIO

IN THE DISTRICT COURT OF

CAMERON COUNTY, TEXAS

138TH JUDICIAL DISTRICT

ORDER

On the 23rd day of May, 2008, came the Accused, by and through counsel and moved this Court in a motion entitled Advance of Funds for Witness Expenses for Indigent Defendant to authorize funding for Dr. Jose Kuri to assist the defense necessary testimony which is material to Defendant's case. The Court, finding that Defendant is indigent and that counsel have made a threshold showing of necessity for that funding, ORDERS as follows:

The Court approves funding for Dr. Jose Kuri to assist the defense with the investigation of the facts. Funding is approved for $2,500.00 services already rendered.

ORDERED AND SIGNED on this the 23 day of May, 2008.

[Signature]
Arturo Cisneros Nelson
Judge, 138th Judicial District Court

FILED 4:07 O'Clock AM
AURORA DE LA GARZA DIST. CLERK

MAY 23 2008

DISTRICT COURT, CAMERON COUNTY, TEXAS
BY
DEPUTY
Exhibit Z

Report of Dr. Young
CURRICULUM VITAE

THOMAS WILLIAM YOUNG, M.D.

PERSONAL DATA:

Birthdate: June 12, 1956
Birthplace: La Mesa, California

PROFESSIONAL POSITION:

Heartland Forensic Pathology, LLC (private practice)
12717 Oakmont Drive
Kansas City, Missouri 64145

ACADEMIC RECORD:

College: Loma Linda University
College of Arts and Sciences
Riverside, California
October 1974 - June 1977

Medical School: Loma Linda University
School of Medicine
Loma Linda, California
September 1977 - November 1980
Bachelor of Science (Human Biology) and
Medical degrees awarded on November 30, 1980

Internship and Residency: Anatomic and Clinical Pathology
Loma Linda University Medical Center and Jerry L. Pettis
Memorial Veterans Administration Hospital
Loma Linda, California
January 1981 - December 1984

Fellowship: Forensic Pathology
Office of the Medical Examiner, Fulton County (Program
affiliated with Emory University, School of Medicine)
Atlanta, Georgia
July 1988 - June 1989
THOMAS WILLIAM YOUNG, M.D.

BOARD CERTIFICATION:

Diplomate-National Board of Medical Examiners
January 2, 1982

Diplomate-American Board of Pathology
  Anatomic and Clinical Pathology - May 31, 1985
  Forensic Pathology - September 25, 1989

MEDICAL LICENSURE:

Missouri—MD108989
Kansas—04-32417
Georgia—030931 (inactive)

PROFESSIONAL ACTIVITIES:

Heartland Forensic Pathology, LLC (private practice)
  Kansas City, Missouri
  January 2007 -- Present

Jackson County Medical Examiner
  Kansas City, Missouri
  July 1995 -- December 2006

Medical Examiner, Platte County Missouri
  July 1995 -- December 2006

Medical Examiner, Clay County Missouri
  April 1996 -- December 2006

Medical Examiner, Cass County Missouri
  January 2004 -- December 2006

Director, Office of the Jackson County Medical Examiner
  Forensic Pathology Training Program
  July 2002 -- December 2006

Clinical Associate Professor
  University of Missouri-Kansas City School of Medicine
  September 1997 -- December 2006
Forensic Pathologist, National Disaster Medical System (DMORT - 7)
United States Department of Homeland Security
October 1996 – March 2006

Participated in Federal Disaster Response involving
Korean Airlines Flight 801, Guam
August 1997

Associate Medical Examiner, Fulton County
Atlanta, Georgia
July 1989 - June 1995

Assistant Professor of Pathology,
Emory University School of Medicine
August 1994 - June 1995

Clinical Assistant Professor of Pathology,
Emory University School of Medicine
July 1991 - August 1994

Medical Examiner for Division of Forensic Sciences,
Georgia Bureau of Investigation
Decatur, Georgia
July 1989 - June 1995

Chief, Anatomic Pathology
Ehring Bergquist Strategic Hospital
Offutt Air Force Base, Nebraska
January 1985 - May 1988

Medical Director, Phase II
Laboratory Technician Training Program
Ehring Bergquist Strategic Hospital
Offutt Air Force Base, Nebraska
January 1985 - May 1988

Major, Active Duty
United States Air Force Medical Corps
January 1985 - May 1988
PROFESSIONAL MEDICAL SOCIETIES:

Alpha Omega Alpha Honor Medical Society (1980)
American Society of Clinical Pathologists (1983; Fellow 1985)
College of American Pathologists (Fellow 1985)
American Academy of Forensic Sciences (1989; Fellow 2003)
National Association of Medical Examiners (1989)

PUBLICATIONS:


ABSTRACTS AND FORMAL PRESENTATIONS:


15. Young TW, Brasfield R, and Gill TH: Catch-22 No More! Twenty-two Lessons Learned After 10 years as a Chief Medical Examiner. Presented at the 39th Annual Meeting of the National Association of Medical Examiners, Los Angeles, California, October 2005.

16. Young TW: Forensic Science and the Scientific Method. Presented at the 19th Annual Alumni Reunion Meeting, Department of Pathology and Human Anatomy, Loma Linda University School of Medicine, Loma Linda, California, March 2009.


December 9, 2010
December 29, 2010

Margaret Schmucker, Esq.
512 E 11th St, Ste 205
Austin, TX 78701

Re: TX v. Lucio

Dear Ms. Schmucker:

You asked me to provide a report containing: 1) my opinions made to a reasonable degree of medical certainty that I would have offered had I testified at the trial, 2) an analysis of the opinions offered by Dr. Norma Jean Farley, the autopsy pathologist, and 3) an analysis of the opinions offered by Dr. Jose Kuri, the defense expert at the trial. In accordance with your request, I viewed the following, and I offer the analyses that follow.

**Items viewed:**

1. A document labeled “Defendant’s Story.pdf.”
2. The autopsy report on Alvarez, Myriah (sic) by Norma Jean Farley, MD.
3. Multiple photographs from the autopsy, both printed and on CD.
4. Photographs of the stairwell and the bottom of the stairwell.
5. The deposition transcript of Norma Jean Farley, MD.
6. The trial testimony transcript of Normal Jean Farley, MD.
7. The trial testimony transcript of Randall Kenneth Nester.
8. The trial testimony transcript of David Mendoza.
9. The trial testimony transcript of Alfredo Vargas, MD.
10. The trial testimony transcript of Jose Kuri, MD.
11. A CD of images from the skeletal survey from Valley Baptist Hospital.

12. Glass slides from the autopsy, viewed on site at the Cameron County Courthouse in Brownsville, TX on December 27, 2010.

**Analyses:**

I have analyzed and evaluated the items listed above. The reasonable inferences from that evidence have resulted in the opinions that follow. Those opinions are made to a reasonable degree of medical certainty and follow accepted prevailing forensic pathology standards.

i. My opinions regarding the death of Mariah Alvarez

A. The cause of death is **Blunt head injury, delayed effects**. The manner of death is **Accident**. The initiating event was a head impact from a fall down a set of stairs. The subsequent events, manifested by a progression of signs and symptoms, resulted from that impact.

B. Correlation of witness account with autopsy findings

1. Defendant Melissa Lucio alleged that Mariah fell down stairs. She did not know how many stair steps Mariah fell down. The child was awake and alert and she did not seem disoriented. For this reason, defendant Lucio did not seek medical attention.

2. Some children may develop reactive brain swelling to head trauma, and the swelling may worsen over a period of time. The swelling often leads to the onset of signs and symptoms following a **lucid interval**--an interval of time when there are no observable signs and symptoms. This kind of situation is commonly seen with children following accidental head injury. Literature references (These are submitted with this report):


3. The defendant describes the worsening of the child’s brain function in her statement.
a. Later in the evening following the fall, Mariah said she was feeling sick, and the defendant noted that she was pretty warm ("slight fever"). Ongoing brain swelling can lead to symptoms of nausea. Also, disturbances of hypothalamic functioning (the hypothalamus is a portion of the brain) can lead to disturbances in body temperature.

b. Mariah was up half that night tossing and turning.

c. She remained asleep the next day although she continued to kick her legs, toss and turn. She never awoke until she was found to be dead another day later, prior to the 911 call.

C. Further explanation of the autopsy findings.

1. Hypoxic-ischemic encephalopathy

   a. When the brain is deprived of the flow of oxygenated blood, brain damage ensues in the form of hypoxic-ischemic encephalopathy (HIE). Dr. Farley uses the term, "anoxic-ischemic encephalopathy" in her report, but it is basically the same condition. "Anoxic" means "no oxygen." "Hypoxic" means "little oxygen." "Ischemic" means damage from insufficient blood flow. "Encephalopathy" means brain damage---in this case from little oxygenated blood flow.

   b. With brain swelling brought about by trauma ("cerebral edema"—a term used in her report—means brain swelling), the pressure inside the bony skull rises. As this pressure approaches and exceeds the blood pressure, the blood flow through the brain from arteries conducting blood from the heart slows down. This leads to brain damage. The brain damage leads to further swelling, and a vicious cycle ensues, leading to death.

2. Multiple intracranial and soft tissue hemorrhages

   a. As the brain deteriorates, proteins from dead brain tissue are released into the bloodstream, causing an activation of blood clotting factors and blood clotting cells in the blood (platelets). This activation is disorderly and chaotic, spreading throughout the blood stream. It results in the consumption of clotting factors and platelets.

   b. This condition, known as disseminated intravascular coagulation (DIC), leads to both spontaneous hemorrhages and hemorrhages associated with minor trauma. Handling of the child or even the child's own movements (kicking her legs, tossing and turning) can lead to bruises throughout her body.

   c. The absence of coagulation factors and platelets combined with the increasing intracranial pressure from brain swelling can lead to the
3. "Dehydration"

a. Another complication of the brain deterioration is a condition known as \textit{diabetes insipidus}. The hypothalamus in the brain and a portion of the pituitary gland attached to the hypothalamus allows the release of \textit{antidiuretic hormone} (ADH). This hormone causes the kidneys to retain water.

b. Without ADH, the child will lose water rapidly from her body, causing the "dehydration" findings.

4. Eye pathology

a. Hemorrhages in the optic nerve sheath are not diagnostic of head injury. See: Mathses E. Retinal and Optic Nerve Sheath Hemorrhages Are Not Pathognomonic of Abusive Head Injury. Proceedings of the American Academy of Forensic Sciences 62nd Annual Scientific Meeting; February, 2010, p. 272. (included with this report). In this case, brain swelling and DIC caused these hemorrhages. The report of this study is included with this report.

b. The eyes do not have retinal hemorrhages, according to the eye pathology report. Without retinal hemorrhages, a finding of retinal folds and disruptions is of dubious value. This is because postmortem handling and processing of the eyes can introduce such folds and disruptions.

5. The "bite marks"

a. The lesions identified as bite marks in the right upper back are not bite marks. They are abrasions and are consistent with the fall down the stairs.

b. Note the photographs in PowerPoint submitted with this report (Brownsville postconviction case.ppt). They are the photographs of the abrasions in the right upper back but zoomed in to show greater detail. These injuries have numerous fine curvilinear striations, and these are particularly obvious in photograph #3. Several are parallel, but several are not. One fine linear abrasion extends for some distance from the other striations (note photograph #5). Smooth tooth cusps are not capable of forming such fine striations, but impacts with roughened surfaces are (see photographs #6 & 7).

c. Furthermore, a bite involves a pincer-like action where the two opposing sets of teeth (maxilla and mandible) press inward and toward each other. These
leave impressions in the skin that match the cusps of the teeth. These lesions in this case, instead, represent striated abrasions, made by forces passing roughly in the same direction rather than opposite directions. One of the sets of marks does not reveal an opposing set of marks at all. How can only one set of teeth make marks when the same amount of force is caused by both sets of teeth?

d. These abrasions are consistent with the repeated bouncing of the right upper back down several stair edges. The shapes of these abrasions would also be affected not only by the stair edges but also by the projected contours of the child’s scapula and ribs beneath the skin and the contours of a child’s upper garment (there are no photographs of an upper garment, nor any description).

6. “Older” lesions

a. Several findings represent either older injuries (the healing left humerus fracture, the right foot laceration, the crusted abrasions on the scalp) or items that might not be injuries at all (thinning of the hair).

b. The older injuries are not necessarily the result of child abuse. They may have been from accidents in an active 2-year-old.

c. Several natural scalp conditions may result in hair loss.

d. There are no available witness accounts to explain or to compare with these findings. As such, any surmised explanation for these findings would be speculative.

7. Focal bronchopneumonia and mucous plug

a. I discovered focal bronchopneumonia and a bronchial mucous plug in the lung sections I examined. Dr. Farley did not note these findings in her report.

b. These findings are consistent with deteriorating brain function over a couple of days as described by witnesses.

D. In summary, the autopsy findings are entirely consistent with and explained by the account provided by the defendant. There are no inconsistencies.

II. My analysis of the opinions offered by forensic pathologist Norma Jean Farley, MD.

A. Consider carefully Dr. Farley’s conclusion at the end of her autopsy report (I added bold type for emphasis):
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**Conclusion:** It is my opinion that Myriah (sic) Alvarez, a 2-year-old female child, died as the result of blunt force head trauma. At autopsy, there is evidence of significant blunt force head trauma with multiple contusions and abrasions involving the head, multiple scalp hemorrhages, cerebral edema, and subarachnoid and subdural hemorrhage (blood around the brain and blood between the brain and skull). The findings in the eyes are also highly suggestive of non-accidental trauma. Other autopsy findings are listed above and include contusions involving both lungs and the right kidney, a healing fracture of the left humerus and multiple abrasions and contusions to the body. Dehydration is present and confirmed by vitreous electrolytes. The manner of death is homicide.

**B. The “mistake of substituting intuition for scientifically defensible interpretation.”**

1. In his now classic paper, “Classical mistakes in forensic pathology,” Dr. Alan Moritz describes the “mistake of substituting intuition for scientifically defensible interpretation” as “one of the most dangerous mistakes in forensic pathology” and “one that is particularly prevalent among experienced forensic pathologists.” Please refer to page 303 of the article that I submitted with this report.

2. Dr. Moritz described how a “Sherlock Holmes type of expert” may intuitively decide from certain autopsy findings that foul play must have occurred without recognizing that such findings may be found in circumstances that are not foul play (Dr. Moritz calls them “control cases”).
   
   a. The famous fictional detective, Sherlock Holmes, would characteristically notice subtle clues and derive from them an account of what happened to lead to those clues.

   b. Such inferences do not work in real life because more than one explanation often exists for any set of physical evidence clues. The success of Sherlock Holmes in being correct almost all of the time was because the author, Arthur Conan Doyle, wrote his stories that way.

   c. Forensic doctors make these mistakes when they fail to learn enough information about their cases, instead intuitively determining what must have happened without complete information.

3. Note Dr. Farley’s statement above. There is no evidence in her report that she carefully correlated eyewitness accounts with the autopsy findings to see if the accounts explained the findings. There is no evidence that she was aware of or even interested in the witness accounts. She felt that she could look at the autopsy findings and determine from them the past events that led to those findings, just like Sherlock Holmes.

4. Also note the phrase in bold print, “also highly suggestive.” This is not a term...
that indicates certainty--reasonable medical certainty or any other form of certainty. It is a term that indicates speculation. Her use of the term, "highly," makes it sound as if she is certain, but she cannot be logically or reasonably certain when more than one explanation can exist for any set of physical findings.

5. On the other hand, if she had carefully compared the autopsy findings with the defendant's account, as I have done in the first part of this report, she would have been able to say with certainty whether or not that account is consistent with the autopsy findings. Such an approach is reliable because no witness--no matter how clever or educated--can invent a lie that perfectly matches complex anatomic and physiologic evidence, particularly when he or she does not know or understand that evidence.

6. Furthermore, more than one person other than the defendant witnessed the events that happened to the child. For child abuse to occur in a setting where there is more than one witness, all witnesses would have to participate in a conspiracy, weaving a tale that would explain complex evidence. There is no evidence that Dr. Farley ever considered such factors in offering her opinions allegedly to a reasonable degree of medical certainty.

7. Included with this report is a document demonstrating the logical basis for what I have written above: Putting It All Together: The Logic Behind the Forensic Scientific Method and the Inferential Test.

C. Examples of speculative opinions from Dr. Farley's testimony

1. Page 7 of her deposition transcript: Dr. Farley sees homicidal beating as the only explanation for the child's injuries, without acknowledging that blunt trauma from a wide variety of means--including non-homicidal means--could lead to the injuries.

Q. Could you make a determination of the cause of these abrasions, contusions and the blood excess of blood around the brain?

A. Yes, that's what blunt force head trauma means, means beat about the head or thrown or hit up against an object, basically; beaten.

Q. And so that we can, a jury can understand this how would, how would this come about?

A. Beating. I don't know how else to make it clear. Beating.

Q. With a hand, a fist, a club?

A. Whatever. We don't know for sure what was used to hit the child, but for sure there's bruises and contusions. We don't see things that we would call a pattern abrasion on the head like from a broom where you get parallel lines or something like that. So all we know that they were beaten. They could be a hand, yes, could be a fist or you can actually take a child and beat their head in with something and that's also possible.
2. Pages 8 & 9: Dr. Farley states that the child’s spiral fracture of the humerus is "highly suggestive" and "suspicious" for abuse. These terms indicate speculation, not certainty. She also indicates that the injury took place at an uncertain time previous to the death event.

Q. A broken bone, explain to the jury this broken bone how it occurred, if you know? A. (Nods head). I don’t know how it occurred, if it was twisted. There is usually a torsion-type injury where you grab someone and kind of twist the arm. It’s called a spiral fracture. We often see it in abused cases in children from someone grabbing and twisting violently the arm. It goes along with all the other findings or finding on this child of all these contusions and abrasions, and, of course, there’s same kind of marks on his arm, so there’s actually a fracture there. Children are usually very resilient and don’t fracture. And this is a particular type spiral fracture that’s highly suggestive and suspicious for abuse.

Q. How old a fracture is this? A. I can’t say for sure it is a healing fracture. Children heal with different stages than adults do. In fact, most people know that their kids’ bruises and injuries seem to heal faster than an older person. It’s a healing one. It’s sort of got fibrosis and granulation in the wound. It’s probably several days.

Q. So we’re talking days, we’re not talking months? A. No, not months.

Q. Okay. More than a week? A. You can’t get that precise with these kind of fractures in children.

(Note: My examination of the glass slides indicates that the humerus fracture is in the remodeling bone stage, where osteoid has matured and cartilage has disappeared. This indicates a time period of “weeks” or even “months,” not “days.”)

3. Pages 10 & 11: Dr. Farley expresses further speculative opinions about the head injury without any correlation to the witness account.

Q. The bruising, the contusions, this broken bone, broken bone didn’t cause the death? A. No.

Q. The cause of the death was the injury to the head? A. Yes.

Q. And the injury to the head happened within how much time, do you think? A. It’s hard to say. It’s acute. The blood that we’re seeing in the subdural space doesn’t appear to have any fibroblast or pigment I’m talking about. So I say it was acute. The neuropathologist also said acute, which means usually, you know, within a day or so they start to organize after that. But the exact time we don’t know. The child would have had symptoms, in my opinion, immediately after sustaining this type of trauma. But the exact time frame in that 24-hour period I can’t give you.

4. Pages 11 & 12: Dr. Farley speculates about the nature of the misinterpreted bite marks and how in her opinion they would have had to have been inflicted. She provides no explanations of how teeth can drag across the skin if they are
pressing skin down and pinching skin together by biting. She indicates that
the odontologist was unable to match a bite mold from the defendant to the
marks left in the child's back, but she does not explain why the abraded
character of the mark would make the odontologist unable to either match with
or exclude the defendant.

Q. The torso, explain to this jury what you found in the torso?
A. The same. There are numerous contusions and abrasions. There are also bite
marks up on the right back. These bite marks have contusions, but they're also, like,
dragging. Looking like dragging of the teeth. There's abrasion associated with them,
and if I believe they're on the right back. But again multiple, multiple contusions on the
trunk. The trunk would be the abdomen, chest and back. Lots of contusions again.
Q. The bite marks these are human bite marks?
A. In my opinion, they are. There's bite marks on the right upper back. Unfortunately,
for an odontologist to tell you and match somebody with them, you have to actually
have to leave an impression for them to be able to match, too. In this case they're
dragged, they're abraded and there was no way to try to match them.

Q. Okay. How much force is required to leave such marks on a child two years of age?
A. This -- this -- these are pretty bad. I mean, they're abrasions with them. If you
picture a child biting someone they leave little impressions of teeth. This actually left
blood in the soft tissue as well as a scrape on the surface. So it's not like a little kid just
kind of biting and leaving a tiny little teeth impression. This left an abrasion like you get
if your knee went across the asphalt.

5. Pages 12 & 13: Dr. Farley speculates about the abusive, severe nature of the
trauma to cause the bruises to the lung and kidney without explaining the
absence of other findings to indicate severe, deep-seated trauma (i.e. rib
fractures, deep soft tissue lacerations and contusions).

Q. Explain how I would get bruises to my lung and kidney?
A. Again, that would be consistent with being beat with an object or objects or kicked or
stomped or, you know, however you get the beating that's how it would occur.

6. Page 13: Dr. Farley speculates about the alleged beating, even reconstructing past
events from autopsy findings just as Sherlock Holmes might do.

Q. The injuries that this child sustained, did it come all of a sudden at one time, the
beating, or is this maybe beatings that took place over a period of time?
A. In my opinion, the child did have signs that it had been beaten over a period of time.
The cause of death is a blunt force head trauma, and this time whoever beat the child
beat it enough to kill it when they hit it in the head.
Q. And death was it instant or lingers or what?
A. I wouldn't know. You can go in a coma. What I'm saying is when it got this kind of
injury there would have been symptoms immediately, signs and symptoms of the 
trauma. Either they're lethargic like they're trying to fall asleep or they go into a coma,
but they wouldn't be acting normally after this type of head injury. Typically, that's what
happens, they'll seize a little bit. They'll be lethargic or sleepy then they might seize a
little bit. Every kid is a little bit different. They usually slip into a coma or die.

7. Page 14: Dr. Farley speculates about the cause of some "parallel" bruises that she
perceives as a patterned injury without providing a credible scientific
explanation as to how "a slap or a hit" could even be capable of causing those
bruises.

Q. You have a diagram on your autopsy report that shows that there's, looks like some
parallel marks on the inner thigh of the left leg.
A. Yes. That's what I was talking about when I said there were these parallel contusions
that were patterned that looked like a slap or a hit. That's what I was talking about
when you asked me about extremities earlier.

8. Page 17: Dr. Farley audaciously states that the time a person dies is whenever
the doctor says it is. There is no reference or acknowledgement of the accounts
of the people who were actually present to see when the child was no longer
living.

Q. Were you able to determine, roughly, the time of death?
A. Well, the child I think they pronounced actually at the hospital.
Q. Okay. But she had actually died at home?
A. It doesn't matter. They pronounce, wherever they pronounce is when they die.

9. Pages 14 & 15 of the trial testimony transcript: There is a failure to acknowledge
that there are multiple reasons for patchy hair loss in a child besides trauma.

Q. Did you find any contusions or abrasions on the outside of the scalp?
A. They're more difficult to see in the scalp. We could see the abrasions fairly well.
Little scabbed areas in the scalp, and the scalp was very thin. It looked like the hair had
been pulled, basically, and then there was a little blood scab in that area.
Q. So across the head up in this area, the child appears to be missing sections of hair,
is that correct?
A. Yes. It's very thin and then there's these crusted areas where the hair would have
been.
Q. Would that be consistent, Doctor, with the child's hair being pulled away?
A. Yes, it would.

10. Pages 16 & 17 of the trial testimony transcript: Dr. Farley speculates as to the
nature and severity of the ear lesions.
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Q. Now the ears -- did the child suffer any injuries to the ears?
A. Yes. Both tops of the ears -- both of them had contusions on them -- at the top of the ear, like a pinching. Some people "pop" their kids in the ears when they're not listening. But both sides have these contusions, and it's pretty much in the same area.
Q. And that would be consistent with her being hit, or being pinched in the area? Is that correct?
A. Yes. I mean, all of these bruises are consistent with somebody being hit, or being slammed into something.

11. Page 31 of the trial testimony transcript: Dr. Farley discusses dehydration but fails to mention that such findings can be a delayed effect of head injury, implying instead that the dehydration was brought about by abuse.

Q. Did you examine the child's eyes?
A. Yes, I did. They were sunken.
Q. What is that indicative of?
A. Usually, it's indicative of dehydration -- not getting enough fluid. And I did pull the vitreous from the eyes which is the juice that keeps the eyes open and helps nourish the eyes, and it did show that the child was dehydrated from the electrolytes that we pull from the eyes.

12. Page 32 of the trial transcript: Dr. Farley speculates that the eye findings could only be the direct result from trauma from substantial head injury rather than from other factors.

A. We usually hear about retinal hemorrhages, basically, because it goes along with a blunt head force trauma in children. And, so I could already see, basically -- we'll take the base of the skull, and look to see if we can see injury to the eyes. And on this child there was hemorrhage around both of the nerves that come from the eyes. So that means there was something, probably, traumatically wrong with the eyes. So we did remove them. I send those to San Antonio because there's a specialist -- like I'm a forensic pathologist -- and he's an eye pathologist. So I'll send them to him because he'll take photographs of these as well take very thin sections of them, and then give a report to what he sees. More than just looking in and seeing a retinal bleed, which is just part of the eye where you see blood there. He can then see folds in the retina where the retina has detached and folded onto itself which is, again a sign of significant trauma to the child. And he did see this as well as the optic nerve hemorrhage that I had seen at autopsy.

13. Page 34: Dr. Farley rules out bruising due to a fall, while failing to recognize that the bruising can be a delayed effect of even minor head trauma due to a coagulopathy.
Q. Did you find anything on the child -- any type of injuries that would be consistent with a fall, where you would expect to see -- if something was there as a result of the fall?
A. It would depend on what fall your -- where they're falling from, but not bruises all over the body. That's stretching it a lot, for one fall. Maybe if they fell off a house, fell off a significant height more than once. But these are -- all over the body. This isn't a simple fall.

14. Page 37: Dr. Farley offers speculative opinions regarding the onset of the child's symptoms after a head injury (please refer to scientific articles submitted with this report regarding a lucid interval prior to the emergence of symptoms from brain swelling).

Q. Like on this type of injury, how far back would those symptoms been known to somebody that is watching the child? At least since the inception, or when?
A. It's usually fairly quickly after the fatal blow occurs that they'll start to have the symptoms. And the first symptom is, they're usually, they're tired. They can't keep them awake. That's the lethargy. They just can't get them up -- can't get them awake. They won't eat or drink, usually. And if they do, they vomit it.

III. My analysis of the opinions of defense expert, Dr. Jose Kuri.

A. In spite of the substantial mistakes made by Dr. Farley, the defense counsel at the trial was not able to point out the mistakes or to provide a scientific defense. This was because of problems with the testimony of the scientific expert they used to confront the state's case.

B. There were several problems with Dr. Jose Kuri.

1. Dr. Kuri was not qualified to perform a forensic analysis.
   a. He is a neurosurgeon who treats patients with brain injury and disease. This does not give him the expertise to perform the kinds of analyses required for a complex case like this.
   b. Such expertise by qualified forensic professionals is available nationwide and was available at the time of the trial.
   c. Certifications by the American Board of Forensic Medicine and the American College of Forensic Examiners do not demonstrate competence for performing forensic pathology. Requirements for certification do not include the kind of full-time, supervised training required of physicians who specialize and obtain board certification in forensic pathology. Dr. Kuri after a fashion acknowledges the limitation of such a credential in pages 10 and 11 of the transcript of his testimony:
Scanned Jun 18, 2013

“And I told you that I have a diploma of the board, but I -- that is not part of -- this is a type of curriculum. But it's not based on that. I am not going to use it. That kind of paper it's like -- and I told you the ink -- the pen without the ink is just paper. It's a credential. My knowledge is in that part that I am going to talk to you about.

d. Dr. Kuri also limited himself to issues regarding the head, rather than performing the kind of global approach to the entire case required by a forensic analysis. According to page 14:

Q. And you're here to testify about the brain injury that this child suffered, and you're here to testify based upon the findings in the deposition as well as the findings in the autopsy report; is that correct?
A. Yes, sir.
Q. You're not here to contradict what Dr. Farley said the cause of death was?
A. No, sir.

Page 17:

His opinion as to the cause of death, Judge, is going to go into the -- the doctor kept -- Dr. Farley kept talking about 24 hours. Dr. Kuri is going to be testifying that he has seen blunt force trauma to the brain causing hemorrhage and death as much as 48 hours. He is going to be testifying that there was no shake in this -- that there is no indication of shake in the brain.
The Court: He didn't see the brain.
Mr. Gillman: No. From the pictures and from the autopsy report -- excuse me -- from the autopsy report he is able to draw, based upon what the testimony was in the deposition, as well as the autopsy report, that he can testify that there was no shaking.

Page 18:

"He is only going to be talking about the brain, Judge, just the brain. We are not talking about any of the other injuries on the body."

2. Dr. Kuri's testimony was incoherent. Much of the testimony recorded in the transcript did not address the questions asked of him. This may have been due to a combination of factors, such as a language barrier or that the expert was hard of hearing.

a. Incoherence, language barrier and being unresponsive to questions illustrated in pages 36, 37 and 38:
Q. Doctor, if there is evidence that on a Thursday afternoon, a child fell down the stairs and a Friday morning a child was vomiting, on Friday evening the child was somewhat lethargic and not opening their eyes very much and started to cramp, had forms of the locked jaw, and Saturday morning the jaws were shut tight, and then Saturday evening -- Saturday afternoon/evening, the child passed, are those symptoms that you would be interested in knowing if you were trying to treat this child prior to death?
A. Well, these are the cases that I've seen. This is not the first case. Those type of cases that I have seen, that they fall, and they become drowsy. I open the skull, and equate the hematoma with some type of edema. So I remove the bone out to avoid the pressure.
Mr. Padilla: Your Honor, the response is totally unresponsive to the question asked, and I object to that.
The Court: He is talking about what he has seen. Repeat your question.
Q. The symptoms that you are looking for, the symptoms that you are needing to get from in the way of history are telling you what? Do they -- do they tell you how far along or to what degree a person's injury that they have sustained?
A. From what you just mentioned?
Q. Yes, sir.
A. And reading the autopsy report, is hemorrhage, edema and pressure in the peduncle, in the brainstem, and hemorrhage in the brainstem. It's okay. But clinically if the patient fell, and the child has some elasticity, and as I mentioned the child has -- they have better circulation in the brain -- the brain can tolerate more pressure. But symptoms, classical symptoms, they call triad, T-R-I-D-A-I (sic, "triad?") symptoms. Vomiting, blurred vision, and headaches. That was the information. In the injury, we have vomiting and drowsiness. Was the child drowsy?
Q. Yes.
A. Okay. That was related to the accident.
Q. Okay.
A. Then the brain is getting worse through time. And then I was talking before about the kind of brain movement. What kind of movement she becomes ridged. You said she begins to cramps. Any information about the movement?
Q. She seems to be tired, lethargic, doesn't respond in talking with people, and then later on she gets jaws tight, and her body seems to tighten up.
A. Okay. That's part of the complication of the previous to death. When they become decerebrated, unresponsive, the prognosis is bad -- absolutely bad.

b. Difficulty with hearing illustrated in pages 65 and 66:

Q. Doctor, you sat here during the testimony of Dr. Farley.
A. I missed in part --
Q. Okay.
A. -- and she didn't talk loud. So the -- if you would be kind to tell me what she said.

c. On page 44, the defense attorney passed the witness after the witness gave a rambling discourse about head anatomy.
3. Portions of the testimony that could be understood were factually incorrect.
   a. Retinal hemorrhages (in spite of the fact that no retinal hemorrhages were found in the child). The explanation of the cause of retinal hemorrhages is fanciful and incorrect. Page 41:

   Q. Could the falling down the stairs cause a hemorrhage in the retina, if you know?
   A. The hemorrhage in the retina is due to the hemorrhage in the brain that infiltrates through the exit of the optic nerve. It’s part of the -- that’s the result.

   b. The “bite marks.” Pages 82 and 83:

   Q. And that the bite marks would also be consistent with severe trauma to the upper right shoulder, correct?
   A. The bite?
   Q. Yes.
   A. It's not a kiss. It's not -- it's not manifestation of love. This is a trauma. It is sad to see that. It is sad to see that.

   C. In summary, the defense expert in this case was egregiously inadequate to confront the arguments provided by the state for child abuse.

Respectfully submitted,

Thomas W. Young, MD
Heartland Forensic Pathology, LLC
Exhibit AA

CPS Visitation Records
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Child(ren)'s reaction continued:

herself on the floor & then Adriana begins to cry. Sara fights with Adriana & Becomes jealous easily. Richard sets off to a side and covers by himself. Marian is left unattended on the floor & falls back & hits her head.

Visitor's reaction continued:

Robert makes the comment that Melissa is making everyone cry. Melissa begins to make smart remarks in front of kids about case & raises her voice at Robert.

Observer's comments continued:

Melissa & Robert disagree & argue in front of kids, when Sara & Adriana do not stop crying, caseworker is called & notified of situation. When Adriana leaves room, Robert brings her back by upturning her arm. I canceled visit at 3:30 due to children being left unattended & fearful. Something might happen to Marian. Ms. Webo became upset & began to cry with me in front of kids. I notified supervisor, Nasia Kothari.
Exhibit BB

Trial Transcript Volume 34
REPORTER'S RECORD
VOLUME 34 OF 44 VOLUMES

TRIAL COURT CAUSE NO. 08-CR-885-B

STATE OF TEXAS : IN THE DISTRICT COURT
VS : 138TH JUDICIAL DISTRICT
MELISSA ELIZABETH LUCIO : CAMERON COUNTY, TEXAS

JURY TRIAL - DAY 3

On the 3rd day of July, 2008, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable A. C. Nelson, Judge Presiding, and a petit jury, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.

Adelaido Flores, Jr.
Certified Shorthand Reporter
Q What type of force would be necessary to cause a kidney or lungs to get bruised?

A Oh, you can see that with punches or stomps -- or slams. Sure. You can get contusions from all of that.

Q The child had some -- any other internal injuries that were remarkable or unremarkable?

A Those were the biggest injuries that I can remember from my report. There was a left arm fracture as well. And there was a skeletal survey performed by the radiologist. He may have seen that. And the tech that brought us the x-rays told us that it looked like there might be a left humerus or arm fracture. And, so we did remove that humerus. I do have photographs of that. But it basically showed a fracture of that arm in a healing stage meaning that it didn't happen within the first 24 hours as did the subdural and subarachnoid, and that would have been within -- most likely -- within at least a 24 hour period. This arm was older. It would have been more in the seven to two week period because it showed evidence of healing with new blood vessels coming in, with the blood being reabsorbed, and with the neutrophiles, the early acute inflammatory cells already gone. They weren't there any longer. So, definitely, this is a healing fracture, but just gives us more evidence of a battered child syndrome.
Q  Typically, how would a spinal cord fracture occur?
A  Usually, it's from tugging on the arm, or twisting the arm, basically.
Q  And I can only assume that for a child, or an adult, a fracture would be a painful injury, would it not?
A  Yes, it would.
Q  Would that be something that the child would not complaining of, if she has a prior fracture of the arm?
A  She should have been complaining of pain to that arm.
Q  And so you estimate that maybe a week or two since the fracture?
A  Yes. In adults, a lot times, we would say closer to two weeks. But children tend to heal faster than we heal, and there's no good studies published yet of child injuries, and how fast those fractures heal. Most of our studies are on older individuals. So that's why I'm saying, it could be a week; it could be two weeks, because children tend to heal must faster than the older people that we did the studies on to get these dates.
Q  Were there any other injuries, Doctor, that you were able to observe?
A  That's all I can -- well, on the foot there was a laceration of the right foot. Other than that, it had a
contusion around it. Other than that, that's just about it.

Q Did you examine the child's eyes?
A Yes, I did. They were sunken.

Q What is that indicative of?
A Usually, it's indicative of dehydration -- not getting enough fluid. And I did pull the vitreous from the eyes which is the juice that keeps the eyes open and helps nourish the eyes, and it did show that the child was dehydrated from the electrolytes that we pull from the eyes.

Q Did the eye itself, or the retina, show any injury to it?

THE REPORTER: I'm sorry?

Q Did the eye or the retina show any injury to it?
A At these autopsies, most of the time, we will take the eyes -- most of you have heard of retinal hemorrhages.--

THE COURT: Doctor Farley? Slow down please.

THE WITNESS: Yes, sir. I'm sorry. He is going to send me to jail.

THE COURT: Once you get into third gear, Mr. Flores can't take you down.

THE WITNESS: We usually hear about retinal...
THE STATE OF TEXAS:
COUNTY OF HIDALGO:

CERTIFICATE OF COURT REPORTER

I, ADELAIDO FLORES, JR, Official Court Reporter in
and for the 430th Judicial District Court of Hidalgo
County, State of Texas, do hereby certify that the above
and foregoing contains a true and correct transcription of
all portions of evidence and other proceedings requested
in writing by counsel for the parties to be included in
this volume of the Reporter's Record, in the
above-entitled and numbered cause, all of which occurred
in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the
proceedings truly and correctly reflects the exhibits, if
any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND on this the 11th day of
August, 2008.

ADELAIDO FLORES, JR., Texas CSR
Official Court Reporter
430th District Court
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Certificate No. 1117
Expiration Date: 12/31/10

Adelaido Flores, Jr.
Certified Shorthand Reporter