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IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE,  
AT NASHVILLE, DIVISION II

STATE OF TENNESSEE

Vs.

JOYCE WATKINS,  
CHARLIE DUNN

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CASE NO. 87-S-1186

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NOTICE OF INTENT

Tenn. Sup. Ct. R.8, RPC 3.8 imposes special responsibility for prosecutors. Among those responsibilities are subsections (g) and (h) which provide as follows:

(g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) If the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to an appropriate authority, or

(2) If the conviction was obtained in the prosecutor's jurisdiction, undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in the prosecutor's jurisdiction of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

As the elected District Attorney General for the 20<sup>th</sup> Judicial District the undersigned established a Conviction Review Unit (hereafter "CRU") within the Office of the District Attorney whose purpose is to investigate claims of actual innocence consistent with and in furtherance of the ethical duties set forth above.

The CRU has conducted an extensive investigation into the cases against Joyce Watkins and Charlie Dunn. A copy of the CRU report and exhibits is attached to this Notice.

This Office knows of clear and convincing evidence establishing Ms. Watkins and Mr. Dunn were convicted of crimes they did not commit. As required by RPC 3.8 (h) this Office will seek to remedy the conviction by utilizing the appropriate procedural process to bring this matter within the jurisdiction of this Court. The State will then request the convictions in this matter be vacated and the case dismissed.

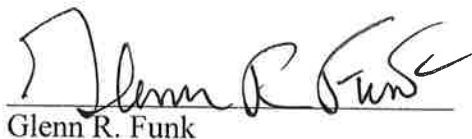
Respectfully submitted,



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#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been forwarded to Jessica Van Dyke and Jason Gichner, Attorneys for Joyce Watkins and Charlie Dunn on this the 10 day of November, 2021.



Glenn R. Funk

OFFICE OF THE DISTRICT ATTORNEY GENERAL  
20th JUDICIAL DISTRICT, DAVIDSON COUNTY  
CONVICTION REVIEW UNIT

FINAL REPORT

JOYCE WATKINS AND CHARLIE DUNN

CASE NO. 87-S-1186

Applicant Attorneys:

Jason Gichner and Jessica Van Dyke of the Tennessee Innocence Project

## Table of Contents

I.	Factual Background and Procedural History.....	2
II.	Analysis of The Facts .....	3
	A. Two Months in Ft. Campbell, Kentucky.....	3
	B. Nine Hours in Nashville.....	8
	C. The Investigation.....	10
III.	Analysis of Evidence Leading to Conviction.....	20
	A. Dr. Harlan's Assessment of the Timing of B [REDACTED] Injuries.....	20
	1. Current Medical Evidence Establishes Innocence .....	22
	2. The Lack of Credibility of Drs. Charles and Gretel Harlan.....	25
	B. Sheets Not Indicative of Guilt.....	28
	C. Alleged Minor Inconsistencies.....	30
	D. Other Factors Relevant for Consideration.....	32
IV.	CRU Findings and Recommendation.....	36

## **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

B [REDACTED] D [REDACTED] J [REDACTED]<sup>1</sup> was a four-year-old girl who died on June 28, 1987, after spending the prior nine hours in the care of her great-aunt, Joyce Watkins and Watkins' boyfriend, Charlie Dunn. Just before midnight on June 26, 1987, Ms. Watkins and Mr. Dunn drove from Nashville, Tennessee to Ft. Campbell, Kentucky and picked B [REDACTED] up from the home of Rose Williams, where B [REDACTED] had been staying for the preceding two months. B [REDACTED]'s mother, E [REDACTED] B [REDACTED]<sup>2</sup>, lived in Georgia.

The following morning, June 27, 1987, at approximately 9:30 a.m., Ms. Watkins brought B [REDACTED] to Nashville Memorial Hospital. B [REDACTED] was unconscious at the time of their arrival. Emergency room physicians determined B [REDACTED] had a severe vaginal injury and head trauma. B [REDACTED] was transferred to Vanderbilt University Hospital and placed on life support at 3:42 p.m. On Sunday, June 28, 1987, B [REDACTED] was pronounced dead.

The Medical Examiner, Dr. Gretel Harlan, concluded the injuries causing B [REDACTED]'s death occurred during the 9-hour time period she was with Ms. Watkins and Mr. Dunn.

On August 5, 1988, following a jury trial in Division II of the Davidson County Criminal Court, Joyce Watkins and Charlie Dunn were convicted of first-degree murder and aggravated rape of B [REDACTED].<sup>3</sup> The Court of Criminal Appeals affirmed their convictions on April 11, 1990.

Ms. Watkins and Mr. Dunn filed separate petitions for post-conviction relief in 1993, alleging ineffective assistance of counsel, based in pertinent part upon counsel's failure to call rebuttal witness to refute the surprise medical testimony of the Medical Examiner.

On September 7, 1994, Dr. Kris Sperry, Deputy Medical Examiner for Fulton County, Georgia testified regarding the medical opinions of Dr. Gretel Harlan at trial. The Trial Court denied relief, and the denial was subsequently affirmed by the Court of Criminal Appeals on

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<sup>1</sup> Referred to throughout the record with her name often spelled B [REDACTED], or referred to as B [REDACTED] B [REDACTED], B [REDACTED] J [REDACTED], B [REDACTED] Danielle J [REDACTED] and B [REDACTED] J [REDACTED] and hereinafter as "B [REDACTED]."

<sup>2</sup> Now E [REDACTED] L [REDACTED] but referred to throughout the record and this report as "L [REDACTED] B [REDACTED]"

<sup>3</sup> Both were acquitted of a second count of Aggravated Rape of the same victim. This count was based on the State's assertion that B [REDACTED] had been anally raped.



Ms. Williams additionally reported that while in her care, B [REDACTED] had daily episodes of urinary incontinence with less-frequent fecal incontinence. She described B [REDACTED]'s vulvar region as "it stayed chafed" due to the urinary incontinence, and testified she instructed B [REDACTED] to put Vaseline on the affected areas, and that B [REDACTED] complained of her "cussie" hurting.<sup>11</sup> Ms. Williams stated B [REDACTED] never wanted to sit down in the bathtub when she bathed because she was sore.<sup>12</sup> At the time of B [REDACTED]'s death, Ms. Henry, Ms. Watkins, and Ms. Williams all reported a variety of bruises, scrapes, and marks on B [REDACTED]'s body including a bruised eye. Ms. Williams has offered various explanations for B [REDACTED]'s injuries including a fall from monkey bars and a fall down a staircase.

Ms. Williams testified to two incidents during the time she kept B [REDACTED] where B [REDACTED] lost consciousness. She stated around the end of May or beginning of June,<sup>13</sup> she found B [REDACTED] "laying down by the door," unresponsive. Williams ran with the "limp" child to the next-door neighbor, Suzette Fetterman,<sup>14</sup> for help. Ms. Fetterman testified that Ms. Williams:

Picked her up, and she was holding her, and she said that—told her daughter to call an ambulance. And so she put her hand right here and then she said, I—I don't know if I feel her heart beating or not. So I took B [REDACTED]. I opened her mouth, and I took the peanut butter out. And when I took the peanut butter out, and then she said, that's ok about the ambulance.<sup>15</sup>

Ms. Fetterman further explained she had tried to perform the Heimlich maneuver, "but with the child limp it wasn't working."<sup>16</sup> She stated Ms. Williams pulled out a "big old glob" of peanut butter, but "still B [REDACTED] wasn't breathing." Ms. Williams tried again and then Ms. Fetterman heard a breath from B [REDACTED]. According to Ms. Fetterman, "I did suggest, you know, to

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<sup>11</sup> According to Ms. Williams, this was the word B [REDACTED] used for her vagina. *See* Trial Transcript, p. 221.

<sup>12</sup> Trial Transcript, p. 279. Williams:

(Nimmo): And on that Friday evening, you made her sit down in the bathtub?

(Williams): Yes, she bathed, yes.

(Nimmo): Did you watch her bathe?

(Williams): No, not really.

(Nimmo): All right. Do you remember telling your sister that she didn't want to sit down in the bathtub because she was so sore?

(Williams): No, I had talked to L [REDACTED] about that.

<sup>13</sup> In the Kentucky Department of Social Services, Family Services Division (hereinafter "KY DSS") report dated June 9, 1987, Ms. Williams references the peanut butter incident occurring on the previous Sunday, which would have been June 7, 1987. **Marked Exhibit A.**

<sup>14</sup> Hereinafter "Ms. Fetterman."

<sup>15</sup> Trial Transcript, p. 206.

<sup>16</sup> Trial Transcript, pp. 328.

Rosie that maybe she would like to find out, you know, just somebody to check her because, you know, there's always a chance of brain damage or something.”<sup>17</sup> Williams defended her failure to seek medical attention for B■■■■ following this incident by claiming that after she cleared the peanut butter lodged in B■■■■'s airway, B■■■■ was able to walk and “knew who everybody was and stuff.” Thus, they called back and canceled the ambulance.<sup>18</sup>

Ms. Williams recounted another incident in the week immediately prior to Ms. Watkins picking her up in which B■■■■ fell down a set of stairs and then “dropped on the floor.” Williams explained that she:

Picked her up and put her in the car, and I was going to the hospital to see if I could get them to—to look at her, and...because she couldn't—it looked like she was unconscious. I thought she was unconscious. So when I got to the service station, and when I went to get the gas and I came back out, my daughter said, “Mama, she's talking...And she said that B■■■■ was talking. And what I did, I turned around and came back home and that's when I called L■■■■ and I was talking to L■■■■.”<sup>19</sup>

Upon cross-examination, when challenged regarding her failure to call an ambulance or seek medical assistance for B■■■■ on this date, Ms. Williams offered no reasonable explanation. She maintained she did not have enough gasoline in her car to make it to the hospital without stopping.<sup>20</sup>

During this same time period, after receiving a report alleging the physical abuse of B■■■■, a KY Department of Social Services social worker, Mary Fran Jackson,<sup>21</sup> visited Ms. Williams's home. Ms. Williams told the social worker B■■■■ had already returned to Georgia. Ms. Williams later admitted this was a lie and that B■■■■ was still in her care.

No one from KY DSS ever spoke with or observed B■■■■. Ms. Jackson simply spoke with Ms. Williams about the report, accepted Ms. Williams's explanation of the alleged injuries as “playground injuries,” and closed her investigation.<sup>22</sup> B■■■■'s mother, Ms. B■■■■, has

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<sup>17</sup> Trial Transcript, pp. 328-29.

<sup>18</sup> Trial Transcript, p. 206.

<sup>19</sup> Trial Transcript, pp. 284-85.

<sup>20</sup> Id.

<sup>21</sup> Hereinafter “Ms. Jackson.”

<sup>22</sup> “A protective services case will not be opened because we are unable to locate the family. It is believed they have returned to their home in Georgia.” KY DSS, recommendation signed by Ms. Jackson and Thomas Presler.



reported the majority of these behaviors did not exist prior to this time period and she was not made aware of the behaviors, the injuries, or the KY DSS visit until after B█████'s death.<sup>23</sup>

Ms. Watkins reported she visited with Ms. Williams and B█████ two to three weeks prior to B█████'s death. She did not note any injuries but stated that following this visit, she notified Ms. B█████ that something "seemed off" with B█████ and that B█████ should come get her. Ms. Watkins reported B█████ responded by requesting Ms. Watkins go to get B█████ herself.<sup>24</sup> Ms. Watkins resisted doing so due to her work schedule and a lack of available child care. Ms. Watkins stated she called Ms. B█████ several times over these weeks with her concerns for B█████.<sup>25</sup> Ms. Underwood corroborated this claim in her trial testimony:

Because prior to this Joyce had been calling, right, and say, you all come and get B█████, that something was wrong with B█████. And I don't -- Joyce is just -- she -- she exaggerates a lot, so I didn't -- I didn't -- I did not believe her, and that was the reason I called Julia.<sup>26</sup>

Ms. Williams's neighbor, Ms. Fetterman, also described B█████ as an unhappy child with possible medical issues:

Well, I always thought there was something medically wrong with her, because she--well, the first time, about two years ago, when she came to visit, she played like a normal child, you know, giggled and laughed and played. And this last time she didn't play--if she went to the playground, she kind of stood around. And otherwise, she would just kind of stand around Rosie, and she didn't laugh or want to play. She--she looked like an unhappy child, but you know, I really, you know, didn't get to talk to her that much, so I don't know what she was thinking.<sup>27</sup>

In the week prior to B█████'s death, Ms. Williams began calling Ms. Watkins requesting that Ms. Watkins retrieve B█████ and take her to her home in Nashville. Each passing day, the calls became more insistent until the evening of Friday, June 26th, 1987, when Ms. Watkins and her boyfriend, Charlie Dunn, left Nashville at 10:30 p.m. and drove to Ms. Williams's residence in Fort Campbell, arriving approximately an hour later.<sup>28</sup> Ms. Watkins and Mr. Dunn had worked overnight shifts the preceding evening, getting off of work at 11:00 a.m. the morning of the 26th.

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<sup>23</sup> CRU Interview with Ms. Boynton.

<sup>24</sup> CRU Interview with Ms. Watkins.

<sup>25</sup> CRU Interview with Ms. Watkins.

<sup>26</sup> Trial Transcript, p. 117.

<sup>27</sup> Trial Transcript, p. 326.

<sup>28</sup> From Ms. Watkins's address at 612 May Drive in Madison, TN, it is 58.8 miles to Fort Campbell, KY.

They planned to leave together for a trip to Maryland and St. Louis the following morning. Mr. Dunn's son, Nathaniel Dunn, and Ms. Watkins both reported Charlie spent the day packing for the trip and was with his two sons prior to leaving for Fort Campbell with Ms. Watkins. Nathaniel reported that his father, Mr. Dunn, invited his sons to ride along with them to Fort Campbell, but they declined in order to attend a football game.<sup>29</sup>

According to Ms. Watkins, upon her arrival to Ms. Williams's home, B [REDACTED] and Ms. Williams's two younger children, T [REDACTED] (8) and C [REDACTED] (4) were awake and playing in the front yard.<sup>30</sup> The neighbor, Ms. Fetterman, also reported having seen the children, including B [REDACTED], playing in the front yard late that evening. **She stated she noticed a bruise underneath B [REDACTED]'s eye and observed odd behavior:**

**That last evening that she was at Rosie's I noticed that she kind of stood beside a chair and she actually was trying to nod off and go to sleep. And Rosie told her that they would be going in pretty soon and she could go to bed. But she-- I mean I've never seen a kid stand and almost just fall sound asleep.**<sup>31</sup>

Ms. Watkins reported that when she arrived, Ms. Williams had a bag packed for B [REDACTED] and that despite Ms. Watkins's desire to come inside and visit with her family, as she would normally have done, Ms. Williams rushed them to leave.<sup>32</sup> During trial, Ms. Williams initially denied calling Ms. Watkins the week of June 26 or requesting Ms. Watkins come get B [REDACTED] instead asserting Joyce had already planned to come get her.<sup>33</sup> However, upon cross-examination, she was confronted with phone records proving four calls were made from her number to Ms. Watkins on Friday, June 26.<sup>34</sup> As of this date, B [REDACTED] had been in Ms. Williams's care for almost two months.

Mr. Dunn told police he thought B [REDACTED] seemed "weak" when he and Ms. Watkins picked her up.<sup>35</sup> He recalled that on the way back to Nashville, B [REDACTED] repeatedly complained of thirst

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<sup>29</sup> CRU Interviews with Nathaniel Dunn and Ms. Watkins.

<sup>30</sup> This is corroborated, in part, by Ms. Fetterman, who testified she observed the children playing in the front yard earlier in the evening, around 9:00 p.m. Ms. Fetterman also noted seeing a bruise underneath B [REDACTED]'s eye. Trial Transcript, pp. 327-28.

<sup>31</sup> Trial Transcript p. 327.

<sup>32</sup> CRU Interview with Ms. Watkins; Supported by timeline within phone records.

<sup>33</sup> Trial Transcript, pp. 215-16.

<sup>34</sup> Trial Transcript, p. 277.

<sup>35</sup> Officer Bradford told Joyce that Charlie said this in her "Voluntary Statement to Police," p. 9.

and they stopped once to get her a drink at a convenience store. This stop was corroborated by Ms. Watkins and confirmed by investigators.

## **B. Nine Hours in Nashville, Tennessee**

According to Ms. Watkins, she first noticed blood in B■■■■'s underwear upon their arrival home.<sup>36</sup> Phone records indicate Ms. Watkins called the home of B■■■■'s grandmother, Ms. Underwood, at 1:04 a.m. on June 27, 1987, from her home phone. Ms. Watkins reported she spoke with Ms. Underwood and Ms. Boynton, informing them B■■■■ needed medical attention but that they instructed her not to take B■■■■ to the hospital and said they would drive to Nashville. At trial, Ms. Underwood admitted that during this sixteen minute call, Ms. Watkins informed her that the child was bleeding. **At this time, B■■■■ had been in the care of Ms. Watkins and in the presence of Mr. Dunn for less than 1.5 hours, at least an hour of which had been spent traveling between Fort Campbell, Kentucky and Nashville, Tennessee.**<sup>37</sup> Ms. Underwood testified:

Joyce called and told me that she had come back with B■■■■ and that something was wrong with B■■■■, and that she needed us to come up there and see about her.... She didn't say what was wrong. The only thing that she said was that she had spots in her panties, and it looked like blood.<sup>38</sup>

Because Joyce was like in hysterics when she called me, okay. And I -- when she told me that something was wrong with B■■■■--<sup>39</sup>

Ms. Underwood admitted telling Ms. Watkins to "just wait and we'll be there." The following morning, when Ms. Underwood and Ms. B■■■■ had not yet arrived,<sup>40</sup> Ms. Watkins made two additional calls to Ms. Underwood, once at 8:32 a.m. (a one minute call) and again at 8:53 a.m. (a three minute call). Ms. Watkins reported to police that at this time, she informed Ms. Underwood and Ms. B■■■■ that she would not wait any longer and would be taking B■■■■ to

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<sup>36</sup> CRU Interview with Ms. Watkins.

<sup>37</sup> The distance between Fort Campbell and Ms. Watkins's address is approximately 59 miles.

<sup>38</sup> Trial Transcript, pp. 89-90.

<sup>39</sup> Trial Transcript, p. 115 (Several times throughout Ms. Underwood's testimony she described Ms. Watkins as having been "hysterical" in this conversation).

<sup>40</sup> CRU Interview with Ms. Watkins.

the hospital herself. She obtained medical insurance information from Ms. B[REDACTED]. This is corroborated by the testimony of Ms. Underwood:

Joyce said a bad word, and she asked me what was I waiting on? And I explained to her that I had to get my food and get my medicine and my husband, and in the background a lot of commotion was going on, said Joyce -- she said, I will take her to the doctor, and she talked to my daughter and got the information from my daughter.<sup>41</sup>

Ms. Henry, Ms. Watkins's sister,<sup>42</sup> testified at trial that she went to Ms. Watkins's home Saturday morning at the behest of her sister, Ms. Underwood, and observed B[REDACTED] asleep in bed. She woke B[REDACTED] and spoke with her. She checked her underwear and saw "something like pink."<sup>43</sup> Ms. Henry described the following injuries on the child:

A bruise under one of her eyes and her fingers were swollen, her thumb was swollen. She had a big scrape down the side of her leg, down by her ankle. And she had marks all on her stomach, chest, and her little face was swollen, her little nose was swollen... a pink substance, like a discharge or something [in B[REDACTED]'s genital area.]<sup>44</sup>

Ms. Henry stated B[REDACTED] complained of thirst and drank a Sprite. Ms. Henry stated both in her initial police phone interview and in her trial testimony that B[REDACTED] was awake and talking on the morning of June 27, 1987.<sup>45</sup> This is corroborated in Ms. Watkins's statements to police.

Shortly after Ms. Henry departed the home, Ms. Watkins transported B[REDACTED] to the emergency room of Nashville Memorial Hospital, arriving at 9:39 a.m. By then, B[REDACTED] was unconscious and bleeding more heavily from her vaginal area. She was immediately intubated.<sup>46</sup> At approximately 3:42 p.m. B[REDACTED] was transferred to Vanderbilt University Medical Center, where she was placed on life support.<sup>47</sup> Nurses' notes indicated B[REDACTED] was brain-dead by that afternoon. B[REDACTED] remained on life-support until the following morning when she was removed from life-support and pronounced dead.<sup>48</sup> The cause of death was determined to be trauma to the head.

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<sup>41</sup> Trial Transcript, p. 118

<sup>42</sup> Also the sister of Ms. Underwood and Ms. Williams

<sup>43</sup> Recorded phone interview of Julia Henry by Lt. Arlene Moore on 6-29-1987.

<sup>44</sup> Trial Transcript, pp. 179-80.

<sup>45</sup> MNPd phone interview with Ms. Henry.

<sup>46</sup> Nashville Memorial General Records **Marked Exhibit B**.

<sup>47</sup> Vanderbilt Medical Center Records **Marked Exhibit C**.

<sup>48</sup> Vanderbilt Medical Records **Marked Exhibit C**.

### C. The Investigation

Based on B[REDACTED]'s vaginal injuries, treating physicians at both Nashville Memorial Hospital and Vanderbilt Hospital determined she had been sexually assaulted. Sexual Assault evidence collection kits were performed at both hospitals. Neither indicated the presence of semen or spermatozoa.<sup>49</sup>

The investigation initially focused on the theory that B[REDACTED]'s injuries had occurred in Fort Campbell, Kentucky, while in the care of Ms. Williams. Investigators and B[REDACTED]'s other family members believed the injuries occurred while B[REDACTED] was in the care of Ms. Williams. When Metro Nashville Police Department (hereinafter "MNPd") Detective Jerry Pinkelton arrived at Vanderbilt Hospital, he spoke to Ms. Underwood. His notes reflected:

At Vanderbilt, I proceeded to Pediatrics to see B[REDACTED]. As I entered, a female, [later identified as Ms. Elizabeth Underwood] was talking more or less to herself, but in the vicinity of other family members. She was upset and stated, 'Rose knows what happened and I'm going to get to the bottom of this.' It was my opinion she was accusing Rose of wrongdoing.<sup>50</sup>

Ms. Underwood testified:

(Nimmo): All right. And before that or was it after that that you expressed the belief that Rose had done it and threatened to kill her?

(Underwood): Yes. When that happened, I said, yes, if she did, I would kill her, yes, I did.

(Nimmo): In other words, you had a fixed opinion in your mind that Rose was guilty?

(Underwood): Yes I did; I really did, right after it happened, I sure did.<sup>51</sup>

Detective Pinkelton also spoke to B[REDACTED]'s mother and documented the following:

I further stated to Ms. B[REDACTED] that I overheard a woman stating, 'I'll kill her' upon my arrival to pediatrics. Ms. B[REDACTED] stated that was her sister, and she was referring to 'Rosie May' [Ms. Williams]. I asked Ms. B[REDACTED] if she thought Rose harmed her daughter and she stated, 'She must have, yes I think she did it.'<sup>52</sup>

MNPd detectives contacted Fort Campbell Criminal Investigations Division (CID) who began to investigate this theory while MNPd continued their Nashville-based investigation.

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<sup>49</sup> TBI Forensic Services Crime Laboratory Report, 9-28-1987 **Marked Exhibit D.**

<sup>50</sup> Pinkelton Supplement Report, 6-13-1988.

<sup>51</sup> Trial Transcript, p. 122.

<sup>52</sup> Pinkelton Handwritten Report, 6-27-1987.

The Nashville investigation was based on the opinion of initial medical assessments that B■■■■'s injuries were acute (had recently occurred) and on the autopsy conducted by Dr. Mona Gretel Harlan,<sup>53</sup> the Assistant Davidson County Medical Examiner. Dr. Harlan concluded B■■■■ died as a result of bilateral subdural hematomas. She opined that there were imprints of nine blows from human knuckles on B■■■■'s head and the force of the blows caused the veins and arteries on both sides of her brain to tear. In addition, there were multiple tears to B■■■■'s hymen and also lacerations around her vagina extending back to the area around her anus.<sup>54</sup>

Initially, Dr. Harlan placed the time of the injuries to B■■■■'s head and vagina within 24-48 hours of her pronouncement of death. This timing of the injuries was not exclusive to the brief time B■■■■ was in the care of Ms. Watkins and Mr. Dunn. At trial, however, Dr. Harlan changed her opinion, stating the injuries must have occurred sometime after 1:35 a.m. on Saturday morning, June 27, 1987,<sup>55</sup> which squarely placed B■■■■ in the care of Ms. Watkins and Mr. Dunn at the time of onset.

At the hospital, Ms. Watkins gave statements to several MNPd officers, including Detective David Bradford,<sup>56</sup> Officer Helen Neely,<sup>57</sup> and Lieutenant Arlene Moore,<sup>58</sup> who served as an investigator with MNPd's Youth Guidance Division, as well as Laura Treece,<sup>59</sup> a social worker with the Nashville Department of Human Services. Lt. Moore testified that at this time, Ms. Watkins was not a suspect. Ms. Watkins was not informed of her rights, was not in custody, and never requested the assistance of an attorney.<sup>60</sup>

Later the same day, Ms. Watkins met again with Lt. Moore, Detective Bradford, and another officer, Major Curry, at the Youth Guidance office. The following day, Sunday, Ms. Watkins was once again interviewed by Detective Pinkelton. Pinkelton spoke with Ms. Watkins a final time on Monday, June 29th.

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<sup>53</sup> Hereinafter "Gretel Harlan" or "Dr. Harlan." The record indicates Dr. Charles Harlan performed the autopsy of B■■■■ and Dr. Gretel Harlan assisted.

<sup>54</sup> *State v. Dunn*, 1990 WL 40988 (Tenn. Crim. App. 1990).

<sup>55</sup> Trial Transcript pps. 17-25

<sup>56</sup> Hereinafter "Detective Bradford."

<sup>57</sup> Hereinafter "Off. Neely."

<sup>58</sup> Formerly Sergeant Arlene Moore, promoted to Lieutenant prior to trial. Hereinafter "Lt. Moore."

<sup>59</sup> Hereinafter "Ms. Treece."

<sup>60</sup> Trial Transcript p. 26

Officers noted inconsistencies within Ms. Watkins's statements related to the time she and Mr. Dunn returned home with B■■■■, where she slept, the time she noticed blood in B■■■■'s underwear, and when she notified Ms. Underwood and Ms. B■■■■ about the blood.

Officers also claimed Charlie Dunn's statements to police did not precisely match Ms. Watkins about where Ms. Watkins slept that night and when he learned of B■■■■'s injuries. Lt. Moore testified that when she confronted Ms. Watkins at the hospital about conflicts in her statements, she was satisfied with Ms. Watkins's explanation and did not consider her a suspect at that time.<sup>61</sup> However, the reported inconsistencies in the statements of Ms. Watkins and Mr. Dunn became a central issue at trial, and contributed to both their conviction and the affirmation of those convictions in post-conviction and upon appeal.

Only some of these statements were recorded.<sup>62</sup> According to the testimony of Lt. Moore, she did not reduce her interviews of Ms. Watkins to writing until June 9, 1988, almost a full year afterward, at the request of ADA Richard Fisher,<sup>63</sup> the chief prosecutor in this case. This report, written one year after the statements were taken, in preparation for trial, was relied upon during testimony and entered as an exhibit for consideration by the jury. The same was true for the other officers who interviewed Ms. Watkins and Mr. Dunn.

When questioned by defense counsel about whether she reviewed any supplements or notes from June of 1987 in writing her report, Lt. Moore denied doing so and stated she wrote from her own memory.<sup>64</sup>

Q (Nimmo): I believe you testified that you didn't find any supplements or notes or reports that you, yourself, had prepared in that?

A (Moore): I didn't look for them.<sup>65</sup>

She went so far as to say that although she reviewed recorded statements, her written reports did not reflect what was in those recordings, but that the recordings "refreshed her memory" as to other statements made by Ms. Watkins.<sup>66</sup>

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<sup>61</sup> 6-22-1988 Mtn to Suppress Transcript, Testimony of Lt. Arlene Moore p. 65

<sup>62</sup> These recordings do not currently exist within the DA File or the Appellate Record

<sup>63</sup> Hereinafter "ADA Fisher."

<sup>64</sup> Motion to Suppress Transcript, Testimony of Lt. Arlene Moore, p. 65

<sup>65</sup> Motion to Suppress Transcript, Testimony of Lt. Arlene Moore p. 64

<sup>66</sup> Mtn. to Suppress Transcript, Testimony of Lt. Arlene Moore, Id.

Q (Nimmo): Are you stating then that the substance, the entire substance of this supplement dated 6-9-88 which you prepared at General Fisher's request are contained in the three tape recorded statements that you reviewed?

A (Moore): No, they're not; that is from my memory...of what happened that day. **I don't even think they're in the statement.**<sup>67</sup>

Similarly, Detective Pinkelton testified:

Q (Nimmo): Now, you are not on active duty at this time?

A (Pinkelton): No.

Q: (Nimmo) And haven't been since - was it November of last year?

A: (Pinkelton) November

Q: Of '87? Now, prior to November of 1987, it's accurate to state that you didn't, you didn't prepare any supplements reflecting any conversations you had with Ms. Watkins?

A: That's correct.

Q: Would it be accurate to say that the first time that you prepared any written supplements of any of these conversations that you had with Ms. Watkins in June of last year was in June of this year?

A: I don't know when I turned them in, but I can answer it by saying it was, it was well after I had left the police department.

Q: Well, could you consult your files and see if you can find a three-page supplement referring to these conversations?

(At the request of Nimmo, ADA Fisher provides Detective Pinkelton with a copy of his notes and supplements to refresh his recollection. Nimmo points to a three-page supplement dated June 13, 1988)

Q: Mr. Pinkelton, that is the first time that you prepared a supplement setting out the substance of the conversation that you had with Ms. Watkins, isn't it?

A: It's basically a summary of the statement.

Q: But you made no other summaries, did you?

A: No.

Q: So that is the first and only summary of those conversations; is that your testimony?

A: Correct.

Q: And that was prepared June of this year?

A: [Affirmatively] June the 13th.<sup>68</sup>

Ms. Watkins and Mr. Dunn cooperated with the authorities' investigation. Ms. Watkins consented to police officers entering her home and retrieving B■■■■'s clothing and bedding. According to police reports, on Sunday morning, June 28, Ms. Watkins:

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<sup>67</sup> Motion to Suppress Transcript, Testimony of Lt. Arlene Moore p. 42

<sup>68</sup> Trial Transcript, pp. 460-62.



Invited us into her home. I explained to her that I would like to obtain any of B■■■■'s belongings, clothes, etc. She led us upstairs to a bedroom with one small bed and a dresser and gave me B■■■■'s clothes explaining there was not many clothes or a suitcase. I also asked Ms. Watkins if I could have the bedding also and she replied that I could take everything.<sup>69</sup>

Mr. Dunn voluntarily submitted a hair sample to be tested against any DNA recovered from the rape kits and gave a statement to investigators. Mr. Dunn's DNA was tested against samples taken from multiple items of B■■■■'s clothing, an assortment of bedding from the home, and head hairs taken from the bed where B■■■■ slept and from her shorts. Mr. Dunn was excluded as a source in all of these samples.<sup>70</sup>

While MNPB officers were investigating Ms. Watkins and Mr. Dunn, the Fort Campbell CID investigation focused solely on determining if any men in Fort Campbell, Kentucky had contact with B■■■■. Fort Campbell CID coordinated with the United States Marine Corp Criminal Investigations Division regarding the whereabouts of Ms. Williams's oldest son, M■■■■ G■■■■.

Given the lack of jurisdiction for MNPB in Fort Campbell, as it relates to the investigation of events possibly occurring while B■■■■ was in Ms. Williams's care, MNPB investigators were left to the mercy of the CID investigation. A thorough review of both Ft. Campbell and USMC CID investigative reports and the trial testimony of CID Special Agent Deborah Becker<sup>71</sup> and Sergeant John Schroder<sup>72</sup> reveals the CID investigation efforts do not stand up to scrutiny and were minimal at best.

Despite Sgt. Schroder's report, which stated he went to the homes of three different neighbors of Ms. Williams and that each neighbor he spoke with told him that "B■■■■ was a bad kid" but was "never abused by anyone,"<sup>73</sup> during trial he testified he only remembered speaking with Ms. Fetterman. He stated:

I only recall one particular person, only because she was the only neighbor to give me any information that could either back with what Rosie Williams was telling us or debate what she was telling us, and that was Ms. Fetterman.

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<sup>69</sup> Pinkelton Supplement Report, 6-13-1988.

<sup>70</sup> TBI Laboratory Reports 9-28-87; 12-7-87 **Marked Exhibit D.**

<sup>71</sup> Hereinafter "SA Becker."

<sup>72</sup> Hereinafter "Sgt. Schroder."

<sup>73</sup> CID Report **Marked Exhibit E.**

I talked to several people, but none of them were able to give me any type of information.<sup>74</sup>

CID was informed of the prior report to KY DSS regarding the allegations of child abuse. CID made no effort to identify the complainant,<sup>75</sup> though records show the complaint came through the base hospital's social services department. It was received by a woman named Barbara Lynch who worked as a receptionist.

In his investigation of the case, Ms. Watkins's attorney, Niles Nimmo, attempted to ascertain the identity of the caller by visiting the base hospital, but he was unable to do so. Nimmo stated to the Court:

I had some difficulty with some Army personnel in trying to get them to release the information, went back and talked to the officer who told me that--that I was going to reach a dead end there anyway because he'd checked the log and could tell me more or less in confidence that--that the--there wasn't a name.<sup>76</sup>

During trial, just prior to her testimony, ADA Fisher provided *Jencks* material for Nashville DCS social worker Ms. Treese that included a statement in her report:

The referral in Hopkinsville came via Major Stephen...LaMache, head of Social Work Services at Fort Campbell...[who] stated he had witnesses as to B[REDACTED]'s injuries.<sup>77</sup>

Throughout the trial, the Court took multiple recesses to give defense counsel an opportunity to review the *Jencks* statements of key witnesses and heard several arguments between the parties regarding the State's failure to disclose information. In this instance, because Treese's report was withheld until trial, the defense had no opportunity to pursue the information about witnesses to B[REDACTED]'s injuries in Kentucky.

As a note, the trial transcripts make clear that ADA Fisher interpreted discovery rules adversarially, holding tightly to all disclosures until the last possible moment for tactical advantage and a narrow meeting of his duty. The prosecutorial community has since largely

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<sup>74</sup> Trial Transcript, p. 379.

<sup>75</sup> The individual who made the report.

<sup>76</sup> Trial Transcript, p. 396-402, Niles Nimmo addresses the Court about trying to find out the identity of the complainant.

<sup>77</sup> Trial transcript, p. 398.

condemned this sort of evidence hoarding, and today, the Nashville District Attorney's Office has adopted a policy of open-file discovery.

CID was asked to speak to Ms. Williams again regarding the Kentucky DSS report once Nashville investigators became aware of it. Despite the uncontroverted fact Ms. Williams lied to KY DSS investigator, Ms. Jackson, about both B■■■■'s whereabouts and the nature of her injuries, the CID followed suit with Ms. Jackson, and took Ms. Williams's word at face value that B■■■■ had not been abused.

Regarding Williams's lie to Ms. Jackson about B■■■■ having returned to Georgia, Agent Scroder testified:

At my time I interpreted that as just being a misconception or -- or a misunderstanding between--between terminology between the social worker and Rosie Williams... she gave us no indication that there was any child abuse inflicted upon the girl, that--and she made us believe or we believed that everything she received was from playing out on a playground and conditions in --in the house and things such as that.<sup>78</sup>

Well, based on a conversation with the neighbor, conversation with Ms. Williams, conversations with the detectives from Nashville, and reading the report from the social worker, that gave us no indication that there was any foul play here. What happened between the social worker, the conversation between the social worker and Ms. Williams I conceded as --as being an investigator that it was --could possibly just be a misinterpretation between the two, because Ms. Williams had the tendency of going on about talking and talking and talking and didn't really know when to stop.<sup>79</sup>

Terminology and misinterpretation cannot account for this unequivocally deliberate deception, nor does Ms. Williams's description of B■■■■'s injuries as "playground" injuries comport with the actual nature of the injuries. Ms. Williams admitted that she told Ms. Jackson with KY DSS on June 9, 1987, multiple lies, including B■■■■ having only been with her since June 6, that L■■ and her other children had also been there visiting with her, and that they had all left at 2:00 p.m. on June 9 to go back to their home in Atlanta, Georgia. Throughout Ms. Williams's various statements to investigators and throughout her trial testimony, she remained adamant that B■■■■ and the other children were always within her close supervision, but Ms.

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<sup>78</sup> Trial transcript, p. 376.

<sup>79</sup> Trial Transcript, p. 385.

Jackson's report does not indicate that during her visit to Ms. Williams's, any children were present. Ms. Williams always maintained the children had never been cared for by anyone else.

The report to KY DSS, alleging physical abuse of B[REDACTED], specifically noted: "Child has welts on back, swollen hands and says her knees hurt. Mother spanked child for wetting pants."<sup>80</sup> By any measure, these injuries are consistent with the type a child may receive through normal playground interactions. In speaking with Ms. Jackson, Ms. Williams admitted spanking B[REDACTED] for wetting her pants, claiming to do so with only her hand, but at trial, Ms. Williams stated she carried a belt in her purse for disciplinary purposes.<sup>81</sup> Williams tried to explain the welts on B[REDACTED]'s back by saying that she thought there was only one, and that it was from B[REDACTED] falling against a doorframe during the peanut butter incident. She blamed the swollen wrists on a fall from the monkey bars and the scraped knees from a fall running through puddles.

The CID's investigation as to other individuals who may have contact with B[REDACTED] was incomplete and the conclusions drawn were based upon Ms. Williams's statements along with unreliable and unconfirmed alibis and documentation: "In the investigation I conducted we did not put a male in that house at any point in time that we were looking that could have -- have done the acts. There was nobody."<sup>82</sup>

An illustration of the inadequacy of the CID inquiry can be found with Ms. Williams's oldest son, M[REDACTED] G[REDACTED], who was 19 at the time of B[REDACTED]'s death and a member of the USMC. The CID investigative report states:

At 1300, 6 Jul 87, SA Schroder met with Pinkelton and Pardue who requested to reinterview R. Williams regarding information they received that Williams' son, M[REDACTED], had raped and beat [sic] B[REDACTED], and Williams was attempting to hide M[REDACTED] from the police. During the interview, Williams denied this allegations [sic] and stated that M[REDACTED] had left on 27 May 87, to his Marine Reserve Unit in Columbus, GA.<sup>83</sup>

There is no information within the CID report as to the source of this information or any attempt to interview the person who provided the information. According to Sgt. Schroder, "We

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<sup>80</sup> KY DSS Report, **Marked Exhibit A**.

<sup>81</sup> Trial Transcript p. 267

<sup>82</sup> Trial Transcript, p. 374. Neither the medical reports nor the record provide any reason to believe it was a male who inflicted the injuries upon B[REDACTED] or that her injuries were even sexual in nature. However, males were the only focus of investigation as to who may have had contact with B[REDACTED].

<sup>83</sup> CID Investigative Report, p. 2, **Marked Exhibit E**.

had a conversation with the Marine Corp out of Quantico, Virginia, to verify exactly where Rosie Williams's son was."<sup>84</sup> The USMC CID provided documentation to the Fort Campbell CID related to Mr. G [REDACTED], utilizing these documents to provide a clear alternative location for Mr. G [REDACTED].<sup>85</sup> The documents included a plane ticket from Atlanta, Georgia to Washington, D.C. on June 26, 1987, the same day Ms Williams became aggressively insistent Ms. Watkins retrieve B [REDACTED] from Ft. Campbell. The flight appears to have been booked the preceding day, June 25, 1987. There is no documentation to show whether or not he took the flight. The documents also include a document, signed only by Mr. G [REDACTED] with the subject heading "Receiving Endorsement," and stamped "Original Orders," purporting to show he signed for his orders on June 26 while in Atlanta, but the documents do not include the actual Orders, and an unprocessed travel voucher filled out and signed by Mr. G [REDACTED] indicating at 4 a.m. on June 26, 1987, he took a bus from Columbus, Georgia, arriving at the Atlanta airport at 6:00 a.m. There is no documentation related to that bus ticket. Though the Fort Campbell CID report indicates a finding that Mr. G [REDACTED] was in Quantico on June 26, Quantico confirmed Ms. Williams's 19-year-old son arrived four days later on June 30, 1987. Based on the new scientific evidence, discussed below, we now know the timing of B [REDACTED]'s injuries could have been several days prior to the date of Mr. G [REDACTED]'s plane ticket. CID made no attempt to verify Mr. G [REDACTED]'s whereabouts in the days prior to June 26 nor to confirm Ms. Williams's claim he had left her home on May 27.<sup>86</sup>

To be clear, there is no direct evidence implicating Mr. G [REDACTED] committed or has knowledge of the acts leading to B [REDACTED]'s death, but he is one of many individuals the CID failed to reliably eliminate from contact with the child. Throughout Ms. Williams's various statements and testimony were reports B [REDACTED] went to Bible School, that men worked for several days in the garage at the Williams' home, that B [REDACTED] spent a great amount of time playing with

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<sup>84</sup> Trial Transcript, pp. 382, 387. "Question: How did you reach the conclusion that--that no males were there at the home? Answer: Well, her husband was in New York, the son was in Virginia."

<sup>85</sup> USMC CID Packet of Documents, **Marked Exhibit F**.

<sup>86</sup> Ms. Watkins has reported on the occasions she visited Ms. Williams's home in the weeks preceding B [REDACTED]'s death, Mr. G [REDACTED] was not present at the home. Conversely, Ms. Boynton stated a belief Mr. G [REDACTED] was present until at least one week prior to B [REDACTED]'s death.

neighborhood kids and at Ms. Fetterman's home, and that Williams, her children, and B[REDACTED] spent several hours in the afternoon prior to B[REDACTED]'s departure at a car dealership.

Additionally, B[REDACTED] spent time at Ms. Williams's neighbor, Ms. Fetterman's, home where her two teenage sons and husband resided. Notably, in Ms. Fetterman's testimony she only admitted that her youngest child (a 12 year old boy in the summer of 1987) would have been around B[REDACTED]. She did not make any mention as to whether her husband was home during this time or acknowledge that her 15 year old child was also male.<sup>87</sup>

Finally, this was a neighborhood on a large military base. It is unclear if CID actually interviewed any neighbors other than Ms. Fetterman. What is clear is that CID failed to engage in even a cursory investigation into **any** of the multiple other individuals who had direct access to B[REDACTED] during the time frame her injuries likely occurred.<sup>88</sup> Sgt. Schroder's testimony sums up his lack of motivation in this investigation:

All we checked, we were basically--out investigation--we weren't really conducting an investigation. We were assisting. The Nashville Police Department called me, Jerry called me and asked me to find out when the son went to reserve training. All we did was find out when his reserve unit left Atlanta, Georgia, and when he arrived at Quantico, Virginia, which we did.<sup>89</sup>

The most documented action taken by individuals within this investigative body was to clearly state they would take no action at all. CID indicated, however, to MNPB investigators that their investigation made it clear no other men had access to B[REDACTED] and therefore, in conjunction with the Medical Examiner's timing of her injuries, B[REDACTED]'s abuse must have occurred in Nashville. CID closed their investigation. CID's reported findings and the opinions of the Medical Examiner led MNPB to conclude Charlie Dunn and Joyce Watkins were the only possible perpetrators.

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<sup>87</sup> Ms. Watkins had knowledge of Ms. Fetterman's sons and reported to CRU that these sons occasionally visited Ms. Watkins's home with B[REDACTED] and Ms. Williams' children.

<sup>88</sup> The CRU is unaware of any direct evidence directly implicating these individuals but it is factual none of these individuals were adequately investigated.

<sup>89</sup> Trial Transcript pp. 382, 387.

### III. ANALYSIS OF THE EVIDENCE LEADING TO CONVICTION

#### A. Dr. Harlan's Assessment of The Timing of B [REDACTED]'s Injuries

Dr. Harlan's initial report indicated a finding that B [REDACTED]'s injuries occurred 24-48 hours from her pronounced time of death. Harlan claimed she could date the bruises on B [REDACTED]'s body by visual inspection and placed them as occurring within 48 hours of her time of death. She based this on the observation that she did not see "color change" in the bruises yet.<sup>90</sup>

If Harlan could indeed determine the timing of a head injury solely by visual observation, she would have possessed a skill not recognized in modern medical science. Since the time of this trial, methods of dating bruises by color and/or visual inspection have been largely discredited. BMJ Journal's Archives of Disease in Childhood performed a peer reviewed study in 2004 on whether it is possible to determine the age of a bruise on a child in clinical practice. The study concluded: "A bruise cannot accurately be aged from clinical assessment in vivo or on photograph. At this point in time the practice of estimating the age of a bruise from its color has no scientific basis and should be avoided in child protection proceedings."<sup>91</sup>

Twenty minutes prior to trial, Dr. Harlan altered her opinion about the brain injury, narrowing her window from 24-48 hours to under 12-14 hours from the time of brain death—putting the timing for causation of these injuries exclusively within the timeframe B [REDACTED] was in the care of Ms. Watkins and Mr. Dunn. This directly conflicts with her other testimony. For instance, she gave a 48 hour window for the scalp bruising.<sup>92</sup> However, given there was no testimony suggesting anything but intentional infliction of these injuries, Harlan's opinion regarding the timing of the injuries was the most damning proof presented to the jury. To accept her testimony meant a guilty verdict must be rendered.

Dr. Harlan explained that the abrupt change in her analysis was based on a review of nursing notes in the medical records while waiting outside of the courtroom to testify. She stated these notes indicated that B [REDACTED] was brain-dead on Saturday afternoon, some sixteen hours

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<sup>90</sup> Trial Transcript, p. 502.

<sup>91</sup> S. Maguire et al. Can you age bruises accurately in children? A systematic review. available at: <https://adc.bmj.com/content/90/2/187>. **Marked Exhibit J.**

<sup>92</sup> Trial Transcript, p. 502.

before death was officially pronounced, different than she had previously understood.<sup>93</sup> She reported this was significant because she had found no *histiocytic response* to the subdural hemorrhage clotting, a response that she said would occur within twelve to fourteen hours of trauma to the head. Dating back from the time that death was pronounced, this would mean the trauma would have inexplicably occurred while the victim was in the hospital. However, dating back from the time that the victim was considered to be brain-dead, the time frame covered just the period of time that the petitioners had the victim with them in Nashville.<sup>94</sup> This radical shift in her assessment of the timing of the injuries was a shock to the attorneys for Ms. Watkins and Mr. Dunn, and to ADA Fisher. In reading through her testimony, it appears that Dr. Harlan was changing her opinion even throughout the time she was on the witness stand.

During the post-conviction stage of the case, the Court considered rebuttal proof from Dr. Sperry on the timing of the injuries; however, their lens focused on whether the trial attorneys were ineffective in how they responded to Dr. Harlan's surprise change in opinion instead of the pertinent question of the impact widening the timeframe had on the question of Mr. Dunn and Ms. Watkins' innocence. Dr. Sperry testified the timing of the head injury "easily could be quite readily within 24 to 48 hours prior to the time of death."

The State offered a response from Dr. Harlan, who doubled down on her trial testimony, **admitting that her use of the terminology *histiocytic response* was incorrect** but that she still stood by her analysis of the timing of the injuries.<sup>95</sup> Additionally, the State called Dr. Warren Hill (the initial treating physician from Memorial Hospital) who said he would not change any of his trial testimony, in which he concluded that the vaginal injuries were fresh. (At the time of trial, Dr. Hill admitted that pathology was not his area of expertise and that his estimate regarding the timing of the injuries was based solely upon a visual examination with the naked eye. He conceded that a more accurate estimate would rely on a microscopic evaluation.)<sup>96</sup>

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<sup>93</sup> *Dunn v. State*, 1999 WL 799338, at \*3 (Tenn. Crim. App. 1999).

<sup>94</sup> *Dunn v. State*, 1999 WL 799338, at \*3 (Tenn. Crim. App. 1999).

<sup>95</sup> She testified that her conclusions as to the cause of death and to the time of injury remained as they were in her trial testimony. However, she stated that her use of the word "histiocyte" was incorrect, that she should have said "fibroblast." *Dunn v. State*, 1999 WL 799338, at \*3 (Tenn. Crim. App. 1999).

<sup>96</sup> Trial Transcript, pp. 148-49.



While the Court did note that defense counsel's lack of rebuttal to the testimony from Dr. Harlan at trial might constitute deficient performance, it still held that, in light of the other evidence, Watkins and Dunn failed to demonstrate prejudice.

The defense theory was that the injuries were inflicted upon the victim in Kentucky. However, the evidence shows that Ms. Williams, Ms. Fetterman and even Ms. Watkins stated that the victim appeared to be healthy when she left Kentucky. The next morning at the hospital, however, she had multiple bruises in the shape of knuckle marks on her head and had fresh blood in her vagina. Dr. Hill, who treated the victim when she first arrived at the hospital, testified that the victim's vaginal injury was fresh. His testimony both at trial and at the evidentiary hearing was that the vaginal injury was only hours old and that no blanching existed to indicate that the wound was any older. *Finally, despite an independent investigation by the Kentucky Department of Human Services, as well as investigations made pursuant to this case, no evidence of either physical or sexual abuse was ever found in Kentucky.*<sup>97</sup>

#### 1. Current Medical Evidence Establishes Innocence

Since 1987, the medical community's understanding of pediatric head trauma has evolved. As already cited, for instance, there have been developments in the area of the dating of pediatric bruising. Petitioner's attorneys consulted with and provided the report of Dr. Shilpa Reddy, Pediatric Neurologist and Assistant Professor of Pediatric Neurology at Monroe Carell Children's Hospital, Vanderbilt University. Dr. Reddy utilized studies<sup>98</sup> from over the past thirty years to analyze B■■■■'s injuries in this case. Based on her knowledge and experience, Dr. Reddy explained that the precision with which Dr. Harlan dated B■■■■'s injuries (as to occurring sometime after 1:35 a.m. on June 27, 1987) is not possible.<sup>99</sup> **Dr. Harlan's purported "methodology for dating the head injury based upon a lack of histiocytic response in the brain tissue is not a legitimate method for dating pediatric head trauma."**<sup>100</sup>

To summarize Dr. Reddy's analysis, B■■■■'s head CT from Vanderbilt Hospital performed on June 27, 1987, showed significant head trauma, most likely from abuse that

<sup>97</sup> *Dunn v. State*, 1999 WL 799338, at \*3 (Tenn. Crim. App. 1999).

<sup>98</sup> See Affidavit of Shilpa Reddy, M.D., and accompanying articles: Age-related mortality in abusive head trauma; Effect of magnesium given 1 hour after head trauma on brain edema and neurological outcome; Cerebral Edema Associated With Large Hemispheric Infarction. Implications for Diagnosis and Treatment; and Molecular Mechanisms of Ischemic Cerebral Edema: Role of Electroneutral Ion Transport, **Marked Exhibits G and H.**

<sup>99</sup> Affidavit of Shilpa Reddy, M.D., **Marked Exhibit G.**

<sup>100</sup> Affidavit of Shilpa Reddy, M.D., p. 4, **Marked Exhibit G.**

possibly occurred up to 48 hours before her presentation at the hospital. The records show “abundant subarachnoid hemorrhage along the tentorium and falx” as well as “loss of gray/white junction bilaterally” diffusely.<sup>101</sup> This indicates ischemia (the lack of oxygenated blood to the brain) along with edema (swelling). Considered with the significant amount of subarachnoid hemorrhage, this is all consistent with a significant head trauma. Along with the presence of bilateral retinal hemorrhages noted on the initial exam at Vanderbilt, it is also highly specific for the diagnosis of non accidental head trauma.<sup>102</sup>

“Edema secondary to ischemia and/or other features of head trauma (i.e. intracranial hemorrhage) takes 24-72 hours to develop and evolve post-trauma.”<sup>103</sup> B ■■■ suffered edema secondary to ischemia.”<sup>104</sup> Considering these and other medical factors, Dr. Reddy opined that it is not possible to date the head injury with any certainty.

The CRU credits Dr. Adele Lewis,<sup>105</sup> the current State’s Chief Medical Examiner for the State of Tennessee who has recently reviewed Dr. Harlan’s prior findings and the medical evidence in this case. According to Dr. Lewis:

As Dr. Sperry noted in his post-conviction testimony, there is no such entity accepted by the forensic pathology community as a “histiocytic response” within the dura. Even if such an entity existed, asserting its appearance or presence within such a narrow time frame, especially given the impaired blood flow to and from the intracranial structures as demonstrated in this case, is fraught with uncertainty.

The clinical picture offered at trial, with the child being able to be aroused from sleep, complaining of thirst, and able to walk and drink fluids at the time Ms. Henry was at the home of Ms. Watkins on the morning of June 27, 1987 could be representative of an injury sustained well before B ■■■ was in the care of Ms. Watkins and Mr. Dunn which was continuing to evolve, with increasing swelling of the brain, eventually resulting in her moribund presentation at Nashville Memorial Hospital later that day.<sup>106</sup>

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<sup>101</sup> Affidavit of Shilpa Reddy, M.D., p. 4, **Marked Exhibit G.**

<sup>102</sup> Affidavit of Shilpa Reddy, M.D., p. 4, **Marked Exhibit G.**

<sup>103</sup> This window of time concerning edema and increased intracranial pressure was established by a 2003 study, Edema Fluid Accumulation Within Necrotic Brain Tissue as a Cause of the Mass Effect of Cerebral Contusion in Head Trauma Patients, See Reddy Affidavit for full citation.

<sup>104</sup> Edema Fluid Accumulation Within Necrotic Brain Tissue as a Cause of the Mass Effect of Cerebral Contusion in Head Trauma Patients, See Reddy Affidavit for full citation.

<sup>105</sup> Dr. Lewis’s Curriculum Vitae is attached to this report along with her report, **Marked Exhibit I.**

<sup>106</sup> Sperry post-conviction testimony pps. 139-142

Dr. Lewis credits the work of Dr. Sperry in this case within her own analysis. Dr. Sperry was able to view the original slides taken during the autopsy that have since been destroyed.<sup>107</sup> At the post-conviction hearing, he testified:

The vaginal injuries occurred “somewhere in the neighborhood of about two to three days before pronouncement of death.” Regarding penetration, he stated that the injuries were more consistent with a straddle injury, such as would occur if a child playing on monkey bars fell onto a bar, hitting the crotch region. He said that he would expect more localized injuries if they had been caused by penetration.<sup>108</sup>

Without access to the slides herself, Dr. Lewis is unable to fully endorse or disclaim the straddle theory, although she acknowledges it is possible. What Dr. Lewis definitively found is that B■■■■'s injured vaginal tissue showed the presence of macrophages, a type of white blood cell.

According to Dr. Lewis, these would not have been present in a fresh wound. Lewis states:

Perhaps a more reliable indicator of timing of this child's injuries is found in the perianal injury, where Dr. Harlan notes of the presence of macrophages within the wound. In a healthy person, these cells (macrophages) typically respond to a site of injury about two to eight days following the insult to the tissue. In a critically ill child, this cellular response could be expected to be delayed to several days or even more than a week following an injury, well before B■■■■ Brooks was in the care of either Joyce Watkins or Charlie Dunn.<sup>109</sup>

Considering this analysis from three well-respected experts and the development of pediatric neurology over time, the CRU is moved to believe it is far more likely that B■■■■'s injuries occurred while she was in Fort Campbell, Kentucky, especially considering the plethora of B■■■■'s medical issues testified to by both Ms. Williams and Ms. Fetterman, the KY DSS report, not to mention the family's immediate suspicions of Ms. Williams.

There is nothing in the history of Ms. Watkins or Mr. Dunn to suggest a propensity towards abuse of B■■■■ or any child. In fact, they are the only individuals who did seek medical care for B■■■■ prior to her death.

Most importantly, Count 1 of the indictment charges Joyce Watkins and Charlie Dunn with First Degree Felony Murder. This charge was predicated upon an allegation B■■■■ had

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<sup>107</sup> The tissue samples from this case no longer exist because Charles and Gretel Harlan failed to preserve the evidence.

<sup>108</sup> *Dunn v. State*, 1999 WL 799338, at \*5 (Tenn. Crim. App. 1999).

<sup>109</sup> Lewis Report, **Marked as Exhibit I**.

been raped and died as a result of injuries sustained during that rape. However, Dr. Lewis concludes the vaginal injuries occurred at a point in time prior to B [REDACTED] ever being in the presence of Ms. Watkins and Mr. Dunn. There is demonstrable evidence of innocence of any charge predicated upon rape.

## 2. The Credibility of Drs. Charles and Gretel Harlan

Not only has there been continuing development in the science of pediatric head trauma, abusive head trauma and theories behind the dating of bruises, CRU is also aware of new information surrounding the credibility of both Dr. Gretel Harlan and Dr. Charles Harlan.

Despite Gretel Harlan's chief assignment to the case and it being her who testified in front of the jury, the autopsy report indicates Charles Harlan was present and he himself conducted the autopsy on B [REDACTED].<sup>110</sup> There are numerous references throughout Gretel Harlan's testimony referring to what "he" did or what "we" did in performing the autopsy.<sup>111</sup> In Detective Pinkelton's testimony, he even refers to a "sample that Dr. Harlan advised me *he* was going to take..."<sup>112</sup>

Dr. Gretel Harlan testified:

Q: (Fisher): let me ask you if the two of you had an occasion to perform an autopsy on the body of the child?

A (Harlan): Yes we did.<sup>113</sup>

(Harlan) What we observed when we were entering the tissue.<sup>114</sup>

(Harlan) then we entered the head itself."<sup>115</sup>

(Harlan) We have taken the skull cap of..."<sup>116</sup>

(Harlan)As part of our autopsy, we did do blood and bile collection..<sup>117</sup>

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<sup>110</sup> Autopsy Report **Marked as Exhibit K**

<sup>111</sup> Trial Transcript pps, 488, 497

<sup>112</sup> Trial Transcript p. 431. emphasis added.

<sup>113</sup> Trial Transcript p. 431

<sup>114</sup> Trial Transcript p. 488

<sup>115</sup> Trial Transcript pps 488, 497. emphasis added

<sup>116</sup> Trial Transcript p. 513

<sup>117</sup> Trial Transcript p. 521

(Harlan) We were not sure of the origin of...<sup>118</sup>

Clearly the two doctors Harlan collaborated in the autopsy and assessment of B■■■■'s injuries.

In the intervening years since Watkins and Dunn's convictions, Drs. Charles<sup>119</sup> and Gretel Harlan have been the subject of intense investigative scrutiny and disciplinary hearings that yielded truly bizarre and unsettling findings. In May 2005, following two years of hearings, the State of Tennessee permanently revoked Charles Harlan's medical license, citing 20 counts of misconduct while serving as Medical Examiner.<sup>120</sup> This was a highly unusual action; Denise McNally, then-director of the National Association of Medical Examiners, remarked "I've been doing it 26 years, and I haven't had a member yet had their license revoked."<sup>121</sup>

Such extraordinary action was well justified, however. The Board of Medical Licensure based its revocation on findings that Charles Harlan had been guilty of five instances of unprofessional conduct, three instances of dishonest conduct, two instances of making false statements, eight instances of negligence, one instance of fraud or deceit involving medical practice, one instance of signing a certificate known to be false, two instances of malpractice, and five instances of incompetence.<sup>122</sup> The facts of these transgressions border on ghoulish: Charles Harlan once replied to a bank's request for proof of a client's death that "M.L. is dead. She is green and has maggots crawling on her."<sup>123</sup> In another case, a tenant renting a house from the Harlans discovered body parts in a jar and tissue samples in a chocolate box.<sup>124</sup> Gretel, for her part, once explained while testifying that the tissue samples belonged to her two pet dogs upon whom she had performed an autopsy.<sup>125</sup>

Charles Harlan's transgressions predated his tenure as Medical Examiner. In 1993, Davidson County Medical Examiner Dr. Julia Goodin prohibited her office from conducting private autopsies, which had caused a backlog of autopsy cases. Dr. Harlan violated this policy and performed private autopsies without permission, for which he was suspended without pay.<sup>126</sup>

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<sup>118</sup> Trial Transcript p. 521

<sup>119</sup> (hereinafter "Charles Harlan" or "Dr. Harlan")

<sup>120</sup> See *State v. Crump*, 2009 WL 723524, \*13 (Tenn. Crim. App. 2009).

<sup>121</sup> [https://products.kitsapsun.com/archive/2005/05-01/45054\\_odd\\_behavior\\_mistakes\\_finally\\_c.html](https://products.kitsapsun.com/archive/2005/05-01/45054_odd_behavior_mistakes_finally_c.html)

<sup>122</sup> *State v. Crump*, 2009 WL at \*13.

<sup>123</sup> [https://products.kitsapsun.com/archive/2005/05-01/45054\\_odd\\_behavior\\_mistakes\\_finally\\_c.html](https://products.kitsapsun.com/archive/2005/05-01/45054_odd_behavior_mistakes_finally_c.html)

<sup>124</sup> [https://products.kitsapsun.com/archive/2005/05-01/45054\\_odd\\_behavior\\_mistakes\\_finally\\_c.html](https://products.kitsapsun.com/archive/2005/05-01/45054_odd_behavior_mistakes_finally_c.html)

<sup>125</sup> *State v. Larkin*, 443 S.W.3d 751, 810 (Tenn. Crim. App. 2013).

<sup>126</sup> TBI Investigation Report dated 1/14/1994.

In 1995, Dr. Harlan was barred from the TBI crime laboratory and his contract as State Medical Examiner was terminated, although he retained private contracts with various Tennessee counties.<sup>127</sup>

Most concerning, Dr. Harlan falsified an autopsy report in the 2001 case of James Suttle, accused of first-degree murder. Suttle claimed his cousin, Stevie Hobbs, had suffered a seizure and fallen through a glass table, but Dr. Harlan insisted that Hobbs had been stabbed to death, opining that the stab wounds had occurred shortly before death. Dr. Harlan's testimony, buttressed by 30 years of experience and his work on thousands of cases, held great weight with the jury, but forensic expert Dr. Bill Bass definitively proved that Dr. Harlan's theory was false. Bass demonstrated the instrument would have had to turn along a right angle inside Hobbs's body, a medical impossibility beyond any doubt that set Suttle free.

This exoneration sparked a review of Dr. Harlan's cases that revealed serious misconduct. Dr. Harlan had falsely identified a body as belonging to an escaped convict, Bruce Allen Littleton, who was discovered alive two years later in connection with another crime. Dr. Harlan also determined that two children had died of SIDS when, in fact, a parent had murdered them. Similarly, Dr. Harlan listed a 10-year-old's cause of death as natural when the child weighed only 18 pounds, a clear case of neglect. Dr. Harlan also allowed his dog into the autopsy room on one occasion; the dog consumed some of the remains of a murder victim. Finally, Harlan's testimony in the death penalty cases of James Dellinger and Gary Sutton proved definitive when he testified that rigor mortis could persist 72 hours after death, a crucial fact that, if false, would have cleared the defendants. The testimony established their guilt and placed them on Death Row, but subsequent medical experts have weighed in and established that Dr. Harlan's testimony regarding rigor mortis was entirely unfounded and impossible.<sup>128</sup> Dellinger and Sutton's appeals are ongoing.

Dr. Gretel Harlan<sup>129</sup> was also the subject of professional discipline and investigation. An Ohio State Medical Board investigation found that anatomical samples from the Davidson

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<sup>127</sup> Department of Health/TBI letter from Larry Wallace dated 7/7/1995.

<sup>128</sup> <https://abcnews.go.com/2020/doctors-botched-autopsies-blame-murder/story?id=9989554>

<sup>129</sup> Most of these actions were pursued after Dr. Gretel and Charles Harlan divorced in 1999, after which Gretel Harlan used her surname "Stephens."

County Medical Examiner's Office were discovered inside the Harlans' home.<sup>130</sup> The renters found autopsy files containing graphic crime scene photos, as well as blood smears from Nashville Memorial Hospital that should have been discarded.<sup>131</sup>

The Tennessee Department of Health initiated formal proceedings against Dr. Gretel Harlan for these infractions, offering a settlement agreement documenting 48 violations and proposing a fine of \$2,400 plus costs.<sup>132</sup> Following this reprimand, Dr. Gretel Harlan retired her Tennessee license in 2005 and moved to Ohio, whose medical board initiated a parallel investigation. The Board described the Tennessee reprimand as "very unusual" and noted that while Dr. Charles Harlan bore some responsibility for the material found in the home, Dr. Gretel Harlan was also culpable.<sup>133</sup>

#### **B. Sheets Not Indicative of Guilt**

Information that Ms. Watkins washed the master bedroom sheets Saturday morning, June 27, 1987, before taking B [redacted] to the hospital was presented to the jury and emphasized throughout the State's argument. This assertion was not substantiated by any actual proof from the scene. To the contrary, notes from Nashville DHS worker Ms. Treese indicated the sheets were in a dirty laundry hamper when she visited Ms. Watkins's home on Sunday June 28.<sup>134</sup> Ms. Treese testified at trial but these notes were not mentioned and it is unclear if it was made available to defense counsel. Trial testimony regarding the sheets creates further doubt Ms. Watkins removed it from the bed.

Treese notated that during the home visit to [redacted] M [redacted] Drive where she met Detective Bradford she:

Saw bloody underwear & room where B [redacted] slept...Detective Bradford said the sheets from the master bedroom bed were in the dirty laundry & they found a child's pair of shoes in the master bedroom.<sup>135</sup>

Detective Bradford testified he could not remember whether the master bed had a sheet on it when he arrived at the scene or not. "I really can't remember precisely if--if the sheets were

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<sup>130</sup> In the Matter of Gretel Case Stephens, M.D., p. 4.

<sup>131</sup> In the Matter of Gretel Case Stephens, M.D., pp. 4-5.

<sup>132</sup> In the Matter of Gretel Case Stephens, M.D., p. 6.

<sup>133</sup> In the Matter of Gretel Case Stephens, M.D., p. 7.

<sup>134</sup> Recording Sheet for Protective Services, Handwritten notes of Laura Treese dated 6-29-87. **Marked as Exhibit L**

<sup>135</sup> Id.

taken off that morning. I can't remember."<sup>136</sup> The sheet that was shown to jurors through crime scene photos was "in a hallway closet adjacent to the bedrooms."<sup>137</sup> Detective Bradford testified Ms. Watkins had told police she washed the sheets Saturday morning before going to the hospital and that was one of his reasons for being at the scene, despite this being directly contrary to Ms. Treese's notes from that day.<sup>138</sup> Detective Bradford was relying solely upon Lt. Moore's report, written one year after taking Ms. Watkins's statement, where she claims Watkins told her she washed the sheets.

Later in the trial, Detective Pinkelton also weighs in on the sheets, in the following exchange:

Q: (Nimmo) I pass you State's Exhibit No. 9 and ask you if you can identify what that is. Can you identify that as being the dirty sheets from the bed in the master bedroom?

A: (Pinkelton): No, I can't.

Q: All right. Do you recall being told by Ms. Watkins that she had removed the sheets and was going to wash them?

A: No, I recall her, her statement was that she had -- that was part of her Saturday morning routine, that she had -- had washed the sheets.

Q: You've been inside Ms. Watkins' home?

A: Yes, I have.

Q: Did you see any other bed while you were there on that Sunday morning that those sheets could have come from?

A: Sunday? No. I mean I don't -- I -- I don't know where those sheets there come -- I don't know anything about those sheets there, I wasn't there. When I was back in her home Sunday, the house was pretty neat, everything was made up .

Q: Were there sheets on the master bedroom bed?

A: I don't recall.<sup>139</sup>

Neither of the two detectives who claimed Ms. Watkins told them she had washed the sheets prior to taking B [REDACTED] to the hospital, were present during the search of the house most recent in time to B [REDACTED]'s death. Both detectives failed to document these alleged, unrecorded statements until one year following the statements. Photographic evidence<sup>140</sup> and the contemporaneous notes of Ms. Treese clearly demonstrate the unwashed sheets were located on

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<sup>136</sup> Trial Transcript p. 21-22.

<sup>137</sup> Trial Transcript p. 19.

<sup>138</sup> Ms. Watkins denies ever telling police she had washed the sheets.

<sup>139</sup> Trial Transcript, Pinkelton Testimony

<sup>140</sup> Photo of Sheets from Initial MNPd Search of Ms. Watkins house, **Marked Exhibit M.**



the floor of the laundry closet. The sheets observed by Ms. Treese and photographed by MNPD officers were available for collection but neither collected as evidence nor do any reports mention the presence of blood on the sheets.

Despite all of this testimony and exhibits proving the contrary, in closing argument, ADA Fisher suggested Ms. Watkins attempted to conceal the sheets and emphasized the dark connotations of Ms. Watkins alleged sheet washing, stating to the jury in his rebuttal closing:

They hit the fact that it is a purely circumstantial evidence case. Well it's not purely circumstantial. It's mostly circumstantial. There is direct evidence that Joyce Watkins washed the sheets in the master bedroom that morning. She said so.<sup>141</sup>

Despite ADA Fisher's assertions being inaccurate, even if they were accurate this evidence would not amount to direct evidence of culpability.

The Appellate Court made the same error in analyzing the testimonial and evidentiary proof, noting:

In addition to the conflicting statements, the proof showed that Ms. Watkins washed the sheets from the sheets from the bed in the master bedroom on Saturday morning, prior to taking the child to the hospital.<sup>142</sup>

### **C. Alleged Minor Inconsistencies**

The State argued Ms. Watkins and Mr. Dunn gave inconsistent and conflicting statements regarding the timing of their arrival home, where Ms. Watkins slept after their arrival at home with B [REDACTED] and when Mr. Dunn observed B [REDACTED]'s blood-stained underwear. The sources for these alleged inconsistencies are the typed reports and testimony of Detective Pinkelton and Lt. Moore, which they each drafted from memory a year after the alleged statements were made. As described above, Lt. Moore reported having reviewed the available recordings prior to her documentation but that her documentation did not reflect what was in those recordings but instead that the recordings refreshed her memory as to other, unrecorded statements.

Despite the obvious issues with reliability in the year-old memories of detectives who conducted multiple interviews over several days with both Ms. Watkins and Mr. Dunn, the inconsistencies themselves, even if true, are not as insidious as the State implied to the Court and

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<sup>141</sup> Fisher Closing Argument, Trial Transcript pps 90-91

<sup>142</sup> Appellate Opinion page 4, Paragraph 2.

jury. Since any recordings of the interviews that once existed are no longer available for review, the CRU has conducted a detailed review and thorough analysis of every single documented statement and alleged inconsistency, both with the assumption of reliability of detective reports and with scrutiny as to their probative value. Not one alleged difference in the recitation of events given by Ms. Watkins or Mr. Dunn lends toward evidence of their guilt nor do they appear to be calculated statements painting a picture of innocence. The differences are neutral and there are benign, reasonable explanations for each alleged inconsistency.

For example, Detective Pinkelton's report<sup>143</sup> asserts that Ms. Watkins told police she and Mr. Dunn did not arrive home with B [REDACTED] until 2:30 am but phone records indicate they arrived home before 1:04 am. Even if Ms. Watkins did state to police they did not return until 2:30 am, it has been clearly proven that at 1:04 am, she made a call to Ms. Underwood and Ms. B [REDACTED] reporting the discovery of blood in B [REDACTED]'s underwear and expressing a desire to take B [REDACTED] to the hospital. There is no probative value nor did Ms. Watkins have anything to gain by attempting to convince detectives they did not return until 2:30.

A transcript of Mr. Dunn's statement to police indicates he told them Ms. Watkins went to sleep in the master bedroom with him but that he heard her walking around the house throughout the night, checking on B [REDACTED]. Police reports indicate Ms. Watkins gave multiple different descriptions of where she slept including a version where she first fell asleep in a chair with B [REDACTED] before waking up and putting B [REDACTED] to bed, another version where she slept the entire night in bed with B [REDACTED] and yet another where she first laid down in the master bedroom then later relocated to the room where B [REDACTED] slept. The differences between these versions and every other alleged difference in their recounting of events are negligible and immaterial to any question of relevant fact.

Ms. Watkins and Mr. Dunn had both worked from 11:00 p.m. the previous night until 11:00 am the same morning they picked up B [REDACTED]. They spent the day packing for a planned vacation and late that evening drove to and from Clarksville, Tennessee.<sup>144</sup> Ms. Watkins reported almost falling asleep while driving home and that Mr. Dunn took over driving. Upon arriving home, she discovered B [REDACTED] was injured, made frantic calls to B [REDACTED]'s mother and grandmother

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<sup>143</sup> Pinkelton Report.

<sup>144</sup> CRU Interviews with Nathaniel Dunn, Joyce Watkins.

and was awake throughout the night checking on B [REDACTED]. By the time she gave her first statements to police, she had not had meaningful rest for almost 48 hours. She had experienced the trauma of her niece losing consciousness while in her care and rushing her to the hospital. These statements by Ms Watkins and Mr. Dunn were taken over a series of several days, at various locations, by multiple investigators, without the assistance of counsel following the death of a child within their care. At all times, Ms. Watkins and Mr. Dunn cooperated and attempted to aid rather than obstruct the investigation. It is unreasonable to assume guilt for slight differences in each of their recollections of events.

#### **D. Other Factors Relevant for Consideration**

The CRU agrees with the assessment of the Petitioners that:

These convictions are about more than just incorrect medical opinions and weak circumstantial evidence. In order to understand why these people were convicted, it is critical to look at how this case was presented to the jury.<sup>145</sup>

Further, the CRU believes there are a variety of evidentiary and non-evidentiary issues that may have contributed to the fate of Ms. Watkins and Mr. Dunn, not only for the jury but for the post-conviction and appellate courts.

ADA Fisher consistently misrepresented evidence to the jury and to the Post-Conviction Court. There are numerous examples throughout the record of misrepresentations by ADA Fisher.

First, Dr. Harlan clearly testified B [REDACTED] was not the victim of anal rape and there was no evidence of attempted anal rape:

Q (Fisher): And the anal tears would be consistent with an effort to hit the vagina but to miss and hit the anus instead?

A (Harlan): No sir; they are consistent with entry into the vagina also. We are dealing with a very small vaginal length...I cannot substantiate an attempt to penetrate the rectum. I see no internal injuries..I cannot say that there was an attempt to enter the rectum or the anus.<sup>146</sup>

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<sup>145</sup> Petitioners' Application for CRU Review

<sup>146</sup> Trial Transcript pp. 548-49.

Despite Harlan's testimony, in closing arguments ADA Fisher insisted to the jury an attempted anal rape had occurred:

Now its apparent, I submit, from the evidence that the child was vaginally raped and an effort made through inadvertence in a moment of passion or just by misdirection an effort at anal penetration as well.<sup>147</sup>

ADA Fisher further argued facts unsupported by the evidence when he stated Mr. Dunn had caused the scratches on B■■■■'s back while raping her.<sup>148</sup> Dr. Harlan testified to these as minor, *healing* injuries.<sup>149</sup> Ms. Williams testified to B■■■■ having scrapes and bruises from injuries occurring while in her care<sup>150</sup> and there had been a report to KY DSS of injuries well before B■■■■ ever arrived in Nashville. No evidence was presented at all suggesting the scratches on B■■■■'s neck were related to a sexual assault, two of the State's witnesses testified they had happened in Kentucky and there was a Kentucky DSS report of injuries.

Nevertheless, ADA Fisher told the jury Mr. Dunn had caused these injuries while sexually assaulting B■■■■.

Second, as previously discussed, ADA Fisher told the jury Ms. Watkins had not only washed the sheets from the master bedroom but also that she had attempted to conceal the sheets.<sup>151</sup> There is nothing within the record or testimony to support this assertion and all evidence indicates otherwise. The appellate made the same error when weighing the evidence before them. In ruling to affirm the conviction the court explained:

Even assuming that the substance of Dr. Sperry's testimony at the evidentiary hearing had been presented at trial, the petitioners have not shown a reasonable probability that the result of the trial is unreliable or that the proceedings were fundamentally unfair... [Finally,] the trial record contains ample evidence against the petitioners, the most glaring evidence being the numerous inconsistencies in their statements....Other evidence at trial shows that the sheets on the bed in the master bedroom had been removed and washed Saturday morning before the victim was taken to the hospital.<sup>152</sup>

Third, ADA Fisher argued Rose Williams had been investigated and cleared as a suspect:

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<sup>147</sup> Fisher Closing Argument, Trial Transcript p. 490

<sup>148</sup> Fisher Closing Argument, Trial Transcript p. 92.

<sup>149</sup> Trial Transcript, p. 66.

<sup>150</sup> Trial Transcript, p. 210.

<sup>151</sup> Fisher Closing Argument, Trial Transcript p. 210

<sup>152</sup> *Dunn v. State*, 1999 WL 799338, at \*8 (Tenn. Crim. App. 1999).

The Kentucky authorities could find no fault and an assault upon that child before she left the State of Kentucky, which is consistent with the medical professionals and all other evidence you have here.<sup>153</sup>

This is flatly inaccurate. No authority in Kentucky investigated these allegations to the point that they could make that finding. Upon receiving a report containing serious allegations of abuse, DSS social worker Ms. Jackson made a single visit to Ms. Williams's home wherein Ms. Williams plainly made false statements by saying B [REDACTED] had returned to Georgia and that her injuries had come from regular playground activity. Ms. Jackson did not attempt to verify Ms. Williams's statements or to contact B [REDACTED]'s mother. She did not interview neighbors or anyone else who had come into contact with B [REDACTED]. Ms. Jackson closed her inquiry without ever seeing or speaking to B [REDACTED].

By CID's own admission, they viewed their role as simply accounting for the whereabouts of Mr. G [REDACTED] and even this singular task, they did inadequately. Despite B [REDACTED]'s death and being armed with the knowledge Ms. Williams had lied to KY DSS before B [REDACTED]'s death, CID also had a single conversation with Ms. Williams and once again, accepted her explanation for her prior false representations without any attempt at verification. The investigating agent contradicted his own report by testifying he may not have spoken with anyone but Ms. Williams and Ms. Fetterman through the course of his investigation. As ADA Fisher was certainly aware, a failure to investigate is not a finding of "no fault."

This misunderstanding of this evidence tainted the analysis of the Post-Conviction Court:

A [KY DSS] social worker from Madisonville, Kentucky, who formerly worked in the Fort Campbell area, testified about a previous complaint of physical abuse to the victim at the hands of Ms. Williams. That witness testified that her investigation revealed no physical abuse and that there were not even allegations of sexual abuse.<sup>154</sup>

Further, ADA Fisher made statements to the jury that by any measure were inappropriate because they were grossly prejudicial and without probative value.

I knew before you ever sat there that I was going to put you through your own personal torture, because you had no idea when you got that notice, you were going to be a juror and when you walked into this courtroom, that you were going

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<sup>153</sup> Fisher Closing Argument, Trial Transcript p. 82.

<sup>154</sup> Appellate Opinion p. 8, paragraph 2.

to be exposed *to what humanity in Nashville, Tennessee, may be all about in some pockets of town* or to some evil deviants who have no control.<sup>155</sup>

Prior to these indictments, neither Ms. Watkins nor Mr. Dunn had any criminal record. They worked full-time jobs and were close to their family and friends. They lived in a nice home in a nice neighborhood made up primarily of working and professional-class, African-Americans. Ms. Watkins was in the middle of applying to adopt a child of her own. Mr. Dunn had children he was close to and who he regularly spent time with.<sup>156</sup>

The impact of these misrepresentations of fact and inflammatory statements made by the prosecuting attorney to the jury, just before they attempted meaningful deliberation, cannot be overstated. The prosecuting attorney breached his ethical responsibility to argue facts consistent with the proof. The jury did not have the benefit of a trial transcript during their deliberation.

Finally, a bomb threat occurred in the middle of the testimony of a critical witness, Ms. Fetterman.<sup>157</sup> This threat was called into the courthouse during the trial causing the courtroom to be evacuated for several hours. At the time of the evacuation, Ms. Fetterman had just completed direct questioning and the jury was brought back to hear her cross-examination.

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<sup>155</sup> Fisher Closing Argument, Trial Transcript p. 70

<sup>156</sup> CRU Interviews with Mr. Dunn's ex-wife and two of his children; CRU Interviews with Ms. Watkins, NCIC.

<sup>157</sup> Nashville Banner Article, **Marked Exhibit N**.

#### IV. CRU FINDINGS AND RECOMMENDATION

“The evidence, of course, will be circumstantial, *as is all of the evidence in this case.*”

-- ADA Richard Fisher<sup>158</sup> June 22, 1988

“Perhaps a more reliable indicator of timing of this child’s injuries is found in the perianal injury...in a critically ill child this cellular response could be expected to be delayed to several days or even more than a week following an injury **well before Brandy Brooks was in the care of either Joyce Watkins or Charlie Dunn.**” --State’s Chief Medical Examiner, Dr. Adele Lewis November 8, 2021

At the time of this trial, the jury charge provided in circumstantial cases, the State had to prove the following: First, circumstantial evidence should be acted upon with caution, Second, all of the essential facts must be consistent with the hypothesis of guilt, as that is compared with all of the facts proved. Next, as stated in Lancaster v. State, 91 Tenn. 267, 18 S.W. 777, 781 (1982), the facts must exclude **every other reasonable theory or hypothesis except that of guilt**. Finally, the facts must establish such a certainty of guilt of the accused as to convince the mind beyond a reasonable doubt that the accused is the one who committed the offense. The Court continued, “(it) is not necessary that each particular fact should be proved beyond a reasonable doubt if enough facts are proved to satisfy the jury, beyond a reasonable doubt, of all the facts necessary to constitute the crime charged. **Before a verdict of guilty is justified, the circumstances, taken together, must be of a conclusive nature and tendency, leading on the whole, to a satisfactory conclusion and producing in effect a moral certainty that the accused, and no one else, committed the offense.**” Marable v. State, supra, citing Wharton’s Criminal Evidence, Vol. 2, pps. 1609-1610.

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<sup>158</sup> Motion to Suppress, pp. 3-4.

The inescapable reality is that we may never know for certain what happened to cause the death of B■■■■ D■■■■ J■■■■.<sup>159</sup> However, what is clear is that Joyce Watkins and Charles Dunn neither committed an Aggravated Rape of B■■■■ nor did they take any actions that caused her death. The case against them was purely circumstantial and failed to exclude other reasonable theories or possible perpetrators.

When stripped of demonstrably unreliable testimony, facts misrepresented to the jury and Post-Conviction Court and faulty medical conclusions, even the minute circumstantial case against Ms. Watkins and Mr. Dunn is devoid.

There is clear and convincing affirmative evidence of Ms. Watkins's and Mr. Dunn's innocence found in B■■■■'s physical and psychological condition for the two months prior to her being in Mr. Dunn's and Ms. Watkins's care. It can be deduced from the testimony of Ms. Williams herself that B■■■■ was at a minimum, seriously neglected while in her care. Williams described many times that B■■■■ wet or soiled herself, but Williams did not change her, instead having B■■■■ do it on her own (or not at all, as she explained B■■■■'s rash as a result of her being "constantly wet"). Ms. Williams denied bathing the child; again, letting a four year old bathe herself. She told B■■■■ to put vaseline on her vagina for the purported rash, but did not help her or inspect the area. She observed that by the end of her stay in Kentucky, B■■■■ was unable to even sit in a bathtub because of vaginal pain.<sup>160</sup>

By Ms. Williams's own account, there were multiple injuries and disturbing behaviors that warranted seeking immediate medical attention for the child. Williams reported that B■■■■ vomited multiple times at the table, without warning. She recounted the previously described peanut butter incident to the court. Despite B■■■■ losing consciousness on more than one occasion, Ms. Williams did not seek medical attention for her. She described B■■■■ falling asleep almost anywhere, including a playground. All of the incidents and symptoms described by Williams are unnerving when considered alongside information from B■■■■'s mother Ms. B■■■■, that B■■■■ was a healthy child prior to her stay in Kentucky.

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<sup>159</sup> In light of the new information and analysis by the CRU, the Nashville District Attorney's office is engaged in a fervent and active investigation into the causation of B■■■■'s death. Due to the pending nature of the investigation, the CRU is limited as to what can be included within this report regarding that investigation.

<sup>160</sup> Trial Transcript, p. 279.



Ms. B█████ testified that, “B█████ was a happy child, bright.”<sup>161</sup> In a recent interview with the CRU, Ms. B█████ elaborated, saying B█████ would “[g]o to the bathroom like a normal person. There wasn’t nothing wrong with her. B█████ went to a private school...right before she went up there. There was nothing wrong with her.”<sup>162</sup> This was corroborated by Ms. Watkins who stated B█████ was potty-trained at an early age.<sup>163</sup>

Accounts from Ms. Watkins and from Ms. Fetterman indicated that before this time period, B█████ was a lively, happy child who enjoyed being around other people. In the span of only weeks, B█████ went from being a healthy, normal child to being withdrawn and exhibiting frightening medical and behavioral symptoms.

Beyond these instances of neglect, there was ample evidence of abuse. The complaint to KY DSS alleged B█████ had swollen hands, welts on her back and injured knees. Of course, because of Ms. Williams deception and the negligence of the DSS social worker, these allegations were not fully investigated. Regardless, B█████’s injuries were alarming enough that they led someone to call and report suspected child abuse - *within the same two to three week period* as the peanut butter incident, the fall down the stairs, the severe vaginal rash and pain, and finally, B█████’s eventual death.

Of no coincidence, beginning the week of B█████’s death, Ms. Williams began expressing she was ready for B█████ to go home.<sup>164</sup> Throughout that week, Ms. Williams called Ms. Watkins with desperate frequency, demanding she come and get the child. Ms. Williams admitted she knew B█████ was unable or unwilling to sit in bathwater due to pain prior to Ms. Watkins’s arrival on June 26.

Dr. Lewis’s new scientific analysis of B█████’s head and vaginal injuries, the analysis of Dr. Reddy, the analysis of Dr. Sperry, and Dr. Gretel Harlan’s own post-conviction testimony along with current scientific understanding of the timing of head injuries render spurious Dr. Harlan’s conclusions as to the timing for causation of B█████’s injuries. Her assessment dramatically changed moments before her trial testimony, mutated during her testimony and did not comport with current scientific standards. Finally, Dr. Gretel Harlan (and Dr. Charles Harlan

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<sup>161</sup> Trial Transcript, p. 65.

<sup>162</sup> CRU Phone Interview of L█████ B█████, 10-26-21.

<sup>163</sup> CRU Interview with Ms. Watkins.

<sup>164</sup> Trial Transcript, pp. 335-36.

who, at the very least, also participated in the examination and assessment of B■■■■'s injuries), have been discredited by licensing boards and made documented mistakes in testimony throughout other cases.

New expert opinions expand the window of time for causation of B■■■■'s injuries to include several days prior to her being in Ms. Watkins and Mr. Dunn's care. This, considered in concert with what we know about that two-month period, leads to the logical conclusion B■■■■ was already injured when Ms. Watkins and Mr. Dunn picked her up on Friday night. Dr. Harlan's previous assessment was unreliable, changed immediately before trial and did not comport to current scientific standards regarding the timing of head injuries.

It is absurd to ignore the documented ongoing abuse and neglect of B■■■■ that took place in the two months prior to her presence in Nashville and instead to place blame on the two people who had B■■■■ in their care for less than 9 hours. Two people, who within 1.5 hours, notified B■■■■'s grandmother of a medical problem and the need for B■■■■ to receive medical care.

The tragedies of this case are myriad. B■■■■ was failed by every adult who interacted with her during the summer of 1987. She was failed by her caretaker, Ms. Williams, she was failed by the neighbor, Ms Fetterman, she was failed by the Kentucky Department of Social Services. Ms. Watkins is the only person who attempted to help B■■■■ and the only person who sought to get B■■■■ medical attention. Other than merely being a male who was in B■■■■'s presence prior to her death, there is utterly no evidence suggesting Mr. Dunn's guilt.

Ms. Watkins served 27 years of a life sentence until she was granted parole in 2015. Notably, E■■■■ B■■■■, B■■■■'s mother, testified in support of Ms. Watkins at her parole hearing as did their sister, Julia Henry.<sup>165</sup> Ms. Watkins, now 74, has been supervised by the TDOC Department of Parole since her release, and remains under Sex Offender Registry<sup>166</sup> supervision. Her parole officer, Joshua Rogers, verified she has been fully compliant.<sup>167</sup> Rogers

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<sup>165</sup> CRU Phone Interview of L■■■■ B■■■■, 10-26-21. This is not a new position for Ms. B■■■■ to take. In 1988, she was interviewed for Watkins's presentence report and stated "she was shocked that Joyce was sentenced and that the whole family hated to see her like that. Ms. B■■■■ advised that she does not feel Joyce had anything to do with this offense. She stated Joyce has kept her other children in the past and just couldn't imagine that she had anything to do with this."

<sup>166</sup> "SOR."

<sup>167</sup> CRU Interview with Off. Joshua Rogers, 10-18-2021.

placed her within “the top five percent of offenders as far as her willingness to comply with supervision.”<sup>168</sup>

Ms. Watkins has submitted to a psychosexual evaluation and regular polygraph testing as required by the SOR. Noted in the testing, “Per her report, Ms. Watkins was neither an accomplice nor an accessory to the crimes for which she was charged. She disavowed that her boyfriend at the time (her co-defendant) would mistreat or abuse a child, especially one in her care. She adamantly denied knowing what happened to the child in question.”<sup>169</sup> **Ms. Watkins has passed all polygraph tests while on parole.**

Charlie Dunn also served approximately 27 years before he died, in prison, in 2015. According to his son, Nathaniel Dunn, Charlie had been granted parole and was awaiting release at the time of his death. Dunn also maintained his innocence of any involvement in B[redacted]’s death.

The jurors who convicted Ms. Watkins and Mr. Dunn were presented with a picture of Ms. Watkins and Mr. Dunn as monsters. They were told by the Medical Examiner there was only one narrow timeframe for B[redacted]’s injuries - occurring during the period she was in the care of Ms. Watkins and Mr. Dunn. They were told all other suspects had been investigated and eliminated from suspicion. They were told the co-defendants were engaged in a conspiracy to cover up their actions by purposely confusing material facts in their statements to police. They were told Ms. Watkins had made an attempt to hide blood-stained sheets from police discovery. In the middle of critical testimony, a bomb threat forced the evacuation of the Court.

The State’s closing argument was rife with emotionally charged, flatly incorrect summations of the evidence the jury had heard. These false assertions flowed through to the Post-Conviction and Appellate Courts’ understanding of the facts tainting their ability to meaningfully analyze the questions posed to them.

Guided by new scientific analysis of reliable expert medical witnesses, including our current State’s Chief Medical Examiner and a thorough examination of the evidence in this case, the CRU finds Joyce Watkins and Charlie Dunn to be **actually innocent** and therefore, respectfully submits that the Office of the District Attorney General should, in accordance with

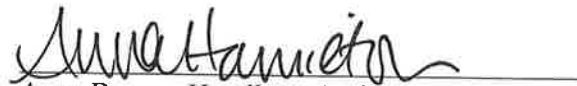
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<sup>168</sup> CRU Interview with Off. Joshua Rogers, 10-18-2021.

<sup>169</sup> Psychosexual Evaluation by Tim K. McConkey, M.Ed., on 1-15-2016.

our obligation under Tenn. R. Sup. Ct. 3.8(h), formally recommend the vacation of the convictions and exoneration of Joyce Watkins and Charlie Dunn for the Aggravated Rape and Murder of B [REDACTED] D [REDACTED] J [REDACTED].

  
Sunny Eaton, Director  
Conviction Review Unit  
BPR #025364

  
Anna Benson Hamilton, Assistant District Attorney  
Conviction Review Unit  
BPR #031350

## TABLE OF EXHIBITS

- A. Kentucky Department for Social Services Report of Ms. Jackson
- B. Nashville Memorial General Hospital Records
- C. Vanderbilt University Hospital Records
- D. Tennessee Bureau of Investigation Laboratory Report
- E. Ft. Campbell Criminal Investigations Division Report
- F. United States Marine Corps Criminal Investigations Division Report
- G. Affidavit and Report of Shilpa Reddy, MD
- H. Scientific Studies related to the timing of head trauma
- I. Curriculum Vitae and Report of State's Chief Medical Examiner, Adele Lewis, MD
- J. Article: Kemp, A., Maguire, S., Mann M.K., "Can you age bruises accurately in children? A systematic review. *Archives of Disease in Childhood*
- K. Autopsy Report and Final Conclusions of Dr. Gretel Harlan and Dr. Charles Harlan
- L. Handwritten Notes of Laura Treese, TN Department of Human Services
- M. Photograph of sheets from initial MNPd search of Ms. Watkins'
- N. News Article, McCullough, Leslie *Nashville Banner*, "Bomb Threat empties courtroom in couple's murder trial"